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CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)
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Compilation of responses to the questionnaire

for the preparation of the CCJE Opinion No. 26 (2023)

“Moving forward: use of modern technologies in the judiciary”

Compilation des réponses au questionnaire

en vue de la préparation de l’Avis No. 26 (2023) du CCJE

« Aller de l'avant : l'utilisation des technologies modernes dans le système judiciaire »

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Préparée par le Secrétariat du CCJE

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Albania/Albanie

1. Introduction and definitions

The questionnaire is aiming to collect the relevant information as regards the modern technology used within the judiciary in your country.

In this regard, for the purposes of the present questionnaire, the following definitions apply:

Electronic files/electronic proceedings

Definition: the whole or part of process/commencement/issue of process/correspondence of the process with all parties, including court internal administration and/or case management generally is electronic (no paper files or paperwork at all).

Videoconference

Definition: all kind of hearings which are held via videoconference (including online platforms).

Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

No, electronic files/proceedings are not in use at the Albanian courts. There are no solutions that facilitate access to justice by establishing a digital channel to exchange data and e-files between court and citizens.

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

Not all the documents and the judicial proceedings are in electronic files.

In 2011 the courts of Albania began implementing audio recording to capture the hearings conducted in the court rooms throughout the country. All the sessions that take place in the courtrooms are recorded with audio means and these are the only one electronic files that are part of the judicial proceeding.

2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

No, electronic signature is not applicable in the judicial system.

2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

None of the Albanian courts use electronic files. They still work on paper-based files.

2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

No, they do not work with electronic files.

2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

All the judicial proceedings are paper-based files. Digitalisation of judicial proceedings and e-filing requires consistent legislation, which strives for formalisation, simplification and/or dematerialisation, and uniformity of the processes. Strict technical rules and requirements should be defined in order to avoid potential legal challenges and maintaining the flexibility for specific cases. New development such as electronic documents is difficult to apply in the existing case management system.

The HJC need to establish the concept of a unified centralized information system for the courts delivering e-services, including e-filing and allowing public access on the digital case files and electronic recording maintained by the judicial authorities.

2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

In Albania is approved a dedicated law for the electronic document¹, respectively Law no. 10 273, dated on 29.4.2010. The article 2 of this law foreseen that:” Provisions of this law shall not apply in cases where the in force law asks expressly for the use of a written form of it.

2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

The use of electronic files/proceedings is optional.

Nowadays electronic evidences presented on courtrooms tend to be used much more than the paper-based evidences.

Rule regarding written evidences are foreseen in the Code of Civil Procedure, while procedure about the use of electronic documents/evidences is foreseen under the law no. 10 273, dated 29.4.2010 “for the electronic document”.

This law regulates the use of electronic documents by physical, legal, public and private people, whose electronic programs and devices enable the realization, production, transmission, receipt, storage and security of the electronic document information.

In this law, the term "electronic document" is any information created with "documentary quality", sent, received or stored electronically from a computer system or similar mechanism, which is eligible for validity, in accordance with articles 5 to 9 of this Law. The content of the electronic document includes all forms of data, reflected in letters, numbers, symbols, sound and image.

2.9 Are different approaches to the use of electronic files/proceedings taken depending on the substance of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

As long as electronic files are not applied, we cannot give an answer.

2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

As long as electronic files by judges are not applied, we cannot give an answer.

2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

As long as electronic files by judges are not applied, we cannot give an answer.

¹ https://cesk.gov.al/publicAnglisht_html/wp-content/uploads/2016/04/ligji10273.pdf

2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

As long as electronic files by judges are not applied, we cannot give an answer.

2.13 In your experience, what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them.

The transition from paper based to a digital-by-default system, in which all documents are created, storage and managed electronically requires internal reorganisation, sublegal acts drafted and approved, involvement of stakeholders as well as a gradual implementation.

The digitalization process requires considerable human resources and since it will be a new process, it may be difficult for judges to integrate into this environment. Considering the heavy workload of the judicial system this may be considered as "additional job".

3. Use of videoconference facilities, including online platforms

3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms? Where such facilities are used, in which courts are they used?

Videoconferencing is applied mainly in criminal cases and in civil family cases when the parties are physically allocated in different countries. For family cases, this procedure has been applied since the period of the covid-19 pandemic.

Durres District Court and Special Court of First Instance for Corruption and Organized Crime use professional equipment for video conferencing. Mainly these devices are used for criminal cases and they enable the interaction among Albanian courts and other foreign court, outside Albania.

While for civil matters, the Albanian courts use the MS Teams platform.

3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

Except for testimony that may be taken as evidence serving the trial, other evidence may not be exchanged during video conference sessions.

3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

According to the Albanian Criminal Code of Procedure², the proceedings that can be held via videoconferencing in the following scenarios:

- minor victim shall be questioned without delay by people specialized for this purpose;
- When possible and appropriate, the conversation shall be recorded with audio-visual recording tools, pursuant to the provisions of this Code.
- The defendant in a joined proceeding, who is being prosecuted or is serving a sentence abroad for a different criminal offence, whose extradition has been denied, may be questioned in distance, by means of audio-visual link, pursuant to international agreements, provided that the foreign State ensures the presence of the defendant's lawyer in the venue of questioning;
- The witness may be questioned at distance, within the country or abroad, through audio-visual links, in compliance with rules provided by international agreements and provisions of this Code. The person authorized by the Court shall remain at the witness's location, certifies his/her identity, and ensures the correct process of questioning and of the implementation of protective measures. These actions are reflected in the minutes;

²<https://euralius.eu/index.php/en/library/albanian-legislation?task=download.send&id=172&catid=11&m=0>

- The victims of the sexual criminal offences, trafficking or other domestic violence offences, upon their request, may be questioned as witnesses through audio and audio-visual tools;

3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

Hearings that take place by video conference are held in the courtrooms. In these rooms, parties who are present in court can participate physically and they interact among them via the connection made by video conference. Most courtrooms are equipped with monitors so that parties can smoothly interact with each other despite their physical distance.

3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

The only act approved by the HJC is decision no. 145, dated 27.04.2020³ about approval of the use of the computer program "Microsoft Teams" that enables remote audio-visual communication for the court sessions, during covid -19.

3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

Videoconferencing is binding only for hearings foreseen in the article 167/a on 'Distance questioning of a defendant in a joined proceeding or serving a sentence abroad', in the Criminal Code of Procedure. For civil cases, when parties are in different countries, the decision for the use of videoconferencing is under the discretion of the judge.

3.7 What views have been expressed by judges concerning the use of electronic files and proceedings? Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

No surveys were conducted by our side, regarding the use of electronic documents by judges.

3.8 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

We don't have any official report regarding the utility of the electronic files and proceedings.

3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

The technology of the courts has been defined like any system that uses technology in the form of electronic devices have to guaranteeing an undisputed benefit to the judicial process. More specifically, the various technologies used in court may include transcriptions and videoconferencing and audioconferencing technologies, software such as case management systems, electronic filing systems, electronic libraries ect.

With the spread of technology, courts can no longer be seen as a secondary entity but as a central part of larger interconnected technological and legal layers.

The widespread of the 'internet of things', deriving from the integration of mobile devices, together with integrated telecommunications, has inevitably led to a greater use of

³<https://klgj.al/wp-content/uploads/2020/04/VENDIM-Nr.-145-dat%3%ab-27.04.2020-P%3%8bR-MIRATIMIN-E-P%3%8bRDORIMIT-T%3%8b-PROGRAMIT-KOMPJUTERIK-%e2%80%9cMICROSOFT-TEAMS%e2%80%9d-Q%3%8b-MUND%3%8bSON-ND%3%8bRLIDHJE-.pdf>

technology in the judicial system especially when it comes to the delivery and administration of evidentiary materials in a judicial process.

4. Use of data tools

4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

Some actions which are more easily performed when handling paper needs ad-hoc tools, such as double screens to read, tablets to read documents on the move and software tools to make annotations or “post-it” in open documents; such tools should be made available to users when the digital-by-default becomes reality.

4.2 What kind of tools may judges use? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?

Through E-Albania platform, judges have been provided with the necessary credentials to log into the system for verifying the information they need.

Through this instrument, they do verifications related to various institutions such as civil register, the national registry of the business, the property registration register, the electronic register of experts, the general directorate of prisons, etc.

The user of these data tools is optional. Some judges prefer receiving official information through documents, in hard copy.

Currently, HJC is applying to the Tirana Judicial District Court for the electronic notification of the parties.

4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

Detailed rules on the electronic notification are established by order of the Minister of Justice.⁴ (Article 141 Rules on electronic notification of acts)

The experts shall be chosen from an online register of licensed professionals, which shall be administered and published by the Ministry of Justice, except for the conditions laid down in Article 224/d, paragraph 2 of this Code. The experts shall be appointed under the rules contained in the Code of Civil Procedure of the Republic of Albania.

4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

Yes, these instruments definitely help the judge a lot during the trial, as they are directly related to judicial economy and efficiency in the examination of the case.

4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

No, we don't have this information.

4.6 In your experience, what are the advantages and disadvantages of using data tools? Please describe them.

Using data tools would help the judicial system to interact with other government systems, with the purpose to exchange data with other authorities systems in an interoperable manner, to create complete digital case files, to allow the access from a single online point to all case-related documents (including interaction with evidences presented in electronic version, accessing the audio recording of the session and multimedia e-evidence), to allow for a legally valid digital serving of documents for parties and other participants to the proceedings ect.

⁴<https://euralius.eu/index.php/en/library/albanian-legislation?task=download.send&id=257&catid=51&m=0>

In the Albanian judicial system, the use of these instruments is distributed and not centralized. To perform verification you must access systems with different credentials.

5. Forms of automatic proceedings

5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.

No there are not automatic proceedings used.

5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?

No there are not automatic proceedings for fact finding used.

5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

No there are not automatic proceedings for ascertaining the applicable law and/or precedent.

5.4 Are there automatic proceedings for decision-making or to assist decision-making?

No.

5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

First of all, in Albania a broad consensus has been achieved in the Albanian judiciary about the need to replace both existing case management systems used by Albanian courts. However, it's obvious that the systems used in the Albanian courts are almost obsolete despite frequent updates with new features.

5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.

At the moment the main objective of HJC is to set up a new system, to increase the efficiency of courts, increase the quality of their work, its results and of data produced and increasing transparency, accountability, and inclusiveness for court users.

5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

No, there are not. The HJC during the technology development shall strive at ensuring that rules, laws and practices driven by digitalisation do not have any negative impact on the Rule of Law implementation. All guarantees to a fair trial must apply to all digitalised judicial proceedings.

5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence?

The utmost need is related firstly with the establishment of a new integrated case management system.

5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?

No.

5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?

No.

5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?

No.

5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use artificial intelligence in legal proceedings?

As long as IA is not applied, the commissioner has no role in this part.

6. Responsibilities for operating modern technologies

6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

By law 115/2016 on governance institutions of the justice system⁵, High Judicial Council, in cooperation with the information technology Centre for the justice system, will be responsible for determining the applicable information technology system used for the courts case management and ensuring that the same technology system is applied in every court.

6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

For any development or project related to IT and regarding the implementation of new technologies, all actors participating in the justice system must be consulted.

We emphasize that members of the board of the information technology centre are judges from various fields, prosecutors, etc.

6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?

At the moment the main objective of HJC is to set up a new case management system.

7. Criticisms and proposals for use and development of modern technology

7.1 Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

The use of information and communication technologies (ICT) can strengthen justice systems and make them more accessible, efficient, resilient and ready to face current and future challenges.

The COVID-19 pandemic has also had an impact on national justice systems and has highlighted a number of challenges affecting the functioning of the judiciary. At the same time, it has shown the need for judicial systems to further improve their digitalisation, articulated and pointed out also by the EU Progress Report emphasising: the availability of online information to the public, procedural rules for digitisation, use of digital technologies in courts and prosecutors, digital solutions to start and follow civil/commercial and administrative proceedings, to allow accessing judicial decisions via a one-stop-shop solution (e.g., e-justice portal), to cover all activities related to the administration of cases, trials and activities at court level and to create complete digital case files, allowing the access from one point to all case-related documents, including audio recordings and multimedia e-evidence, ect.

⁵

<https://www.avokatipopullit.gov.al/media/manager/website/reports/LAW%20%20No.%201152016%20ON%20GOVERNANCE%20INSTITUTIONS%20OF%20THE%20JUSTICE%20SYSTEM.pdf>

Andorra/Andorre

1. Introduction et définitions

Le questionnaire vise à recueillir des informations utiles concernant les technologies modernes utilisées au sein du système judiciaire de votre pays.

A cet égard, voici ce qu'on entend par les termes ci-après aux fins du présent questionnaire :

Dossiers / procédures électroniques

Définition : l'ensemble de la procédure / du début de la procédure / de la correspondance liée à la procédure avec toutes les parties ou une partie de celle-ci, y compris l'administration interne du tribunal et / ou la gestion de l'affaire se fait généralement par la voie électronique (pas de dossiers ou de documents sur papier).

Visioconférence

Définition : tous les types d'audiences qui se déroulent par visioconférence (y compris les plateformes en ligne).

Outils liés aux données (sur les faits, sur le droit et sur les précédents / la législation)

Définition : les tribunaux / ministères fournissent des outils liés aux données (conçus par un fournisseur privé ou public) utilisés par les juges pour faciliter le jugement des affaires.

Formes de procédures automatiques

Par exemple, des procédures automatiques pour 1) l'établissement des faits, 2) la recherche du droit et des précédents ; 3) les décisions.

2. Utilisation de dossiers / procédures électroniques

2.1 Existent-ils des fichiers / procédures électroniques et y a-t-il des exigences spécifiques à ce sujet ? Veuillez les décrire.

Tous les dossiers (procédures judiciaires) existent en électronique (plateforme de gestion des dossiers) et en papier, puisque on est en période transitoire jusqu'à 2024, quand le dossier en papier va disparaître définitivement, et tous les actes de procédure devront obligatoirement être fait à travers le réseau électronique en ce qui concerne l'Administration de justice, les professionnels en rapport avec la justice (notamment avocats, mais aussi notaires ou autres) et le reste d'administrations publiques (police et autres).

2.2 Les documents et l'ensemble de la procédure judiciaire sont-ils logés dans des fichiers électroniques ? Si ce n'est pas le cas, veuillez décrire la ou les utilisations les plus importantes des fichiers électroniques.

Tous les documents produits par l'administration de justice sont logés dans des fichiers, mais il y a encore certaines pièces/documents apportés par les parties (particuliers) qui ne sont pas encore digitalisés.

2.3 La procédure s'accompagne-t-elle de signatures numériques ? Les procédures électroniques diffèrent-elles en substance des dossiers et procédures sur papier ?

Les magistrats et autres membres de l'administration de justice ne peuvent signer qu'en numérique. Cependant les avocats et particuliers signent en papier. Les dossiers en papiers sont encore plus complets que les procédures électroniques, puisque certaines pièces ne sont pas encore transmises numériquement.

2.4 Les juges et les tribunaux travaillent-ils tous à l'aide de fichiers électroniques ? Sinon, quels tribunaux les utilisent et quels tribunaux ne le font pas ? Quelle est la raison de cette différence d'utilisation ?

Tous les juges et les tribunaux sont au même niveau d'usage des fichiers électroniques.

2.5 Les juges ont-ils des ordinateurs à domicile et travaillent-ils à domicile avec les mêmes fichiers électroniques qu'au bureau ? Dans quelle mesure les fichiers électroniques sont-ils accessibles par le tribunal et / ou les parties via des systèmes basés sur un cloud ?

Les juges peuvent travailler en accès à distance depuis leur domicile, et ont donc accès aux mêmes fichiers qu'au bureau, mais les ordinateurs portables ne sont pas fournis par l'administration de justice, mais achetés par chaque juge, s'il le souhaite.

2.6 Lorsque des dossiers électroniques sont utilisés, des dossiers sur papier le sont-ils également ? Si oui, dans quelle mesure les dossiers papier sont-ils utilisés et comment se justifie le fait de continuer de les utiliser ? Existe-t-il un processus continu de transition au sein du système judiciaire pour passer des dossiers papier aux dossiers électroniques ? Combien de temps ce processus de transition doit-il prendre ?

On est en processus continu de transition, qui devrait durer 2 ans (jusqu'en mars 2024). On maintient les deux dossiers pendant cette période. La partie du dossier qui concerne l'administration de justice est complètement électronique, et le système est en train de s'implanter dans le reste de l'administration, les avocats et les notaires dans la présente phase.

2.7 Existe-t-il des lois, des règlements ou des règles de procédure applicables à l'utilisation de dossiers et de procédures électroniques : 1) dans la Constitution ; 2) en droit procédural ; 3) dans d'autres formes de droit, y compris des instruments de *soft law* ? A quoi s'appliquent ces lois, règlements ou règles ? Veuillez décrire leur application.

Il y a une loi, la Loi d'accès électronique à l'administration de justice, qui établit le fonctionnement du réseau électronique, la procédure électronique, le registre et présentations des écrits et les communications des actes de procédure.

2.8 L'utilisation de dossiers / procédures électroniques est-elle facultative ou obligatoire pour les juges / avocats ou, lorsque cela est autorisé, pour les plaideurs agissant sans l'assistance d'un avocat ?

Elle est obligatoire pour les juges, elle sera obligatoire pour les avocats en quelques mois, et à la fin du processus, aussi pour les plaideurs particuliers.

2.9 Des approches différentes de l'utilisation des dossiers / procédures électroniques sont-elles adoptées en fonction du fond de la procédure judiciaire, par exemple, des approches différentes sont-elles adoptées pour les procédures civiles, pénales, administratives, familiales ou celles qui portent sur des questions sociales ?

Non, les procédures électroniques sont mises en place au même temps pour toute sorte de procédures.

2.10 Quelles sont les opinions exprimées par les juges concernant l'utilisation des fichiers et des procédures électroniques ?

Aucune opinion n'a été exprimée auprès du CSJ ou autres par les juges, que ce sont adaptés au processus.

2.11 Existe-t-il des sondages / enquêtes auprès des juges concernant leur opinion sur l'utilisation et / ou l'utilité des dossiers et procédures électroniques ?

Non.

2.12 Existe-t-il des rapports officiels concernant l'opinion des juges sur l'utilisation et / ou l'utilité des fichiers et des procédures électroniques ? Si oui, que disent-ils ?

Non.

2.13 Selon votre expérience, quels sont les avantages et les inconvénients des fichiers / procédures électroniques. Veuillez détailler.

Avantages : Cela facilite le travail au domicile ou à distance, et la gestion des procédures complexes (indexation, ...). Cela facilite aussi l'harmonisation des actes de procédure sur la base de document de base pre-remplis.

Inconvénients : Les outils sont souvent trop lents et un peu difficiles à utiliser (ils ne sont pas encore pleinement développés, et les améliorations techniques prennent beaucoup de temps)

3. Utilisation des installations de visioconférence, y compris les plateformes en ligne

3.1 Quels types de procédures judiciaires peuvent se dérouler via des installations de visioconférence et / ou des plateformes en ligne ? Lorsque de telles installations sont utilisées, dans quels tribunaux le sont-elles ?

La visioconférence n'est en place que pour les dépositions des témoins en certains cas (très restreints) et des experts auprès du tribunal, quand ils se trouvent à l'étranger (très souvent dans un petit pays).

3.2 Les preuves peuvent-elles être recueillies par le biais d'installations de visioconférence et / ou de plateformes en ligne ? Dans l'affirmative, peuvent-elles être réalisées dans toutes les juridictions ou seulement dans certaines d'entre elles ? Dans ce dernier cas, dans quelles juridictions peuvent-elles être réalisées ?

Seulement les dépositions des experts et témoins peuvent être recueillies par visioconférence en ce moment, mais dans quelques mois toutes les preuves documentaires devraient être recueillies par la plateforme en ligne.

3.3 Quelles sont les conditions liées à l'utilisation de visioconférences ou de plateformes en ligne dans les procédures ? Si elles diffèrent d'une procédure à l'autre, veuillez décrire ces différences.

Il n'y a pas de prévisions législatives pour la visioconférence. Dans la période covid il y eu une loi qui permettait les interventions à l'audience par visioconférence quand ce n'était pas possible de faire autrement, mais la loi n'est applicable que en cas d'émergence sanitaire.

Pour les plateformes en ligne, l'usage de la plateforme de justice sera obligatoire, mais elle est en ce moment en déploiement. Tous les juges et procureurs accèdent avec leur signature numérique. Les avocats disposent déjà de signature numérique, mais pas encore d'accès sécurisé à la plateforme.

3.4 Les participants (juges, avocats, parties, témoins) à une procédure se déroulant par visioconférence ou sur une plateforme en ligne peuvent-ils se trouver en dehors d'un tribunal ? Dans l'affirmative, tous les participants ou seulement certains d'entre eux

peuvent-ils prendre part à la procédure sans se trouver au tribunal ? Si cette possibilité est offerte à certains d'entre eux, lesquels ? Y a-t-il des lieux extérieurs à une juridiction à partir desquels un participant ne peut pas prendre part à une procédure qui se déroule par visioconférence ou via une plateforme en ligne ? Si oui, lesquels ?

Que les experts (médecin légiste ou experts policiers) se trouvant à l'étranger peuvent participer à une procédure par visioconférence, ou des témoins se trouvant à l'étranger, mais qui se connectent depuis un autre tribunal, en suivi d'une DEPI (pour les témoins).

3.5 Existe-t-il des lois, des règlements ou des règles applicables à l'utilisation des visioconférences et des plateformes en ligne : 1) dans la Constitution ; 2) en droit procédural ; 3) dans d'autres formes de droit, y compris le *soft law* ? Que régissent ces lois, règlements ou règles ? Veuillez décrire leur application.

Non, hors situation d'urgence sanitaire, il n'y a aucune règle, autre que la pratique des tribunaux.

3.6 L'utilisation de la visioconférence est-elle facultative ou obligatoire ? Si elle est facultative, peut-elle être imposée par le tribunal sans le consentement des parties ?

Elle ne peut pas être imposé en aucun cas.

3.7 Quelles sont les opinions des juges sur l'utilisation de dossiers et de procédures électroniques ? Existe-t-il des sondages / enquêtes auprès des juges concernant leur opinion sur l'utilisation et / ou l'utilité des dossiers et des procédures électroniques ?

Il n'y a pas de données sur ce point.

3.8 Existe-t-il des rapports officiels concernant l'opinion des juges sur l'utilisation et / ou l'utilité des fichiers et des procédures électroniques ? Si oui, que disent-ils ?

Non.

3.9 Selon votre expérience, quels sont les avantages et les inconvénients de l'utilisation de la visioconférence et / ou des plateformes en ligne ? Veuillez les décrire.

Avantage : Pouvoir connecter avec des témoins à l'étranger qui ne peuvent pas se déplacer.

Inconvénient : L'immédiation et l'échange perd beaucoup à travers l'écran, et la communication (verbale et gestuelle) est bien moins fluide.

4. Utilisation d'outils liés aux données

4.1 Existe-t-il des outils liés aux données utilisés par votre système judiciaire : 1) sur les faits, 2) sur le droit et les précédents ? Si oui, veuillez les décrire.

Pas sur les faits.

Il existe des bases de données sur le droit, avec les modifications et les périodes d'application actualisés.

Sur la jurisprudence il y a des bases de données très simples qui n'ont pas une indexation par matières.

4.2 Quels types d'outils les juges peuvent-ils utiliser ? Y a-t-il des outils officiels fournis par le pouvoir judiciaire / le ministère ? Si oui, quels sont-ils ? L'utilisation d'outils liés aux données est-elle facultative ou obligatoire ? Si elle est facultative, comment et par qui leur utilisation est-elle déterminée ?

Les outils de jurisprudence sont officiels et fournis par le Conseil Supérieur de la Justice (CSJ), les outils sur le droit sont développés par une entreprise privée, mais le CSJ fourni un accès à chaque juge. L'usage est facultatif et a critère de chaque juge selon ses besoins. Le CSJ fourni les accès payants aux bases de données privées à tous les juges qui le demandent.

4.3 Existe-t-il des lois, des règlements ou des règles applicables à l'utilisation des outils liés aux données dans votre système : 1) dans la Constitution ; 2) en droit procédural ; 3) dans d'autres formes de droit, y compris le *soft law* ? Que régissent ces lois, règlements ou règles ? Veuillez décrire leur application.

Aucune règle en la matière.

4.4 Les outils liés aux données facilitent-ils l'établissement des faits et la préparation de la décision judiciaire ?

Pas sur l'établissement des faits, mais sur la préparation de la décision, puisqu'ils permettent d'accéder très facilement au droit en vigueur au moment des faits. Et moins facilement, aux précédents, puisqu'il faut effectuer une recherche par mots inclus dans le texte.

4.5 Y a-t-il des sondages / enquêtes auprès des juges concernant leur opinion sur l'utilisation et / ou l'utilité des outils liés aux données ? Existe-t-il des rapports officiels concernant l'opinion des juges sur l'utilisation et / ou l'utilité des outils liés aux données ? Si oui, qu'en disent-ils ?

Non.

4.6 Selon votre expérience, quels sont les avantages et les inconvénients de l'utilisation des outils liés aux données ? Veuillez les décrire.

Avantages : Ils permettent d'effectuer des recherches ciblées et permettent de gagner beaucoup de temps et éviter des erreurs.

Inconvénient : Le seul inconvénient est qu'ils ne sont pas bien développés en ce qui concerne les précédents. Aucun inconvénient quand a son usage.

5. Formes de procédures automatiques

5.1 Utilise-t-on des procédures automatiques dans le système judiciaire de votre pays ? Si oui, veuillez les décrire.

Non.

5.2 Existe-t-il des procédures automatiques pour l'établissement des faits ? Les faits générés automatiquement sont-ils acceptés comme éléments de preuve ?

Non.

5.3 Existe-t-il des procédures automatiques pour déterminer le droit applicable et / ou les précédents ?

Non.

5.4 Existe-t-il des procédures automatiques de prise de décision ou d'aide à la décision ?

Non.

5.5 Quels types de conditions sont nécessaires, d'un point de vue technique et juridique, pour l'utilisation d'une procédure automatique ? Veuillez les décrire et exposer leurs avantages et inconvénients.

Il n'y a en a pas.

5.6 Existe-t-il des initiatives visant à mettre en œuvre des procédures automatiques sur les faits / le droit / les décisions ? Si oui, veuillez les décrire.

Non.

5.7 Existe-t-il des lois, des règlements ou des règles concernant l'utilisation de formes d'intelligence artificielle, comme les procédures automatiques : 1) dans la Constitution ; 2) en droit procédural ; 3) dans d'autres formes de droit, y compris le *soft law* ? Que régissent ces lois, règlements ou règles ? Veuillez décrire leur application.

Non.

5.8 S'il n'y a pas encore de mise en œuvre de telles mesures, existe-t-il des projets concernant la mise en œuvre de formes d'intelligence artificielle ?

Non.

5.9 Existe-t-il un code éthique applicable à l'utilisation de procédures automatiques dans les procédures judiciaires ? Si des procédures automatiques sont utilisées, comment l'indépendance de la prise de décision judiciaire est-elle sauvegardée et préservée ?

Non.

5.10 Existe-t-il des règles et des garanties spéciales concernant les procédures automatiques ? Le juge a-t-il le dernier mot / le contrôle sur l'issue et la qualité d'une procédure automatique ?

Non.

5.11 La sécurité des données est-elle assurée pour l'utilisation de procédures automatiques ou lors de leur réalisation ? Si oui, veuillez décrire la situation factuelle et juridique ?

Non.

5.12 Quel rôle, le cas échéant, un commissaire à la protection des données (ou l'équivalent) joue-t-il dans la supervision de l'utilisation de l'intelligence artificielle dans les procédures judiciaires ?

6. Responsabilités en matière d'exploitation des technologies modernes

6.1 Qui détermine la mise en œuvre des technologies modernes, et dans le système, l'utilisation de dossiers / procédures électroniques et d'outils liés aux données dans votre tribunal / juridiction ?

Le Conseil Supérieur de la Justice

6.2 Les juges participent-ils au processus de conception et / ou de mise en œuvre de l'utilisation de dossiers / procédures électroniques, de visioconférences et d'outils informatiques ?

Une commission avec la participation des Présidents de juridiction et un représentant des greffiers donné son avis au CSJ sur toutes les démarches concernant l'implémentation des systèmes électroniques.

6.3 Les juges sont-ils associés au processus de création de formes d'intelligence artificielle dans les procédures judiciaires telles que les procédures automatiques ?

L'intelligence artificielle n'est pas envisagée.

7. Critiques et propositions d'utilisation et de mise au point des technologies modernes

7.1 Décrivez les principaux arguments discutés par votre système judiciaire au sujet de l'utilisation et de la mise au point des technologies modernes dans les procédures judiciaires.

La question de l'IA ne s'est pas posée. Pour les procédures électroniques le principal problème à été comment compter les délais, puisque les écrits peuvent être présentes 24/24 heures tous les jours de l'année. Le reste des questions était des questions techniques mineurs qui pouvait être arrangees avec des améliorations des outils.

Armenia/Arménie

1. Introduction et définitions

Le questionnaire vise à recueillir des informations utiles concernant les technologies modernes utilisées au sein du système judiciaire de votre pays.

A cet égard, voici ce qu'on entend par les termes ci-après aux fins du présent questionnaire :

Dossiers / procédures électroniques

Définition : l'ensemble de la procédure / du début de la procédure / de la correspondance liée à la procédure avec toutes les parties ou une partie de celle-ci, y compris l'administration interne du tribunal et / ou la gestion de l'affaire se fait généralement par la voie électronique (pas de dossiers ou de documents sur papier).

Visioconférence

Définition : tous les types d'audiences qui se déroulent par visioconférence (y compris les plateformes en ligne).

Outils liés aux données (sur les faits, sur le droit et sur les précédents / la législation)

Définition : les tribunaux / ministères fournissent des outils liés aux données (conçus par un fournisseur privé ou public) utilisés par les juges pour faciliter le jugement des affaires.

Formes de procédures automatiques

Par exemple, des procédures automatiques pour 1) l'établissement des faits, 2) la recherche du droit et des précédents ; 3) les décisions.

2. Utilisation de dossiers / procédures électroniques

2.1 Existent-ils des fichiers / procédures électroniques et y a-t-il des exigences spécifiques à ce sujet ? Veuillez les décrire.

Actuellement, il n'existe pas de fichiers / procédures électroniques dans la République d'Arménie, que pour la procédure « Ordres de paiement ». Toutefois le nouveau code de procédure pénale prévoit la possibilité de fichiers électroniques qui entrera en force le 1 septembre 2023.

2.2 Les documents et l'ensemble de la procédure judiciaire sont-ils logés dans des fichiers électroniques ? Si ce n'est pas le cas, veuillez décrire la ou les utilisations les plus importantes des fichiers électroniques.

Pour la procédure « Ordres de paiement » les documents sont logée sur le plateforme électronique géré par le Ministère de la Justice. Il est important à noter que la procédure « Ordres de paiement » est l'une des plus simples procédures qui ne nécessite pas beaucoup de documents. A part de cela les documents et l'ensemble de la procédure judiciaire ne sont pas logés dans des fichiers électroniques.

2.3 La procédure s'accompagne-t-elle de signatures numériques ? Les procédures électroniques diffèrent-elles en substance des dossiers et procédures sur papier ?

Oui, pour la procédure « Ordres de paiement » la procédure s'accompagne obligatoirement de signatures numériques. En plus pour pouvoir procéder avec la procédure électronique les parties doivent avoir un appareil de lecteur de carte d'identité

2.4 Les juges et les tribunaux travaillent-ils tous à l'aide de fichiers électroniques ? Sinon, quels tribunaux les utilisent et quels tribunaux ne le font pas ? Quelle est la raison de cette différence d'utilisation ?

Non, les juges et les tribunaux ne travaillent pas à l'aide de fichiers électroniques.

2.5 Les juges ont-ils des ordinateurs à domicile et travaillent-ils à domicile avec les mêmes fichiers électroniques qu'au bureau ? Dans quelle mesure les fichiers électroniques sont-ils accessibles par le tribunal et / ou les parties via des systèmes basés sur un cloud ?

Il n'y a pas de possibilité pour les juges de travailler à domicile avec leurs propres ordinateurs. Tout le travail est fait au bureau.

2.6 Lorsque des dossiers électroniques sont utilisés, des dossiers sur papier le sont-ils également ? Si oui, dans quelle mesure les dossiers papier sont-ils utilisés et comment se justifie le fait de continuer de les utiliser ? Existe-t-il un processus continu de transition au sein du système judiciaire pour passer des dossiers papier aux dossiers électroniques ? Combien de temps ce processus de transition doit-il prendre ?

En Arménie que les dossiers sur papier sont utilisés par les juges.

2.7 Existe-t-il des lois, des règlements ou des règles de procédure applicables à l'utilisation de dossiers et de procédures électroniques : 1) dans la Constitution ; 2) en droit procédural ; 3) dans d'autres formes de droit, y compris des instruments de soft law ? A quoi s'appliquent ces lois, règlements ou règles ? Veuillez décrire leur application.

Non, dans la Constitution ou en droit procédural il n'existe aucune règle de procédure applicables à l'utilisation de dossiers et de procédures électroniques. Or le Conseil suprême judiciaire a établi les règles de procédure pour l'envoi de documents au tribunal par voie électronique, mais le système n'est toujours pas opérationnel.

2.8 L'utilisation de dossiers / procédures électroniques est-elle facultative ou obligatoire pour les juges / avocats ou, lorsque cela est autorisé, pour les plaideurs agissant sans l'assistance d'un avocat ?

Le système électronique est toujours en cours de création c'est pourquoi l'utilisation de dossiers / procédures électroniques n'est pas prévu par la législation de la République d'Arménie.

2.9 Des approches différentes de l'utilisation des dossiers / procédures électroniques sont-elles adoptées en fonction du fond de la procédure judiciaire, par exemple, des approches différentes sont-elles adoptées pour les procédures civiles, pénales, administratives, familiales ou celles qui portent sur des questions sociales ?

Non, les approches ne sont pas adoptées.

2.10 Quelles sont les opinions exprimées par les juges concernant l'utilisation des fichiers et des procédures électroniques ?

Il n'y a pas d'opinion exprimée, mais les juges sont favorables à la mise en place du système électronique.

2.11 Existe-t-il des sondages / enquêtes auprès des juges concernant leur opinion sur l'utilisation et / ou l'utilité des dossiers et procédures électroniques ?

Il n'existe pas de sondages / enquêtes auprès des juges concernant leur opinion sur l'utilisation et / ou l'utilité des dossiers et procédures électroniques.

2.12 Existe-t-il des rapports officiels concernant l'opinion des juges sur l'utilisation et / ou l'utilité des fichiers et des procédures électroniques ? Si oui, que disent-ils ?

Il n'existe pas de rapports officiels concernant l'opinion des juges sur l'utilisation et / ou l'utilité des fichiers et des procédures électroniques

2.13 Selon votre expérience, quels sont les avantages et les inconvénients des fichiers / procédures électroniques. Veuillez détailler.

Il est difficile de s'exprimer sur les avantages et les inconvénients des fichiers / procédures électroniques, mais quand même ça serait un pratique intéressant qui pourrait faciliter les échanges entre le tribunal et les parties et qui permettrait de travailler à distance. En ce qui concerne la procédure « Ordres de paiement » cela rend le processus plus rapide et plus facile à la fois pour les juges aussi que les parties à la procédure.

3. Utilisation des installations de visioconférence, y compris les plateformes en ligne

3.1 Quels types de procédures judiciaires peuvent se dérouler via des installations de visioconférence et / ou des plateformes en ligne ? Lorsque de telles installations sont utilisées, dans quels tribunaux le sont-elles ?

Non applicable.

3.2 Les preuves peuvent-elles être recueillies par le biais d'installations de visioconférence et / ou de plateformes en ligne ? Dans l'affirmative, peuvent-elles être réalisées dans toutes les juridictions ou seulement dans certaines d'entre elles ? Dans ce dernier cas, dans quelles juridictions peuvent-elles être réalisées ?

Non applicable.

3.3 Quelles sont les conditions liées à l'utilisation de visioconférences ou de plateformes en ligne dans les procédures ? Si elles diffèrent d'une procédure à l'autre, veuillez décrire ces différences.

Non applicable.

3.4 Les participants (juges, avocats, parties, témoins) à une procédure se déroulant par visioconférence ou sur une plateforme en ligne peuvent-ils se trouver en dehors d'un tribunal ? Dans l'affirmative, tous les participants ou seulement certains d'entre eux peuvent-ils prendre part à la procédure sans se trouver au tribunal ? Si cette possibilité est offerte à certains d'entre eux, lesquels ? Y a-t-il des lieux extérieurs à une juridiction à partir desquels un participant ne peut pas prendre part à une procédure qui se déroule par visioconférence ou via une plateforme en ligne ? Si oui, lesquels ?

Non applicable.

3.5 Existe-t-il des lois, des règlements ou des règles applicables à l'utilisation des visioconférences et des plateformes en ligne : 1) dans la Constitution ; 2) en droit procédural ; 3) dans d'autres formes de droit, y compris le soft law ? Que régissent ces lois, règlements ou règles ? Veuillez décrire leur application.

Non applicable.

3.6 L'utilisation de la visioconférence est-elle facultative ou obligatoire ? Si elle est facultative, peut-elle être imposée par le tribunal sans le consentement des parties ?

Non applicable.

3.7 Quelles sont les opinions des juges sur l'utilisation de dossiers et de procédures électroniques ? Existe-t-il des sondages / enquêtes auprès des juges concernant leur opinion sur l'utilisation et / ou l'utilité des dossiers et des procédures électroniques ?

Non applicable.

3.8 Existe-t-il des rapports officiels concernant l'opinion des juges sur l'utilisation et / ou l'utilité des fichiers et des procédures électroniques ? Si oui, que disent-ils ?

Non applicable.

3.9 Selon votre expérience, quels sont les avantages et les inconvénients de l'utilisation de la visioconférence et / ou des plateformes en ligne ? Veuillez les décrire.

Non applicable.

4. Utilisation d'outils liés aux données

4.1 Existe-t-il des outils liés aux données utilisés par votre système judiciaire : 1) sur les faits, 2) sur le droit et les précédents ? Si oui, veuillez les décrire.

Non applicable

4.2 Quels types d'outils les juges peuvent-ils utiliser ? Y a-t-il des outils officiels fournis par le pouvoir judiciaire / le ministère ? Si oui, quels sont-ils ? L'utilisation d'outils liés aux données est-elle facultative ou obligatoire ? Si elle est facultative, comment et par qui leur utilisation est-elle déterminée ?

Non applicable

4.3 Existe-t-il des lois, des règlements ou des règles applicables à l'utilisation des outils liés aux données dans votre système : 1) dans la Constitution ; 2) en droit procédural ; 3) dans d'autres formes de droit, y compris le soft law ? Que régissent ces lois, règlements ou règles ? Veuillez décrire leur application.

Non applicable

4.4 Les outils liés aux données facilitent-ils l'établissement des faits et la préparation de la décision judiciaire ?

Non applicable

4.5 Y a-t-il des sondages / enquêtes auprès des juges concernant leur opinion sur l'utilisation et / ou l'utilité des outils liés aux données ? Existe-t-il des rapports officiels concernant l'opinion des juges sur l'utilisation et / ou l'utilité des outils liés aux données ? Si oui, qu'en disent-ils ?

Non applicable

4.6 Selon votre expérience, quels sont les avantages et les inconvénients de l'utilisation des outils liés aux données ? Veuillez les décrire.

Non applicable

5. Formes de procédures automatiques

5.1 Utilise-t-on des procédures automatiques dans le système judiciaire de votre pays ? Si oui, veuillez les décrire.

Non applicable.

5.2 Existe-t-il des procédures automatiques pour l'établissement des faits ? Les faits générés automatiquement sont-ils acceptés comme éléments de preuve ?

Non applicable.

5.3 Existe-t-il des procédures automatiques pour déterminer le droit applicable et / ou les précédents ?

Non applicable.

5.4 Existe-t-il des procédures automatiques de prise de décision ou d'aide à la décision ?

Non applicable.

5.5 Quels types de conditions sont nécessaires, d'un point de vue technique et juridique, pour l'utilisation d'une procédure automatique ? Veuillez les décrire et exposer leurs avantages et inconvénients.

Non applicable.

5.6 Existe-t-il des initiatives visant à mettre en œuvre des procédures automatiques sur les faits / le droit / les décisions ? Si oui, veuillez les décrire.

Non applicable.

5.7 Existe-t-il des lois, des règlements ou des règles concernant l'utilisation de formes d'intelligence artificielle, comme les procédures automatiques : 1) dans la Constitution ; 2) en droit procédural ; 3) dans d'autres formes de droit, y compris le soft law ? Que régissent ces lois, règlements ou règles ? Veuillez décrire leur application.

Non applicable.

5.8 S'il n'y a pas encore de mise en œuvre de telles mesures, existe-t-il des projets concernant la mise en œuvre de formes d'intelligence artificielle ?

Non applicable.

5.9 Existe-t-il un code éthique applicable à l'utilisation de procédures automatiques dans les procédures judiciaires ? Si des procédures automatiques sont utilisées, comment l'indépendance de la prise de décision judiciaire est-elle sauvegardée et préservée ?

Non applicable.

5.10 Existe-t-il des règles et des garanties spéciales concernant les procédures automatiques ? Le juge a-t-il le dernier mot / le contrôle sur l'issue et la qualité d'une procédure automatique ?

Non applicable.

5.11 La sécurité des données est-elle assurée pour l'utilisation de procédures automatiques ou lors de leur réalisation ? Si oui, veuillez décrire la situation factuelle et juridique ?

Non applicable.

5.12 Quel rôle, le cas échéant, un commissaire à la protection des données (ou l'équivalent) joue-t-il dans la supervision de l'utilisation de l'intelligence artificielle dans les procédures judiciaires ?

Non applicable.

6. Responsabilités en matière d'exploitation des technologies modernes

6.1 Qui détermine la mise en œuvre des technologies modernes, et dans le système, l'utilisation de dossiers / procédures électroniques et d'outils liés aux données dans votre tribunal / juridiction ?

Non applicable

6.2 Les juges participent-ils au processus de conception et / ou de mise en œuvre de l'utilisation de dossiers / procédures électroniques, de visioconférences et d'outils informatiques ?

Non applicable

6.3 Les juges sont-ils associés au processus de création de formes d'intelligence artificielle dans les procédures judiciaires telles que les procédures automatiques ?

Non applicable

7. Critiques et propositions d'utilisation et de mise au point des technologies modernes

7.1 Décrivez les principaux arguments discutés par votre système judiciaire au sujet de l'utilisation et de la mise au point des technologies modernes dans les procédures judiciaires.

L'opinion générale dans le système judiciaire est que le système électronique aidera à réduire l'arriéré des affaires et à accélérer les procédures devant les cours. Le système est actuellement en cours de développement par le Ministère de la justice et il inclura tous les processus dans tous les cours.

Austria/Autriche

1. Introduction and definitions

The questionnaire is aiming to collect the relevant information as regards the modern technology used within the judiciary in your country.

In this regard, for the purposes of the present questionnaire, the following definitions apply:

Electronic files/electronic proceedings

Definition: the whole or part of process/commencement/issue of process/correspondence of the process with all parties, including court internal administration and/or case management generally is electronic (no paper files or paperwork at all).

Videoconference

Definition: all kind of hearings which are held via videoconference (including online platforms).

Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

The administrative judiciary in Austria is matter of the federal state and of the nine regions (provinces): thus, there are nine administrative courts (AC) of provinces and two of the federal state of first tier, plus the Supreme Administrative Court (SAC) and the Constitutional Court, both federal. The ordinary judiciary, on the contrary, is exclusively within the competence of the federal government.

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements?

Depending on the organisational power of the body responsible for the court, there are ACs of first tier with fully developed electronic files and proceedings (e.g. Federal Fiscal Court, connected to the fiscal authorities), with partly enrolled files and proceedings (also depending on the status of the authorities under review) and those without any of these (esp. on the regional level). At the SAC, files and parts of the preliminary proceeding are conducted electronically.

Ordinary judiciary:

As far as civil and criminal proceedings are concerned all cases of first instance are conducted as electronic files. Partly also cases pending at the court of appeals are conducted electronically. The transition is in progress and is expected to be completed for the entire ordinary jurisdiction by the end of 2025.

In which branches the electronic file will be introduced was a decision of the Ministry of Justice together with the presidents of the courts. In fact, the electronic file was first introduced in the area of labour and social law, then (general) civil law (excluding family law). Currently, the criminal area is fully covered.

- 2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

As described above, it depends on the organisation of the courts; the most important (common) use of electronic files covers the collection of data of the proceeding (parties, submissions, procedural steps, decisions), not necessarily connected with electronic proceeding!

In the above mentioned criminal and civil cases of first instance all documents and the entire judicial proceedings are in electronic files.

- 2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

It depends again on the development of the individual court: electronic proceeding (also only in parts of the proceeding, e.g. only preliminary steps) includes forms of electronic signature.

The common background for all kind of proceeding is - the law. Thus, electronic file and proceedings often 'mirror' paper files and proceedings.

Yes, the process includes digital signatures. There are no substantial differences between electronic and paper files and proceedings.

- 2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

As described above, it depends on the organisation of the court and the progress in change to electronic files. In general, the federal courts might be considered as mostly developed. Any 'rationale' for difference is rooted in the organisational power, distributed over the bodies.

As mentioned above (question 2.1) there was a roll-out plan set up by the Ministry of Justice in consultation with the court presidents.

- 2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

All administrative judges are supplied with computers; the possibility to have access from home to electronic files depends on the development at the court in question. If there is an electronic file system fully established, judges could work from home.

The administrations of the courts responsible for the supply rely mostly on servers, established at the courts or connected to them; in administrative matters, parties have not yet access to electronic files.

All ordinary judges are supplied with notebooks., the server can be accessed at home, technically this is done via endpoint-protecting-software (FortiClient), therefore judges work also at home with the same electronic files.

- 2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

There is a slow, but continuous change from paper to electronic files visible in the administrative judiciary, depending on the body responsible for the organisation of the court; the total process of change at all administrative courts will take years.

Even if there are electronic files (sometimes only for parts of the proceedings), paper files (print-outs) are still in use to give an user-friendly overview over the whole proceedings, especially for parties seeking access to the records (if they have no access to the electronic file).

There is a continuous process of change which shall be completed at the end of the year 2025.

As part of the transition the newly arising files (new lawsuits, new indictments) are kept electronically, while the files already pending continued to be kept as paper files until they were closed.

- 2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

There are procedural laws and regulations governing the establishment of electronic files and proceedings, starting with the intercourse between parties, esp. representatives (lawyers) and the courts (submission of electronic statements, secure electronic delivery of decisions etc.): such laws govern the secure connection between parties (representatives) and courts by defining certain 'channels' for (electronic) communication. Last but not least the general principles of the Convention for a fair trial, not discerning between electronic and 'old-fashioned' files and proceedings, and data-protection.

The above statements also apply to the ordinary courts. In addition, it should be noted that the digital file has in the meantime been expressly taken into account in the civil procedural laws. This law has been in force since 01.05.2022 (BGBl I 2022/61).

- 2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

As far as electronic files/proceedings are established (depending on the court administration), their use is compulsory for judges and lawyers involved, still permitting parties without professional representation the use of paper.

As far as the lawyers are concerned, the use of electronic files/proceedings is binding. It is also compulsory for the judges, However, an opt-out provision has been introduced for judges.

Judges of the ordinary courts who have reached the age of 60 by the cut-off date of 1 January 2022 may work in a paper file; the relevant, legally binding act, however, is the digital act. In addition, colleagues who do not fall into the above-mentioned group of persons, but who, at the time of the introduction of the digital file, have reached the age of 63 at their workplace, are also covered by the opt-out regulation.

- 2.9 Are different approaches to the use of electronic files/proceedings taken depending on the substance of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

The difference in any approach depends of the body responsible for the funding and organisation of the court: there are differences between the ordinary and the administrative judiciary and - as described above - within the administrative judiciary.

There are no different approaches to the use of electronic files in the ordinary judiciary.

- 2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

The collection of data and/or the transformation of papers (still used at most administrative authorities) to electronic ones are sometimes confusing or badly arranged, depending on the system provided to the courts.

Electronic files and proceedings enjoy great acceptance. The trial situation was initially a challenge for some colleagues who were not so familiar with computers, and therefore caused some concern

- 2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

First, there is no high council for the administrative judiciary or any comparable body of self-administration (so the executive branch organizes the administration and equipment of the courts) and there are no polls among administrative judges or any involvement of their judges associations.

Soundings among judges wish more coordination of the several administrative courts in the change to common compatible systems.

There were several polls among judges, first conducted by the Association of Austrian Judges, about a year later by the Federal Ministry of Justice. A core concern of the judges was the accessibility and availability of IT support, which should be improved. In the meantime, additional IT staff have been hired.

- 2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

No, at least no public ones.

The same applies for the ordinary jurisdiction.

- 2.13 In your experience, what are the advantages and disadvantages of electronic files/electronic proceedings? Please describe them.

Any advantage should start in more time for the judges for their origin task, the fair trial and decision-making. Thus, the advantage depends on the easy and secure usage, observing their independence; electronic tools give more opportunity to survey judges and their exercise of their judicial office.

It should be noted that time saving has never been used as an argument in favour of the electronic file, nor is it one.

The big advantage is that you can work independently of location, which makes working from home easier. Another advantage is that several people can access the file at the same time, so that the file can be processed continuously. In extensive proceedings, it is very easy to structure the file.

During the hearing, interactive questioning is possible; the persons to be questioned can be presented with documents, photographs, etc.

A major disadvantage is the dependence on technology. At least four times a year, there are comprehensive updates that are carried out over the weekend. This means that from Friday 19.00 the electronic file is not available. Such updates are announced in good time. The files needed for trials are made available up to date for a period of one week, so that one can prepare for the hearings. Nevertheless, the user is restricted in his or her personal way of working.

Apart from that, there are health concerns because the work is done exclusively via the screen. The employer consequently offers health-promoting measures (eye training, back training), height-adjustable desks are offered etc.

3. Use of videoconference facilities, including online platforms

- 3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms? Where such facilities are used, in which courts are they used?

Court-proceedings via video-conferencing require legal provisions. The pandemic gave reason to issue provisions for hearings and taking evidence and to supply all administrative courts (including the SAC) to with the necessary tools. Meanwhile, video-conferencing became part of the regular procedural rules.

It's up to the discretionary power of the judge to order it.

Ordinary judiciary:

Till the pandemic, it was possible to question parties, witnesses, experts by means of video conferencing. However, the videoconference took place from court to court. That is, the witnesses, experts, parties could go to the court near their place of residence. The aim was to avoid long journeys to the adjudicating court. The decision, if videoconference was held, always rested with the trial judge. The trial, on the other hand, was not allowed to take place by way of videoconference, i.e. the judge and the parties' representatives were in the hearing room.

As a result of the pandemic, regulations were established according to which the trial itself could take place by way of videoconferencing. However, the judge must always be in the hearing room, especially in view of the public.

The possibility to hold hearings, not only hearings of taking evidence, by video conference is regularly used.

The regulations on videoconferencing introduced during the pandemic were only valid for six months and have been extended - currently until 30 June 2023. A further extension is no longer planned. There is now a draft to convert these temporary regulations into permanent regulations. There is a draft law that is still being negotiated politically.

- 3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

Yes, also taking evidence via video-conferencing is possible.

Yes, see above.

- 3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

In the administrative judiciary the use of video-conferencing can be ordered by the judge, except the personal/immediate hearing of parties and evidence prevails; at the SAC it also requires the consent of the parties.

In the ordinary judiciary (civil proceedings) first of all the use of video-conference has to be ordered by the judge. In most cases, however, the consent of the parties is required. Only in cases concerning law enforcement and mentally ill persons, where hearings are often held in hospitals, the use of videoconferencing is permitted without parties' consent.

In criminal proceedings, the extension of the possibility to use videoconferencing was provided for, generally in hearings in connection with the imposition and extension of pre-trial custody and in the interrogation of the accused in pre-trial custody. There were exceptions, especially in jury proceedings.

- 3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

The hearing has to be held at the court, also to guarantee the public, which can't be substituted. Therefore, the judge has to be in house; parties, representatives and witnesses might be remote and connected via video.

The same applies to ordinary jurisdiction.

- 3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law,

including soft law? What do any such laws, regulations or rules govern? Please describe their application.

Procedural laws provide video-conferencing; further details are in regulations.

In the administrative judiciary, the use of video-conferencing can be ordered by the judge, except the personal/immediate hearing of parties and evidence prevails; at the SAC it also requires the consent of the parties.

See also remarks to 3.1: Criminal and civil procedural laws provide video-conferencing; further details are in a regulation, which was amended in 2017.

- 3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

At the ACs it can be mandated by the sitting judge, except the personal hearing prevails; at the SAC the consent of the parties is required.

See also answer to question 3.3. It can be mandated by the sitting judge, but only with party consent. There are some exceptions where party consent is not required.

- 3.7 What views have been expressed by judges concerning the use video-conferencing? Are there any polls/soundings among judges concerning their views on the use and/or utility of video-conferencing?

Much depended on the individual judge to make use of it or not, especially in the pandemic. Lawyers and representatives are more reluctant, fearing the distance and/or a disadvantageous influence on the assessment of evidence taken up remotely.

The situation is similar in the ordinary jurisdiction. There are judges who use videoconferencing whenever possible, while others are very reluctant to do so for various reasons.

- 3.8 Are there any official reports concerning judicial views on the use and/or utility of video-conferencing? If so, what do they say?

Until now, there are no official assessments or reports on this; the fact, that the provisional regulations of the pandemic became permanent, seems to express the interest of court administration in video-conferencing.

Same situation in the ordinary judiciary.

- 3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms? Please describe them.

It is a tool to hear parties and to take up evidence whenever or wherever a personal hearing is impossible or difficult to organize. The technique of video-conferencing absorbs a good part of the communication and impression in the hearing and can influence the assessment by the judge - thus, the fairness might be at stake.

I fully agree and may add as follows:

There are proceedings in which the personal presence of the parties' representatives (lawyers) and the parties themselves is not as important as in other proceedings (when it comes to finding a settlement, for instance). At the same time, parties and their lawyers often have to travel long distances to the court. In these cases, holding the hearing by videoconferencing makes sense, it saves time and resources and is also ecologically sound. Videoconferencing may also be in the interest of the court as it is often easier to find a trial date.

4. Use of data tools

- 4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

The Federal Chancellor provides a public RechtsInformationsSystem (RIS), a data tool on law and on case law.

Also the Federal Law Gazette is published only electronically (comparable systems exist in the regions of Austria).

I have nothing to add.

- 4.2 What kind of tools may judges use? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?

The above mentioned RIS is official, run and provided by the federal state and optional (as a kind of service); it's up to the judge to know the law (*iura novit curia*) and the case-law (which is also published in journals and gazettes).

The Federal Law Gazette is the authentic publication of federal laws, regulations and state-treaties.

In addition to the official data tools mentioned above, there are also those from private providers that are available to judges because the Federal Ministry has purchased licences.

- 4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

The publication of the Federal Law Gazette is provided in a special Law on the Federal Law Gazette; anything else is simply organized and offered by the state.

I have nothing to add.

- 4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

Data tools for fact-finding are not officially used by courts (and their assessment as evidence would be critical).

- 4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

Data tools on law and case law are widely accepted and in use; there are no polls/soundings among judges (see above) nor official reports on the use/utility.

- 4.6 In your experience, what are the advantages and disadvantages of using data tools? Please describe them.

Data tools (in Austria: on law and case law) facilitate the recognition of the law applicable and the precedents, especially where there is no literature published (e.g. in many fields of administrative law). Data tools on case law have to be used in the awareness what they offer you: possible precedents, that have to be properly compared with the case in question.

5. Forms of automatic proceedings

- 5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.

As a general principle, in a positivistic legal system rules are issued by human beings, addressed to human beings; decisions have to be made by human beings for human

beings. The constitution and procedural laws provide strict conditions that a decision is attributable to bodies, especially to the state.

In the pandemic, Austria issued a law on the obligation to vaccination (COVID-19-Impflichtgesetz): considering a big number of penal proceedings, the law provided an automatism between data collected on the status of vaccination and the imposing of fines on unvaccinated. The application of the law was suspended and meanwhile the law is quashed.

Especially in connection with the order for payment (according to Austrian law) there are automated standardised procedures. which can be seen as first steps to support decision-making. Based on the information provided by the claimant, the order for payment is issued. If there are contradictions in the claimant's details, then the system automatically points this out. Of course, it is up to the decision-making body to decide whether to issue the order for payment anyway.

- 5.2 Are there automatic proceedings for fact-finding? Are automatically generated facts accepted as evidence?

No procedural rules on this; automatically generated facts offered by parties are submitted to the assessment as evidence.

The same applies for the ordinary jurisdiction.

- 5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

No.

No.

- 5.4 Are there automatic proceedings for decision-making or to assist decision-making?

No.

In the (see remark to answer 5.1) mentioned cases.

- 5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

As described above, decisions have to be made by human beings for human beings. The constitution and procedural laws provide conditions that a decision is attributable to bodies, especially the state. Even for 'automatically generated' steps there has to be someone responsible.

Rule of law requires remedies and also the review of "automatic" decisions: what reasons are given for an automatic decision, who is responsible and will the automatism follow judicial control?

I fully agree.

- 5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.

As described above under 5.1, there was an initiative, which failed not due to concerns against automatic procedural steps.

I agree.

- 5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

In Austria, AI is a 'blind spot' in the legal system.

I agree.

- 5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence?

No.

No.

- 5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?

No.

There is no ethic code governing the use of automatic proceedings in legal proceedings. But the board of the Association of Austrian Judges has mandated the Ethics Council (a body of the Association) to look into the issue of the use of artificial intelligence in the judiciary. On this topic, the Ethics Council held workshops with experts, based on which webinars (for the information of colleagues) were offered in order to create a rudimentary awareness of the problem.

- 5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?

Until now the question of judicial control over automatic proceedings hasn't yet raised.

I agree.

- 5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?

No automatic proceedings.

I agree.

- 5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use artificial intelligence in legal proceedings?

AI is, as mentioned above, only a matter of public discussion, but hasn't led to regulations.

I agree.

6. Responsibilities for operating modern technologies

- 6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

In Austria, there is no high council for the judiciary or a comparable body for self-administration of judges. The organisation of courts is in the responsibility of the bodies (federal state and provinces) and under the power of the presidents of courts, bound to orders of the executive branch: it is up to ministers and governors to determine the functioning of courts and their equipment.

As far as the ordinary judiciary is concerned, the decision lies with the Minister of Justice.

- 6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

Different to the ordinary judiciary, in the administrative judiciary judges (who are not presidents themselves) or judges associations are not involved.

In the ordinary judiciary the digital file was developed with strong involvement of judges. Their suggestions were (largely) implemented. Working groups were also set up - depending on the branch (criminal law, civil law) - which met regularly. The Association of Austrian Judges was regularly informed by the Federal Ministry. The Association has been very active on its own initiative, organising networking meetings (between the judges concerned) in order to get its own impressions regarding the suitability of the product and the experiences of colleagues. A good product has been developed, which also meets with high acceptance among judges and public prosecutors.

- 6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?

No, if there are developments, judges are not yet informed or involved.

The same applies with the ordinary jurisdiction.

7. Criticisms and proposals for use and development of modern technology

- 7.1 Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

Any modern technology is and should remain a tool, in the hands and under full control of human beings and fully comprehensible in the case of review. It should facilitate the access to and service of justice

I fully agree with the comments above.

Submitted by

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1. Introduction and definitions

The questionnaire is aiming to collect the relevant information as regards the modern technology used within the judiciary in your country.

In this regard, for the purposes of the present questionnaire, the following definitions apply:

Electronic files/electronic proceedings

Definition: the whole or part of process/commencement/issue of process/correspondence of the process with all parties, including court internal administration and/or case management generally is electronic (no paper files or paperwork at all).

Videoconference

Definition: all kind of hearings which are held via videoconference (including online platforms).

Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

Court proceedings are conducted electronically in courts where the "Electronic Court" information system (presently still being implemented countrywide) had already been installed.

Moreover, use of such system is mandatory at the Supreme Court and the appellate courts.

Furthermore, existing legislation provides that entire proceedings in cases concerning commercial disputes must be conducted in written through the electronic cabinet to be created by the parties within the "Electronic Court" information system (hereinafter referred to as "Electronic Court"). Same requirement applies also to the court proceedings on civil cases, provided that the respective court had been connected to the Electronic Court.

Such proceedings are carried out in accordance with the rules on use of the Electronic Court adopted by the executive authority in charge together with the Supreme Court.

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

Court proceedings are carried out electronically only in courts where the Electronic Court had been installed. Documents submitted by the parties through the electronic cabinet are stored digitally within the system while those that were presented physically are scanned and uploaded to the system if necessary.

2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

Digital signature is being used widely, in particular, by judges and court officers at the court connected to the Electronic Court, as well as by the parties who shall endorse their submissions via their electronic cabinet.

Court proceedings do not differ in substance, however, electronic procedure optimises the case management.

Moreover, constant liaison between the legal professionals and computing technicians assists improvement of the system efficiently.

- 2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

All judges and court officers at the courts whereat the Electronic Court is operational must work with electronic files. At present, there are 89 such courts out of 117 in total.

However, the extent to which electronic files are in use, varies – while entire civil, administrative and commercial proceedings at the court of cassation and appellate courts are conducted electronically, first instance courts, even those that are connected to the Electronic Court, may operate using physical files also.

- 2.5 Do judges have computers at home and work with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

Although normally electronic files must be used only on a local office network, in practice, judges are allowed to copy the relevant data for an extra-office work. OTA access to the intranet from outside is not technically possible for the time being.

Parties to the proceedings may use the Electronic Court remotely, in order to upload documents, view status of their proceedings and several similar services.

- 2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

Physical files continue to be used even at the courts where the Electronic Court is fully operational as there are still elder generation judges or even younger ones who are not enough computer literate or prefer paper-based files out of their personal preferences. However, both the regulatory and technical arrangements continue to expand in a direction of eliminating all paper work though several years will be required to achieve the planned aims.

- 2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

There is no constitutional requirement for implementation of electronic justice but over the period of last few years respective changes were introduced in Codes for civil, criminal and administrative [petty offences] procedure, Law on Courts and Judges. Furthermore, Regulation on the Electronic Court was approved by the President's relevant Decree followed by the detailed rules for the use of the Electronic Court drafted and approved by the executive authority in charge. Respectively, relevant additions and changes were introduced into the manuals for various court officers. The documents referred to herein cover various issues including but not limited to the rights and obligations of the parties to the proceedings conducted electronically, as well as those of the judges and court officers carrying out such proceedings.

- 2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

Use of electronic files/proceedings is binding both for the courts and the parties to the civil proceedings at the courts where the Electronic Court is fully operational, as well as on appeals and cassation appeals in civil, commercial and administrative cases. That requirement applies to any party to such proceedings regardless whether it is self- or legally presented.

- 2.9 Are different approaches to the use of electronic files/proceedings taken depending on the substance of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

General approach to the use of electronic files/proceedings is similar regardless of the substance of the legal proceeding as they all have the same aim of replacing paper proceedings. The only difference experienced presently stems from the level of implementing the Electronic Court as described above.

- 2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

All judges are constantly trained to effectively use and follow development of the Electronic Court.

Those who follow modern trends in information technologies benefit from the advantages of the system, regularly cooperate with technicians by referring to the deficiencies and providing their input for the further improvement, e.g. designing of automated processes within the system.

However, a number of judges complain that use of electronic files and proceedings increases the amount of work they must do consequently and complicates their daily routine.

- 2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

No polls have been carried out as of present, but a working group established at the Supreme Court constantly monitors status of the use of electronic files and collects feedback from various stakeholders, including judges.

- 2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

No official reports has been prepared and published as of present.

- 2.13 In your experience, what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them.

Advantages of the system:

- Creation of a single web portal for entire court system (www.courts.gov.az) where public may obtain general information about court proceedings without need to register;
- Registered users can lodge applications and/or administer online the cases they are involved in via the electronic cabinet without a need to go to the court all the way until delivery of the final decision at last instance;
- Dedicated service has been installed in connected courtrooms allowing more accurate record of the minutes by providing audio and video recording of the hearings;
- Use of "Electronic Signature" certificates (usb dongles) allowing disposal of the need to sign court documents physically.
- Digital processing of appeals/cassation appeals between the connected courts without need to send entire case files saves time and costs involved;

- Paperless notification (by e-mail or SMS) of the parties to the proceedings about the forthcoming hearing facilitates the procedure;
- Automated assignment of incoming cases to the judges on a random basis;
- E-templated drafting of court documents;
- Digital processing of the court decisions to the execution officers connected to the "Electronic Execution" system;
- Online retrieval of various data from other connected state information resources;
- Semi-automated anonymisation of court decisions;
- Establishment of a single database for all court decisions;
- Automated compilation of some statistical reports.

Disadvantages of the system:

- Failure to operate in fully automated mode as a number of operations is still in need of a manual user interference;
- Delay in implementing all measures provided by the relevant legislation;
- Rather undeveloped electronic document circulation system;
- Technical restrictions reducing use of the videoconference subsystem;
- Undeveloped use of artificial intelligence-based applications;
- Rather outdated user-machine exchange experience;
- Restricted use of automated data collection applications;
- Limited input criteria for court decisions' search engine.

3. Use of videoconference facilities, including online platforms

3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms? Where such facilities are used, in which courts are they used?

According to the legislation, proceedings on civil, commercial, administrative and criminal cases can be held using the video conference communication system subject to the conditions listed below.

In civil cases, court proceedings using a videoconference communication system may be conducted in absence of a party:

- if an individual participating in the case is outside of the country or in another city (district) within the country, and it is impossible for him/her to attend the court hearing in person for a valid reason;
- if an individual is unable to attend the court hearing in person due to deprivation of liberty or detention;
- if an individual is unable to participate in court proceedings following natural disaster, epidemic, state of emergency, martial law or any other force majeure;
- in other cases found to be acceptable by the court in order to avoid unnecessary delay in proceedings.

Conditions referred to above are listed in the Code of Civil Procedure and can be applied by any judge under their own initiative or upon request of the parties to the proceedings.

In criminal proceedings, video conference facility may be used in following cases:

- if an imminent danger to safety of the parties or unlawful pressure upon them is present;
- if a suspect, accused person or convict's health condition or other similar valid reason renders their personal participation in the proceedings impossible;

- if the need to protect interests of a minor involved;
- if an individual is unable to participate in court proceedings following natural disaster, epidemic, state of emergency, martial law or any other force majeure.

Lastly, in administrative court proceedings:

- if an individual party to the case is outside of the country or in another city (district) within the country, and it is impossible for him/her to attend the court hearing in person for a valid reason;
- if an individual party to the case is undergoing treatment in a specialised facility;
- if an individual is unable to attend the court hearing in person due to deprivation of liberty or detention;
- if an individual is unable to participate in court proceedings following natural disaster, epidemic, state of emergency, martial law or any other force majeure;

3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

Yes, certain evidence, including testimonies, can be taken via videoconferencing facilities in courts that possess necessary technical equipment.

3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

Use of the videoconferencing facilities permitted on the court's own initiative or upon a reasoned request of the party in all cases as a tool to prevent unnecessary delays in proceedings. While this is a common ground for launching such facility across different types of proceedings, Criminal Procedure Code provides for an additional specific one such as a need to ensure safety of the parties involved, to prevent unlawful external influences on them and to protect the interests of minors.

3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

It is permissible for some participants (e.g. parties, witnesses) to remotely connect to the judicial proceedings using the videoconferencing while the judges themselves physically preside in the courtrooms.

The videoconferencing options are only available in the courthouses, prisons or other detention facilities. The administrators of the premises (presidents of the courts, prison wardens etc.) are responsible for ensuring uninterrupted use of the technology, including security of the network.

3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

Use of videoconferences in judicial proceedings is governed by the relevant provisions of the Codes of Civil, Administrative and Criminal Procedure.

In essences, the provisions outline the grounds and conditions (further detailed in para 3.1 above) under which a judge may order the out-of-courtroom connection by the participants. Provisions referred to also regulate confidentiality and security of such virtual connections.

3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

Use of videoconference is upon the discretion of the court, it may be launched on the courts' own initiative or a reasoned request of the party, either way such procedural order may be objected by the parties to the proceedings.

- 3.7 What views have been expressed by judges concerning the use of electronic files and proceedings? Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

Please, see para 2.10 above, no dedicated poll had been launched as of present.

- 3.8 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

There are no official reports to date. However, in practice, we observe difficulties among the older generation judges in using the electronic files since they often require more assistance and guidance. Judges of younger age usually adapt quickly to the new technologies. General agreement is that presently UI is not user friendly and requires serious improvement and continuous adjustments.

- 3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

Saved time and costs create a biggest advantage of video conferencing leading to improved productivity in case processing. It is also a socially oriented tool, as it gives to certain public categories, for instance disabled persons, possibility to join the proceedings in person.

Disadvantages include a lack of genuine human-to-human interaction, also network issues or poor connectivity may have an impact on proper handling of the court hearing.

4. Use of data tools

- 4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

Currently, there is no data tool for facts but it is planned for future development in the Electronic Court.

As for the law and precedents, judges use the database for Supreme Court's judgments and decisions, as well as an up-to-date collection of all final decisions delivered by the courts connected to the Electronic Court. Both data banks provide for a relatively convenient search option.

- 4.2 What kind of tools may judges use? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?

Particular tools are described in para 4.1 above. They, as well as a publicly available database for legislation, are provided in cooperation between the judiciary and the Ministry of Justice. Use of data tools is optional and personal choice of an individual judge, it is not regulated by law.

- 4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

The Law on Courts and Judges of the Republic of Azerbaijan requires all court decisions to be published within one month upon delivery and to be electronically available to the parties.

Regulation on the "Electronic Court" information system governs establishment, formation and operation of the system, integration with the information systems and resources of other institutions through the Electronic Government portal, as well as other legal, organization and security measures.

4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

There are currently no data tools for finding facts in operation. However, technical work on such tools is being carried on and several basic applications of such kind have been submitted for testing to the judges chosen among advanced users, though for limited use. For example, there is an AI tool that can brief a case automatically or even create a draft judgment (or decision), which can then be further adjusted by judge and/or judicial assistants.

Furthermore, existing case-law database of the Supreme Court creates new possibilities both for ensuring unification of the case law and for reducing time needed for preparation of the individual draft decisions.

4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

No poll had been run on a subject issue as of present.

4.6 In your experience, what are the advantages and disadvantages of using data tools? Please describe them.

Data tools bound to become an integral part of administering justice by enabling improved research, enhanced productivity, time saving and easy access to a wealth of information. Disadvantages include a generalized approach to resolving disputes on some occasions where a tailor-made attitude would be more appropriate.

5. Forms of automatic proceedings

5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.

As of now, there are no automated procedures in the e-court system. Some tools have been developed (and currently being tested) by the Supreme Court together with other relevant government bodies that would bring a certain level of automation to the legal proceedings. Upon successful completion of the testing, new measures can be introduced to upgrade the e-court system.

The joint project aims at using artificial intelligence in the unification of case law, drafting of court decisions and associated legal documents, and outlining perspectives for an individual case. Initially, the project will be deployed in cases concerning family, social payments and benefits disputes.

5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?

None

5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

None

5.4 Are there automatic proceedings for decision-making or to assist decision-making?

None

5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

Partial or full introduction of the automation into the legal proceedings requires a concerted effort among key stakeholders in order to analyse the existing legislation and technical framework for the system and to develop a step-by-step technical workflow on how to upgrade the e-court system with automation options available to all users. Benefits of the automated proceedings are efficiency and improved effectiveness while

the drawbacks include a lack of customized approach to each individual problem, as well as a certain margin of error.

- 5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.

Currently, Supreme Court is leading an initiative to incorporate artificial intelligence into the case management system for enhancing foreseeability of judicial decision-making in partnership with the Ministry of Digital Development and Transport.

- 5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

Presidential Decree No. 1043 dated June 1, 2020 "On approval of the Regulation concerning the Electronic Court" envisages use of the artificial intelligence in court activities.

- 5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence?

As referred to in para 5.6 above, at present the Supreme Court is collaborating with the Ministry of Digital Development and Transport on project aiming to use the artificial intelligence in unification of judicial practice, drafting of court decisions and documents, and outlining perspectives for an individual case.

- 5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?

As the automatization of court proceedings is still in very early stages of development, no discussions in respect of its impact on independence of judicial decision-making are being held presently.

- 5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?

We currently have no automated proceedings.

- 5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?

As there is no automated proceedings in operation presently, data security concerns are rather theoretical for the time being.

- 5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use artificial intelligence in legal proceedings?

Currently, there is no dedicated official or organisation overseeing the application of data protection laws in Azerbaijan. However, Ministry of Digital Development and Transport had been designated to oversee general data security on country level. As of now, use of artificial intelligence in legal proceedings is unregulated by law.

6. Responsibilities for operating modern technologies

- 6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

According to the Presidential Decree No. 1043 dated June 1, 2020 "On approval of the Regulation concerning the Electronic Court", Ministry of Justice was designated as the responsible governmental authority in charge of the organisation, development and operation of the subject system.

- 6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

According to the order of the President of the Supreme Court dated 14 September 2020, a working group had been set to increase efficiency of the court management. The group, which also includes judges, shall ensure strategic development of the court by wider application of the Electronic Court and information technologies in general.

- 6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?

As noted at para 6.2 above, judges form integral part of the respective working group and play leading role in the process of creating forms for automatic proceedings.

7. Criticisms and proposals for use and development of modern technology

- 7.1 Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

Further development of new technologies will face two major challenges in that regard -undeveloped IT infrastructure in certain remote areas and mostly below average IT skills and abilities among both the judges and court staff.

Belgium/Belgique

1. Introduction et définitions

Le questionnaire vise à recueillir des informations utiles concernant les technologies modernes utilisées au sein du système judiciaire de votre pays.

A cet égard, voici ce qu'on entend par les termes ci-après aux fins du présent questionnaire :

Dossiers / procédures électroniques

Définition : l'ensemble de la procédure / du début de la procédure / de la correspondance liée à la procédure avec toutes les parties ou une partie de celle-ci, y compris l'administration interne du tribunal et / ou la gestion de l'affaire se fait généralement par la voie électronique (pas de dossiers ou de documents sur papier).

Visioconférence

Définition : tous les types d'audiences qui se déroulent par visioconférence (y compris les plateformes en ligne).

Outils liés aux données (sur les faits, sur le droit et sur les précédents / la législation)

Définition : les tribunaux / ministères fournissent des outils liés aux données (conçus par un fournisseur privé ou public) utilisés par les juges pour faciliter le jugement des affaires.

Formes de procédures automatiques

Par exemple, des procédures automatiques pour 1) l'établissement des faits, 2) la recherche du droit et des précédents ; 3) les décisions.

2. Utilisation de dossiers / procédures électroniques

2.1 Existent-ils des fichiers / procédures électroniques et y a-t-il des exigences spécifiques à ce sujet ? Veuillez les décrire.

Oui.

Description des procédures existantes :

2.1.1. Procédure électronique - communication ou dépôt d'actes par les avocats, huissiers de justice et notaires auprès des cours et tribunaux (art. 32ter du Code judiciaire) :

Ces communications et dépôts peuvent se faire au moyen du « système informatique de la justice » désigné par un arrêté royal ; ce dernier en garantit la confidentialité et l'effectivité.

En pratique, les citoyens, les entreprises et les avocats peuvent soumettre des documents de procédure préliminaires (requêtes), des dossiers, des conclusions et des lettres d'accompagnement, à un tribunal, via le portail web e-Deposit.

Les avocats peuvent également utiliser le système DPA-Deposit¹.

¹ Digital Platform for Attorneys.

Il existe un helpdesk (courriel et téléphone) pour les personnes qui rencontrent des problèmes techniques avec les applications e-deposit et DPA-Deposit.

La procédure électronique - dépôt d'actes par l'utilisation des systèmes e-Deposit et DPADeposit - est actuellement d'application courante et effective auprès des tribunaux suivants : cours d'appel et cours du travail, tribunaux d'entreprise, justices de paix, tribunaux de police (contentieux civil), tribunaux de première instance (pour le contentieux civil et famille) et tribunaux du travail.

Par exemple, pendant l'année 2020, 854.269 pièces de procédure ont été déposées au moyen de ces systèmes. En 2021, 1,1 million de documents ont été déposés par voie numérique auprès des cours et tribunaux du Royaume.

Liens :

e-deposit : <https://access.eservices.just.fgov.be/edeposit/fr/login>

DPA-Deposit : <https://https://access.eservices.just.fgov.be/edeposit/fr/logindp-a.be/fr>

L'utilisation de ces systèmes n'est toutefois pas encore opérationnelle pour les tribunaux suivants : tribunaux de première instance (contentieux pénal), tribunaux de police (contentieux pénal), tribunaux de la jeunesse, tribunaux de l'application des peines et le greffe de l'instruction. Il est cependant prévu que ces systèmes fonctionneront dans ces tribunaux dans le courant de l'année 2023.

La procédure électronique existe également et est largement pratiquée devant le Conseil d'Etat (= juridiction administrative suprême du Royaume) et le Conseil du contentieux des étrangers (= juridiction administrative supérieure compétente en matière de séjour des étrangers).

Elle n'est cependant pas encore en vigueur devant la Cour de cassation et devant la Cour constitutionnelle. Devant ces juridictions, les documents doivent encore être déposés sous la forme « papier ». L'évolution vers la procédure électronique devant ces juridictions est actuellement en cours d'élaboration.

2.1.2. Accès des citoyens au dossier judiciaire et à des informations relatives à la justice :

2.1.2.1. Le site internet « Just-on-Web »² permet d'accéder aux informations ou dossiers suivants :

*Via la rubrique « My Justice » : il s'agit d'un service en ligne donnant accès au dossier judiciaire. Actuellement, cette possibilité existe pour les tribunaux correctionnels et pour les jugements des tribunaux de police. La connexion se fait au moyen de clés numérisées (<https://justonweb.be/log-in>).

*Via la rubrique « Administration judiciaire », il est possible d'accéder de manière sécurisée au « Registre central de protection des personnes » (administration des biens des personnes vulnérables) (<https://www.protectionjudiciaire.be/public/login/?lang=fr>)

*Via la rubrique « Amendes », il est possible de gérer et de payer ses amendes routières et pénales (<https://justonweb.be/fines/>)

² Le 1er décembre 2022, ce site internet a été récompensé aux "Digital Society Awards 2022" (catégorie Rentabilité).

*Via la rubrique « Extraits et copies », il est possible d'obtenir des extraits et copies d'actes de l'état civil (<https://justonweb.be/extracts>)

*Via la rubrique « Experts », les traducteurs, interprètes et experts judiciaires peuvent soumettre une demande de paiement auprès du bureau de paiement.

2.1.2.2. Le site internet « JustSearch » permet aux citoyens d'être dirigés vers la page internet de chaque tribunal. Sur la page internet du tribunal, le citoyen peut trouver des informations utiles sur l'organisation du tribunal, et, selon le degré de modernisation numérique du tribunal concerné, le rôle des audiences, la date de fixation d'une affaire etc.

Exemples :

Tribunal de première instance de Namur : <https://www.rechtbanken-tribunaux.be/fr/tribunal-de-premiere-instance-de-namur>

Cour de cassation : <https://www.cass.be/fr/calendrier-audiences>

2.1.3. Communication électronique des cours et tribunaux vers les citoyens et les avocats

Le Code judiciaire a été adapté en ce sens et il contient un grand nombre d'articles prévoyant la possibilité de recourir à la communication électronique.

Exemple : les greffes transmettent une copie simple des jugements aux avocats des parties en adressant cette copie à leur adresse électronique professionnelle (art. 792 du Code judiciaire).

Dans la pratique, la tendance va dans le sens d'une augmentation de la communication électronique au détriment de la communication « papier ».

2.1.4. Signification électronique d'un acte de la procédure par une partie à une autre partie

Le Code judiciaire prévoit la possibilité de procéder à la signification d'une acte par le voie électronique, à une adresse électronique (exemple : la partie qui a gagné le procès fait signifier le jugement à la partie qui a perdu le procès, afin de faire courir les délais de recours et, le cas échéant, de faire exécuter le jugement).

La signification électronique doit avoir lieu à « l'adresse d'élection de domicile électronique », suivant la procédure organisée par les articles 32quater/1, 32 quater/2 et 32 quater/3 du Code judiciaire, à la condition que le destinataire y ait consenti chaque fois pour la signification en question, de manière expresse.

Pour plus de détails sur ce sujet :

<https://www.huissiersdejustice.be/themes/la-signification-electronique#:~:text=L'adresse%20judiciaire%20%C3%A9lectronique%20est,pas%20prise%20en%20compte%20ici.>

Actuellement, dans la pratique, la signification électronique demeure exceptionnelle.

2.2 Les documents et l'ensemble de la procédure judiciaire sont-ils logés dans des fichiers électroniques ? Si ce n'est pas le cas, veuillez décrire la ou les utilisations les plus importantes des fichiers électroniques.

2.2.1. La réponse à cette question est nuancée.

La situation est variable suivant le tribunal concerné et est en constante évolution.

Certains juges travaillent déjà avec un dossier électronique (en matière de contrôle de la détention préventive, par exemple), mais cette pratique est encore minoritaire ; les dossiers entièrement « papier » constituent la règle.

Cependant, lorsque les avocats déposent leurs actes de procédure (généralement des conclusions et mémoires, en ce compris les pièces invoquées à l'appui d'une demande ou d'une défense) par la voie électronique, les juges ont également accès à ces actes par la voie électronique. Ainsi qu'il a été mentionné plus haut au point 2.1.1, l'usage des systèmes de dépôt e-Deposit et DPADeposit est actuellement fortement répandu.

Cette évolution positive a pour résultat concret que, nonobstant le fait que le « dossier judiciaire électronique » en est encore au stade du développement (voy. le point 2.2.2. ci-après), les juges, dans leur travail quotidien, ont souvent accès aux conclusions, mémoires et pièces des parties par la voie électronique.

2.2.2. En matière pénale, certains dossiers peuvent déjà être entièrement consultés en ligne, aussi bien par les parties que par les juges, dans le cadre des programmes « JustScan » et « Consult On Line ».

Exemple : la numérisation du dossier pénal relatif à l'explosion de gaz de Ghislenghien a permis d'économiser 11 000 000 de pages papier, ce qui correspond à une économie de 44 000 euros en papier et à une économie totale estimée de 315 000 euros (papier, toner, entretien des machines et nombre d'heures/homme).

Actuellement, un programme de développement de la consultation des dossiers en ligne est en cours d'élaboration dans le domaine pénal. Dans une première phase, ce programme couvre les dossiers de violences sexuelles, violences intrafamiliales, meurtres et homicides involontaires, en raison de la gravité des faits et de l'impact émotionnel sur les victimes et les parents proches. La consultation a lieu de manière sécurisée, au moyen de la carte d'identité électronique ou de l'application « ItsMe »³.

2.3 La procédure s'accompagne-t-elle de signatures numériques ? Les procédures électroniques diffèrent-elles en substance des dossiers et procédures sur papier ?

2.3.1. Jugements : pas actuellement, mais une loi dont la date d'entrée en vigueur est actuellement fixée au 31 décembre 2023 dispose que les jugements devront être établis sous forme dématérialisée.

Le jugement devra, dans ce cas, être signé en apposant une signature électronique qualifiée au sens de l'article 3.12. du règlement (UE) n° 910/2014 du Parlement européen et du Conseil du 23 juillet 2014 sur l'identification électronique et les services de confiance pour les transactions électroniques au sein du marché intérieur et abrogeant la directive 1999/93/CE (art. 782 du Code judiciaire).

2.3.2. Traductions officielles : les traducteurs et traducteurs-interprètes qui disposent d'une eID peuvent, depuis décembre 2022, signer numériquement leurs documents et ainsi légaliser leur traduction.

³ Application d'identité mobile qui permet aux citoyens de se connecter à des plateformes du gouvernement, des banques, des assureurs et d'autres entreprises privées, mais elle permet aussi de partager des données d'identité, de confirmer des paiements et de signer de manière numérique (signature électronique qualifiée selon le règlement européen eIDAS).

- 2.4 Les juges et les tribunaux travaillent-ils tous à l'aide de fichiers électroniques ? Sinon, quels tribunaux les utilisent et quels tribunaux ne le font pas ? Quelle est la raison de cette différence d'utilisation ?

Tous les juges et tous les tribunaux travaillent à l'aide de fichiers électroniques.

- 2.5 Les juges ont-ils des ordinateurs à domicile et travaillent-ils à domicile avec les mêmes fichiers électroniques qu'au bureau ? Dans quelle mesure les fichiers électroniques sont-ils accessibles par le tribunal et / ou les parties via des systèmes basés sur un cloud ?

Tous les juges disposent d'un ordinateur portable fourni par le ministère de la justice. A la connaissance du rédacteur des présentes réponses, de nombreux magistrats disposent également d'un écran supplémentaire séparé et d'une station d'accueil pour le PC portable.

Ils travaillent avec les mêmes fichiers à domicile et au bureau.

En outre, via le « cloud » mis à disposition de chaque magistrat, ils peuvent accéder à leurs documents professionnels au départ de n'importe quel ordinateur, au moyen de codes d'accès personnalisés et modifiés périodiquement.

Les parties n'ont, bien évidemment, pas accès à ces documents confidentiels (projets de jugement, documentation des juges etc.).

- 2.6 Lorsque des dossiers électroniques sont utilisés, des dossiers sur papier le sont-ils également ? Si oui, dans quelle mesure les dossiers papier sont-ils utilisés et comment se justifie le fait de continuer de les utiliser ? Existe-t-il un processus continu de transition au sein du système judiciaire pour passer des dossiers papier aux dossiers électroniques ? Combien de temps ce processus de transition doit-il prendre ?

Voyez la réponse au point 2.2 ci-dessus.

Actuellement, les dossiers entièrement « papier » dominent.

Selon le ministre de la Justice, « la Justice doit se transformer numériquement de telle sorte que tous les dossiers soient dès le départ créés et actualisés de manière numérique ».

Le « Digital Transformation Office » est chargé d'opérer cette transformation.

- 2.7 Existe-t-il des lois, des règlements ou des règles de procédure applicables à l'utilisation de dossiers et de procédures électroniques : 1) dans la Constitution ; 2) en droit procédural ; 3) dans d'autres formes de droit, y compris des instruments de soft law ? A quoi s'appliquent ces lois, règlements ou règles ? Veuillez décrire leur application.

Oui. Ces règles se trouvent dans le droit procédural, en l'occurrence dans le Code judiciaire (affaires civiles) et dans le Code d'instruction criminelle (affaires pénales). Des arrêts royaux, des arrêtés ministériels et des circulaires complètent et mettent en œuvre ces textes légaux.

Des textes spécifiques organisent la procédure électronique devant le Conseil d'Etat et le Conseil du contentieux des étrangers.

- 2.8 L'utilisation de dossiers / procédures électroniques est-elle facultative ou obligatoire pour les juges / avocats ou, lorsque cela est autorisé, pour les plaideurs agissant sans l'assistance d'un avocat ?

La procédure électronique n'est pas obligatoire pour les parties, qu'ils soient ou non assistés d'un avocat.

- 2.9 Des approches différentes de l'utilisation des dossiers / procédures électroniques sont-elles adoptées en fonction du fond de la procédure judiciaire, par exemple, des approches différentes sont-elles adoptées pour les procédures civiles, pénales, administratives, familiales ou celles qui portent sur des questions sociales ?

Il n'y a pas de différences fondamentales autres que celles liées à la particularité du contentieux concerné.

- 2.10 Quelles sont les opinions exprimées par les juges concernant l'utilisation des fichiers et des procédures électroniques ?

Favorable.

S'agissant de l'audience devant un juge par vidéoconférence, les avis sont toutefois partagés.

- 2.11 Existe-t-il des sondages / enquêtes auprès des juges concernant leur opinion sur l'utilisation et / ou l'utilité des dossiers et procédures électroniques ?

Pas à la connaissance du rédacteur des présentes réponses.

- 2.12 Existe-t-il des rapports officiels concernant l'opinion des juges sur l'utilisation et / ou l'utilité des fichiers et des procédures électroniques ? Si oui, que disent-ils ?

Pas à la connaissance du rédacteur des présentes réponses.

- 2.13 Selon votre expérience, quels sont les avantages et les inconvénients des fichiers / procédures électroniques. Veuillez détailler.

Avantages : rapidité de la communication, économies de papier (écologie), possibilités de recherche accrues « dans le texte », facilité d'accès aux documents.

Inconvénients : risque de sécurité (cyberattaques, accidents techniques occasionnant la perte de données) et de confidentialité (espionnage privé ou d'Etats étrangers).

3. Utilisation des installations de visioconférence, y compris les plateformes en ligne

- 3.1 Quels types de procédures judiciaires peuvent se dérouler via des installations de visioconférence et / ou des plateformes en ligne ? Lorsque de telles installations sont utilisées, dans quels tribunaux le sont-elles ?

3.1.1. Actuellement, la loi n'organise pas l'audience d'une cour ou d'un tribunal par vidéoconférence (il n'y a actuellement pas de cadre légal).

En 2016, une loi a introduit cette possibilité pour les audiences consacrées au contrôle de la détention préventive avant le jugement au fond, mais la Cour constitutionnelle l'a annulée en raison de garanties insuffisantes au regard des exigences de la Cour européenne des droits de l'homme (CEDH, 5 octobre 2006, Marcello Viola c. Italy, § 67; 2 novembre 2010, Sakhnovski c. Russia, § 98).

En pratique toutefois, certains tribunaux y ont recouru, durant la pandémie de Covid (quelques tribunaux de police, tribunal de première instance de Malines (NL), Arlon (F), et Neufchâteau (F) ; tribunal de l'application des peines de Bruxelles).

Actuellement, à la Cour d'appel d'Anvers, des audiences civiles par vidéoconférence sont régulièrement organisées entre le palais de justice d'Anvers (lieu où les magistrats se trouvent) et le palais de justice de Hasselt (lieu où se trouvent les parties et leurs avocats). Cette expérience a pour but d'éviter aux avocats et aux magistrats de se déplacer entre le siège de la Cour d'appel (Anvers) et la ville de Hasselt.

3.1.2. Le 23 décembre 2022, le Conseil des ministres a approuvé un avant-projet de loi portant création d'un cadre légal général relatif à l'utilisation de la vidéoconférence dans le cadre de procédures judiciaires en matière civile et pénale.

Ce projet a pour objet de créer un cadre juridique pour l'utilisation de la vidéoconférence dans les procédures judiciaires, tant au civil qu'au pénal. Ainsi qu'il a été mentionné au point 3.1.1.ci-dessus, la vidéoconférence est actuellement utilisée sur une base individuelle par certains tribunaux, mais il n'existe pas de règles communes applicables à tous les tribunaux. L'avant-projet a pour objectif de combler cette lacune.

Le rédacteur des présentes réponses n'a pas connaissance du texte de cet avant-projet de loi. On peut supposer qu'il suscitera un débat important au sein du monde judiciaire.

- 3.2 Les preuves peuvent-elles être recueillies par le biais d'installations de visioconférence et / ou de plateformes en ligne ? Dans l'affirmative, peuvent-elles être réalisées dans toutes les juridictions ou seulement dans certaines d'entre elles ? Dans ce dernier cas, dans quelles juridictions peuvent-elles être réalisées ?

En matière civile, l'audition de témoins par visioconférence n'est pas explicitement prévue. L'article 952 du Code judiciaire, qui prévoit l'enregistrement du témoignage, pourrait éventuellement servir de base légale, mais le rédacteur ne dispose pas d'informations plus précises à ce sujet.

Par contre, si le témoin réside à l'étranger, l'article 10.4 du règlement 1206/2001 relatif à la coopération entre les juridictions des Etats membres dans le domaine de l'obtention des preuves en matière civile ou commerciale mentionne explicitement la possibilité d'un recours à la vidéoconférence.

En matière pénale, l'audition à distance, par vidéoconférence, d'un témoin, d'un expert ou d'une personne soupçonnée résidant à l'étranger est explicitement prévue et organisée par la loi (art. 112, § 1er, du Code d'instruction criminelle).

De même, il est également possible d'entendre un témoin menacé par vidéoconférence.

- 3.3 Quelles sont les conditions liées à l'utilisation de visioconférences ou de plateformes en ligne dans les procédures ? Si elles diffèrent d'une procédure à l'autre, veuillez décrire ces différences.

Cfr. La réponse ci-dessus aux questions 3.1 et 3.2.

- 3.4 Les participants (juges, avocats, parties, témoins) à une procédure se déroulant par visioconférence ou sur une plateforme en ligne peuvent-ils se trouver en dehors d'un tribunal ? Dans l'affirmative, tous les participants ou seulement certains d'entre eux peuvent-ils prendre part à la procédure sans se trouver au tribunal ? Si cette possibilité est offerte à certains d'entre eux, lesquels ? Y a-t-il des lieux extérieurs à une juridiction à partir desquels un participant ne peut pas prendre part à une procédure qui se déroule par visioconférence ou via une plateforme en ligne ? Si oui, lesquels ?

Pas de réponse car la loi n'organise et ne prévoit actuellement pas l'audience devant une cour ou un tribunal par vidéoconférence.

L'examen de l'avant-projet de loi approuvé par le Conseil des ministres le 23 décembre 2022 devrait permettre de répondre à cette question.

- 3.5 Existe-t-il des lois, des règlements ou des règles applicables à l'utilisation des visioconférences et des plateformes en ligne : 1) dans la Constitution ; 2) en droit procédural ; 3) dans d'autres formes de droit, y compris le soft law ? Que régissent ces lois, règlements ou règles ? Veuillez décrire leur application.

Cfr. Les réponses précédentes.

En droit européen, le guide sur la visioconférence dans les procédures judiciaires transfrontières est un document intéressant. (<https://www.consilium.europa.eu/media/30592/qc3012963frc.pdf>).

- 3.6 L'utilisation de la visioconférence est-elle facultative ou obligatoire ? Si elle est facultative, peut-elle être imposée par le tribunal sans le consentement des parties ?

Dans l'état actuel du droit, en l'absence de ce cadre légal, la vidéoconférence ne pourrait pas être imposée en dehors du consentement de toutes les parties.

Actuellement, lorsqu'elle est pratiquée par certains tribunaux, elle l'est de l'accord de toutes les parties.

- 3.7 Quelles sont les opinions des juges sur l'utilisation de dossiers et de procédures électroniques ? Existe-t-il des sondages / enquêtes auprès des juges concernant leur opinion sur l'utilisation et / ou l'utilité des dossiers et des procédures électroniques ?

Je présume que votre question vise les procédures par vidéoconférence ?

Les opinions sont très partagées. En général, les juges n'y sont pas fondamentalement opposés, mais ils considèrent que cette procédure devrait être appliquée seulement de manière exceptionnelle, dans les cas spécifiques où la vidéoconférence est vraiment nécessaire ou qu'elle offre une plus-value dans le cas concret (impossibilité pour une partie de se déplacer pour des raisons de maladie, distance géographique, pandémie etc.)⁴. De manière générale, les juges considèrent que rien ne remplace l'avantage de la présence physique des parties et des juges. En outre, la publicité des audiences est mise en danger si l'audience électronique n'est pas diffusée simultanément dans un palais de justice, afin de permettre au public d'y assister en direct.

- 3.8 Existe-t-il des rapports officiels concernant l'opinion des juges sur l'utilisation et / ou l'utilité des fichiers et des procédures électroniques ? Si oui, que disent-ils ?

Le Conseil consultatif de la Magistrature a rendu un avis relatif à la proposition de loi du 27 mai 2020 « portant des dispositions diverses en matière de justice, notamment dans le cadre de la lutte contre la propagation du coronavirus » (Chambre des représentants, DOC 55 - 1295/001).

Ce rapport exprime le grand scepticisme des magistrats quant à l'introduction de la visioconférence pour les audiences des cours et tribunaux, du moins quant au système tel qu'il était proposé à l'époque.

⁴ Voy., en ce qui concerne l'Ukraine, les travaux de la CEPEJ sur l'organisation d'audiences à distance dans ce pays en guerre.

- 3.9 Selon votre expérience, quels sont les avantages et les inconvénients de l'utilisation de la visioconférence et / ou des plateformes en ligne ? Veuillez les décrire.

Je partage l'avis nuance exprimé ci-dessus au point 3.7 : l'audience par vidéoconférence doit être rendue possible et il faut pouvoir la pratiquer lorsque, dans le cas concret qui se présente et compte tenu des particularités de la cause, elle offre une réelle plus-value par rapport à une audience « physique ».

Mais une telle procédure doit demeurer exceptionnelle et ne peut devenir la règle.

4. Utilisation d'outils liés aux données

- 4.1 Existe-t-il des outils liés aux données utilisés par votre système judiciaire : 1) sur les faits, 2) sur le droit et les précédents ? Si oui, veuillez les décrire.

Sur le droit et les précédents :

- Belgiquelex Législation⁵ : site internet officiel, en accès public libre, contenant la législation belge consolidée ; il existe des sites publics spécifiques pour la législation régionale et communautaire en vigueur en Wallonie⁶, en Fédération Wallonie-Bruxelles⁷ et en Flandre⁸ ;
- Juportal⁹ : site internet officiel, en accès public libre, reprenant la jurisprudence (anonymisée) publiée de la Cour de cassation et de nombreuses juridictions de fond ; chaque arrêt de la Cour de cassation y est précédé de l'énoncé des mots-clés, du sommaire (=enseignement de l'arrêt) et, le cas échéant, d'annotations jurisprudentielles ou doctrinales¹⁰ ;
- trois sites de documentation juridique : Strada lex, Jurisquare et Jura¹¹ ; ces sites publics mais payants, dont l'abonnement pour les magistrats est pris en charge par le Service public fédéral Justice (Ministère de la Justice), permettent d'accéder en ligne à quasi toutes les revues juridiques belges et à de nombreuses monographies.

- 4.2 Quels types d'outils les juges peuvent-ils utiliser ? Y a-t-il des outils officiels fournis par le pouvoir judiciaire / le ministère ? Si oui, quels sont-ils ? L'utilisation d'outils liés aux données est-elle facultative ou obligatoire ? Si elle est facultative, comment et par qui leur utilisation est-elle déterminée ?

4.2.1. Voy. la réponse à la question n° 4.1.

4.2.2. Chaque tribunal ou cour dispose d'un système informatique de gestion, en réseau, permettant de gérer les dossiers et d'accéder aux décisions. Généralement, les juges y ont accès. Actuellement, un système de gestion unique est en voie de généralisation à toutes les juridictions : le système MaCH (Mammouth@Central Hosting).

Certaines juridictions disposent donc encore, en attendant cette généralisation, de leur propre système d'exploitation. Par exemple, pour la Cour de cassation, le programme « Syscas ».

⁵ <https://www.belgiquelex.be/fr/legislation>

⁶ <https://wallex.wallonie.be/home.html>

⁷ https://www.galilex.cfwb.be/fr/leg_menu.php

⁸ <https://codex.vlaanderen.be>

⁹ <https://juportal.be/home/accueil>

¹⁰ Les mots-clés, sommaire et notes sont rédigés par le parquet de la Cour de cassation.

¹¹ www.stradalex.be ; www.jurisquare.be ; www.jura.be.

4.3 Existe-t-il des lois, des règlements ou des règles applicables à l'utilisation des outils liés aux données dans votre système : 1) dans la Constitution ; 2) en droit procédural ; 3) dans d'autres formes de droit, y compris le soft law ? Que régissent ces lois, règlements ou règles ? Veuillez décrire leur application.

4.3.1. La Constitution énonce, en son article 149, le principe selon lequel « Tout jugement est rendu public selon les modalités fixées par la loi ».

4.3.2. La loi concrétise et réglemente la publication des jugements, au moyen de dispositions énoncées dans des articles du Code judiciaire.

Deux lois récentes successives règlent la publication électronique des jugements : d'abord la « loi du 5 mai 2019 modifiant le Code d'instruction criminelle et le Code judiciaire en ce qui concerne la publication des jugements et des arrêts », et, ensuite, la « loi du 16 octobre 2022 visant la création du Registre central pour les décisions de l'ordre judiciaire et relative à la publication des jugements ».

L'entrée en vigueur de la loi précitée du 16 octobre 2022 est actuellement fixée aux dates des 30 septembre 2023 et 31 décembre 2023.¹²

Cette loi introduit notamment les éléments suivants, décrits ci-après de manière nécessairement sommaire et incomplète dans le cadre restreint du présent questionnaire :

- tous les jugements sont pseudonymisés et sont, en règle, publiés dans le "Registre central pour les décisions de l'ordre judiciaire" ;
- tous les jugements sont établis sous forme dématérialisée et signés en apposant une signature électronique qualifiée au sens de l'article 3.12. du règlement (UE) n° 910/2014 du Parlement européen et du Conseil du 23 juillet 2014 sur l'identification électronique et les services de confiance pour les transactions électroniques au sein du marché intérieur et abrogeant la directive 1999/93/CE ;
- en vue de leur insertion dans le Registre central précité, la pseudonymisation préalable de certaines données est prévue, au sens de l'article 4, 5), du règlement (UE) 2016/679 du Parlement européen et du Conseil du 27 avril 2016 relatif à la protection des personnes physiques à l'égard du traitement des données à caractère personnel et à la libre circulation de ces données ;
- il existe une possibilité pour le juge de ne pas publier certaines données qui, en principe, doivent l'être, lorsque la publication du jugement pseudonymisé ou de parties du jugement porte atteinte de manière disproportionnée au droit à la protection de la vie privée des parties ou d'autres personnes impliquées dans l'affaire, ou est préjudiciable à leurs autres droits fondamentaux ou libertés fondamentales reconnus dans la Constitution et dans les instruments internationaux qui lient la Belgique ;
- il existe une possibilité pour le chef de corps de la juridiction, après avis du ministère public, lorsque sa diffusion est de nature à porter atteinte à la sécurité des magistrats, des membres du greffe, des avocats ou de leur entourage, de ne pas publier les données d'identité de ces personnes mentionnées dans le jugement ainsi que, dans les limites de sa lisibilité et de sa compréhension, tout élément du jugement permettant d'identifier directement ou indirectement ces personnes ;
- il est interdit de réutiliser les données d'identité des magistrats, des membres du greffe et des avocats afin de (ou ayant pour effet de) évaluer, d'analyser, de comparer ou de

¹² Il ne peut être exclu que ces dates d'entrée en vigueur soient reportées, au cas où les systèmes informatiques et le personnel ne seraient pas prêts à temps.

prédire leurs pratiques professionnelles réelles ou supposées ; la violation de cette interdiction sera punissable ;

4.4 Les outils liés aux données facilitent-ils l'établissement des faits et la préparation de la décision judiciaire ?

Voy. la réponse à la question 4.1 : les banques de données électroniques (= documentation juridique des magistrats) mentionnées au point 4.1 sont très utiles et largement utilisées par les juges.

4.5 Y a-t-il des sondages / enquêtes auprès des juges concernant leur opinion sur l'utilisation et / ou l'utilité des outils liés aux données ? Existe-t-il des rapports officiels concernant l'opinion des juges sur l'utilisation et / ou l'utilité des outils liés aux données ? Si oui, qu'en disent-ils ?

4.5.1. Le Conseil supérieur de la Justice publie sur son site internet l'étude suivante :

« Intelligence artificielle et justice : un respect des droits de l'homme par un robot est-il possible ? Les grands défis de la justice de demain »

Il s'agit d'un essai réalisé en 2020 dans le cadre du concours organisé par le Conseil Supérieur de la Justice à l'occasion de son 20^{ème} anniversaire. Auteur : Mehdi Amine.¹³

4.5.2. L'Ordre des barreaux francophones et germanophone (« avocats.be ») a protesté contre le fait que, selon lui, la loi précitée du 16 octobre 2022 (voy. le point 4.3.2 ci-dessus) ne prévoit pas la possibilité d'exploiter le contenu du Registre central au moyen d'algorithmes. Les avocats sont d'avis que « l'intelligence artificielle permet des recherches juridiques plus approfondies, plus précises ; permet de rechercher des solutions innovantes qui font progresser le droit ; permet une meilleure prévisibilité, et donc d'éviter d'introduire des procédures inutiles ; doit être pour le magistrat une aide efficace à la décision ».

4.6 Selon votre expérience, quels sont les avantages et les inconvénients de l'utilisation des outils liés aux données ? Veuillez les décrire.

*Avantages de la publication électronique de tous les jugements dans un Registre central accessible au public :

- Transparence dans le cadre d'une organisation démocratique de la société
- Diffusion du droit au travers de la publication des jugements
- Possibilité accrue d'analyse de la jurisprudence.

*Risques ou désavantages de la publication électronique de tous les jugements dans un Registre central accessible au public :

- Trop d'information tue l'information : actuellement, la banque de données publique et officielle « Juportal » publie les arrêts de la Cour de cassation et les décisions des juridictions de fond qui sont pertinents pour l'unité de la jurisprudence ou le développement du droit ; ce tri est efficace et il facilite la recherche juridique ;
- Risque de profilage des auteurs des jugements et arrêts, ou encore risque de profilage des juridictions ;

¹³ <https://csj.be/admin/storage/hrj/intelligence-artificielle-et-justice-un-respect-des-droits-de-lhomme-par-un-robot-est-il-possible.pdf> .

- Risques inhérents aux logiciels prédictifs : quels seront la fiabilité des résultats de telles analyses prédictives ? qu'en est-il de l'accès du citoyen à ces analyses, qui seront effectuées par des entreprises privées qui vendront ces résultats ?

5. Formes de procédures automatiques

- 5.1 Utilise-t-on des procédures automatiques dans le système judiciaire de votre pays ? Si oui, veuillez les décrire.

Dans un futur proche, les procès-verbaux de la police, en matière de circulation routière, seront automatiquement intégrés dans le dossier pénal électronique.

- 5.2 Existe-t-il des procédures automatiques pour l'établissement des faits ? Les faits générés automatiquement sont-ils acceptés comme éléments de preuve ?

En matière de circulation routière, oui (mesure de la vitesse par des appareils automatiques - radars). Les faits ainsi constatés sont acceptés comme preuve.

- 5.3 Existe-t-il des procédures automatiques pour déterminer le droit applicable et / ou les précédents ?

Non, pas à la connaissance du rédacteur des présentes réponses.

- 5.4 Existe-t-il des procédures automatiques de prise de décision ou d'aide à la décision ?

Non.

- 5.5 Quels types de conditions sont nécessaires, d'un point de vue technique et juridique, pour l'utilisation d'une procédure automatique ? Veuillez les décrire et exposer leurs avantages et inconvénients.

- 5.6 Existe-t-il des initiatives visant à mettre en œuvre des procédures automatiques sur les faits / le droit / les décisions ? Si oui, veuillez les décrire.

- 5.7 Existe-t-il des lois, des règlements ou des règles concernant l'utilisation de formes d'intelligence artificielle, comme les procédures automatiques : 1) dans la Constitution ; 2) en droit procédural ; 3) dans d'autres formes de droit, y compris le soft law ? Que régissent ces lois, règlements ou règles ? Veuillez décrire leur application.

5.7.1. Ainsi que mentionné ci-dessus au point 4.3.2 : la loi du 16 octobre 2022 interdira, lorsqu'elle entrera en vigueur, de réutiliser les données d'identité des magistrats, des membres du greffe et des avocats afin de (ou ayant pour effet de) évaluer, d'analyser, de comparer ou de prédire leurs pratiques professionnelles réelles ou supposées ; la violation de cette interdiction sera punissable.

Les modalités techniques et matérielles de mise en place et de fonctionnement du « Registre central pour les décisions de l'Ordre judiciaire » doivent être déterminées dans un arrêté royal. Cet arrêté royal doit être soumis à l'avis préalable de « l'Autorité de protection des données »¹⁴. Ces modalités ne peuvent toutefois avoir aucune incidence sur le contenu ou la compréhension des décisions judiciaires enregistrées dans le Registre central.

- 5.8 S'il n'y a pas encore de mise en œuvre de telles mesures, existe-t-il des projets concernant la mise en œuvre de formes d'intelligence artificielle ?

¹⁴ L'Autorité de protection des données est une institution qui veille à la protection de la vie privée dans le traitement des données personnelles.

Pas à ma connaissance.

Toutefois, la question de l'application de l'intelligence artificielle au domaine de la Justice fait l'objet de réflexions scientifiques dans le milieu universitaire et judiciaire.

Des articles ont été publiés à ce sujet dans plusieurs revues juridiques belges et les magistrats sont intéressés ou préoccupés par ce sujet.

- 5.9 Existe-t-il un code éthique applicable à l'utilisation de procédures automatiques dans les procédures judiciaires ? Si des procédures automatiques sont utilisées, comment l'indépendance de la prise de décision judiciaire est-elle sauvegardée et préservée ?

Selon la connaissance du rédacteur des présentes réponses :

* la Charte éthique européenne d'utilisation de l'IA dans les systèmes judiciaires Commission européenne pour l'efficacité de la justice (CEPEJ) ;

* « Décoder l'intelligence artificielle : 10 mesures pour protéger les droits de l'homme » (Commissaire aux droits de l'homme du Conseil de l'Europe).

- 5.10 Existe-t-il des règles et des garanties spéciales concernant les procédures automatiques ? Le juge a-t-il le dernier mot / le contrôle sur l'issue et la qualité d'une procédure automatique ?
- 5.11 La sécurité des données est-elle assurée pour l'utilisation de procédures automatiques ou lors de leur réalisation ? Si oui, veuillez décrire la situation factuelle et juridique ?
- 5.12 Quel rôle, le cas échéant, un commissaire à la protection des données (ou l'équivalent) joue-t-il dans la supervision de l'utilisation de l'intelligence artificielle dans les procédures judiciaires ?

6. Responsabilités en matière d'exploitation des technologies modernes

- 6.1 Qui détermine la mise en œuvre des technologies modernes, et dans le système, l'utilisation de dossiers / procédures électroniques et d'outils liés aux données dans votre tribunal / juridiction ?

Le « Collège des cours et tribunaux » (= organe de gestion de l'ensemble de cours et tribunaux de l'ordre judiciaire, à l'exception de la Cour de cassation) et chaque organe de gestion du tribunal devrait, selon l'opinion du rédacteur des réponses au présent questionnaire, être étroitement associés.

- 6.2 Les juges participent-ils au processus de conception et / ou de mise en œuvre de l'utilisation de dossiers / procédures électroniques, de visioconférences et d'outils informatiques ?

Voy. la réponse au point 6.1.

- 6.3 Les juges sont-ils associés au processus de création de formes d'intelligence artificielle dans les procédures judiciaires telles que les procédures automatiques ?

Voy. la réponse au point 6.1.

7. Critiques et propositions d'utilisation et de mise au point des technologies modernes

7.1 Décrivez les principaux arguments discutés par votre système judiciaire au sujet de l'utilisation et de la mise au point des technologies modernes dans les procédures judiciaires.

- Audience par vidéoconférence : voy. les points 3.7 et 3.9
- Procédure électronique et dossier électronique : voy. les points 2.10 et 2.13

Bosnia and Herzegovina/Bosnie-Herzégovine

1. Introduction and definitions

The questionnaire is aiming to collect the relevant information as regards the modern technology used within the judiciary in your country.

In this regard, for the purposes of the present questionnaire, the following definitions apply:

Electronic files/electronic proceedings

Definition: the whole or part of process/commencement/issue of process/correspondence of the process with all parties, including court internal administration and/or case management generally is electronic (no paper files or paperwork at all).

Videoconference

Definition: all kind of hearings which are held via videoconference (including online platforms).

Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

There is an electronic Case management system (CMS) in the entire Bosnia and Herzegovina judiciary, but there is no electronic procedures or exclusive use of electronic files.

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

The CMS contains most of the documents related to the cases, including all submissions by parties and minutes of the hearings. However, the submitted material evidence (exhibits) is not entered into the CMS but still into the physical files. CMS make the work of judges and prosecutors easier and with CMS they do not have to have entire case files on their desk or at the office. It makes it easy to search through the case and check when something happened, to find submissions, appeals, decisions etc.

2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

Unfortunately, we still have no digital signatures or electronic proceedings.

2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

The entire Bosnia and Herzegovina judiciary uses CMS. All judges use it, and it is administered by the High Judicial and Prosecutorial Council.

2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

Judges cannot access CMS from home and they have no access to any electronic files outside the courthouse. Judges only have access to the official email, which they can access with special access data.

If working from home, judges must physically bring all materials for work.

2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

Judges still use paper-based files. CMS makes the work much easier because the files do not have to be physically in the judge's office all the time, and some things can be done in the case directly through CMS. For now, there is no intention to completely replace paper files to electronic files.

2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

There are the Rules on the Case Management System in Courts issued by the High judicial and Prosecutorial Council (HJPC). It regulates the manner and rules of behavior of CMS users, authorized access to the court cases by the parties and their legal representatives, the right to access data, checking the accuracy and up-to-dateness of data entry in the CMS, communication and user support of the Department for information – communication technologies of the HJPC with CMS users, procedure in case of CMS unavailability, education of CMS users and procedure of electronic archiving of cases.

2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

It is binding for all judges and prosecutors in Bosnia and Herzegovina.

2.9 Are different approaches to the use of electronic files/proceedings taken depending on the substance of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

No different approaches.

2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

We only have electronic files, we do not have electronic procedures.

CMS was introduced in 2007, and at the very beginning of its application there was a lot of resistance from judges, especially older ones. Today, it is applied by all judicial office holders.

2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

About electronic files, not any more.

2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

Not aware, if any.

2.13 In your experience, what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them.

The advantages of CMS are that I can review all cases when I want, I receive regular notifications when a submission has been made, I can more easily follow the deadlines in cases, it warns when the deadlines for detention expire, it is easier to find a specific decision, it allows insight into the cases of other judges, etc.

The disadvantages are that exhibits are not entered electronically, which would make it much easier to write a judgment and search the complete case. The disadvantages are also that not all judges put their decisions into CMS, so we often have only blank paper instead of an electronic decision. The biggest disadvantage is when the system crashes, and then everything has to be done twice, first manually in the file, and then repeat it all in the CMS, but luckily it doesn't happen often.

3. Use of videoconference facilities, including online platforms

3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms? Where such facilities are used, in which courts are they used?

Our system only allows videoconference hearings of witnesses, in which cases the witness joins via video link, while the other participants (judges, prosecutor, accused, defence) must be in the courtroom. It is mostly used in criminal proceedings.

3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

Only witness hearings.

3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

Only in cases where the witness lives abroad and his/her arrival would be associated with great difficulties. In these situations, through International legal aid, the witness hearing may be organized via video link and usually at the court nearest to the witness. For the organization of witness hearings via video link, the procedures can take up to half a year.

3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

It is not permissible for participants to be outside of the courtroom.

3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

BH laws do not prescribe provisions that would directly refer to the possibility of using a video link in the presentation of evidence in the main criminal proceedings.

But, for example, Article 9 of the Law on the Protection of Threatened Witnesses and Vulnerable Witnesses regulates witness hearings via technical devices for image and sound transmission.

3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

N/A

3.7 What views have been expressed by judges concerning the use of electronic files and proceedings? Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

N/A

3.8 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

N/A

3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

N/A

4. Use of data tools

4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

There is Judicial practice portal in Bosnia and Herzegovina, where the most important court decisions can be found. This portal exists for several years, but has been significantly improved in the past year.

Also, some courts publish all their decisions on their websites, which are publicly available and searchable.

4.2 What kind of tools may judges use? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?

Judges use the mentioned portal optionally, it is not binding, but it is very useful in their daily work. The portal is managed by HJPC.

4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

No.

4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

No.

4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

Those who use the database are generally satisfied, and I have no knowledge of any official reports in that regard.

4.6 In your experience, what are the advantages and disadvantages of using data tools? Please describe them.

The advantage of using the database is that it can be searched in different ways. It contains a huge amount of case law and it is quite easy to search and find what we need.

5. Forms of automatic proceedings

5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.

No.

5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?

No.

5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

No.

5.4 Are there automatic proceedings for decision-making or to assist decision-making?

No.

5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

N/A

5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.

N/A

5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

N/A

5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence?

No.

5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?

No.

5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?

N/A

5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?

N/A

5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use artificial intelligence in legal proceedings?

N/A

6. Responsibilities for operating modern technologies

6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

The High Judicial and Prosecutorial Council of Bosnia and Herzegovina.

6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

As members of some working groups.

6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?

N/A

7. Criticisms and proposals for use and development of modern technology

7.1 Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

This kind of discussion is not yet active in Bosnia and Herzegovina, there are sporadic views of some judges and lawyers, but it is not widely discussed yet.

Croatia/Croatie

1. Introduction and definitions

The questionnaire is aiming to collect the relevant information as regards the modern technology used within the judiciary in your country.

In this regard, for the purposes of the present questionnaire, the following definitions apply:

Electronic files/electronic proceedings

Definition: the whole or part of process/commencement/issue of process/correspondence of the process with all parties, including court internal administration and/or case management generally is electronic (no paper files or paperwork at all).

Videoconference

Definition: all kind of hearings which are held via videoconference (including online platforms).

Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

Yes, only in one specific proceedings – bankruptcy of consumers (natural persons) . In other cases there is electronic filing (parties are logging their files electronically, court is communicating with lawyers, prosecutors and notary public electronically. All those documents are kept in electronic files (on the server) but all those documents are also kept in paper.

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

Yes -see answer 2.1.

2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

YES. No there is no difference.

2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

Yes, all courts are using data base, but “old fashion” case still exist with exception of consumer bankruptcy cases.

2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

No in principle. For that solution judge would need permission from the ministry of justice. (Explanation is security reasons)

2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

Yes, paper files are still in use. Rationale is reluctance from judges to change the ways they work and fact that studying paper file takes less time than electronic one, but there is tendency to move slowly to electronic file or at least to part of it (hearing records)

2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

It is regulated in procedural laws and some regulations and orders. Laws are regulating possibilities and soft law regulates what technical requirements needed to have electronic files and how to keep and use them.

2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

It is optional. Motion posted in traditional way would not be considered invalid or unacceptable.

2.9 Are different approaches to the use of electronic files/proceedings taken depending on substantive of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

Criminal justice is a bit step back from civil justice in use of electronic filing.

2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

In regard to electronic filing judges are now used to it even they have more administrative duties now than when there was no electronic filing.

In regard to move from classical files to electronic ones there is fair majority of judges against this from various practical reasons. Judges strongly believe that procedural laws should be significantly adjusted to new electronic environment if judicial system will move completely toward electronic proceedings.

2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

Not yet.

2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

Not yet.

2.13 In your experience what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them.

Electronic filing saves time, resources and contribute to the security of the proceedings raising procedural discipline of all parties but courts as well.

I do not see advantages form electronic proceedings with exception to environmental and financial goals.

3. Use of videoconference facilities, including online platforms

3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms. Where such facilities are used, in which courts are they used?

In all proceedings with no exception.

3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

They could, but very rarely used.

3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

The same rules apply with exception that court need to hear parties about using video conferencing before deciding.

3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

Judges should be at court. Other participants do not have to be in the court.

3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

See answer 2.7.

3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

It is optional but court can decide to use possibility of "distant hearing" with out parties consent.

3.7 What views have been expressed by judges concerning the use of electronic files and proceedings? Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

Please see answers under section 2.

3.8 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

Not yet.

3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

All advantages were seen during COVID-19 crisis. Access to court was possible, costs are lower and proceedings are faster. disadvantages are that integrity of proceedings can be jeopardizes, judges do not have direct access to evidence, especially witnesses which in many cases is essential to evaluate their statements

4. Use of data tools

4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

Only on law and judgments. (case law)

4.2 What kind of tools may judges use? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?

Data bases are official (Official Gazette and case law data base from the Supreme Court) but also data base created by private companies Judges have access to laws, search engines to find laws and regulations and relevant case law (access for judges is paid by the State)

4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

NO.

4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

Yes, data base case law is used to prepare judgment, that is in fact rationale behind having access to case law.

4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

NO

4.6 In your experience what are the advantages and disadvantages of using data tools. Please describe them.

Securing stability of law and consistence of case law as important part of legal certainty.

5. Forms of automatic proceedings

In Croatia fortunately we do not use automatic proceedings beside frame answered under Section 4. (some questions are overlapping)

5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.

5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?

5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

5.4 Are there automatic proceedings for decision-making or to assist decision-making?

5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.

5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms

of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

- 5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence?
- 5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?
- 5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?
- 5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?
- 5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use artificial intelligence in legal proceedings?

6. Responsibilities for operating modern technologies

- 6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

Ministry of Justice and Legislator

- 6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

Yes. Judges are always involved when laws and regulations are drafted, and they are also part of monitoring bodies who monitor advantages and disadvantages of use of new technical possibilities.

- 6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?

So far no artificial intelligence in court proceedings.

7. Criticisms and proposals for use and development of modern technology

- 7.1 Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

Actually there are two lines of discussion. One is led by Ministry of justice and some parts of the Academia who are advocating use of modern technologies not taking in account obstacles and shortcomings which occur in everyday use.

Judges do have more cautious opinion because they see shortcomings in everyday practice from lack of proper maintenance of the system and lack of resources and investments in the judiciary which are in discrepancy with public communication from the MoJ.

Judges are using frequently and easily all case law data base, when appropriate on line hearings and courts and judges do communicate with judges electronically.

What judges are more cautious are hearing recording without written protocols of the hearings, transfer to electronic files and of course use of AI as a tool to replace human mind and senses in assessing facts and applying law in particular cases.

Duro Sessa
CCJE Member from Croatia

Czech Republic/*République tchèque*

1. Introduction and definitions

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Definition: all kind of hearings which are held via videoconference (including online platforms).

Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

In Czech does exist e-file only in payment order decisions (civil proceeding). Although in bankruptcy agenda we have e-register, where all documents are published in its e-version and some procedural acts of parties are supported originally as e-version. Specific technical requirements are in format (PDF, DOC, DOCX, XLS, XLSX, TXT a RTF) of files.

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

See above.

2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

Parties can use e-format in their procedural acts generally. Some acts (plaint, appeal etc.) are required with digital signature or in special governmentally supported "digital box" based on electronical identity code.

2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

Generally judges do not use electronic files – except payment order agenda or bankruptcy agenda (see point 2.1).

2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

Judges can use an access to their office computer from external accessories – via chip card.

- 2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

Ministry of Justice plans new e-file project where no paper file is used, but now except electronical payment orders agenda is paper file needed.

- 2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

In civil procedure are rules governing use of electronical payment order and in bankruptcy law is regulation of using e-forms and public electronical Register of insolvency.

- 2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

See above point 2.1-2.3

- 2.9 Are different approaches to the use of electronic files/proceedings taken depending on the substance of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

- 2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

There is good experience of using electronical register and documents in bankruptcy proceeding.

- 2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

No.

- 2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

No (or I do not know about them)

- 2.13 In your experience, what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them.

I can handle electronical register with e-documents in bankruptcy law, for this is my jurisdiction. I can image an improvement of this register to e-file system and I hope we will get it from the E-file Project organised by MJ.

3. Use of videoconference facilities, including online platforms

- 3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms? Where such facilities are used, in which courts are they used?

In this time is possible lead all hearings this way, most common is in administrative courts proceedings.

- 3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

Yes, it is possible. But there could be limits when parties demands personal presence or witness evidence.

- 3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

There is stronger emphasis for identification of parties or witnesses. Discussions are still going on this topic.

- 3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

It is expected judge presence in courtroom when holding videoconference. In criminal proceedings are detained persons on special videoconference rooms in prison.

- 3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

There aren't any regulations governing the use of videoconferences yet. Whole system is under control of basic procedural law – implementing "clasic" procedural method to videoconferences.

- 3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

Using videoconferences is optional. There is no regulation requiring consent of parties, but in the other side – court have to verify, that both parties have access to videoconference system. It is not possible to order videoconference proceedings without this information and consent of both parties.

- 3.7 What views have been expressed by judges concerning the use of electronic files and proceedings? Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

Major parts of judges agree with use of electronic files and proceeding. There were a lot of discussion about it. To be truth there will always be a part of judges which disagree, mostly conservative and long serving judges.

- 3.8 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

There is not any official report.

- 3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

The most important advantages are cost saving of parties – travel expenses of barristers (covered by parties) or transport of prisoners from distant prison (covered by state). Disadvantages are risks of bad internet connection or any technical error and unavoidable distance judge from parties.

4. Use of data tools

- 4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

Of course, each court have database of law and precedents calls ASPI programe. Costs are covered by Minister of Justice.

- 4.2 What kind of tools may judges use? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?

Court of first instance are able to prepare judgements in program APSTR. This program generate general part of simple reccuring judgement, for example non-payment of electricity bill. Using of this program is voluntary, but frequent use in this kind of cases.

- 4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

No, there are not.

- 4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

Yes, see above in 4.2 answer.

- 4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

No, there are not any official reports.

- 4.6 In your experience, what are the advantages and disadvantages of using data tools? Please describe them.

Disadvantage is need of often data updates. Advantage – data tools support effectiveness of judge everyday work.

5. Forms of automatic proceedings

- 5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.

No, there is not an automatic proceeding in Czech judiciary system yet.

- 5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?

No.

- 5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

No.

- 5.4 Are there automatic proceedings for decision-making or to assist decision-making?

No.

- 5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

Without answer.

- 5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.

The agenda of implementing automatic proceedings has been discussed on several conferences, but without any concrete suggestion of solution.

- 5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

There are not any.

- 5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence?

See above in 5.6 answer.

- 5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?

No.

- 5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?

No.

- 5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?

Without answer.

- 5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use of artificial intelligence in legal proceedings?

Without answer.

6. Responsibilities for operating modern technologies

- 6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

This agenda is under competence of Minister of Justice.

- 6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

It is customary that a commission of experts (includes judges) is established in such of that important changes of system.

- 6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?

I hope that judges will be involved in the process of creating forms of artificial intelligence. See above in 6.2 answer.

7. Criticisms and proposals for use and development of modern technology

7.1 Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

See above in 4.6 answer.

Denmark/Danemark

1. Introduction and definitions

The questionnaire is aiming to collect the relevant information as regards the modern technology used within the judiciary in your country.

In this regard, for the purposes of the present questionnaire, the following definitions apply:

Electronic files/electronic proceedings

Definition: the whole or part of process/commencement/issue of process/correspondence of the process with all parties, including court internal administration and/or case management generally is electronic (no paper files or paperwork at all).

Videoconference

Definition: all kind of hearings which are held via videoconference (including online platforms).

Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

Files/electronic proceedings are used extensively, almost exclusively.

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

All civil case documents are electronic. Some documents in some criminal cases are still in hard copy. There are plans to conduct all criminal cases in electronic form within a year or two.

2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

Yes.

No.

2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

Yes.

2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

No cloud-based systems are used.

Yes.

2.6 Where electronic files are used, are paper-based files also used?

No.

If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files?

Yes.

How long will this process of change take?

We expect it will take only a few years.

2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

No.

Yes.

Yes.

They support the transition to the use of full electronic case handling including all files in electronic format. It is Danish government policy that the public sector shall be fully digitalised.

2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

Binding for all. In civil cases litigants not represented by a lawyer may exceptionally submit a hard copy document. Upon receipt the court will scan such a copy to electronic form.

2.9 Are different approaches to the use of electronic files/proceedings taken depending on the substance of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

No.

2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

Judges have not expressed their views.

2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

No.

2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

No.

2.13 In your experience, what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them.

We support the digitalisation of the judiciary.

3. Use of videoconference facilities, including online platforms

3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms? Where such facilities are used, in which courts are they used?

All court proceedings may be facilitated by videoconferencing if a party, witness, defendant or interpreter is not physically present in court. First instance courts and courts of appeal.

3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

Yes. Witnesses can be heard via videoconference. Yes, in first instance courts and courts of appeal.

3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

Data security must be ascertained. The remote site shall generally be another courthouse, a police office, a correctional facility, a Danish embassy or consular office etc.

3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

Judges must always be present in their court room. Lawyers, parties and witnesses are allowed to some extent to enter court via videoconferencing. In a criminal case a defendant and his/her lawyer may only enter a main hearing by videoconference when the expected sentence is no more than one year.

See answer to 3.3.

3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

No.

Yes.

Yes.

They govern the safe and appropriate application of videoconferencing.

3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

All such decisions are at the discretion of the judges. The court may in a criminal case mandate that the defendant appears by videoconferencing, when there is imminent risk of the defendant's attempt to escape.

3.7 What views have been expressed by judges concerning the use of electronic files and proceedings? Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

See answer to question 2.10.

3.8 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

See answer to question 2.12.

3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

Videoconferencing is seen as a valuable service to the users of the courts.

4. Use of data tools

4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

Yes. The courts use digital collections. The Danish legislation is available digitally with advanced search tools. Precedent literature likewise.

4.2 What kind of tools may judges use?

Any tool may be used.

Are there official tools provided by the judiciary/ministry?

Yes.

If so, what are they?

By example, a database of selected decisions (domsdaten) is made available by the Danish Court Administration. Other data tools are provided by private parties and subscription organised by the Danish Court Administration.

Is the use of data tools optional or binding?

Optional.

If optional, how and by whom is their use determined?

The use of electronic tools is determined by the judges.

4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

No.

No.

No.

4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

Yes.

4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

No.

No.

4.6 In your experience, what are the advantages and disadvantages of using data tools? Please describe them.

They may save time and enable better founded decisions.

5. Forms of automatic proceedings

5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.

No.

5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?

No.

5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

No.

5.4 Are there automatic proceedings for decision-making or to assist decision-making?

No.

5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

Automatic proceedings are not used in Danish courts.

5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.

No.

5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

No.

No.

No.

5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence?

There are currently no projects concerning artificial intelligence.

5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?

No.

5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?

No. Automatic proceedings are not used in Danish courts.

5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?

Automatic proceedings are not used in Danish courts.

5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use artificial intelligence in legal proceedings?

Artificial intelligence is not used in legal proceedings in Danish courts.

6. Responsibilities for operating modern technologies

6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

The Danish Court Administration headed by the board in which the majority is made up of judges.

6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

Yes.

6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?

Artificial intelligence is not used in legal proceedings in Danish courts.

7. Criticisms and proposals for use and development of modern technology

7.1 Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

There is widespread support in favour of a full digitalisation of the public sector, including the judiciary.

Estonia/Estonie

1. Introduction and definitions

The questionnaire is aiming to collect the relevant information as regards the modern technology used within the judiciary in your country.

In this regard, for the purposes of the present questionnaire, the following definitions apply:

Electronic files/electronic proceedings

Definition: the whole or part of process/commencement/issue of process/correspondence of the process with all parties, including court internal administration and/or case management generally is electronic (no paper files or paperwork at all).

Videoconference

Definition: all kind of hearings which are held via videoconference (including online platforms).

Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

Electronic files exist in civil, administrative, criminal and misdemeanour cases¹. There are no specific requirements per se.

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

As of 01.04.2023 all new civil and administrative court cases are proceeded in electronic form only. Until then, it was a trial period during which some cases were proceeded in electronic form, some traditional paper form. It is a hybrid system still in criminal and misdemeanour cases.

2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

Yes, it includes digital signature. Electronic proceedings do not differ in substance from paper files and proceedings.

2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

In practice, first instance courts are more involved with electronic files (higher courts tend to proceed with older (paper file) cases. However, no court is exempt from electronic files.

¹ Overview: <https://www.rik.ee/en/e-file>

- 2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

Yes. Judges have laptops and access to Electronic File System outside the courthouse, including home. Parties has a limited view to the system, which is called Open Electronic File System. Parties log in to the system using their digital signature (as do judges).

- 2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

Yes, in older cases there are still paper files until the end of its procedure. Change from paper files to electronic files has been going on for years. Judges have been more hesitant than Ministry of Justice. One of the main concerns is health related issue (see p 2.10).

- 2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

1) No 2) Yes 3) Yes, such as regulations by Minister of Justice.

- 2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

Use of electronic files in civil and administrative cases are mandatory. In criminal and misdemeanour cases it depends on the court.

- 2.9 Are different approaches to the use of electronic files/proceedings taken depending on the substance of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

No, but there is a concern that more substantial cases can be harder to proceed in electronic mode (see answer and footnote p 2.12).

- 2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

Main concern would be the health – effect specifically on eyes. Other concerns: unsolved technical issues (including speed of the system), hardware problems, possible threat on quality of decisions (specifically in bigger cases where its harder to navigate electronically than on paper), concern that the electronic file is not under court's or judge's control.

- 2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

Some polls contain questions about electronic files. 2022 Workload Poll (conducted by Estonian Association of Judges) showed that electronic files have partially increased the workload of courts including judges. It is specially evident when court needs to do it both in electronic and paper mode.

- 2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

There have been discussions rather than reports. For example, scientific research show that people comprehend a text better in paper than electronic form². Estonian Association of Judges has been active on this matter as well.

- 2.13 In your experience, what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them.

Society has embraced electronic means of communication. So should court system. In a short run, we should deal with practical not ideological problems, such as user friendly electronic file system (including suitable hardware), data protection (including minimizing the treat that one virus could potentially erase all court cases or take the system hostage) etc. On the long run, we should deal with the next step. In my view, the next step would (not saying it should) be machine-readable court decision (so it could be automatically transferred to other systems, enforced more easily and cross-border etc). It raises philosophical problem – are we (humans) serving the machine or the machine should serve us. Some philosophers have already said that knowledge which is not machine-readable, is not knowledge anymore. Bearing that in mind, we should draw the lines between Artificial Intelligence in the court system and the (human) judges. Some red lines should be drawn: what functions can only be performed by judge only and what can be left to the machine.

3. Use of videoconference facilities, including online platforms

- 3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms? Where such facilities are used, in which courts are they used?

There is no separate legal regulation. In practice, its up to judge's discession (and parties consent). Videoconferencing has been held partly (hybrid mode) or fully in civil, administrative, criminal and misdemeanour cases. However, there is a legal opinion that if the law states that a person should be heard personally by a judge (like in some family and legal guardian cases), videoconferencing is not sufficient.

- 3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

Yes, in all courts.

- 3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

Courts use videoconferencing platform provided by the Ministry of Justice. Judges are not familiar with the technical requirements. As the platform is run by the state agency, it is (hopefully) more secure and protected from third party intervention than regular online platform.

- 3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

² Bachmann, T. Differences in Perception of Information Presented on Paper and Digitally: An Overview of Scientific Research. Annual Book of Estonian Courts 2019. Available at: <https://aastaraamat.riigikohus.ee/en/differences-in-perception-of-information-presented-on-paper-and-digitally-an-overview-of-scientific-research/>

Yes, it is the point of videoconferencing - to participate at court hearings from distance. In practice, lawyers have been stayed in their offices, judges or participants of the proceedings have been at home, detainees in detention facility etc.

- 3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

1) No 2) Yes 3) Yes, such as regulations by Minister of Justice.

- 3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

It is optional, decided by the court. In practice, parties are most likely the one who request it but it can be courts initiative (like judge is at home with a suspicion of virus). Party's consent is not always asked, specially when a party of a civil case (like bankruptcy case) is serving imprisonment.

- 3.7 What views have been expressed by judges concerning the use of electronic files and proceedings? Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

See p 2.10

- 3.8 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

See p 2.12.

- 3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

Videoconferencing is needed, convinient and helps to manage a case in a timely manner (specially in cases when a party can not go to court but can participate via videoconference). However, it raises a question of boundaries. Cases or procedural acts where videoconferencing is not allowed should be discussed and guidelines should be set. Also, analysis of possible infringement of certain principles should be conducted - does it infringe the constitutional principle to attend the court hearing, principle of direct and oral examination etc. Public access and its boundaries is another set of problems.

4 Use of data tools

- 4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

There is a tool which displays legal article with links to relevant court precedents.

- 4.2 What kind of tools may judges use? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?

Forementioned tool (p 4.1) is privately run and Ministry of Justice is buying its membership to courts. Use of it is optional decided by a judge.

- 4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

No.

- 4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

No.

- 4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

No.

- 4.6 In your experience, what are the advantages and disadvantages of using data tools? Please describe them.

Fact finding tool could be useful. For example, a tool which gathers information about person's financial status could be useful in family cases (specially in alimony cases) and bankruptcy cases.

5 Forms of automatic proceedings

- 5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.

No. Only automated procedure is small claim order procedure in civil cases but it is under supervision of court personal.

- 5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?

No.

- 5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

No.

- 5.4 Are there automatic proceedings for decision-making or to assist decision-making?

No.

- 5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

-

- 5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.

No.

- 5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

No.

- 5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence?

No.

- 5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?

No, but it should be.

- 5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?

-

- 5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?

-

- 5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use artificial intelligence in legal proceedings?

Equivalent to Data Protection Commissioner deals mostly with protection of personal data.

6 Responsibilities for operating modern technologies

- 6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

Ministry of Justice who is responsible of administration first and second degree courts. The Supreme Court is not under this administration but it co-operates in order to unify electronic systems in the court system.

- 6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

Yes, via High Judicial Council. The High Judicial Council approves major technical solutions.

- 6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?

No.

7 Criticisms and proposals for use and development of modern technology

- 7.6 Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

See p 2.10, 2.12.

Finland/Finlande

1. Introduction and definitions

The questionnaire is aiming to collect the relevant information as regards the modern technology used within the judiciary in your country.

In this regard, for the purposes of the present questionnaire, the following definitions apply:

Electronic files/electronic proceedings

Definition: the whole or part of process/commencement/issue of process/correspondence of the process with all parties, including court internal administration and/or case management generally is electronic (no paper files or paperwork at all).

Videoconference

Definition: all kind of hearings which are held via videoconference (including online platforms).

Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

Yes, electronic files/electronic proceedings exist in Finland. New IT systems for the use of electronic files/electronic proceedings have been developed in the recent years and they are partly still under development. In certain courts and/or in certain types of cases they are already in use. Electronic files/electronic proceedings will be used in all courts and in all types of cases probably by the end of 2023.

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

In courts/types of cases in which the electronic files are in use, all the documents and the entire judicial proceeding are in the electronic files.

2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

Yes, the process includes digital signatures. For instance, the judges sign the judgements digitally.

Electronic proceedings don't differ in substance from paper files and proceedings.

2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

All administrative courts and all special courts (the Labour Court, the Market Court and the Insurance Court) already work with electronic files.

Also district courts (the courts which deal with criminal cases, civil cases and petitionary matters in first instance) use electronic files but currently only in civil cases and petitionary matters. They will start to use them in criminal cases by the end of 2023.

Courts of appeal and Supreme Court do not yet use electronic files. They will start to use them by the end of 2023.

The rationale for the difference is that the new IT system for general courts (district courts, courts of appeal and Supreme Court) is still under development.

2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

The judges usually have laptops which they can use both at home and in the office. They can work at home with the same electronic files as in the office. The electronic files are not accessible via cloud-based systems.

2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

In courts/types of cases where the new IT system is in place and electronic files are used, paper-based files are no longer used.

However, in old cases in which the proceedings have been initiated before the new IT system was taken into use the courts continue to use paper files, at least for some time.

As the new IT system is taken in use in new courts and in new types of cases, the use of paper-based files will gradually cease. This process will probably still take several years in regard to general courts.

2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

There are no provisions concerning the use of electronic files and proceedings in the constitution or in procedural law.

Some aspects of electronic files are governed by the Act on the National Data Repository of the Judicial Administration. This Act includes provisions on the national data repository, the data to be stored in it, the disclosure and other processing of stored data, and the obligation of the courts, the Public Prosecutor's Office and the legal aid offices to join the data repository and to provide information to it.

2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

The use of electronic files/proceedings is binding for judges.

As a main rule, the use of electronic files is optional for both lawyers and litigants acting without the assistance of a lawyer.

However, companies and other legal persons, lawyers as well as natural persons engaged in professional debt collection must submit debt claims that are presumed to be undisputed to the district court electronically.

2.9 Are different approaches to the use of electronic files/proceedings taken depending on the substance of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

As reported above, there are currently differences in the use of electronic files depending on the substance of the legal proceeding. However, the explanation for this is not a different approach in principle but practical reasons, i.e. the fact that the development of the IT system for the general courts has taken longer than expected.

2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

In general, judges take a rather positive view concerning the use of electronic files. However, judges have often criticised the fact that the IT systems may be cumbersome to use, that their development has been very slow and that there often occur errors in the IT systems during the deployment phase.

2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

No.

2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

No.

2.13 In your experience, what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them.

It is easier to view evidence when it is in electronic files. It is also much easier to work in many places (at home, in the office, etc.) when the electronic files are in use.

3. Use of videoconference facilities, including online platforms

3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms? Where such facilities are used, in which courts are they used?

In principle, all kinds of court proceedings can be held via videoconferencing facilities.

3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

Evidence can be taken via videoconferencing facilities in all courts.

3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

A general requirement for the use of videoconferencing is that the court deems it to be appropriate in the case in question.

3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

There are no explicit rules either allowing or forbidding the judges to be outside a court if the proceedings are held via a videoconference. In most cases the judge is present at the court even if the proceedings are held via a videoconference but there may be some exceptions especially in very urgent cases. However, according to a recent decision of the Supreme Court it is not allowed for the judges to take part in the hearing from different locations when a case is heard by a panel of judges. Thus, they must always be sitting at the same venue.

A witness may be heard by using a video conference if the court deems it appropriate and if:

- 1) the witness cannot appear in the hearing in person due to an illness or another reason,
- 2) the appearance of the witness in the hearing in person would cause considerable expenses or inconvenience,
- 3) the credibility of the testimony of the witness can be reliably assessed without his or her presence in the hearing,
- 4) the procedure is necessary in order to protect the witness or a person with a close relationship to him or her from a threat against life or health,

5) the witness has not reached the age of 15 years or his or her mental capacity is impaired, or if

6) the witness heard in a criminal matter is in need of special protection taking into consideration especially his or her personal circumstances and the nature of the offence.

The same requirements are applied to situations in which a party is heard for evidentiary purposes.

If a party is not heard for evidentiary purposes, he or she can attend a hearing by using a videoconference if he or she agrees to do so and the court deems it appropriate. The same requirements are applied to lawyers. In addition, the party which is the client of the lawyer must agree to this.

There are no rules concerning places outside a court from which a participant may not take part in proceedings held by videoconference.

3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

There are no provisions governing the use of videoconferences in the constitution. The applicable provisions are in procedural law. These provisions govern the requirements of the use of videoconferences, as explained above (3.4).

3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

The use of videoconference is optional. It is up to the court to decide whether it is appropriate to use it in the case in question.

However, the court may not order a party or his or her lawyer to attend the hearing by using a videoconference. In other words, a party and his/her lawyer have always the right to participate in the hearing in person.

On the other hand, other parties can participate in the proceedings and witnesses can be heard via a videoconference even if one of the parties would not give his or her consent to this. The court will, of course, take the views of this party into account when deciding whether it is appropriate to use a videoconference in the case in question.

3.7 What views have been expressed by judges concerning the use of **videoconference facilities** [electronic files and proceedings]? Are there any polls/soundings among judges concerning their views on the use and/or utility of **videoconference facilities** [electronic files and proceedings]?

There are no polls or soundings among judges concerning their views on the use of videoconference facilities. Many judges are already accustomed to using videoconferencing. Especially senior judges consider it important that there is adequate technical support available.

3.8 Are there any official reports concerning judicial views on the use and/or utility of **videoconference facilities** [electronic files and proceedings]? If so, what do they say?

No.

3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

The advantages of using videoconferencing are perhaps most obvious in cases in which a party or a witness lives very far from the court and does not need to travel to the hearing.

When technical problems occur, they cause delays in the proceedings. This is of course very frustrating and may result in additional costs for the parties. Therefore, the reliability of the videoconferencing systems and the adequacy of technical support are important.

4. Use of data tools

4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

No.

4.2 What kind of tools may judges use? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?

The judges may in principle use any data tools they consider helpful and reliable. There are no official data tools provided by the judiciary or the ministry.

The use of data tools is optional. Each judge may decide whether to use such tools or not.

4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

No.

4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

Not applicable as there are no official data tools.

4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

No.

4.6 In your experience, what are the advantages and disadvantages of using data tools? Please describe them.

No experience.

5. Forms of automatic proceedings

5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.

No, there are no automatic proceedings in use in the Finnish judiciary. The Parliament has just adopted new legislation on automated decision-making in public administration. These provisions only allow administrative decisions to be taken automatically. They do not apply to the courts. A complaint, even if it would be handled by an administrative authority, cannot be resolved automatically.

5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?

No, there are no automatic proceedings for fact finding.

Automatically generated facts would be accepted as evidence. It is up to the court to determine the probative value of this kind of evidence.

5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

No.

5.4 Are there automatic proceedings for decision-making or to assist decision-making?

No.

5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

It is difficult to assess as there are neither automatic proceedings in use nor any initiatives to implement automatic proceedings.

5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.

No.

5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

No. There is only legislation on automated decision-making in public administration (see above 5.1). This legislation includes provisions on the conditions for automated decision-making, on legal remedies and on the obligation for the authority to inform the party concerned that the matter has been resolved automatically.

5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence?

No, not concerning the judiciary.

5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?

No.

5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?

Not applicable.

5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?

Not applicable.

5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use artificial intelligence in legal proceedings?

Not applicable.

6. Responsibilities for operating modern technologies

6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

The National Courts Administration (an independent central agency that serves the entire court system) determines in close cooperation with the courts the implementation of electronic files. No decisions concerning the use of data tools have been made so far. It would be in principle each judge who decides whether he/she uses them.

6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

The involvement of judges in the process of implementing the use of electronic files/proceedings has been significant. The use of video conferences has been more a legislative issue, but the courts and judges have been involved in the legislative process.

6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?

There are no such projects now.

7. Criticisms and proposals for use and development of modern technology

7.1 Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

There has not been a lot of discussion at principle level concerning the use and development of modern technology in legal proceedings. The approach to modern technology has been quite pragmatic. The discussion has mainly focused on the fact that the development of IT systems has been too slow and that they are cumbersome to use.

France

1. Introduction et définitions

Le questionnaire vise à recueillir des informations utiles concernant les technologies modernes utilisées au sein du système judiciaire de votre pays.

A cet égard, voici ce qu'on entend par les termes ci-après aux fins du présent questionnaire :

Dossiers / procédures électroniques

Définition : l'ensemble de la procédure / du début de la procédure / de la correspondance liée à la procédure avec toutes les parties ou une partie de celle-ci, y compris l'administration interne du tribunal et / ou la gestion de l'affaire se fait généralement par la voie électronique (pas de dossiers ou de documents sur papier).

Visioconférence

Définition : tous les types d'audiences qui se déroulent par visioconférence (y compris les plateformes en ligne).

Outils liés aux données (sur les faits, sur le droit et sur les précédents / la législation)

Définition : les tribunaux / ministères fournissent des outils liés aux données (conçus par un fournisseur privé ou public) utilisés par les juges pour faciliter le jugement des affaires.

Formes de procédures automatiques

Par exemple, des procédures automatiques pour 1) l'établissement des faits, 2) la recherche du droit et des précédents ; 3) les décisions.

2. Utilisation de dossiers / procédures électroniques

2.1 Existent-ils des fichiers / procédures électroniques et y a-t-il des exigences spécifiques à ce sujet ? Veuillez les décrire.

Les dossiers de procédure sont établis au format papier. Dans la très grande majorité des cas, que ce soit en matière civile ou en matière pénale, les documents contenus dans les dossiers-papier sont scannés et intégrés dans un dossier électronique à la disposition des juges.

Les documents scannés sont au format .pdf .

Il n'y a pas d'exigence spécifique concernant le dossier électronique, qui est la copie du dossier-papier.

2.2 Les documents et l'ensemble de la procédure judiciaire sont-ils logés dans des fichiers électroniques ? Si ce n'est pas le cas, veuillez décrire la ou les utilisations les plus importantes des fichiers électroniques.

Comme indiqué ci-dessus, il existe toujours un dossier papier, mais celui-ci n'est pas toujours consulté par les juges, qui préfèrent pour des raisons de commodité travailler sur la copie électronique des pièces et du dossier.

2.3 La procédure s'accompagne-t-elle de signatures numériques ? Les procédures électroniques diffèrent-elles en substance des dossiers et procédures sur papier ?

Les signatures numériques sont en cours de développement.

Pour la communication avec les avocats, il a été mis en place un réseau de communication électronique sécurisé (Réseau privé virtuel justice, RPVJ), qui permet aux avocats de formuler des demandes ou de transmettre des pièces sans avoir à utiliser de papier.

Les échanges par le RPVJ ont une valeur équivalente à celle de documents papier, car l'utilisation de ce réseau certifie l'identité de l'utilisateur.

Certaines juridictions, en particulier la Cour de cassation, ont mis en place un système sécurisé, auquel les avocats ont accès, et qui leur permet de consulter le dossier électronique de la procédure. Quand de tels systèmes existent, les juges n'ont plus besoin du dossier papier – qui existe cependant toujours.

2.4 Les juges et les tribunaux travaillent-ils tous à l'aide de fichiers électroniques ? Sinon, quels tribunaux les utilisent et quels tribunaux ne le font pas ? Quelle est la raison de cette différence d'utilisation ?

Oui, la quasi-totalité des juges et des tribunaux travaillent à l'aide de fichiers électroniques au format .pdf

2.5 Les juges ont-ils des ordinateurs à domicile et travaillent-ils à domicile avec les mêmes fichiers électroniques qu'au bureau ? Dans quelle mesure les fichiers électroniques sont-ils accessibles par le tribunal et / ou les parties via des systèmes basés sur un cloud ?

Oui, les juges ont généralement des ordinateurs portables qui leur permettent de travailler à domicile.

Les fichiers électroniques ne sont pas toujours accessibles à distance, car leur accès nécessite l'utilisation de réseaux sécurisés, sur l'intranet.

Les juges dont les ordinateurs portables comportent un VPN et sont configurés pour accéder ainsi à l'intranet peuvent consulter les dossiers électroniques à domicile.

2.6 Lorsque des dossiers électroniques sont utilisés, des dossiers sur papier le sont-ils également ? Si oui, dans quelle mesure les dossiers papier sont-ils utilisés et comment se justifie le fait de continuer de les utiliser ? Existe-t-il un processus continu de transition au sein du système judiciaire pour passer des dossiers papier aux dossiers électroniques ? Combien de temps ce processus de transition doit-il prendre ?

Les dossiers papier existent, dans tous les cas, mais sont de moins en moins utilisés par les juges, au profit des dossiers électroniques.

Leur existence est justifiée par le fait que les règles de procédure, qui exigent la plupart du temps la signature manuscrite des actes, des procès-verbaux, et des jugements, n'ont pas encore été totalement adaptées pour pouvoir se passer d'un support papier.

Un processus de transition progressive vers la « dématérialisation » est en cours. Il est géré par le ministère de la justice, et prendra encore plusieurs années.

2.7 Existe-t-il des lois, des règlements ou des règles de procédure applicables à l'utilisation de dossiers et de procédures électroniques : 1) dans la Constitution ; 2) en droit procédural ; 3) dans d'autres formes de droit, y compris des instruments de *soft law* ? A quoi s'appliquent ces lois, règlements ou règles ? Veuillez décrire leur application.

Oui, il existe des règles de procédure applicables aux dossiers et échanges électroniques, non pas dans la Constitution, mais en droit procédural seulement.

Pour que la communication électronique avec les greffes des juridictions soit valable, s'agissant des actes qui doivent être déposés au greffe et revêtus d'un visa par le greffier, il est nécessaire que le code de procédure prévoie expressément cette modalité.

2.8 L'utilisation de dossiers / procédures électroniques est-elle facultative ou obligatoire pour les juges / avocats ou, lorsque cela est autorisé, pour les plaideurs agissant sans l'assistance d'un avocat ?

L'utilisation de procédures électroniques est en principe facultative, même si elle s'est considérablement développée.

2.9 Des approches différentes de l'utilisation des dossiers / procédures électroniques sont-elles adoptées en fonction du fond de la procédure judiciaire, par exemple, des approches différentes sont-elles adoptées pour les procédures civiles, pénales, administratives, familiales ou celles qui portent sur des questions sociales ?

Il n'y a pas d'approches différentes en fonction de la nature du dossier, mais la difficulté est que les juges n'utilisent pas les mêmes logiciels ni les mêmes réseaux de communication en matière civile, pénale, ou sociale, par exemple.

Ces logiciels ont été développés par le ministère de la justice, et dédiés, soit au civil, soit au pénal, et ne sont pas interchangeables.

Les différents réseaux des juridictions ne sont pas toujours interconnectés, et il y a beaucoup de problèmes de compatibilité entre eux.

Dans les cas où la procédure est orale (pas de nécessité pour les parties de présenter des conclusions écrites à l'audience), les dossiers électroniques sont moins utilisés, car les termes du litige dépendront de ce que diront les parties devant le juge.

2.10 Quelles sont les opinions exprimées par les juges concernant l'utilisation des fichiers et des procédures électroniques ?

Il n'y a pas de réticence à l'utilisation de fichiers et procédures électroniques, les opinions à ce sujet sont toujours positives – car ils sont plus faciles à manipuler que les dossiers papier – mais les logiciels utilisés pour le faire présentent de nombreuses lacunes et insuffisances.

Dans l'ensemble, les juges souhaiteraient des logiciels et des applications ayant de meilleures performances.

2.11 Existe-t-il des sondages / enquêtes auprès des juges concernant leur opinion sur l'utilisation et / ou l'utilité des dossiers et procédures électroniques ?

Oui, les services du ministère de la justice diffusent des enquêtes auprès des juges sur leur degré de satisfaction concernant le matériel informatique et les procédures électroniques

2.12 Existe-t-il des rapports officiels concernant l'opinion des juges sur l'utilisation et / ou l'utilité des fichiers et des procédures électroniques ? Si oui, que disent-ils ?

Il en existe probablement dans les services du ministère de la justice.

La politique de ce ministère vise à développer la « numérisation » (= digitalisation) des procédures dans tous les domaines, mais cela nécessite des adaptations législatives et, surtout, des moyens matériels importants (ordinateurs, serveurs, maintenance, évolution et développement des logiciels) pour moderniser les moyens informatiques des juridictions.

2.13 Selon votre expérience, quels sont les avantages et les inconvénients des fichiers / procédures électroniques. Veuillez détailler.

Le principal avantage est la facilité de transport, et de consultation à distance, des pièces du dossier. A condition de disposer des instruments nécessaires (un logiciel de recherche dans le dossier), il est beaucoup plus rapide et aisé de retrouver des documents, des noms, des phrases, dans un fichier électronique – si ce fichier a fait l'objet d'une OCRisation (reconnaissance de caractères) et n'est pas une simple photographie d'un document en papier.

Les fichiers électroniques permettent de copier/coller des extraits du dossier sans avoir à les saisir sur le clavier de l'ordinateur.

Il n'y a pas d'inconvénients, sauf en cas de mauvaise manipulation qui effacerait le fichier.

3. Utilisation des installations de visioconférence, y compris les plateformes en ligne

3.1 Quels types de procédures judiciaires peuvent se dérouler via des installations de visioconférence et / ou des plateformes en ligne ? Lorsque de telles installations sont utilisées, dans quels tribunaux le sont-elles ?

L'utilisation de la visioconférence, qui est considérée comme une forme de comparution des parties, est désormais très répandue.

Elle l'est moins en matière civile – où les parties sont représentées par des avocats et ne sont pas nécessairement présentes à l'audience – qu'en matière pénale, où la comparution personnelle des prévenus et des témoins est la règle.

Cette comparution peut avoir lieu par visioconférence, dans les conditions prévues par le code de procédure pénale.

Des installations de visioconférence ont été mise en place dans les maison d'arrêt, pour les cas où le détenu ne peut être conduit au palais de justice.

3.2 Les preuves peuvent-elles être recueillies par le biais d'installations de visioconférence et / ou de plateformes en ligne ? Dans l'affirmative, peuvent-elles être réalisées dans toutes les juridictions ou seulement dans certaines d'entre elles ? Dans ce dernier cas, dans quelles juridictions peuvent-elles être réalisées ?

Les prévenus ou accusés détenus, et les témoins, peuvent comparaître en visioconférence, durant la phase d'instruction (devant le juge des libertés et de la détention, devant le juge d'instruction) ou devant une juridiction de jugement.

3.3 Quelles sont les conditions liées à l'utilisation de visioconférences ou de plateformes en ligne dans les procédures ? Si elles diffèrent d'une procédure à l'autre, veuillez décrire ces différences.

Les conditions d'utilisation de la visioconférence sont précisées en détail par les codes de procédure, en particulier le code de procédure pénale.

Dans tous les cas, c'est le juge qui décide du recours à la visioconférence.

Une personne détenue doit être informée que le juge envisage de recourir à cette technique, et a la possibilité de le refuser.

3.4 Les participants (juges, avocats, parties, témoins) à une procédure se déroulant par visioconférence ou sur une plateforme en ligne peuvent-ils se trouver en dehors d'un tribunal ? Dans l'affirmative, tous les participants ou seulement certains d'entre eux peuvent-ils prendre part à la procédure sans se trouver au tribunal ? Si cette possibilité est offerte à certains d'entre eux, lesquels ? Y a-t-il des lieux extérieurs à une juridiction à partir desquels un participant ne peut pas prendre part à une procédure qui se déroule par visioconférence ou via une plateforme en ligne ? Si oui, lesquels ?

En principe, les juges et les participants se trouvent au palais de justice, où a lieu l'audience. Ce n'est que par exception que certains participants (certains prévenus détenus loin de la juridiction, certains témoins qui ne peuvent pas se déplacer) sont admis à comparaître en visioconférence.

Il n'y a pas, à ma connaissance, d'audience où tous les participants seraient en visioconférence.

Au cas particulier où une personne détenue participe à l'audience en visioconférence, son avocat a le choix entre se rendre au palais de justice ou assister son client au sein de l'établissement pénitentiaire.

La visioconférence a lieu par des moyens de communication sécurisés (pas de plateformes en ligne grand public), et il est donc nécessaire que le lieu où se trouvera le prévenu ou le témoin soit équipé en conséquence. Les établissements pénitentiaires et les palais de justice sont tous équipés de moyens de visioconférence sécurisés.

3.5 Existe-t-il des lois, des règlements ou des règles applicables à l'utilisation des visioconférences et des plateformes en ligne : 1) dans la Constitution ; 2) en droit procédural ; 3) dans d'autres formes de droit, y compris le *soft law* ? Que régissent ces lois, règlements ou règles ? Veuillez décrire leur application.

Les règles applicables à l'utilisation de visioconférences sont prévues en détail par le code de procédure civile et le code de procédure pénale, notamment, mais pas dans la Constitution.

Cette utilisation doit être expressément prévue par la loi ou le règlement pour que le juge puisse y recourir.

3.6 L'utilisation de la visioconférence est-elle facultative ou obligatoire ? Si elle est facultative, peut-elle être imposée par le tribunal sans le consentement des parties ?

Elle est toujours facultative. Dans certains cas, la personne concernée doit être informée de son droit de refuser la visio-conférence (article 706-71 du code de procédure pénale pour les audiences sur la détention provisoire), et dans d'autres, elle peut être imposée par le juge.

Mais en pratique, si la personne concernée refuse la visio-conférence, il n'est pas possible de la forcer à utiliser ce moyen.

3.7 Quelles sont les opinions des juges sur l'utilisation de dossiers et de procédures électroniques ? Existe-t-il des sondages / enquêtes auprès des juges concernant leur opinion sur l'utilisation et / ou l'utilité des dossiers et des procédures électroniques ?

Voir réponses 2.10 et 2.11

3.8 Existe-t-il des rapports officiels concernant l'opinion des juges sur l'utilisation et / ou l'utilité des fichiers et des procédures électroniques ? Si oui, que disent-ils ?

Voir 2.12

3.9 Selon votre expérience, quels sont les avantages et les inconvénients de l'utilisation de la visioconférence et / ou des plateformes en ligne ? Veuillez les décrire.

L'avantage principal est d'éviter le déplacement de la personne qui comparaît en visioconférence, et, dans certains cas, le déplacement du juge pour entendre cette personne.

Les inconvénients sont :

- Les problèmes techniques ;
- La distance qui s'instaure entre les participants, dont les réactions et les interactions sont beaucoup moins visibles que lorsqu'ils se trouvent dans une salle d'audience, ce qui change l'ambiance du procès.

4. Utilisation d'outils liés aux données

4.1 Existe-t-il des outils liés aux données utilisés par votre système judiciaire : 1) sur les faits, 2) sur le droit et les précédents ? Si oui, veuillez les décrire.

Il n'y a pas d'outils particuliers sur les faits. Sur le droit et les précédents, il faut effectuer des recherches dans les bases de données qui contiennent toutes les décisions rendues.

Les arrêts de la Cour de cassation, par exemple, sont dans la base de données « jurinet » accessible à tous les magistrats, dans l'intranet, et qui permet des recherches par mots-clés, avec un moteur de recherche assez basique.

Depuis une loi du 23 mars 2019 et un décret du 29 juin 2020, ayant posé le principe de l'« Open data » toutes les décisions rendues par les juridictions seront progressivement mises en ligne sur internet et accessibles au public, dans une version anonymisée. C'est déjà le cas des décisions de la Cour de cassation, ce sera celui des jugements correctionnels fin 2024, et des décisions des cours d'appel fin 2005.

Le site internet de la Cour de cassation, accessible au public, comprend un petit moteur de recherche.

4.2 Quels types d'outils les juges peuvent-ils utiliser ? Y a-t-il des outils officiels fournis par le pouvoir judiciaire / le ministère ? Si oui, quels sont-ils ? L'utilisation d'outils liés aux données est-elle facultative ou obligatoire ? Si elle est facultative, comment et par qui leur utilisation est-elle déterminée ?

Les juges utilisent, de manière facultative :

- les outils de recherche classiques de tous les juristes : Google, le site officiel « légifrance » qui contient tous les textes et de nombreuses décisions de jurisprudence, ainsi que les bases de données des éditeurs juridiques spécialisés accessibles par l'internet sur abonnement ;
- la base de données jurinet, accessible aux magistrats seulement, sur l'intranet, qui permet quelques recherches par mots-clés ;
- et parfois le site internet de la cour dans sa partie « Open data ».

Ces outils de recherche sont assez élémentaires, et ne correspondent pas à la notion d'« outils liés aux données » au sens de ce questionnaire.

En particulier, il n'y a pas de logiciels d'aide à la rédaction des jugements, ni de logiciels spécifiques adaptés aux juges pour les recherches de jurisprudence sur tel ou tel point.

4.3 Existe-t-il des lois, des règlements ou des règles applicables à l'utilisation des outils liés aux données dans votre système : 1) dans la Constitution ; 2) en droit procédural ; 3) dans d'autres formes de droit, y compris le *soft law* ? Que régissent ces lois, règlements ou règles ? Veuillez décrire leur application.

Il existe un cadre juridique particulier pour la mise en ligne en « Open data » des décisions de justice anonymisées (loi du 23 mars 2019 et décret du 29 juin 2020), mais rien concernant l'utilisation par les juges d'outils liés aux données – parce que de tels outils n'existent pas vraiment.

4.4 Les outils liés aux données facilitent-ils l'établissement des faits et la préparation de la décision judiciaire ?

Il n'y a pas d'outils facilitant l'analyse des faits, leur établissement, et la préparation de la décision judiciaire.

Les juges utilisent un traitement de texte classique (Wordperfect, Word, Openoffice), et se font eux-mêmes leurs propres modèles de décisions.

4.5 Y a-t-il des sondages / enquêtes auprès des juges concernant leur opinion sur l'utilisation et / ou l'utilité des outils liés aux données ? Existe-t-il des rapports officiels concernant l'opinion des juges sur l'utilisation et / ou l'utilité des outils liés aux données ? Si oui, qu'en disent-ils ?

En l'absence d'outils liés aux données, pas de sondages ni de rapports.

4.6 Selon votre expérience, quels sont les avantages et les inconvénients de l'utilisation des outils liés aux données ? Veuillez les décrire.

Je n'ai pas d'expérience de tels outils.

Je pense que dans de très nombreux cas, un outil spécifique permettrait de rédiger automatiquement une trame de décision, en incorporant automatiquement, outre les noms des parties, les échanges de pièces de procédure, un résumé des demandes des parties, et un exposé des faits.

Les principaux points devant être abordés dans la motivation pourraient également être mentionnés dans la trame du jugement, en fonction de la nature du contentieux, et des motivations-type, adaptables par le juge, pourraient être proposées.

5. Formes de procédures automatiques

5.1 Utilise-t-on des procédures automatiques dans le système judiciaire de votre pays ? Si oui, veuillez les décrire.

Non. Il n'y a pas de procédures automatiques pour l'établissement des faits, la recherche du droit et des précédents, ou les décisions.

5.2 Existe-t-il des procédures automatiques pour l'établissement des faits ? Les faits générés automatiquement sont-ils acceptés comme éléments de preuve ?

Non.

5.3 Existe-t-il des procédures automatiques pour déterminer le droit applicable et / ou les précédents ?

Non.

5.4 Existe-t-il des procédures automatiques de prise de décision ou d'aide à la décision ?

Non.

5.5 Quels types de conditions sont nécessaires, d'un point de vue technique et juridique, pour l'utilisation d'une procédure automatique ? Veuillez les décrire et exposer leurs avantages et inconvénients.

Il est nécessaire que le juge puisse contrôler lui-même, et si nécessaire, rectifier tous les éléments générés par une procédure automatique.

5.6 Existe-t-il des initiatives visant à mettre en œuvre des procédures automatiques sur les faits / le droit / les décisions ? Si oui, veuillez les décrire.

Non.

5.7 Existe-t-il des lois, des règlements ou des règles concernant l'utilisation de formes d'intelligence artificielle, comme les procédures automatiques : 1) dans la Constitution ; 2) en droit procédural ; 3) dans d'autres formes de droit, y compris le *soft law* ? Que régissent ces lois, règlements ou règles ? Veuillez décrire leur application.

Pas de règles particulières, les procédures automatiques n'existant pas dans la justice française.

5.8 S'il n'y a pas encore de mise en œuvre de telles mesures, existe-t-il des projets concernant la mise en œuvre de formes d'intelligence artificielle ?

A la suite de l'« Open data » des décisions de justice, des entrepreneurs ont créé des start-up, ou legaltech, qui se proposent d'analyser toutes les décisions rendues, désormais publiées sur internet, pour en tirer des synthèses juridiques, ou répondre à des consultations, et donner un avis sur le jugement qui serait rendu dans tel ou tel cas de figure.

Un secteur économique est en train de se développer sur ce point, mais il est trop tôt pour apprécier son importance et son avenir. Les avocats seront vraisemblablement les premiers utilisateurs de l'intelligence artificielle pour l'analyse des dossiers et la rédaction de leurs écritures

Je pense qu'il ne devrait pas être très difficile de développer un Chat GPT spécifiquement adapté aux questions juridiques, mais ce n'est pas encore le cas.

5.9 Existe-t-il un code éthique applicable à l'utilisation de procédures automatiques dans les procédures judiciaires ? Si des procédures automatiques sont utilisées, comment l'indépendance de la prise de décision judiciaire est-elle sauvegardée et préservée ?

Sans objet.

5.10 Existe-t-il des règles et des garanties spéciales concernant les procédures automatiques ? Le juge a-t-il le dernier mot / le contrôle sur l'issue et la qualité d'une procédure automatique ?

Sans objet.

5.11 La sécurité des données est-elle assurée pour l'utilisation de procédures automatiques ou lors de leur réalisation ? Si oui, veuillez décrire la situation factuelle et juridique ?

Sans objet.

5.12 Quel rôle, le cas échéant, un commissaire à la protection des données (ou l'équivalent) joue-t-il dans la supervision de l'utilisation de l'intelligence artificielle dans les procédures judiciaires ?

Sans objet.

6. Responsabilités en matière d'exploitation des technologies modernes

6.1 Qui détermine la mise en œuvre des technologies modernes, et dans le système, l'utilisation de dossiers / procédures électroniques et d'outils liés aux données dans votre tribunal / juridiction ?

Le ministère de la justice, en concertation avec les chefs des cours d'appel et des tribunaux.

6.2 Les juges participent-ils au processus de conception et / ou de mise en œuvre de l'utilisation de dossiers / procédures électroniques, de visioconférences et d'outils informatiques ?

Certains juges sont consultés par le ministère de la justice lors de la conception des systèmes et logiciels qui seront ensuite utilisés dans les juridictions.

6.3 Les juges sont-ils associés au processus de création de formes d'intelligence artificielle dans les procédures judiciaires telles que les procédures automatiques ?

Sans objet : pas de projets de création de procédures automatiques ni d'utilisation d'intelligence artificielle.

7. Critiques et propositions d'utilisation et de mise au point des technologies modernes

7.1 Décrivez les principaux arguments discutés par votre système judiciaire au sujet de l'utilisation et de la mise au point des technologies modernes dans les procédures judiciaires.

L'utilisation d'outils de communication modernes (Email, réseau sécurisé pour les échanges avec les avocats, numérisation des dossiers papier pour les transformer en documents .pdf) ne fait pas l'objet de critiques.

L'usage de la visioconférence non plus. Les juges se sont adaptés aux nouvelles technologies qui, dans la justice, relèvent surtout de la simple bureautique.

Le manque d'instruments efficaces pour la recherche de jurisprudence et pour la mise en forme des décisions est souvent déploré.

Il existe un débat naissant sur les risques de l'introduction de formes d'intelligence artificielle, et la peur que le juge perde son pouvoir d'appréciation du dossier, mais en l'absence de procédures automatiques, ce débat reste purement théorique pour l'instant.

Je pense que si un éditeur de revues juridiques a l'idée de lancer un « Chat GPT juridique », ce qui nécessitera des moyens importants, la discussion deviendra probablement plus concrète.

Georgia/Géorgie

1. Introduction and definitions

The questionnaire is aiming to collect the relevant information as regards the modern technology used within the judiciary in your country.

In this regard, for the purposes of the present questionnaire, the following definitions apply:

Electronic files/electronic proceedings

Definition: the whole or part of process/commencement/issue of process/correspondence of the process with all parties, including court internal administration and/or case management generally is electronic (no paper files or paperwork at all).

Videoconference

Definition: all kind of hearings which are held via videoconference (including online platforms).

Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

Yes, In Georgian Judiciary exists electronic files and electronic proceedings. Georgian Judiciary has - Court Case Management system, E-filing system (Ecourt.ge - System for sending a case/all documents to court electronically), Electronic court decisions system and Electronic Case Allocation System.

1. Court Case Management system includes the full cycle of proceedings in the court.

The system is implemented in all three instances and works in all courts in Georgia.

Processes related to case management in the program include the following steps:

- receiving documentation (lawsuit, counterclaim, petition, statement);
- Registration of court case, creation of electronic version;
- Proceedings of the case between responsible persons within the court (receptionist, chancellery, judge);
- Anonymization of Court decisions and publishing them directly to web-portal (Ecd.court.ge);
- movement of court cases between instances (appeal, return);
- Completion of the case.

2. E-filing system - Users registered in the system can:

- to complete and send the case application to the city/district, appellate and supreme courts;

- to upload materials related to the case;
- to receive information about the progress of the sending case, both on ecourt.ge and via short text message;
- to receive information about the recording of the session in the court case

3. Electronic Court Decisions system - web portal through which it is possible to search, view and download decisions and documents made by the court.

4. Case Allocation System – Electronic Program randomly Allocates cases to judges according their specialisation.

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

At the moment according the legislation documents are in both form - in material and in electronic form. If documents are presented in material form, documents are scanned by Chancellery of the Court and uploaded electronically in Case management System.

2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

If document is presented Electronically it's mandatory to have digital signature. Electronic proceedings differ from paper files, since if document is presented in material form it's not mandatory to have digital signature, wet-signature is sufficient.

2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

All Courts have the same system.

2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems? -

Court Case management system is Internal domain System, where access to external users is limited. For working at home special VPN Connection should be subscribed for Judge. For example this connection had been subscribed during Covid Pandemic Restrictions. Parties can view all relevant documents and decisions on their cases via other external web-portal – ecd.court.ge.

Cloud-based systems aren't used.

2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

Besides the electronic-files, Paper-based files are also used. Judiciary works to change paper files to completely electronic files, but it's difficult to say how long this process will last.

2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

According Procedural law (Civil, Criminal, Administrative) court documents/files can be sent and received in electronic form. If – lawsuit, appeal claim or Cassation claim is

presented in material form, additionally electronic form of this document should be presented (on CD Disk).

On 6th December 2013 High Council of Justice of Georgia received Decision (Nowadays Appendix 16 of 31.01.20, Resolution 1, High Council of Justice of Georgia) on General Rules on Electronic Case Management in Common Courts.

2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

- a. Use of electronic files is optional for parties, but as we have mentioned (Question 2.7) there is mandatory demand to present electronic form of Claim/Appeal claim and Cassation claim too.
- b. Besides the form how the document is presented, document is scanned in electronic form and uploaded in Case management System.
- c. There is no different regulation regarding litigants acting with lawyer and without lawyer.

2.9 Are different approaches to the use of electronic files/proceedings taken depending on the substance of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

No

2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

One part of Judges prefer to use electronic files, but another part prefer paper-based proceedings.

2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

No

2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

No

2.13 In your experience, what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them:

- a. Advantage:
 - i. Accessibility is increased
 - ii. Transparency is increased
 - iii. Proceedings are more accelerated

b. Disadvantage:

Risk of termination of access to electronic materials in case of service interruption.

3. Use of videoconference facilities, including online platforms

3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms? Where such facilities are used, in which courts are they used?

Court Proceedings (Civil, Administrative, Criminal) can be held via videoconference.

3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

There is no special regulations regarding receiving the evidences via videoconference, but according procedural law - all relevant documents/evidences should be presented before the Court in such form (Original document throw the Chancellery of the Court or directly to the Judge) that Court could check the reliability of the evidence. Thus it depends on type of Evidence.

- 3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

Proceedings can be held via videoconferencing, when concrete objective circumstances exit.

- 3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

It's permissible for all participants in proceedings held via a videoconference to be outside a court. There is no concrete regulation about the places from where participant can't take part in video-conference.

- 3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

According the procedural law, online proceedings can be held by decision of the Court based on the reasoned motion of the Party.

During Covid 19 Pandemic, High Council of Justice of Georgia received Recommendations about holding all Proceedings via Video Conference or via other online platform.

- 3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

Videoconference in most cases is optional, but in special circumstances can be binding. For example it was binding during Covid Pandemic. Court can use the mandate without party consent only in special objective circumstances.

- 3.7 What views have been expressed by judges concerning the use of electronic files and proceedings? Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

There is no concrete views expressed by Judges. Polls/soundings have n't been conducted.

- 3.8 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

No

- 3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

Advantage is that it gives opportunity to all parties to be heard by the Court, even in special circumstances, for example when they are abroad or have no opportunity to attend the proceedings in Courtroom. But online proceedings can't replace ordinary proceedings, since in most cases different technical issues hinder the flow of process.

4. Use of data tools

- 4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

On law - All Judges have access to the official web-site of Georgian Legislation (Legislative Herald of Georgia).

On precedents – All precedents and important decisions of Supreme Court of Georgia are published on Supreme Court web-page – www.supremecourt.ge. Also analyzes of Supreme Court uniform practice is regularly prepared and published by Supreme Court of Georgia. Also via ecd.court.ge – all decisions and precedents of all Instance Courts can be founded and downloaded. Judges also use HUDOC database tools.

- 4.2 What kind of tools may judges use? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?

Judges use all Abovementioned tools. These tools are optional and provided by Judiciary. Judges also use HUDOC database tools.

- 4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application

No

- 4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

Yes, it facilitates preparing and reasoning of Judicial Judgment.

- 4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

No

- 4.6 In your experience, what are the advantages and disadvantages of using data tools? Please describe them.

All data tools improve decision making process and reasoning of Judgments.

5. Forms of automatic proceedings

- 5.1 Are there any automatic proceedings in use in your judiciary?

Yes, Case Allocation System and Jury selection system.

- 5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?

No

- 5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

No

- 5.4 Are there automatic proceedings for decision-making or to assist decision-making?

No

5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

No concrete requirements.

5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions?

Not at the Moment

5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

Not on artificial intelligence. On Case Allocations system, High Council of Justice has received Rule on Automatic Case Allocation System (Resolution 1 of High Council of Justice of Georgia, Appendix 20).

5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence? – Not at the Moment

5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved? No

5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding? No

5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation? – Since automatic proceedings (except Automatic Case Allocation system doesn't exist), there is no special data security system for automatic proceedings implemented.

5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use artificial intelligence in legal proceedings?

Artificial intelligence isn't used in legal proceedings.

6. Responsibilities for operating modern technologies

6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction? – High Council of Justice of Georgia.

6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools? – Yes. High Council of Justice of Georgia consists of 9 acting Judges and 6 non-Judge members.

6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?- Yes. High Council of Justice of Georgia consists of 9 acting Judges and 6 non-judge members.

7. Criticisms and proposals for use and development of modern technology

Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings –

Increase of Accessibility and Transparency of Proceedings, acceleration of Proceedings.
Criticism – Artificial Intelligence can't replace Judge and internal belief of Judge.

Germany/*Allemagne*

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Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

Electronic files and electronic proceedings are already used in a substantial number of courts within the judiciary. The use of electronic files and proceedings is mandatory in most judicial proceedings as of 1 January 2026. Before that the files may be kept as electronic files. The Federal Government and the Land governments shall determine by statutory instrument for their sphere of responsibility the time onwards from which electronic files are to be kept, as well as the framework conditions in organisational and technical terms governing the creation, administration, and storage of the electronic files (see e.g. Section 32 of the German Code of Criminal Procedure, Section 298a of the German Code of Civil Procedure, Section 14 of the German Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction or Section 55b of the German Code of Administrative Court Procedure).

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

Where the electronic file is introduced, in general all documents are part of the electronic file. Exceptions may occur during the pilot phase until 2026 in particular in proceedings in which several courts and judicial authorities are involved (e.g., criminal court and public prosecutor's office).

2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

In electronic files, qualified electronic signatures replace the traditional paper signatures.

The procedure has not changed significantly compared to paper files, taking advantage of the simplifications offered by electronic file management (e.g., acceleration,

accessibility). Every judge is equipped with a signature card and an identification PIN. Signature services are available from everywhere, also from home office.

If a document used by the prosecuting authorities or courts is drawn up as an electronic document, all those persons responsible for the document must add their names to the document (simple electronic signature). Documents requiring the written form and a handwritten signature must in addition bear a qualified electronic signature of all the persons responsible for them (see e.g., Section 32b sentence 2 of the German Code of Criminal Procedure or Section 130b sentence 1 of the German Code of Civil Procedure).

- 2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

During the pilot phase, only some courts use electronic files. The choice is up to the Federal Government and Land governments for their respective area of responsibility.

Many courts and judges already work with electronic files. Implementation in the different departments is ongoing with the aim of equipping all branches of the courts with electronic file management by 2026.

- 2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

For judges and other court staff, the electronic filing systems are usually available from their homes. They are provided with electronic devices that enable them to access electronic files fully and securely from home via VPN connection.

But there are regional differences as to the extent of the necessary hardware supplied to court staff. None of the electronic files are currently available via cloud-based systems.

However, access to individual files is granted to parties or their representatives on their request through a dedicated online system (web-based portal) where a copy of the electronic file is supplied for download.

- 2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

The use of electronic files is mandatory in most judicial proceedings as of 1 January 2026. During the pilot phase, (until 31 December 2025) paper files may be kept in electronic form (see e.g., Section 32 Subsection 1 Sentence 1 of the German Code of Criminal Procedure provides that files may be kept in electronic form., Section 298a Subsection 1 Sentence 1 German Code of Civil Procedure). The Federal Government and the Land governments shall each, by statutory instrument, determine for their respective area of responsibility the date from which files may be kept in electronic form. They may restrict the introduction of electronic file management to individual courts or prosecuting authorities or to generally determined proceedings, and they may determine that files which are being kept in paper form are to continue to be kept in paper form even after electronic file management has been introduced; where such restrictions are applied, the statutory instrument may specify that it be determined, in an administrative provision of which public notice is to be given, in which proceedings which files are to be kept in electronic form. This authorisation may also be delegated, by statutory instrument, to the competent federal or Land ministries. There are similar provisions in the other Codes of procedure.

- 2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of

law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

The voluntary or mandatory use of electronic files and proceedings is regulated in the Codes of procedure (e.g., Section 32 and following of the German Code of Criminal Procedure, Section 130a and following and Section 298a of the German Code of Civil Procedure). Further regulation, in particular concerning technical requirements, is part of statutory instruments (Rechtsverordnungen) and administrative provisions. These provisions e.g., relate to the storage of electronic files and to the signature (procedure)/to the electronic signature procedure.

- 2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

Where the electronic file is introduced, in general all electronic documents shall be stored in the electronic file. Moreover, e.g., in criminal matters Section 32b of the German Code of Criminal Procedure provides: If files are kept in electronic form, the prosecuting authorities and the courts are obliged, as a rule, to transmit documents to each other as electronic documents. Bills of indictment, applications for the making of summary penalty orders outside of main hearings, appeals on points of fact and law and their grounds, appeals on points of law, their grounds, and responses, as well as court decisions drawn up as electronic documents are to be transmitted as electronic documents.

Moreover, certain essential documents filed by a lawyer or other enumerated professionals shall be transmitted as an electronic document (see e.g., Section 32d of the German Code of Criminal Procedure or Section 130d of The German Code of Civil Procedure. or Section 14b of the German Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction).

Litigants acting without the assistance of a lawyer are free to transmit their documents either electronically or in paper.

There is a general exception from the above-mentioned rules for cases where electronic transmission is temporarily not possible for technical reasons. Then transmission in paper form shall be permissible; upon request, an electronic document is also to be filed.

- 2.9 Are different approaches to the use of electronic files/proceedings taken depending on substantive of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

In general, there are similar provisions for all proceedings with only some minor specific differences. The use of the electronic files should be essentially the same in all courts.

- 2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

In general judges welcome increasingly the use of electronic files and proceedings. Many judges, especially those of a younger generation consider electronic files and proceedings to be beneficial and essential. Extended practice often leads to an appreciation of the advantages of electronic files. But advantages of electronic files and proceedings depend on the quality of the program and the technical support in its use. See 2.13

- 2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

According to the Federal Ministry of Justice and to the German Association of Judges (Deutscher Richterbund) there are no official polls/soundings among judges.

- 2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

See answer 2.11

- 2.13 In your experience what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them.

The possibility to work with electronic files from home without having to transport heavy paper files is widely seen as a clear advantage of the electronic filing systems, in particular since the pandemic has led to a much broader equipment of court staff with notebooks and VPN access. Furthermore, the possibility to perform full-text searches within the file is often mentioned as an advantage.

The time saved in receiving and sending documents, the simultaneous availability of the file for members of the panel and the registry, electronic text processing and simplified signature of documents are as well advantages.

Disadvantages of electronic files can be the reading of files on the screen and the requirement to become familiar with the operation of the program and new work processes. Frequent changes of the system(s) which concern the use of electronic files by judges are inefficient, time-costly and have limited advantages.

The efficiency of electronic files depends on a reliable and robust technical back-up system; down-times or other technical deficiencies could significantly impair the use of electronic files. Moreover, the necessary updates (back-up work) and the dependency on available technical support could make the work with electronic files more time consuming and less efficient.

3. Use of videoconference facilities, including online platforms

- 3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms. Where such facilities are used, in which courts are they used?

In general, all court hearings can be held via videoconferencing facilities and certain online platforms. In most cases the consent of the party taking part via videoconferencing and the permission by the court are required.

In criminal matters, the law does not allow proceedings via videoconferencing facilities and/or online platforms. Sole, there is the possibility to interview witnesses and experts via videoconferencing facilities in certain cases (Section 247a of the German Code of Criminal Procedure). In Administrative Court Procedure and Finance Court Process hearings can be held via videoconferencing facilities.

Civil proceedings can be held via videoconferencing facilities and/or online platforms under certain conditions (Section 128a of the German Code of Civil Procedure): Courts can allow parties and their lawyers to participate via videoconferencing facilities and/or online platforms, upon application or ex officio. Upon application witnesses, experts or parties to the proceedings could testify via video(conference). There is no recording of any statements made via videoconferencing.

The court can reject videoconferencing. It has not to give any reason for the rejection and the decision could not be legally challenged. The parties therefore cannot force the court to hold hearings via videoconferencing.

Similar rules apply to other proceedings (criminal, administrative).

Additionally, a current legislative project of the Federal Ministry of Justice (Entwurf eines Gesetzes zur Förderung des Einsatzes von Videokonferenztechnik in der Zivilgerichtsbarkeit und den Fachgerichtsbarkeiten) aims at amendments to the statutory regulations concerning videoconferences in civil proceedings as well as administrative, financial, labour, and social jurisdiction.

This legislative project intends to change the requirements for the use of videoconferencing facilities. The main purpose is to force the court to hold a hearing via videoconferencing unless it is not absolutely necessary to hold the hearing in court. Videoconferencing should be mandatory if parties or their lawyers request it. Further, there should be an obligation to give reasons for the rejection of videoconferencing. These reasons could be subject to legal review. Further, court proceedings via videoconferencing should be recorded and these electronic notes should be properly stored.

This draft legislation draws some substantial criticism from judges and associations of judges. There is no support for the legislative project as it stands.

They assert that judges should keep the privilege to decide on videoconferencing without reasoning their decision. They should decide whether videoconferencing would be appropriate considering the technical aspects and the facts of the case.

In cases of videoconferencing, it should remain possible that some parties, lawyers, or witnesses appear in person in the court. The recording of the videoconferencing and the storage of the electronic files is partly criticized.

In some branches of the judiciary (labor courts, social law courts, family law cases, some special witnessing procedures) judges have taken the position that the oral hearing in the court in person should be the only way to conduct these cases (exclusivity of the hearings in physical presence).

- 3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

In criminal and civil proceedings, there is the possibility to interview witnesses and experts via videoconferencing facilities in certain cases (Section 247a of the German Code of Criminal Procedure and Section 128a (2) of the German Code of Civil Procedure). In Administrative Court Procedure and Finance Court Process a questioning of a witness, an expert or a concerned party is possible.

- 3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

In criminal matters the court may order that the witness remains in another place during the examination, if there is an imminent risk of serious detriment to the well-being of the witness were he to be examined in the presence of those attending the main hearing; if illness, infirmity or other insurmountable impediments prevent the witness from appearing at the main hearing for a longer or indefinite period; the witness cannot, having regard to the importance of his statement, reasonably be expected to appear at the main hearing given the great distance involved or if the public prosecutor, defence counsel and the accused consent to interview via video link (Sections 247a (1) and 251 (2) of the German Code of Criminal Procedure).

Moreover, the court may order in criminal proceedings that the examination of an expert be conducted in such a manner that the expert is located somewhere other than the court and the examination is simultaneously transmitted audio-visually to the place where the expert is located and to the courtroom. This does not apply if the ordering or reservation of the defendant's placement in a psychiatric hospital or in preventive detention is being considered (Section 247a (2) of the German Code of Criminal Procedure).

In civil proceedings courts have the option of permitting a video hearing of a witness, an expert, or a party. The proceedings must be transmitted simultaneously audio-visually to the place where the absent person is located and to the courtroom (Section 128a of the German Code of Civil Procedure). See answer 3.1.

In Administrative Court Procedure and Finance Court Process the court may permit those concerned, their proxyholders and counsel, on request or ex officio, to be in another place during an oral hearing and to implement procedural acts there. The hearing shall be transmitted simultaneously in image and sound form to this place and to the courtroom. The court may permit on request that a witness, an expert, or a concerned party is in another place during questioning. The questioning shall be transmitted simultaneously in image and sound form to this place and to the courtroom.

- 3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

In criminal proceedings, only witnesses and experts can remain in another place than the court room (Section 247a of the German Code of Criminal Procedure).

Concerning videoconferences in civil matters (Section 128a of the German Code of Civil Procedure) there are no restrictions regarding the place of participation for lawyers, parties, witnesses, and experts; however, existing law does not allow judges to be outside the court. Aim of the legislative project regarding videoconferences in civil proceedings is to enable judges the conduct of proceedings via videoconferences from outside the court; in this case it is intended to guarantee the principle of public hearing by video-streams in the courtroom.

- 3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

In criminal and civil matters, the use of videoconference tools is regulated by procedural law, as well in Administrative Court Procedure and Finance Court Process (e. g. Section 102a of the Code of Administrative Court Procedure, § 91a of the Finance Courts Code).

- 3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

In criminal proceedings the use of videoconference tools to interview witnesses or experts can be mandated by the court if the requirements are fulfilled (see 3.3). As well in Administrative Court Procedure and Finance Court Process.

In civil proceedings the use of videoconference is optional according to Section 128a of the German Code of Civil Procedure. The legislative project regarding videoconferences in civil matters deals with the question whether and to what extent the court must hold proceedings via videoconferences if the parties request for it and – vice versa – to what extend use of videoconference can be binding for the parties and lawyers.

The legislative project intends to force the court to hold a hearing via videoconferencing facilities if it is not absolutely necessary to hold the hearing at the courtroom. (See above 3.1)

- 3.7 What views have been expressed by judges concerning the use of videoconferencing? Are there any polls/soundings among judges concerning their views on the use and/or utility of videoconferencing and/or online platforms?

According to the Federal Ministry of Justice and to the German Association of Judges (Deutscher Richterbund) there are no polls/soundings among judges. But there are reports of experts based on interviews and research among judges.

- 3.8 Are there any official reports concerning judicial views on the use and/or utility of videoconferencing and/or online platforms? If so, what do they say?

According to the Federal Ministry of Justice and to the German Association of Judges (Deutscher Richterbund) there are no official reports. But there are reports of experts based on national and international research.

- 3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

Videoconferencing and online platforms allow the court to conduct hearings more flexibly and can save the parties long journeys. Witnesses can be heard who would otherwise not be available. During the Corona pandemic, hearings could take place without exposing the parties to an unreasonable risk of infection. In contrast, the court has little control over the location from which parties participate in a videoconference and cannot, e.g., prevent undue influence on witnesses. The loss of face-to-face interaction can also have a negative impact on the hearing and the adjudication process.

Public access to court proceedings must be guaranteed as well in videoconferencing which is sometimes difficult due to technical impediments.

4. Use of data tools

- 4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

Courts in Germany usually supply their staff with access to databases containing the law, court decisions and legal literature. Also, software tools allowing case-specific calculation (for court fees, but also relating to substantial law, e.g., maintenance payments).

The data tools used by the judiciary are mostly of private nature – offered by private companies, universities, or book publishers. Only the access to the legal texts is granted by the state.

The following data tools on facts are used regularly:

List regarding used car values and rent price index of rental cars, the table of compensation for pain and suffering and the table considering child support. These tools represent digital listings of various data that help reaching certain factors to assess the case at hand.

There are as well data tools on law and precedents used on the judiciary. That provides almost the entire current federal law.

- 4.2 What kind of tools may judges use? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?

The use of data tools is optional. The tools provided by private companies are offered with costs. Depending on the budget available members of the judiciary have access to these tools according to the individual contracts between the Ministries of Justice (“Länder”) and the private companies.

- 4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

There is no statutory obligation to use data tools. However, Supreme Court rulings require the use of the previously mentioned lists on facts as a reference (e.g., in the assessment of damages for pain and suffering).

- 4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

Yes, they do.

- 4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

According to the Federal Ministry of Justice and to the German Association of Judges (Deutscher Richterbund) there are no official polls or soundings among judges.

- 4.6 In your experience what are the advantages and disadvantages of using data tools. Please describe them.

By using data tools, the daily work becomes much more efficient. Various search options facilitate the research, and the results are available very quickly. Referring to data tools leads to more equality and standardization of cases in the same category, e.g. pain and suffering claims. Disadvantages, especially in terms of affecting judicial independence, are not evident.

5. Forms of automatic proceedings

- 5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.

If “automatic proceedings” is supposed to mean proceedings without any human interaction, there are currently no automatic proceedings used in German courts.

However, some automatic proceedings exist on a very low level of automatization. The automatic procedure for undisputed claims (automatisiertes Mahnverfahren) is available over 20 years and provides claimants of undisputed claims automatically with an enforcement order. This does, however, not include a legal assessment of the claim. “Textsystem Justiz” provides decision-makers with ready-made text modules for judgments. Modules are suggested for certain types of decisions. However, the decision makers are responsible for compiling the text modules.

Other automatic proceedings aim to assist the human decision-making process. Most of them are still in the state of testing on the level of state judiciary. They aim at structuring the dispute/file for judges (“OLGA”, Strukturanalyse e2A”), separating repeatedly used text modules by lawyers from new arguments (“textvergleich e2A”) and sorting documents and contents with the help of artificial intelligence (“FRAUKE”, “Smart”, “Riad”).

The prosecutor’s office in Cologne works already with an AI software, identifying pictures with child pornography (“AIRA”).

- 5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?

There are no officially provided tools for automatic fact finding. However, experts appointed by the court may use automatic proceedings for facts when compiling their expert opinion.

- 5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

The applicable law is determined by judges. Data tools (see above) help with research.

- 5.4. Are there automatic proceedings for decision-making or to assist decision-making?

There are no automated proceedings for decision-making. However, the business applications used in the courts assist judges in formulating their decisions by providing workflows and text modules for frequent scenarios.

The tools that sort and extract content from the lawyers' motions assist in compiling the facts. The text systems with prepared text modules support the drafting of the legal reasons of the decision (see above).

- 5.4 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

Any automatic proceeding needs to respect the independence of the judiciary and to safeguard the independence of the individual judge in decision-making.

- 5.5 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.

The Federal Ministry of Justice is currently managing a project aiming at the introduction of online civil court proceedings. This procedure is intended to create a modern and more citizen-friendly access to the civil courts for the assertion of small claims. The aim of the project is to create a procedure that is generally conducted completely electronically. In this context, digital tools can help to structure proceedings and to automate and accelerate the processing of standardized and uniform tasks, thereby increasing the effectiveness and efficiency of court proceedings. However, there will be no automatic proceedings for decision-making; judicial decisions must always be taken by human beings.

- 5.6 Are there any laws, regulations, or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

See 5.6. The constitution is generally understood to postulate a human decision from the judiciary ("Richtervorbehalt"). The field of AI in the judiciary is largely not regulated on national level. The EU Regulation on Artificial Intelligence is being observed with high interest.

- 5.7 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence?

See 5.6.

- 5.8 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?

See 5.6

- 5.9 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?

See 5.6. It is generally understood that a judge must have the final saying on the outcome of a court proceeding.

- 5.10 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?

Data security is regarded as a very important pillar to safeguard the trust in the judiciary. Court proceedings are held under high standards of data security.

- 5.11 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use artificial intelligence in legal proceedings?

Data Protection Commissioners of the courts have the task to oversee the implementation of national and European Data Protection Rules. That includes any application of IT including AI.

6. Responsibilities for operating modern technologies

6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

Federal law determines the implementation in general. The concrete implementation of IT systems to assist courts are usually determined by the court administrations in close cooperation with the responsible Ministries of Justice of the individual regional state (Land).

6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

Judges are involved in the implementation of all mentioned processes. The participation and consent of Councils for the judiciary are required.

6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?
In general, judges are involved in those processes.

In North Rhine Westphalia, a Think Tank on Artificial Intelligence and Legal Tech will be established at the Court of Appeal Cologne beginning on March 1, 2023. The Think Tank will be headed by judges.

7. Criticisms and proposals for use and development of modern technology

Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

Artificial intelligence (AI) and algorithmic systems have the potential to optimize the functioning of the judiciary. The use of appropriate programs can help to ensure that decision-makers and service staff are relieved from having to perform preparatory work and support activities, thus freeing up urgently needed resources in the judiciary. A practical use of AI systems appears to be particularly promising in view of mass judicial proceedings with many similar claims. The implementation of such a software could help ensure that judicial tasks can continue to be carried out with the required speed and quality.

However, the development and use of AI systems for the courts must comply with strict legal and ethical requirements. A “decision-making robot” does not comply with the principles of the rule of law. The possibility of using artificial intelligence in assistance software for judges imposes increased requirements on the transparency of the code. An automated decision would be especially critical in cases with a high relevance to fundamental rights, such as in the area of criminal law or constitutional law. There are considerable risks of discriminatory tendencies due to one-sided data pools training the AI and thus a lack of fairness in the proceedings.

The use of AI and algorithmic systems should be regularly evaluated in an appropriate manner with all stakeholders. Further developments should be closely monitored with regard to their possible use in the judiciary.

Hungary/Hongrie

1. Introduction and definitions

The questionnaire is aiming to collect the relevant information as regards the modern technology used within the judiciary in your country.

In this regard, for the purposes of the present questionnaire, the following definitions apply:

Electronic files/electronic proceedings

Definition: the whole or part of process/commencement/issue of process/correspondence of the process with all parties, including court internal administration and/or case management generally is electronic (no paper files or paperwork at all).

Videoconference

Definition: all kind of hearings which are held via videoconference (including online platforms).

Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

Electronic documents and electronic procedures are known in the Hungarian court system. The relating requirements are specified in Acts of Parliament, Decrees, and the Instructions of the President of the National Office for the Judiciary and the President of the Curia of Hungary ("the Curia"). According to the relevant rules, the organ providing electronic administration is obliged to operate an information system for electronic administration capable of ensuring, at least:

- the retrieval of the client's request made in relation to the administration of his/her case;
- allowing the client to administer his/her case through a personalised case administration interface;
- the use by the client of the electronic identification solutions specified by the law; the secured service of documents as set out in the law; the receipt of messages addressed to the client;
- the immediate acknowledgement of receipt of legal declarations or documents submitted by the client through electronic means;
- the processing of electronic documents which are at least highly secure, meet the administrative requirements, and are equipped with electronic signatures or electronic stamps;

- the production of authenticated documents;
- the delivery of documents to be served on the client, and
- the electronic payment of charges for the procedure.

In Hungary, authenticated electronic administration of cases has been made possible by the legislator since the early 2000s.

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

In the Hungarian judicial system, court documents are not processed exclusively electronically. The documents of a pending court case (for example, documents in company law proceedings, as explained below) may be handled exclusively in an electronic repository if the proceedings can only be conducted electronically, or if the law provides that the case files are to be handled electronically.

2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

Hungarian court administration uses electronic signatures and stamps as defined by the law. There is no substantial difference between electronic and paper-based procedures. This is reflected in the Instruction of the President of the National Office for the Judiciary, according to which in the absence of a provision prescribing electronic document handling, the rules governing the handling of paper documents are applicable.

2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

In Hungary, all courts work with electronic documents.

2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

Judges in Hungary can access the computer application supporting their adjudicative activities (Judicial Support System) from their own computer, by using a VPN token. Judges can access electronic documents through the Judicial Support System, whereas clients can access electronic documents through the Client File Access System, according to the access rights specified in the law.

2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

There are some court procedures in Hungary in which the law requires the electronic handling of the files of the case. In such proceedings, paper pleadings must be converted into electronic documents and uploaded to the relevant document repository within the time limits and in the manner prescribed by law, using the electronic document handling system.

2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

The provisions governing electronic documents and proceedings in Hungary are laid down in Acts of Parliament, Decrees, and in the Instructions of the President of the National Office for the Judiciary and the President of the Curia. These legal instruments regulate the legal status of judges and other judicial employees, judicial case management, the uniform rules of document handling, electronic administration and the security of data related to electronic administration, as well as electronic signatures and stamps. Their application extends to the handling of criminal, regulatory offence, penitentiary, administrative, civil, labour, economic and enforcement proceedings, contentious or non-contentious.

2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

In Hungarian court procedures both optional and mandatory electronic communication is known. A person required by law to communicate electronically may submit all pleadings to the court only electronically, and the court will also serve all documents and decisions electronically, except for documents or decisions attached or served at a hearing. Lawyers representing clients are required to communicate electronically, but clients have an alternative option and can choose to communicate in both forms.

2.9 Are different approaches to the use of electronic files/proceedings taken depending on the substance of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

Hungarian courts apply uniform rules to the handling of documents in criminal, civil, labour, economic, administrative, regulatory offence, penitentiary and enforcement proceedings, contentious or non-contentious. The approach to the electronic administration of cases is general. Differences appear in relation to the specific procedural law instruments.

2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

In Hungary, the digitalisation of court proceedings is taking place in the framework of the Digital Court Project, whose main objective is to make the administration of court cases faster and more efficient. In the framework of the Project, by the end of 2019 e-files were created, the documents of the court proceedings were digitalised, and electronic access to the court documents was ensured, as a result of which developments all court documents became digitalised, case files became electronically accessible to judges, and online access to documents, irrespective of time and place, was ensured for clients.

Through the Client Access System, clients can consult their pending case files at any time, conveniently from home, that is, without needing to be present in person, by simply connecting to the Internet and, naturally, after identification and approving the request to connect.

Judges can use, via a VPN token, the Judicial Support System, in which they can securely connect to the database of laws, the repository of court rulings, the repository of model documents, and the judicial word-processing software – each facilitating judges' work. Judges can consult documents from the comfort of their home.

The Digital Court Project will also improve the publication and anonymisation of court decisions, making them available in a single, easily searchable repository of decisions. Thereby, access to court decisions will become more efficient, faster, and easier for clients to search.

Connecting the electronically accessible public registers with the specialised judicial systems is also a priority development area of the Digital Court Project. By creating the interconnection of such data, the scope of data needed for starting a case, obtainable from a client can be minimised, hence court proceedings can be completed more quickly.

The duration of proceedings calculator must also be mentioned, since it shows, for information purposes, the average duration of the completion of cases with a given subject

matter, calculated according to statistical rules and with at least 6 judgments from the previous calendar year.

The Hungarian Judicial Academy has organised an international conference with the participation of judicial representatives of the Visegrad Four countries and Croatia, where views on the potential of digitalisation concerning the judicial organisation have been exchanged through presentations, round table talks and workshops.

2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

The feedback is clearly positive. Clients can access information about their pending court case online, 24 hours a day, quickly and free of charge, without having to appear in person at the court. No time needs to be spent on travel and administration, no copying and no travel costs arise. Judges can access the case files electronically at any time to prepare, and put down in writing, their judgments.

2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

Progress reports on the Digital Court Project are published periodically on the official website of the courts (<https://birosag.hu/en/electronic-procedures>). These reports cover, among others, the digitalisation of the documents of the court proceedings and the provision of electronic access to the court documents, the further development of the search engine of the collection of court decisions by using artificial intelligence, and the availability of public records based on automatic information transfers.

According to the Judicial Scoreboard published by the European Union, Hungarian courts are at the forefront of digitalisation among the European countries.

2.13 In your experience, what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them.

The advantages of using electronic files/electronic proceedings can be seen in its compliance with the rule of law criteria of efficiency, expediency, and timeliness. Its disadvantages are due to possible IT errors and a lack of IT skills.

3. Use of videoconference facilities, including online platforms

3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms? Where such facilities are used, in which courts are they used?

In Hungarian court proceedings, videoconferencing equipment can be used to conduct civil and criminal proceedings. All courts have such equipment.

In the Hungarian court system, the Via Video project started in 2018 with the deployment of a nationwide remote hearing system. The 72 endpoints deployed in 2018 were extended by 112 in 2019, so that all district courts, high courts, regional courts of appeal and the Curia now have at least one courtroom equipped with telecommunications equipment, making all court buildings accessible by videoconference.

The courtrooms are also connected to international bodies, domestic partner institutions and other courts for remote hearing.

3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

Evidence can be taken in all Hungarian courts by using video conferencing equipment. Exceptions may occur due to the rules of evidence-taking.

- 3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

In Hungarian court proceedings, the procedural rules on the use of videoconferencing are based on the same principles. Where videoconferencing is used, at least two locations are linked to the procedural act. The venue of the procedural act is the place where the member of the body conducting the procedural act is present. This venue is linked to the place where there is at least one person participating in the proceedings whose presence at the procedural act is possible or mandatory. In the latter case, it is a separate venue. In all cases, the use of videoconferencing is subject to the availability of the requisite technical conditions. The internal rules of the authorities proceeding in the given case shall lay down the arrangements for access to the portable devices enabling the use of videoconferencing. The number of persons present at the separate venue when the device is used shall be limited in accordance with the rules of the given procedure in order to ensure that the proceedings are conducted without prejudice to the integrity of the proceedings and the authenticity of the events taking place there.

- 3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

For lawyers, parties and witnesses, videoconferencing is a special option for the efficiency of the proceedings, chosen for reasons of expediency and not as a general tool. Hence, the use of videoconferencing is justified, in particular, in cases where it is necessary to quickly clarify certain aspects of the case. If the interests of the proceedings are not prejudiced, it is also possible that connection is made from outside the court building or that several participants in the proceedings are present at the same time at a separate venue. Consequently, the authenticity of the procedural act is ensured not by the venue, but primarily by the use of the technical device itself, in accordance with the law.

- 3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

The use of videoconferencing in Hungarian court proceedings is regulated by Acts of Parliament, Decrees, and the Instructions of the President of the National Office for the Judiciary and the President of the Curia. These legal instruments contain, among others, provisions governing the conduct of the procedural acts, the venues and the isolated venues, the protective and sparing measures, malfunctions, recordings, and the handling of recordings.

- 3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

In Hungary, the use of videoconferencing in the judicial system is optional, in view of the fair trial requirements. For certain procedural acts, consent is required. In the absence of such consent, the procedural act is carried out in a prohibited manner and hence its result cannot be used as evidence.

- 3.7 What views have been expressed by judges concerning the use of electronic files and proceedings? Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

The feedback is clearly positive. In this context, it must be noted that before the pandemic, in the first half of 2019, a total of 2,388 remote hearings were held by Hungarian courts, whereas in the first half of 2020, more than three times as many: a total of 8,246. From this figure it can be seen that the court organisation responded well to the challenges in the specific circumstances, and put the available technology at the service of efficient operation.

3.8 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

In Hungary, currently the digitalisation of court proceedings takes place in the framework of the Digital Court Project, whose main objective is to make court administration faster and more efficient.

Progress reports on the Digital Court Project are published periodically on the official website of the courts (<https://birosag.hu/en/electronic-procedures>). These reports present, among others, the digitalisation of the documents of court proceedings and the provision of electronic access to court documents, the further development of the search engine of the Collection of Court Decisions by using artificial intelligence, and the availability of public records based on automatic information transfer.

According to the Judicial Scoreboard published by the European Union, Hungarian courts are at the forefront of digitalisation among the European countries.

3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

The advantages of using videoconferencing can be seen in its compliance with the rule of law criteria of efficiency, expediency, and timeliness. Its disadvantages are due to possible IT errors and a lack of IT skills.

One of the main advantages of videoconferencing is the reduction of the time and costs of bringing clients to court. Based on the operation of the current system, it can be said that, in the long term, the remote hearing system will contribute to improving the timeliness of court proceedings and will increase the transparency of the proceedings. Moreover, in criminal cases, the security risks inherent in the transport of detainees can be greatly reduced and the safety of the persons to be protected can be guaranteed.

4. Use of data tools

4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

In Hungary, the courts' adjudicative activities are supported by several data tools. Among these, judicial work is primarily assisted by the data tool facilitating access to the Judicial Support System.

The Judicial Support System is a system for editing and anonymising judgments, for accessing the electronic case files, for supporting the work of judges, and for launching queries from public registers and public databases.

4.2 What kind of tools may judges use? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?

The work of judges in Hungary is mainly supported by the Judicial Support System, which can be accessed by judges remotely, via a VPN token. The use of the Judicial Support System is mandatory for certain functions (e.g. for anonymising and publishing judgments). Courts generally provide judges with laptops to work from home.

- 4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

The use of the Judicial Support System is determined by the President of the National Office for the Judiciary and the President of the Curia in an Instruction, taking into account the legislation on judicial case management. These legal sources determine the uniform rules for the handling of documents and the management of the cases. Judges apply these rules for editing and anonymising their decisions, for consulting electronic files, and for launching queries from public registers and public databases.

- 4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

The Judicial Support System significantly facilitates the work of the judiciary in Hungary.

- 4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

The feedback is clearly positive. The data tools make the case files available for judges in electronic format, enabling judges to prepare their judgments and put them down in writing at any time. In Hungary, currently the digitalisation of court proceedings takes place in the framework of the Digital Court Project, whose main objective is to make the administration of court cases faster and more efficient. Progress reports on the Digital Court Project are published periodically on the official website of the courts (<https://birosag.hu/en/electronic-procedures>). These reports present, among others, the digitalisation of the documents of court proceedings and the provision of electronic access to court documents, the further development of the search engine of the Collection of Court Decisions by using artificial intelligence, and the availability of public records based on automatic information transfer. According to the Judicial Scoreboard published by the European Union, Hungarian courts are at the forefront of digitalisation among the European countries.

- 4.6 In your experience, what are the advantages and disadvantages of using data tools? Please describe them.

The benefits of using data tools can be seen in their compliance with the rule of law requirements of efficiency, relevance and timeliness. Disadvantages may arise from possible IT errors and a lack of IT skills.

5. Forms of automatic proceedings

- 5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.

In Hungarian company law procedures, changes in the company or in the data registered in the companies register are entered electronically. The resultant automatic order is edited by the IT system of the companies court, without needing to take any further action.

- 5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?

In Hungarian court proceedings, whether automatically generated facts can or cannot be used as evidence is a matter of judicial discretion.

- 5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

In Hungary, one of the aims of the Digital Court Project is to further develop the search engine of the Collection of Court Decisions. These improvements are provided by artificial intelligence-driven decision search licenses which optimise searches, learn from the results, and produce increasingly accurate results.

5.4 Are there automatic proceedings for decision-making or to assist decision-making?

In Hungarian company law procedures, changes in the company or in the data registered in the companies register are entered electronically. In other respects, judges are assisted in their decision-making primarily by the Judicial Support System, which also includes the Collection of Court Decisions.

5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

The use of automatic procedures requires the fulfilment of technical and legal criteria ensuring observance of the principles set out in 2022 by the European Law Institute on the basis of Opinion No 14, published by the Consultative Council of European Judges in 2011.

5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.

In Hungary, currently the digitalisation of court proceedings takes place in the framework of the Digital Court Project, whose main objective is to make the administration of court cases faster and more efficient. At the same time, Hungarian courts regularly participate in professional events organised by the European Law Institute, thus contributing to the development of the basis of the most efficient automatic court procedures in Europe.

5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

The rules governing the use of artificial intelligence in Hungarian court proceedings can be found in the Act on Electronic Administration. The procedural provisions of the different areas of law and the Instructions of the President of the National Office for the Judiciary and the President of the Curia take these provisions into consideration. Hence, AI-based technology may be used for regulated electronic administration services and central electronic administration services. Where the organ ensuring electronic administration makes a declaration by machine when using the AI-based service, the service provider of the central electronic administration services shall act on behalf of the organ ensuring electronic administration.

5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence?

In addition to the Digital Court Project mentioned above in sections 2.12, 5.3 and 5.6, we note that in 2020 the Government of Hungary adopted the Artificial Intelligence Strategy of Hungary (2020-2030), setting out the creation of a language technology solution which also supports Hungarian language, and which can be integrated into the process of administration, thus automating that process. Responsibility for the implementation of these objectives was vested in a Minister. It is expected that the results of the research carried out under the Strategy will also be adaptable to court administration, subject to the provisions of the legislator, the President of the National Office for the Judiciary, and the President of the Curia.

5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?

The Code of Ethics for Judges is decided on by the National Judicial Council. Although the Code of Ethics does not contain any explicit provision on the use of automatic procedures, the ethical standards in the Code set out the ethical requirements applicable to all judges in Hungary. Hence, the Code provides support for avoiding ethically risky behaviour, including ethical risks arising from the use of automatic procedures. Independence and impartiality can be achieved through developments having regard to the ethical rules relating to judges and to the principles and knowledge base of automatic judicial procedures developed at European level.

5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?

In case of the automatic company law procedures mentioned in point 5.1, the law sets out the verification aspects of the company information service. The company information service shall publish the verification aspects and the availability of the databases or algorithms serving as a basis for the verification. The companies court may, *ex officio*, correct or remedy an error or omission specified in the law.

5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?

In Hungary, the security of data related to electronic administration is ensured by the Governmental Data Repository, in accordance with the provisions of the law. The Governmental Data Repository is a governmental database that receives and securely stores archived data files and makes the various IT systems rebuildable by releasing the data to the data controller. Data archiving is the back-up of unclassified data stored in the electronic information systems and registers of the organ ensuring electronic administration. The obligation of data archiving is imposed on the organ providing the electronic administration service and on the organ providing the central electronic administration service and the regulated electronic administration service, in respect of unclassified data stored in the electronic information systems and in the records managed in their own software environment or, together with these, in respect of the entire running environment. It is the responsibility of the data controller to ensure that, in the event of total or partial destruction of the original environment, the archived data can be restored to its original functioning after the installation of the appropriate hardware means. The Government designates the organ responsible for the custody of the data repository archives in the Governmental Data Repository and for the operation of the data repository archiving system. The organ responsible for such custody is the data processor responsible for the receipt, safe and professional storage and return of the data repository archives, and for the operation of the data repository archiving system.

5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use artificial intelligence in legal proceedings?

The hosting service provider designated by the Government must keep a data access record for the purpose of verifying the lawfulness of data requests and data transfers from the central repository by electronic means, via an IT application. The National Authority for Data Protection and Freedom of Information may request data from the data access register.

6. Responsibilities for operating modern technologies

6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

The implementation, the system, and the use of electronic documents and proceedings are set out in Acts of Parliaments, Decrees, and the Instructions of the President of the National Office for the Judiciary and the President of the Curia.

6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

In Hungarian court proceedings, the organs responsible for electronic administration are the National Office for the Judiciary and the courts. The President of the National Office for the Judiciary, the President of the Curia, and the heads of the courts have a statutory duty to ensure the requisite operational conditions for the judicial bodies and to consult judges and other court staff in the process of commenting on the relevant legislation and regulations.

6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?

Yes, as described in point 6.2.

7. Criticisms and proposals for use and development of modern technology

7.1 Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

The Curia participates in the European-level professional discourse on the use and development of modern technologies in legal proceedings, in particular, in the elaboration of the recommendations of the Consultative Council of European Judges and the European Law Institute. Hence, the subject-specific recommendations issued by these organisations also reflect the arguments of the Curia.

Ireland/Irlande

1. Introduction and definitions

The questionnaire is aiming to collect the relevant information as regards the modern technology used within the judiciary in your country.

In this regard, for the purposes of the present questionnaire, the following definitions apply:

Electronic files/electronic proceedings

Definition: the whole or part of process/commencement/issue of process/correspondence of the process with all parties, including court internal administration and/or case management generally is electronic (no paper files or paperwork at all).

Videoconference

Definition: all kind of hearings which are held via videoconference (including online platforms).

Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

Yes. Specific requirements include needing to make an account on CSOL (Courts Service Online system). Electronic files must be compatible with the computer systems used within the Courts (i.e. Word or PDF); must be reviewed by a member of office staff to make sure they are legible and easily navigable; and must often conform to title requirements (i.e. Title and Record Number with date). When filing electronic copies of submissions and issue papers to the High Court, Practice Direction HC 97 requires practitioners to clear formatting and to use bold or underlining rather than the word "headings"

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

In eLicensing and small claims, the whole process is done using electronic files. For most others that avail of electronic files, parts of the judicial process are still paper-based alongside electronic. For example, books of pleadings and submissions are often required in both soft and hard copy in the Superior Courts. The most important use of electronic files is in eLicensing, small claims, leave to appeal to the Supreme Court, personal insolvency proceedings, and legal costs adjudication.

2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

Digital signatures are not used in electronic proceedings, though the Superior Court Rules allow for the President of the High Court to make practice directions regarding the use of

digital signatures in commercial and competition proceedings (Order 63A and 63B). The Personal Insolvency Act 2012 and the Superior Court Rules also allow for digital signatures in the context of filing personal insolvency proceedings. In all other cases, a photocopy of signatures or proof that the electronic files were submitted via a particular email address suffices. Often documents that require a signature, such as an affidavit, must be filed in soft and hard copy. Electronic submissions do not differ in substance, although they will often have an interactive index to navigate to different parts of the document easily.

2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

No. They are much more commonly used on the civil side rather than the criminal side. Furthermore, the Superior Courts (High Court, Court of Appeal and Supreme Court) use electronic files more so than Circuit and District Courts due to accessibility, and the types of cases that are heard in different courts. Typically cases that rely heavily on witness evidence are not as compatible with electronic proceedings.

2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

Yes, judges have portable surface pro devices which they can use at home.. Electronic files are stored in a cloud-based system so are accessible when working from home.

2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

For trials that proceed to a full hearing, paper-based files are nearly always used alongside electronic files. This is due to a preference amongst the judiciary to have paper-based books in front of them on the bench when a hearing is proceeding. Paper-based files are also needed to stamp documents and file them in the Central Office of the courts so that there is an original version of every document kept safely within the courts.

There is a continuous process to move from paper files to electronic files, which was accelerated by the onset of Covid-19. However, it still remains based largely on individual judges' preferences.

2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

There is guidance in both the Superior Court Rules and in Practice Directions issued by the presidents of the individual jurisdictions. These govern the format that electronic submissions should take, as well as when they must be submitted, and other terms.

2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

It is optional for judges. For lawyers or litigants acting without a lawyer, applications can be made to exempt themselves from the requirement when bringing legal proceedings. E-licensing is required to be completed online and this is binding for lawyers. Small claims applications may be carried out online or in person.

- 2.9 Are different approaches to the use of electronic files/proceedings taken depending on the substance of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

Criminal trials, in the District, Circuit or High courts do not use electronic files. The use of electronic files is more prevalent in civil proceedings, especially at appellate level where the production of evidence and signed affidavits is no longer required.

- 2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

Judges, through the Judges' Association and other relevant committees, have made representations for a modern IT system to facilitate better use of electronic files and remote hearings.

- 2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

No.

- 2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

None.

- 2.13 In your experience what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them.

The advantages are that Judges are not bogged down by box loads of papers and have greater ease of access to the relevant files without the necessity of physically transporting papers around.

The disadvantages are that significant time can be lost through IT difficulties, whether on the parties' side or Courts Service. The latter system needs to be upgraded so that it is fit for purpose. In addition, Judges need to be provided with adequate training to ensure that they have the necessary skill set to run remote/hybrid trials effectively and efficiently.

3. Use of videoconference facilities, including online platforms

- 3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms. Where such facilities are used, in which courts are they used?

All court proceedings except for criminal trials and those where the court deemed it necessary due to certain witnesses giving evidence for the proceedings to be held in person, moved to online videoconferencing facilities during the lockdown caused by the COVID-19 pandemic. Now that Ireland has emerged from lockdown, most court proceedings have returned to in person hearings; however, some, especially case management proceedings or proceedings where one or more parties has COVID, are conducted online via videoconferencing facilities.

There are a significant number of technology-enabled courtrooms where remote hearings can take place across the country. A full list can be found here <https://www.courts.ie/acc/alfresco/e4b70699-44c5-4ed2-9ba4-e2e3cdf8de05/Technology%20Enabled%20Courts.pdf/pdf/1>

- 3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

Yes evidence can be taken via videoconferencing facilities in both criminal and civil matters. Only technology-enabled courtrooms with video link facilities may hear evidence remotely. The full list of court rooms is attached <https://www.courts.ie/acc/alfresco/e4b70699-44c5-4ed2-9ba4-e2e3cdf8de05/Technology%20Enabled%20Courts.pdf/pdf/1video>

3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

Parties must apply to court to have their case held remotely as the default position is now that hearings will be conducted in person. Only proceedings that can be heard as fairly and effectively as they would be if heard in person will be listed for remote hearing. Parties must have high-speed internet to participate in the remote hearing. There is also a limit on how many people may attend a remote hearing.

<https://www.courts.ie/news/high-court-presidents-notice-michaelmas-management-dublin-court-proceedings>

3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

All participants except the designated court registrar may attend a remote hearing from outside the court. It is a requirement that remote hearings are conducted in a dignified and orderly manner and participants are required to log in from a fixed premises which is free from background noise. Participation in remote proceedings from a motor vehicle is not accepted save in exceptional circumstances.

<https://www.courts.ie/content/requirement-regarding-attendance-remote-hearings>

3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

Legislation was enacted in 2020 to regulate the use of remote videoconferencing under the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020. Under this Act, the President of each of the court jurisdictions may issue practice directions governing which remote platform may be used, and any such ancillary or consequential directions as the court considers appropriate. These govern rules on how many participants may join, the dress code for remote hearings, the requirement to have a mic and camera on or off at different times.

3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

The use of videoconferencing is typically at the discretion of the sitting judge, though certain conventions apply regarding certain lists. If proceedings are directed to be held remotely and a party requests that they be held physically, it is a matter for the judge presiding to decide whether or not to grant the application. As such it can be mandated without the parties' consent.

3.7 What views have been expressed by judges concerning the use of electronic files and proceedings? Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

See reply to 2.10 above. There are no such polls.

3.8 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

None.

3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

The advantages are that they can facilitate hearing evidence that might not otherwise be available to the court during the course of a trial and may require an adjournment. They also alleviate a costs burden on parties re travel to court and associated expenses/inconvenience eg expert witnesses such as Doctors who may reside outside the jurisdiction.

4. Use of data tools

4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

No the judiciary does not use data tools.

4.2 What kind of tools may judges use? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?

N/A

4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

N/A

4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

N/A

4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

None.

4.6 In your experience what are the advantages and disadvantages of using data tools. Please describe them.

Not used.

5. Forms of automatic proceedings

5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.

No. If by automatic proceedings that is to mean proceedings that are computer-generated or with little human intervention, then the Irish judiciary do not use any such automatic proceedings.

5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?

No to both.

5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

No

5.4 Are there automatic proceedings for decision-making or to assist decision-making?

No

5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

N/A

5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.

There are no such initiatives currently underway within the Irish judicial system.

5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

No laws, regulations or rules have been introduced to deal with the use of AI.

5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence?

No.

5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?

N/A

5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?

N/A

5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?

N/A

5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use artificial intelligence in legal proceedings?

N/A

6. Responsibilities for operating modern technologies

6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

Presidents of jurisdictions issue practice directions relating to the use and filing of electronic files and proceedings. However, they are developed by the Courts ICT Directorate alongside third party software providers. Courts Service Staff in the offices where documents are filed are responsible for checking and ensuring that the requirements for electronic files are adhered to.

6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

Presidents of jurisdictions (who are judges) are involved in the process of devising and implementing the use of electronic files and video conferences

6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?

N/A

7. Criticisms and proposals for use and development of modern technology

7.1 Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

The priority for Irish Judges is to get a modern and effective IT system together with appropriate training on an ongoing basis.

Italy/Italie

1. Introduction and definitions

The questionnaire is aiming to collect the relevant information as regards the modern technology used within the judiciary in your country.

In this regard, for the purposes of the present questionnaire, the following definitions apply:

Electronic files/electronic proceedings

Definition: the whole or part of process/commencement/issue of process/correspondence of the process with all parties, including court internal administration and/or case management generally is electronic (no paper files or paperwork at all).

Videoconference

Definition: all kind of hearings which are held via videoconference (including online platforms).

Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

The Telematic Civil Process, after orders of experimentation and authorization for some Courts only, has become mandatory with respect to all injunction proceedings and for new proceedings instituted in the first instance in the Courts and for parties already constituted on June 30, 2014.

An electronic procedure has been set up in civil proceedings in Italy since 2012.

Originally, electronic records and proceedings were intended only for injunction proceedings, for the payment of money (2012)

Gradually, the duty was extended to all proceedings at the first instance and on appeal. This year, also in cassation court.

On the one hand, to improve the effective launch of the telematic civil process the d.l. 193/2009 recognized the Minister of Justice's regulatory power to identify the new technical rules for the adoption of information and communication technologies in civil proceedings. On the other hand, it made a very specific choice by definitively identifying in the certified e-mail (PEC), the system where all communications and notifications would take place in the new telematic civil process. Having laid the primary regulatory foundations, the rules exclusively imposed the electronic methods for the filing of the party's and judge's documents in proceedings concerning appeals for injunction - a procedure which still today represents the only one in which the Judge is obliged to proceed electronically in all its phases -. With the subsequent regulation (d.l. 90/2014) the obligation was introduced in the courts with effect from 30 June 2014 of the electronic filing of the deeds of the already constituted parties (so-called endoprocedural deeds) for cases brought after that date, while, from 31 December 2014 the obligation has also been extended to deeds filed in cases registered before 30 June 2014. The same dates for executive processes for which the obligation of electronic filing applies only to deeds subsequent to the filing of the deed with the execution. However, starting from 31 March 2015, the filing of the note of registration in the forced expropriation proceedings takes place exclusively electronically. However in bankruptcy proceedings the

obligation of electronic filing applies exclusively to the filing of deeds and documents by the trustee, the judicial commissioner, the liquidator, the liquidator and the extraordinary commissioner. D.l. no. 83 of 2015, now extended, starting from 30 June 2015, the obligation of electronic filing of endoprocedural documents will also apply to judgments presented at the courts of appeal.

The so called Cartabia Reform, adopted in July 2022, among others, introduces rules that the former Ministry of Justice called "cross-cutting," because they apply to multiple procedural models, to the point of affecting almost all areas of justice.

As regards digitalization, it provides the strengthening of IT tools and ways of conducting hearings remotely, with the extension and strengthening of the telematic civil process in proceedings before the justice of the peace, the court, the court of appeals and the Court of Cassation, and the possibility for the judge, without prejudice to the possibility for the constituted parties to object, to order that civil hearings that do not require the presence of parties other than defense counsel, the parties, the prosecutor and the judge's aides be held with remote audiovisual connections (See below, para. 3.2).

Digitization of criminal justice and the development of the electronic criminal proceedings represent fundamental elements of the overall reform of the criminal justice system adopted by Parliament in December 2022 to speed up disposition times of judicial proceedings, in line with the objectives of the ongoing National Plan for the Implementation of the Next Generation EU Recovery Plan (P.N.R.R.)

The reform provides that, with specific exceptions, every act of the criminal proceeding must be created in digital form.

The electronic files of the criminal proceedings must be formed, stored, updated, and transmitted digitally in compliance with national and EU regulations, such as the eIDAS Regulation 2014/910/EU, concerning the IT file, in order to ensure their authenticity, integrity, accessibility, legibility, interoperability as well as an easy telematic consultation. The obligation of electronic filing does not apply for acts and documents which, by their nature or for specific procedural needs, cannot be acquired in electronic copy.

The documents drawn up in analogical form must be converted, without delay, into a digital copy.

The acts drawn up in the form of an electronic document must be signed with a digital signature.

The technical provisions concerning the filing, communication, and notification with telematic modalities of the documents of the criminal proceeding will be defined by decree of the Minister of Justice to be adopted by 31 December 2023, having heard the Authority for the protection of personal data.

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

With the latest reforms (to be) introduced in Italy in 2022, all civil procedural documents are kept in electronic files. Exceptions are limited to cases where computer systems are not yet developed or to cases where the parties are suing in person (small claims).

We can therefore say that the file should be entirely digital, but at present paper documents are still available.

However the procedural law envisaged the completeness of the electronic file. In other words, it was envisaged that everything not in digital format would be transformed to be stored in the electronic file

2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

Digital signatures in both Pades and Cades formats are foreseen.

The basic procedural rules are the same for both digital and paper proceedings, but for digital proceedings (which now, as of January 1 2023 have become the rule for all degrees and compressed cassation proceedings), specific technical rules are provided to govern file formats, perfecting telematic filing, and so on. See paragraph 2.1.

2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

All civil judges work principally with electronic files. The only exception are the non professional judges (*di pace*) who judge cases of limited value, where parties can defend themselves without a lawyer. On the other hand In criminal proceedings, most documents are still non-electronic. Only recently has the law provided for electronic files in criminal proceedings as well. The technical provisions concerning the filing, communication, and notification with telematic modalities of the documents of the criminal proceeding will be defined by decree of the Minister of Justice to be adopted by 31 December 2023, having heard the Authority for the protection of personal data. See paragraph 2.1.

2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

In both civil and criminal proceedings, the software designed for judges can be used in a similar way from both home and from the office. Lawyers can also access the electronic files from their office and obtain the necessary information. the parties may also extract electronic documents from the file and formally serve them on third parties

2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

At present, paper files and documents are no longer used in the civil sector except in cases of malfunctioning systems.

It is still necessary to use paper acts and documents for older proceedings, but also for these so-called "digitization," i.e., scanning of paper acts, is being carried out so that computer copies can be worked on.

In the criminal sector, although the law has recently included the same rules, the software still must be implemented to be able to proceed without paper.

This software must be implemented by the end of the year 2023, as this is the commitment the Italian state has made to EUROPE.

2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

The rules governing the telematic process are laid down in ordinary law (not in the constitution).

Alongside the laws there are lower-ranking regulations and very precise technical rules.

The technical rules, as mentioned, regulate file formats, digital signatures, the time of completion of telematic filing and other aspects directly related to technical issues.

The technical rules are constantly evolving to adapt the legislation to advances in technology and to European rules on digital identity and digital document transmission methods.

2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

In civil matters, the use of the electronic process is mandatory for judges (in some cases) and parties as above mentioned (see para. 2.1).

Only if the parties sit in court without the assistance of a lawyer, the use of the electronic process is not mandatory.

2.9 Are different approaches to the use of electronic files/proceedings taken depending on the substance of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

There are no differences except in terms of development.

The basic idea is to regulate all processes with electronic acts and documents. But not all processes are at the same level of evolution, the civil process is the most evolved.

Some differences in approach are due to the fundamental distinction in regulation between civil and criminal matters, but they are mostly due to different applications of technology in the process.

As for the administrative process, a different development has occurred, due to the fact that different jurisdictions proceed and different software implementations have been made. Although the intention is to harmonize the approach to all the different types of telematic processes (civil, criminal, administrative, accounting, constitutional, tax).

2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

Magistrates are in favor of the use of electronic documents and the introduction of the telematic process. They point out, however, the need for the technology to work effectively and, above all, that there be no blockages or malfunctions.

The need represented by the judges is also adequate and fruitful training in the use of applications and the possibility, when problems arise, to rely on effective technical assistance.

The judges also emphasize the need to receive reliable, modern and functioning IT tools from the government.

They emphasize the centrality of the use of digitization as long as it works effectively.

2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

Internal standardization tools have been arranged by the Superior Council of the Judiciary in order to issue general resolutions on the subject.

Further initiatives have also been taken by the National Association of Magistrates, to support the need for reliable and functioning tools, as mentioned in the previous point.

2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

The Superior Council of the Judiciary on several occasions has formulated official documents regarding its opinion on the use of electronic tools, expressing favour for modernity but highlighting the critical issues noted above.

In particular, the Superior Council of the Judiciary organizes an annual meeting with the magistrates referents for innovation, appointed for the different districts for both the civil and criminal sectors, aimed at verifying the state of computerization, the functionality of applications and the development of new projects. As a result of these meetings, on a periodic basis the Superior Council of the Judiciary adopts general resolutions aimed at analytically illustrating the development of computerization, highlighting the strengths and any critical points, as well as the indications to be placed as the basis for further achievements.

2.13 In your experience, what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them.

The consensus of opinion is that there are significant advantages in using electronics both to replace paper documents and to replace proceedings.

Indeed, the use of digitization makes it easier to convey information, making it possible to work from outside the office, and makes justice much more accessible to citizens by allowing significant savings in labour and personnel energy.

However, it is necessary for the regulation of computerized activity to be very clear as unclear and ill-defined regulations create additional interpretative problems that can be a hindrance to the prompt execution of judicial activity. It is necessary that the tools used are efficient and functional, and that judges and other practitioners who need to learn the new way of working receive professional and qualified assistance.

3. Use of videoconference facilities, including online platforms

3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms? Where such facilities are used, in which courts are they used?

The recent reform introduced in Italy with reference to civil and criminal justice has stabilized the use of video conferencing systems that had been introduced on an emergency basis during the pandemic.

In both the civil process in the criminal process it is possible to hold hearings by video conference. In the civil trial, the video conference hearing may be ordered by the judge when only the presence of defense counsel, parties, prosecutor, and court aides is required. The parties may object and request that the hearing take place in presence. In this case, the judge may also order that the hearing be held in the presence of the parties who have requested it and with audiovisual connection for the other parties (as regards civil proceedings, See below, para 3.2).

The place where the parties are located is considered a courtroom for all purposes. Since 1992, the Italian Code of Criminal Procedure (Article 147-bis implementing provisions) provides that "collaboratori di giustizia" (even if not detained), undercover agents and other persons likely to be subjected to the risk of pressure or danger for their safety can testify during the trial by video-conference. In this case, the judge decides after hearing the parties, but also without their consent. In the place where the witness is located, there is a clerk who certifies compliance with the precautions required by law to ensure the regularity of the cross-examination. The Constitutional Court, called to rule on the legitimacy of this method of (remote) cross-examination, considered that the law was in accordance with the Constitution and the principles of due process (judgement no. 342-22/7/1999). In 1998, Italian criminal law provided that defendants held in prison participate by video-conference in trials relating to organized crime or terrorism offenses (Article 146-bis implementing provisions to the criminal procedure code, introduced by law 11/1998 and subsequent amendments; art.134-bis implementing provisions to the criminal procedure code, introduced by law 4/2011). The videoconference is implemented by activating a digital link between the place of detention of the accused and the courtroom. These provisions were intended to prevent dangerous prisoners from maintaining contact with other defendants; trying to escape; or to avoid the postponement of the trials, being the same prisoner involved in several proceedings at the same time. When provided for by international agreements, and according to the relative regulations, the accused detained abroad who cannot be transferred to Italy, participates in the criminal hearing via audiovisual link (art.205-ter implementing provisions of the criminal procedure code). Even before the Covid-19 pandemic, all these provisions have been widely used in Italian judicial practice.

Specific audio-visual systems are used, protected from possible external intrusions and managed by the Ministry of Justice.

New multi-videoconferencing systems in the court-rooms and in the prisons have been realized in the last decade; as of 30 June 2019 32 rooms in the judicial offices (at least one for each Corte di appello) and 123 rooms in the prisons were completed with the switch from the analogical to digital technology based on remote control systems.

The procedural rules adopted following the Covid-19 health emergency have expanded the possibility of using video conferencing in the criminal trial.

In particular, the law n. 27 of 2020 established that from 9 March 2020 to 30 June 2020 (term subsequently further extended), criminal hearings that do not require the hearing of witnesses other than judicial police officers can be held via remote connections identified by the Ministry of Justice (no longer only the specific protected tools already provided, but also the Microsoft Teams or Skype for business applications). These provisions did not apply, without the consent of the parties, to the final hearings (prosecutor's and attorney's closing statements) and to those during which witnesses, parties, consultants and experts must be examined.

The law also provided that the Chiefs Justices can determine with appropriate measures, and on the basis of agreements stipulated with the representative bodies of lawyers, that some judicial activities are carried out by video-conference.

Following the resurgence of the pandemic, similar rules were adopted in October 2020, and have been further extended.

The Law adopted in December 2022 provides that the judicial authority may order that an act be performed remotely or that one or more parties participate remotely in the performance of an act or in a hearing.

In this case, an audiovisual link is activated between the courtroom and the place where the persons performing the act or participating in the hearing are located. The persons who perform the act or who participate to the remote hearing are connected from another judicial office or from a police office determined by the judicial authority, after checking the availability of technical equipment and logistical conditions suitable for the audiovisual connection.

Persons detained, interned, placed in pre-trial detention in prison or restricted in prison following an arrest, carry out the act or participate in the remote hearing from where they are restricted.

Lawyers connect from their respective offices or from another place if it is suitable. It is however insured the right of lawyers to be present in the place where their client is located. The right of lawyers to consult confidentially between them and with their client by means of suitable technical tools is equally guaranteed.

An assistant of the judge or the public prosecutor, or a police officer is present in the place where the people are. He certifies who perform the act or who participate in the remote hearing, attests their identity and draws up a report of the operations carried out, in which he acknowledges compliance with the provisions of the law, describes the precautions taken to ensure the regularity of the examination with reference to the place where the person is located, as well as the absence of impediments or limitations to the exercise of the pertinent rights and faculties.

Unless a particular provision of the law provides otherwise, the judge may order, with the consent of the parties, that the examination of witnesses, experts, technical consultants, or other persons or private parties takes place remotely.

The place where the persons performing the act or taking part in the hearing are located is considered as the courtroom for all legal purposes.

The audiovisual connection is implemented safeguarding the right of the parties to be heard and their effective participation in the act or hearing. In cases of public hearing, it is assured adequate publicity of remotely performed acts. The hearing is always audio and video recorded.

A massive computerization activity has been considerably speeded up as result of the interventions adopted to face the COVID-19 pandemic that produced a significant increase in remote working for magistrates and personnel of clerk's offices. It is noted that the legal framework has developed by going hand in hand with the development of the Covid emergency on the national territory and following the opinions of the experts, thus several urgent legislative measures have been adopted since the outbreak has taken place.

As to interventions to improve the digital instruments, mention should be made of the measures on the handling of judicial affairs introduced following the COVID-19 emergency, which were issued and provided for the possibility of holding both civil and criminal hearings remotely, equipping the judiciary and administrative staff with videoconferencing tools.

In this field, there have been numerous interventions with the assignment of Teams licenses to the personnel, the use of webinar and remote training as well as a massive use by the personnel of judicial administration of the e-learning platform whose contents have been considerably expanded.

3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

In criminal proceedings, as previously said in paragraph 3.1., specific audio-visual systems are generally used for videoconferencing. These systems are protected from possible external intrusions, and are managed by the Ministry of Justice.

New multi-videoconferencing systems in the court-rooms and in the prisons have been realized in the last decade; as of 30 June 2019 32 rooms in the judicial offices (at least one for each Corte di appello) and 123 rooms in the prisons were completed with the switch from the analogical to digital technology based on remote control systems.

According with the criminal system's reform adopted in December 2022, unless a particular provision of the law provides otherwise, the judge can order, with the consent of the parties, that the examination of witnesses, experts, technical consultants, or other persons or private parties takes place remotely. The videoconference is carried out via the specific protected tools provided by the Ministry of Justice - available only in some courts and prisons – or, according to the legislation adopted to face the Covid-19 pandemic, still in force regarding videoconferencing in criminal proceedings, using the Microsoft Teams or Skype for business applications.

This makes it possible to hold the videoconference in each court, and in connection with the prison where the prisoner (and his lawyer, if he so decides) is located, the lawyer's office and/or the police office where other parties or interested persons are located.

The place where the persons performing the act or taking part in the hearing are located is considered as the courtroom for all legal purposes.

The audiovisual connection shall be implemented safeguarding the right of the parties to be heard and their effective participation in the act or hearing. In cases of public hearing, it is assured adequate publicity of remotely performed acts. The hearing is always audio and video recorded.

See the previous paragraph for more details.

As regards provisions concerning the collection of evidence via videoconferencing facilities and/or online platforms in civil proceedings, see below para 3.2.

3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

For videoconferencing in criminal proceedings see previous paragraphs.

As regards civil proceedings see the following paragraph.

3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

The reform of civil proceedings adopted in July 2022 requests that the judge may order the hearing be held by remote audiovisual connections or be replaced by the filing of written documents. The provision subordinates the possibility of conducting the hearing with remote audiovisual links and the substitution of the hearing with the telematic filing of written notes to a decision of the judge, consistent with the power to direct the hearing. The reform requests that the conduct of the hearing by means of remote audiovisual links may be ordered by the judge when the presence of parties other than defense counsel, the parties, the prosecutor and the judge's aides is not required as above mentioned. Therefore, the possibility of holding a hearing by videoconference is excluded in the case of the examination of witnesses, informing summaries and, in general, in the case where the presence at the hearing of subjects other than those listed in the rule is required. In order to prevent doubts in interpretation, the provision specifies that the hearing by audiovisual links is also allowed for the public hearing. The terms of communication of the judge's order and the exercise of the right of opposition given to the parties by the delegation criterion are precisely regulated. In fact, it is provided that the order by which the judge orders the hearing to be held by means of remote audiovisual links shall be communicated to the parties with a minimum of fifteen days preceding the hearing; that each of the parties constituted, within five days of the communication, may request that the hearing be held in presence, and that the judge shall take action within the next five days by a non-appealable decree, by which he may also order that the hearing be held in the presence of the parties who have requested it and by audiovisual link for the other parties. Provision was expressly made for the non-appealability of the decree by which the judge decides on the application proposed by the parties, in order to prevent the proceedings from being slowed down. Provision is also made for the possibility of a mixed hearing, that is, in presence for the parties who have requested it and with audiovisual connection for the other parties. Lastly, it is clarified that it is still the case that in

the event that the mixed hearing is ordered, the possibility of attending in presence also remains for the parties who had not made the relevant request. Finally, it is granted that if there are special reasons of urgency, the time limits may be shortened by the judge, who must note in the order the reasons underlying the shortening (See art. 127 c.p.c. and 196 duodecies disp. att. c.p.c.).

The reform of criminal proceedings adopted in December 2022 provides that the judicial authority may order that an act be performed remotely or that one or more parties participate remotely in the performance of an act or in a hearing.

In this case, an audiovisual link is activated between the courtroom and the place where the persons performing the act or participating in the hearing are located. The persons who perform the act or who participate to the remote hearing are connected from another judicial office or from a police office determined by the judicial authority, after checking the availability of technical equipment and logistical conditions suitable for the audiovisual connection.

Persons detained, interned, placed in pre-trial detention in prison or restricted in prison following an arrest, carry out the act or participate in the remote hearing from where they are restricted.

Lawyers connect from their respective offices or from another place if it is suitable. It is however insured the right of lawyers to be present in the place where their client is located. The right of lawyers to consult confidentially between them and with their client by means of suitable technical tools is equally guaranteed.

An assistant of the judge or the public prosecutor, or a police officer is present in the place where the people are. He certifies who perform the act or who participate in the remote hearing, attests their identity and draws up a report of the operations carried out, in which he acknowledges compliance with the provisions of the law, describes the precautions taken to ensure the regularity of the examination with reference to the place where the person is located, as well as the absence of impediments or limitations to the exercise of the pertinent rights and faculties.

The place where the persons performing the act or taking part in the hearing are located is considered as the courtroom for all legal purposes. See previous paragraphs for more details.

- 3.5. Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

The rules are contained in procedural (primary) laws, which make reference to secondary regulations, yet to be supplemented and implemented.

Specifically, for the civil sector, the hearing with remote audiovisual connections is regulated by the above mentioned Article 127 bis c.p.c. and Article 196 duodecies dispositions att. c.p.c., which refer for specific technical implementation rules to measures of the Director General of Information and Automated Systems of the Ministry of Justice. Until this adoption, implementation measures adopted during the pandemic were extended.

- 3.6. Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

See above, under para. 3.4.

- 3.7. What views have been expressed by judges concerning the use of electronic files and proceedings?

The experience can be said to be positive, considering that the use of videoconferencing, which was widespread as a result of the pandemic and was envisaged as an interim measure in the civil sector, has now been stabilized with its full incorporation into the Code of Civil Procedure as one of the ways in which hearings are held, pursuant to Article 127 bis of the Code of Civil Procedure.

Indeed, in the opinion of experts, the Cartabia reform is set to mark in some ways a watershed between a "traditional" model of civil case management to an "innovative" model: case management by the judge, lots of telematics, hints of digital, many alternative rites also admitted by telematic means; all beyond the c.p.c. procedural rules.

Only practice will clarify whether the organizational apparatus of the administration of justice will live up to this promised efficiencyist "breakthrough" but equally sensitive to the effective judicial protection of the parties involved. And only practice will tell us whether lawyers and magistrates will learn to govern this new model that is, yes, barely sketched out, but defined in its contours; they will have to interrelate more and more with platforms, renounce orality in favor of a dry and effective language; they will have to deal with party technical consultants also to understand the intersection between system malfunction and procedural code rules.

3.8. Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

The Superior Council of the Judiciary on several occasions has formulated official documents regarding its opinion on the use of electronic tools, expressing favour for modernity but highlighting the critical issues noted above.

In particular, the Superior Council of the Judiciary organizes an annual meeting with the magistrates referents for innovation, appointed for the different districts for both the civil and criminal sectors, aimed at verifying the state of computerization, the functionality of applications and the development of new projects. As a result of these meetings, on a periodic basis the Superior Council of the Judiciary adopts general resolutions aimed at analytically illustrating the development of computerization, highlighting the strengths and any critical points, as well as the indications to be placed as the basis for further achievements.

3.9. In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

The issue of the mode of communication in the field of justice has assumed decisive importance with the development of so-called electronic justice (e-Justice or Cyberjustice). This makes use of digital technologies, information, communications and knowledge management techniques to improve citizens' access to justice, while ensuring efficiency and effectiveness. Indeed, it enables the exchange of knowledge and automation of civil, criminal and administrative proceedings through remote interaction. It is a system made of software and hardware that facilitates case management, electronic filing scheduling of hearings, of which the notification system is also partly electronic and the public information websites themselves. In this sense, electronic e-justice enables all relevant actors to act virtually, facilitating the access to documents and information in real time, at anytime and from anywhere. In this context, videoconferencing is an essential tool, which makes it possible to avoid traveling in person to court and which has been systematically introduced in many countries, including for purposes of judicial cooperation. But, according to the European Court of Human Rights, *"although the participation of the defendant in the proceedings by videoconference is not as such contrary to the Convention, it is incumbent on the Court to ensure that the use of this measure in each specific case serves a legitimate purpose."*(Marcello Viola v. Italy, Oct. 5, 2006). The result is an invitation to courts that use videoconferencing to continue improve the quality of videoconferencing and apply encryption of the signal video to avoid eavesdropping. We agree with the Opinion No. (2011) 14 on "Justice and Information Technology" where the CCJE stressed that the introduction of IT in the courts in Europe should not, however, compromise the human and symbolic faces of justice. If justice is perceived by users as purely technical, without its real and fundamental function, it risks being dehumanized. Justice is and should remain human in that it deals primarily with people and their disputes.

4. Use of data tools

- 4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

Judges can have access to comprehensive jurisprudential databases that contain, in particular, archives of all cassation judgments in addition to archives of constitutional, merit, and administrative jurisprudence and regulatory archives. In addition to this, databases are made available by the Superior School of the Judiciary containing doctrine, case law and legislation. No archives containing judicial data are available to judges other than those they have to deal with. The Ministry, however, does have such archives.

- 4.2 What kind of tools may judges use? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?

All software and programs are prepared or purchased by the Ministry, and provided to magistrates. Software for making electronic acts is mandatory, and the relevant choices are adopted by the Ministry of Justice

- 4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

As for databases related to court proceedings, there are rules and regulations that stipulate how judicial data are to be processed and collected.

Judicial data constitute statistical data, under the responsibility of the Ministry of Justice, statistics office, while specific IT offices (dgsia) are responsible for technical management. In judicial offices, the judicial and administrative manager of the office is responsible for the quality of data and its proper updating.

As for databases related to precedents, which can be consulted by magistrates, there are administrative regulations (Italggiure) and regulatory references, included in the recovery plan.

- 4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

The Electronic Documentation Center of the Supreme Court of Cassation performs a public service of legal information technology to disseminate knowledge of legislation, case law and legal doctrine. Data entered into the CED constitute a database and are subject to the regulations dictated by current legislation (see Art. 1 of Presidential Decree 195 of 2004). Consultation of the CED's databases is through the ItalggiureWeb search system, which is based on web-oriented technologies.

The use of Italggiure and in general of all legal databases is not only useful but indispensable for the proper exercise of judicial activity in light of precedents that have dealt with cases the same or similar to the one brought to the judge's attention.

- 4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

See answers sub 2.11 and 2.12

- 4.6 In your experience, what are the advantages and disadvantages of using data tools? Please describe them.

Only advantages characterize the use of data bases, and no disadvantages can be said to be connected with a system that allows to manage dozens of archives of standards, case law, and bibliography that are strongly interconnected by cross-references, searchable through a web-based interface. The only relevant issue is whether these are databases characterized by sufficient reliability.

5. Forms of automatic proceedings

5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.

By adopting an ad hoc provision Italy has complied with the art.22 GDPR.

According to the rule, decisions based solely on an automated treatment, including profiling, are prohibited, because they are supposed to produce negative effects towards the person concerned, unless they are authorised by European Union law or by specific provisions of law.

The provisions of the law must provide adequate guarantees for the individual's rights and freedoms concerning personal data. In any case it is guaranteed the right to obtain human intervention from the owner of the treatment.

The decisions concerned cannot be based on particular categories of personal data referred to in Article 9 of the EU regulation, unless appropriate measures provide a protection of rights, freedoms and legitimate interests of the people involved. Without prejudice to the prohibition pursuant to article 21 of the Charter of Fundamental Rights of the European Union, it is prohibited profiling aimed at discriminating individuals on the basis of particular categories of personal data referred to Article 9 of the EU regulation.

Many European countries have already developed a highly advanced approach to using concrete AI tools (both in terms of technology and legal support), while for Italy it is still an emerging issue and focus is only on effective management informatics.

The attractiveness of automating certain steps in the process is evident, and somewhat desirable when the problems of system efficiency are considered. But, advanced use of technology-intensive tools, articulated on the application of mathematical science and computer science, is in place only in some European countries. Rather, automated distribution of cases, analysis of jurisprudential databases (even if not accomplished through translation of natural language into a digital representation) and thoughtful management of workloads and flows have long since entered the organization of the justice service.

The range of software offered by the market is wide: prediction of judicial outcomes, tools for case "risk" assessment, ODR systems also linked to Blockchain technology.

With the transition from deterministic to probabilistic algorithmic applications, the decision is not simply derived from the slavish application of deductive reasoning, but is based on the simultaneous appreciation of a plurality of interests and instances that come to the fore in the concrete case. In this sense, a shift that can be summarized in the formula from the delegation of process to the delegation of decision is achieved which necessarily implies the acceptance of the existence of the margin of error.

5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?

Technology then changes the "connotations" of the process. For example: the first profile of adversarial process should concern the validity and validation of the scientific theory underlying the algorithm by the relevant scientific community. The (predictive, algorithmic, automated) character evidence may acquire cognitive elements about how the accused might be led to behave in the future, but nothing is said with regards to the responsibility of the latter with respect to the facts of which he is accused. The "algorithmic evidence" subtracts from the parties the judgment of its reliability, transforming itself into an apodictically reliable means and, therefore, the judge, into a mere annotator of a process of evaluation of the evidence entirely absorbed by the algorithmic nature of the same. On the different plane of judicial independence, the impact that open access systems, coupled with predictive algorithmic tools, may have on the value of precedent and the independence of adjudicative bodies deserves careful consideration. Just as quantitative legal predictions systems available to law firms, among others, would risk depowering the essential evolutionary factor that comes from the traditional commitment of the legal profession to promoting new interpretive paradigms.

For all these reasons and in light of the risks of too much AI in the process, there should be a careful distinction between the concept of knowability of precepts and foreseeability of

sanction, which are essential to satisfy the modern concept of legality, and the concept of 'foreseeability' of the judge's decision.

5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

No, as noted under para. 4., above, there are databases that facilitate consultation and identification of legislation and precedent, but do not result in automatic decisions.

5.4 Are there automatic proceedings for decision-making or to assist decision-making?

There are not automatic proceedings for decision-making or to assist decision-making; there are only forms and forms that can be used to facilitate the drafting of the decision (especially for simple measures, such as injunctive orders), but they are only tools that import data previously loaded into computerized records (e.g., names of parties, defendants, amounts claimed, etc.) and prepare a file using formats. They are writing aid tools and do not replace the decision.

5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

As mentioned in the previous point, there can be tools to assist in the preparation of the measure, both in finding legislation and case law precedents, and information already entered in databases.

From a technical point of view, it is necessary that such tools be reliable and thus give answers that can be used with confidence to facilitate the work.

From a legal point of view, beyond the possible use of such tools to facilitate preparatory work, it is necessary for each decision to be made by the judge with full and convinced awareness of the case at hand, such that even the reference to possible precedents is legitimate only if, through reasoning, it emerges that the precedent is indeed analogous and the decision is the result of study and verification regarding the applicability of the same principles to the case at hand as well.

The possible advantages are thus given by the simplification of the work and also by the uniformity of approach in decisions for cases that are really similar. The possible disadvantages are potentially related to a "flattening" of the approach or to a lesser appreciation of the characteristics of the actual case, compared, for example, with the use of general forms and forms.

5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.

There are a number of initiatives to improve and extend the utilities offered by databases with the use of artificial intelligence, including to improve the ability to extract structured information from documents to facilitate research, but, also in light of the legal constraints operating in the field, the action of automatic decision-making tools is not possible at present.

5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

There are no express provisions in our system, but the opposite rule applies, in the sense that in the absence of provisions authorizing such applications, the decision remains the sole responsibility of the magistrate.

The current studies in Italy take into account, at the international level, the White Paper on Artificial Intelligence, published by the European Commission on February 19, 2020, directed toward the realization that the benefits attributable to the use of AI systems for citizens, the economy and services of public interest can only constitute real added value if they are realized in an overall context of security and reliability, promoting an "ethical" use of AI. With this in mind, the work done by the High-Level Expert Group was expressly referred to in the

document entitled "Ethics guidelines for trustworthy AI," published in April 2019. Also moving in the same direction is the Recommendation on the Impacts of Algorithmic Systems on Human Rights, adopted by the Committee of Ministers of the Council of Europe on April 8, 2020, which, in recognizing the great potential of algorithmic processes in fostering innovation and economic development in a number of areas, including communication, transportation, and health systems, draws attention to the potential human rights risks associated with the use of algorithmic systems, especially with regard to the right to due process, respect for privacy and data protection, the right to freedom of thought, conscience and religion, the right to freedom of expression and assembly, the right to equal treatment, as well as economic and social rights.

Also worth noting is the European ethical Charter on the use of Artificial Intelligence in judicial systems and their environment, adopted by the European Commission for the Efficiency of Justice (CEPEJ) at its plenary session on December 3-4, 2018, which is a key reference for the development of AI systems specifically for the justice sector.

5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence?

See answer sub 5.6.

5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?

See answer sub 5.6.

5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?

There are provisions to ensure the reliability of automated information systems issued by the Ministry of Justice, under the responsibility of the relevant Director General. At present, as noted in Section 5.5. above, the judge retains responsibility and control over the final decision.

5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?

See answers sub 5.6 – 5.9

5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use artificial intelligence in legal proceedings?

See point 4.3. regarding current databases. As mentioned, there are currently no concrete applications of artificial intelligence in the process.

6. Responsibilities for operating modern technologies

6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

The Ministry of Justice, which, for aspects most directly concerning jurisdiction, has set up a cooperation channel with the Superior Council of the Magistracy.

6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

Yes, judges are normally involved by the Ministry in the development of the systems as users, either through direct management (outplacement for specific assignments to the Ministry) or through the creation of working groups of expert judges of the various sectors,

who are called to contribute to the analysis of user requirements prior to the development of the applications.

In addition, the Superior Council of the Magistracy appoints at least two magistrates for each district as referents for innovation, who follow the use and development of computerisation in judicial offices.

6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?

As already mentioned, no such initiatives exist at present, except in the sense of developing and improving legal and judicial IT databases.

7. Criticisms and proposals for use and development of modern technology

7.1 Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

The use of new technologies has led to important changes.

There has been a great saving in expenditure for carrying out communications and notifications, working energies have been freed up, due to the effect of automating some procedures.

The way of working of all justice operators has changed. The lawyer is now able to reduce his physical access to the judicial premises, to consult the files directly from his office, make deposits, communications and notifications from his workstation.

The clerk's office is now busy every day at the video terminal, in the activity of verifying/accepting/checking documents filed electronically.

The judge (in Italy, at the moment, only the ones working in the civil and administrative law sectors) has the possibility of consulting his role in an orderly and schematic manner, having a clear picture of the more remote causes, of the activities in progress, of the procedural deadlines; can better organize hearings, schedule activities, manage his own calendar of commitments; can perform complex searches; can constantly update the content of the computer file, draw up the provisions using an editor who automatically fills in some parts of the written document.

For lawyers and magistrates there is the advantage of being able to work and file acts and provisions directly from places other than the office, saving the time needed to physically move from home or office to the court.

However, the introduction of such a widespread use of new technologies has led to the emergence of new problems that did not exist before and whose solution even conditions the exercise of the rights of defense and procedural activities: the judge, the lawyer, the registrar are required to carry out a series of formalities of a technical nature for the correct functioning of the system and to provide answers to a series of technical problems often completely extraneous to their basic training.

There has been an undoubted acceleration of the fulfilments linked to the communication of deeds and provisions.

But the more immediate fulfilment of the activities of the parties and of the clerk's office has made it even more evident that the real critical point of the whole procedural process must be identified in the delicate phase of deciding the case and drafting the judgement.

In this context, it could be emphasized that the Internet has been the greatest recent revolution, but its full potential in the justice sector has not yet been fully explored. In this respect, the COVID-19 provided an opportunity to explore the new chances of the digitalization.

Lithuania/*Lituanie*

1. Introduction and definitions

The questionnaire is aiming to collect the relevant information as regards the modern technology used within the judiciary in your country.

In this regard, for the purposes of the present questionnaire, the following definitions apply:

Electronic files/electronic proceedings

Definition: the whole or part of process/commencement/issue of process/correspondence of the process with all parties, including court internal administration and/or case management generally is electronic (no paper files or paperwork at all).

Videoconference

Definition: all kind of hearings which are held via videoconference (including online platforms).

Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

Electronic files and electronic proceedings partially or in full exist in civil, administrative, criminal cases and cases of administrative offences. Judicial Council has approved a list of cases (Resolution No. 13P-145-(7.1.2) of the Judicial Council of 8 November 2013 on Processing of Cases and Information Related to the Court Process Only in Electronic Form), which shall be formed **only electronically**:

- 1) Civil cases regarding the issuance of a court order in the district courts, where the statement, on the basis of which the case is initiated, was submitted to the court on the 1st of July, 2013 or later using technologies of information and electronic communication;
- 2) Civil cases in district courts, where the procedural document, on the basis of which the case is initiated, was submitted to the court on the 1st of January, 2014 or later using technologies of information and electronic communication;
- 3) Civil cases in regional courts, as in courts of first instance and in administrative courts, as in courts of first instance, where the procedural document, on the basis of which the case is initiated, was submitted to the court on the 1st of July, 2013 or later using technologies of information and electronic communication;
- 4) Cases of administrative law violations and administrative offences in district courts, where the procedural document, on the basis of which the case is initiated, was submitted to the court on the 1st of July, 2015 or later using technologies of information and electronic communication;
- 5) Criminal cases in district and regional courts according to the prosecutor's statement regarding the termination of the process by a penal order, where the procedural

document, on the basis of which the case is initiated, was submitted to the court on the 1st of January, 2020 or later using technologies of information and electronic communication;

- 6) All cases in courts of general competence and specialized courts that hear cases in appeal or cassation procedure according to the complaints received in court on the 1st of January, 2014 or later (regarding decisions or rulings adopted in cases that were handled only in electronic form).

All documents in electronic case shall be signed electronically or digitalized.

Regarding cases in Lithuanian courts, it is worth to note that there is a group of process participants (attorneys, attorneys' assistants, bailiffs, bailiffs' assistants, notaries, state and municipal companies, institutions and organizations, etc.), who are obliged to receive court documents only electronically. According to the regulation, if the case is initiated electronically, the process participant shall pay only 75 % of the stamp duty.

In cooperation with the Ministry of Justice of the Republic of Lithuania, the Judicial Council, the Lithuanian Bar Association, and other related institutions, the amendments to the Description of the Procedure for the Use of Video Conferencing Technology in Criminal Cases and the Description of the Procedure for the Use of Video Conferencing and Teleconferencing in Civil and Administrative Cases have been approved by Order of the Minister of Justice of 23 February 2022. These amendments set out how the publicity of the court hearing is ensured when the court hearing takes place using video conferencing and/or teleconferencing technologies.

According to the amended legal regulation, when a public court hearing takes place using video conferencing technologies and it is not possible to allow individuals to watch this court hearing directly in the courtroom or other place of hearing, it can be observed and/or listened to by one of the following remote methods available to the court: by rebroadcasting the sound of the court hearing and, if possible, video into a separate, public courtroom or other room in the court building; by joining a video conference.

The court hearing the case decides on the use of specific tools during the court hearing, after assessing the circumstances, which are significant for ensuring a safe environment of the court, the protection of personal data, and the requirements for the implementation of the provisions of the relevant legal acts.

A person wishing to observe a public court hearing and/or listen to it shall inform the court hearing the case about this usually at least 3 working days before the day of the court hearing, except in cases where the date of the court hearing is publicly announced with a shorter deadline.

By Resolution No. 13P-162-(7.1.2.) of the Judicial Council of 20 December 2021 the Resolution No. 13P-46-(7.1.2) of the Judicial Council of 25 May 2018 "On Approval of the Description of the Procedure for the Use of Technical Means during the Announcement of a Judgment" was amended by supplementing it with the provisions detailing the rules on publicity in court proceedings; also, regulations related to ensuring the publicity of court proceedings were established: the procedure for submitting and examining a request to a court by a person willing to observe a public remote court hearing was established, the essential aspects of practical implementation was defined (by supplementing them, inter alia, with more modern solutions), which may be relevant for the uniform organisation of the court activities, enabling individuals to observe public hearings at a distance, and for informing the public.

Implementing these legal requirements, on 28 February 2022 certain updates have been implemented in LITEKO: when a court staff enters data about newly scheduled hearings into LITEKO, the attribute "Remote" can be selected. On the website <https://www.teismai.lt/lt>, in the "Public schedule search" section, information about the court hearing has been added with a new "Remote" section, and next to a publicly announced court hearing with the corresponding attribute, it is possible to select the "Register" function.

After the interested person selects this function, LITEKO provides a data entry form, in which, after specifying the data provided for in the aforementioned legal acts, the system automatically forms a request in the approved form, which is submitted to the court where the case is being heard via court's general e-mail address.

In addition, interested persons who have completed the request form published on the website can submit it to the court in other ways: by using LITEKO Public Electronic Services subsystem as well as by delivering it to the court physically. Also, a request might be filed in court.

The request is registered according to the procedure established by the court and transferred to the judge (judicial panel) hearing the case. The person who has submitted the request is informed about the decisions made as well as about technological possibilities created (at the same time the person is informed about the prohibition of disclosing personal data that becomes public through the court hearing and other duties established in the legal acts and responsibilities for not complying with them). In addition, this information is explained before the start of the court hearing when the court staff responsible for organizing the court hearing check whether the person who has submitted the request has arrived or joined to observe the public court hearing and whether there are no legal obstacles to allowing the person to observe the public court hearing.

Difficulties in using remote means are partly related to the insufficient amount of computer equipment and licenses available to the courts, as well as to the inability of those involved in the proceedings to attend court hearings remotely (e. g. due to the lack of skills). In 2022, an additional number of computers were purchased for courts; juvenile interview equipment was updated / new purchases were made. Due to the adoption of the amendments to the law on limiting business relations and cooperation with relevant states and territories, by the end of 2024, it is mandatory to abandon a large part of video conferencing equipment and replace it with the decision of another manufacturer.

In 2019, the IT state investment project “Ensuring the speed and security of the court information system and modernisation and development of electronic court services” was prepared and coordinated with the Information Society Development Committee and from 2020 onward was included in the Public Investment Program. This project aims to complete the last stages of the LITEKO modernisation and to fully complete the modernisation of the LITEKO in 2022, as well as to improve the functionalities of the LITEKO public electronic services subsystem.

In 2022, the implementation of the project “Increasing the Efficiency of Judicial Activities”, financed by the investment funds of the European Union, was continued. The project aims to increase the efficiency of court activities, develop models for advanced management of court resources and case allocation, update case data management processes and transfer them into the electronic space. The activities of the aforementioned projects are late and it is planned to complete the development of LITEKOII by 31 December 2023.

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

In cases determined by the Judicial Council, all documents and the entire judicial proceeding is handled in electronic files (via Lithuanian Court Informational System (hereinafter – LITEKO), its Public Electronic Services subsystem or other means of electronic communication (e. g., by e-mail)).

Digital or paper-based procedural documents are registered in LITEKO, which is a database for the judicial information on all cases, procedures, etc. (not only electronic documents) and provides functionalities such as electronic/automatic random allocation of cases; electronic e-services, storage of the audio records of court hearing; gathering, management, and storage of electronic information and documents for every case in the centralized database; ability to search of documents and other data for the courts’ process in LITEKO, other registers, and databases, etc. LITEKO is integrated with over 25 registers or informational systems (courts receive and submit data from the courts’ informational system).

From the 1st of July, 2013, the e-file system was introduced in Lithuania – the process whereby participants have the ability to submit e-documents to courts in civil and administrative cases; from the 1st of July, 2015, the system is used in administrative offense cases and from the 1st of January, 2020, the procedures in some criminal cases (penal order in criminal cases) are managed electronically as well.

The court electronic services, provided by LITEKO Public Electronic Services subsystem, allowing access to electronic files, are approachable for customers via the specific portal, *e.teismas.lt*.

The registered users may initiate case forms and other documents directly in the portal by completing more than 90 documents' forms that are placed in a document list with unique data, and saving them in their own account or personal computer for the later submission to a court. Therefore, a function is available for uploading various external format documents. System automatically fills in documents with the pre-existing metadata from the users' account.

The general information about the case, the documents stored by the court, including the documents provided by the parties, the documents issued by the court, and the records of the court hearings are placed in the electronic case and may be reviewed online, or the documents may be downloaded in ADOC format as soon as the court employee, upon request, grants the necessary rights. For easy access to the course of the case examination, the information on all court proceedings is directly disclosed to the participants who have legal interests in the case via their accounts and are sent by email or short messages by their GSM operator.

For representation in electronic cases, a specific function has been created, and the party may authorize the representative to represent his/her interests. The delegate may get all the information about the case, form and deliver electronic documents in the name of the party, and exercise other representative rights using electronic means. Also, there is a possibility to delegate the representation for a natural person, as well as a legal entity.

The system as well possesses functionalities for judicial mediation for secure communication among judicial mediators and the parties in the procedure.

Since 2016, the court has carried out the pre-trial investigation actions within the Informational pre-trial investigation system (hereinafter - IBPS), managed by the Ministry of the Interior of the Republic of Lithuania. The direct link from LITEKO allows the court to access the system in the most convenient and prompt way.

Procedures and process actions that may be conducted digitally (in electronic files) are determined by procedural laws, e. g. Paragraph 2 of Article 175¹ of the Civil Procedure Code of the Republic of Lithuania states that procedural documents may be submitted to court using technologies of information and electronic communication. In exceptional criminal cases, when it is impossible to ensure the hearing of case in the usual manner established in Criminal Procedure Code of the Republic of Lithuania, the hearing of case and the participation of process participants, witnesses, experts, specialists, translators and other persons involved in the case, can be ensured using information and electronic communication technologies (if there are suitable technical possibilities) (Article 8² of the Criminal Procedure Code of the Republic of Lithuania); similar rules, establishing wider use of information and communication technologies, apply as well in civil, administrative cases and cases of administrative offences. Noteworthy, in criminal cases, process actions performed by a pre-trial investigation officer, prosecutor or judge can be recorded in electronic form. When written documents cannot be digitized due to legal requirements, they are stored only in written form, noting this fact in the electronic file (Article 8¹ of the Criminal Procedure Code of the Republic of Lithuania).

2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

All documents in electronic case shall be signed electronically or digitalized. Use of digital signatures in court proceedings is governed by the Description for Processing, Recording and Storing Electronic Data in Judicial Proceedings Using Information and Electronic Communication Technologies, approved by Resolution No. 13P-74-(7.1.2) of the Judicial Council of 20 June 2013.

Electronic documents prepared by the court in judicial proceedings are signed with a secure qualified electronic signature by the person or persons who compiled them, unless other legal acts stipulate otherwise. Digital copies of written documents prepared by the court are certified with a secure qualified electronic signature by the person who digitized the document.

In cases that are handled in electronic form, paper-based procedural documents received in the court together with the attachments and/or attached documents, are digitized and added to the electronic file no later than within three working days of their receipt. Digital copy of the document is confirmed with a secure qualified electronic signature of the person who digitized the document.

Persons submitting procedural documents to court by means of electronic communication must sign them with a secure electronic signature or confirm their personal identity in other ways.

Portal *e.teismas.lt*. can be accessed using the tools available at the e-government portal: using electronic banking, a personal identification card or an electronic signature.

There is no difference in substance between electronic proceedings and paper-based proceedings. Electronic files and proceedings allow to exchange procedural documents, conduct process actions in a more prompt and convenient way.

2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

The extent of use of electronic files in Lithuanian courts differs and depends mainly on the substance of the legal proceeding. Cases regarding the issue of court orders and other cases specified by the Judicial Council and information relating to court proceedings may be processed electronically in all courts. Upon the national regulation, procedural documents may be submitted by means of electronic communication to all instances of general and administrative competence courts in civil and administrative cases as well as in cases of administrative offences. Due to legal regulation, electronic services via LITEKO Public Electronic Services subsystem cannot be provided in majority of criminal cases, although process actions that may be conducted digitally (and requires work with electronic files) in all criminal cases are determined by Criminal Procedure Code of the Republic of Lithuania. When criminal cases in written form are transferred to the court, the data of the criminal case processed in electronic form are additionally transferred via electronic means of communication.

Regarding court internal administration and data management, LITEKO II non-process document management module enables court employees to register, collect, store, archive electronically all non-procedural court documents.

2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

It has been three years now that judges' and other employees' computers are being purposefully changed to laptops with docking stations, thus making it possible to have a working tool at all times. Both those who have laptops and those who use their own computers can connect to the court infrastructure using VPN technology.

In order to ensure greater security and comply with legal regulation, courts do not use cloud solutions.

2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

Cases determined by the Judicial Council are formed and processed only electronically.

If the document initiating the court case is submitted to the court using LITEKO Public Electronic Services subsystem, the court case file is processed in electronic form, by

assigning electronic documents, digital copies of documents and electronic data to the electronic court case file.

Continuous use of paper-based files in cases that are formed only electronically is determined by the form of documents submitted to the court by process participants or other national institutions.

All written documents related to the court proceedings received in the electronic court case are digitized and their digital copies are assigned to the electronic court case file while the written documents themselves are placed in the paper court case file. When the court proceedings file is handled in electronic form, the documents received for such a case via LITEKO Public Electronic Services subsystem are not printed and are not placed in the paper court case file together with the written documents received by the court.

If, according to national regulation, electronic documents and digital copies of documents, related to the court proceedings are to be served to process participants as paper copies (when the addressee is not obliged to receive procedural documents by means of electronic communication and LITEKO Public Electronic Services subsystem account is not active), court clerk shall print and send them to the participants in paper form, noting it in the electronic case file.

In 2020, LITEKO II non-process document management module was developed and put into use in all Lithuanian courts. This module enables court employees to register, collect, store, archive electronically all non-procedural court documents.

Practice of Lithuanian Courts in working with electronic cases is highly appreciated by the Judicial Council and further changes in the judiciary from paper files to electronic files are being planned. Currently, organizational, legal and technological possibilities to expand the list of criminal cases processed electronically, to digitalize the processes of issuing and submitting executive documents in this type of cases are actively being discussed with representatives of the courts, the prosecutor's office and the Ministry of Justice of the Republic of Lithuania. Due to factors related to technical and organizational solutions as well as inter-institutional cooperation, the exact implementation date is not defined yet.

2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

The use of electronic files and proceedings are primarily governed by the provisions enshrined in the Law on Courts, which establishes the court system of the Republic of Lithuania as well as jurisdiction, organization, activities, administration and self-governance of courts, their principles, status of judges, procedure of selection of candidates to judges, appointment of judges, their promotion and liability, social guarantees of judges and other issues relating to courts. Article 37¹ of the Law on Courts specifically governs use of electronic files, information and electronic communication technologies in courts. The application of the provisions includes processing of electronic data and documents in courts, as well as handling of electronic cases, rights and duties of process participants regarding familiarization of the electronic case, submitting and receiving procedural documents from court.

More detailed norms on the matter are provided in procedural law, namely Criminal Procedure Code of the Republic of Lithuania (Article 8¹ regulates processing of data of criminal proceedings and lodging of procedural documents using information and electronic communication technologies), Civil Procedure Code of the Republic of Lithuania (Article 175¹ governs the peculiarities of the use of information and electronic communication technologies in civil proceedings), Code of Administrative Offences of the Republic of Lithuania (provisions of Article 573 apply to sending summonses and other procedural documents to process participants in administrative offence proceedings by means of electronic communication), Law on the Examination of Administrative Cases of the Republic of Lithuania (Article 24 stipulates possibility to lodge complaints (requests, statements) to court in electronic form and by means of electronic communication; Article 74 governs the service of summonses by means of electronic communication).

There are different by-laws governing the use of electronic files and proceedings in court.

The Description for the Submission of Procedural Documents and Their Delivery to Persons by Electronic Means of Communication, approved by Order No. 1R-332 of the Minister of Justice of the Republic of Lithuania of 13 December 2012, determine the procedure and form of electronic communication for the submission of procedural documents to courts and to process participants when examining civil, administrative, criminal cases and cases of administrative offences. Provisions of the aforementioned description are applied to correspondence of the process.

Moreover, the Description for Processing, Recording and Storing Electronic Data Related to Court Proceedings Using Information and Electronic Communication Technologies, approved by Order No. 13P-74-(7.1.2) of the Judicial Council of 20 June 2013, is applied to preparation, processing, inclusion in accounting and storage of court electronic documents, digital copies of documents and electronic data related to civil and administrative cases.

The Rules for the Provision of Public Electronic Services of the Courts of the Republic of Lithuania, approved by Order No. 6P-141-(1.1) of the Director of National Courts Administration of 17 September 2015, specifically regulate the conditions and procedure of the public electronic services of Lithuanian courts, provided by LITEKO Public Electronic Services subsystem.

The Description of the Procedure for Processing Criminal Case Data in Electronic Form During the Pre-trial Investigation, approved by Order No. 1V-67/I-31 of Minister of Interior and Prosecutor General of the Republic of Lithuania of 29 January 2016, regulates the processing of data, procedural documents or other documents during pre-trial investigation, examination of the notification of a criminal offence and in the materials of international legal cooperation and communication with foreign countries in the IBPS as well as procedure for serving procedural documents by other means of electronic communication. Provisions of aforementioned Description are applied to judges carrying out the pre-trial investigation actions.

Regarding the soft law, it is worth mentioning that Judicial Council has adopted Recommendations on remote court hearings. The purpose of the Recommendations is to provide practical advice to courts and process participants regarding the organization of remote court hearings and procedures for participation in it, to set standards and ensure adherence to good practice in the execution of justice.

Other solitary provisions concerning electronic files and proceedings are enshrined in different resolutions of the Judicial Council, thus the list of applicable legislation is non-exhaustive.

2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

Judges and process participants must act in accordance with national regulation (provisions set out in Law on Courts, procedural laws, by-laws, etc.). Requirements adopted by the Judicial Council related to formation and processing particular cases only in electronic form is binding for judges. All documents in electronic case shall be signed electronically or digitalized.

However, in some cases judges have the discretionary power to perform certain process actions in electronic format, e. g. in exceptional criminal cases, when it is impossible to ensure the hearing of case in the usual manner established in Criminal Procedure Code of the Republic of Lithuania, the hearing of case and the participation of process participants, witnesses, experts, specialists, translators and other persons involved in the case, can be ensured using information and electronic communication technologies (Article 8² of the Criminal Procedure Code of the Republic of Lithuania). In this case, it is the judge who assesses whether the conditions for application of the provision exist or not.

Process participants have the right to submit all procedural documents and information related to the court process to the courts in electronic form, using electronic means of communication in accordance with the procedure established by the Minister of Justice of the Republic of Lithuania.

Process participants, regarded as professional subjects of legal matters, are obliged by procedural laws to receive court documents only electronically. This group includes attorneys, attorneys' assistants, bailiffs, bailiffs' assistants, notaries, state and municipal companies, institutions and organizations, etc. In addition, documents are delivered by

means of electronic communication to persons who are required by law to receive procedural documents by means of electronic communication or if such requirement is in the contract concluded with the manager of the court information system.

Litigants (including those, who are acting without the assistance of a lawyer) who are not obliged to receive procedural documents by means of electronic communication, but have given consent to receive procedural documents via LITEKO Public Electronic Services account and the account is active, receive the documents electronically.

If the addressee must receive procedural documents by means of electronic communication, but his LITEKO Public Electronic Services account is not active, the court informs the participant that he must activate his account and sets a deadline of at least 7 calendar days for account activation. After the deadline, court employee sends the procedural documents to LITEKO Public Electronic Services account of the process participant and these procedural documents are considered to have been delivered in accordance with the procedure established by law.

If, according to national regulation, electronic documents and digital copies of documents, related to the court proceedings are to be served to process participants as paper copies (when the addressee is not obliged to receive procedural documents by means of electronic communication and LITEKO Public Electronic Services subsystem account is not active), court clerk shall print and send them to the participants in paper form, noting it in the electronic case file.

2.9 Are different approaches to the use of electronic files/proceedings taken depending on the substance of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

As mentioned before, the extent of use of electronic files and proceedings in Lithuanian courts differs and depends mainly on the substance of the legal proceeding. Electronic files and electronic proceedings in full exist in civil, administrative, criminal cases and cases of administrative offences determined by the Judicial Council (Resolution No. 13P-145-(7.1.2) of the Judicial Council of the 8th of November 2013 on Processing of Cases and Information Related to the Court Process Only in Electronic Form), which shall be formed and handled only electronically. Due to peculiarities of the national criminal process, electronic services via LITEKO Public Electronic Services subsystem cannot be provided in majority of criminal cases (only in criminal cases regarding the termination of the process by a penal order).

Under Lithuanian law, there are specific dispositions in the procedural laws which provide for a possibility to question a witness or a victim whose identity has been classified by applying special acoustic and visual tool in order to render the identity of that person completely unrecognizable.

2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

Difficulties in using electronic files and remote means of communication are partly related to the insufficient amount of computer equipment and licenses available to the courts, as well as to the inability of those involved in the proceedings to attend court hearings remotely (e. g. due to the lack of skills). In 2022, additional number of computers were purchased for courts; juvenile interview equipment was updated / new purchases were made.

2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

No

2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

No

2.13 In your experience, what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them.

The advantages of the electronic files and proceedings include prompt and convenient way of forming and exchanging procedural documents and other data, necessary for the examination of the case, between courts and process participants or national institutions. The formation and submission of documents to courts, the acquisition of the case material in electronic way, the possibility to perform the duties concerning the payment of stamp duty, litigation costs or court-imposed fines only in few clicks are the considerable undertaking in making the implementation of justice more time and cost saving.

For example, due to provisions of the process law, enabling audio recording of court hearings in civil, administrative cases, there is no need for the court employees to fill in protocols of the hearing as audio recording of the hearing is regarded to be the minutes (a protocol) of the hearing and it is component of the case files. In case of uncertainty, parties of the proceedings have the right to acquaint themselves with the audio recording.

Use of electronic files in court proceedings facilitates the protection of the fundamental procedural rights (e.g., procedural equality, confidentiality, rights of minors, etc.).

For instance, during interview of a minor in a criminal case, the accused and other participants in the process, except for the psychologist and the representative of the minor, are not allowed to be in the room where the interview is conducted. In such a case, an audio and video recording must be made and the accused and other participants in the process must be given the opportunity to observe and hear the questioning from another room and to ask questions to the minor through the judge. Witness who is subject to measures of protection against criminal influence in accordance with the procedure established by law, as well as a witness who cannot attend the criminal trial for other reasons, may be questioned by means of remote audio and video transmission.

Regarding disadvantages, it should be noted that adoption of informational technologies, allowing use of electronic files in courts takes time and depends on the financial resources of the judicial system.

3. Use of videoconference facilities, including online platforms

3.1 Which kinds of court proceedings can be held via and/or online platforms? Where such facilities are used, in which courts are they used?

The current legislation allows the use of videoconference facilities handling civil, criminal, administrative and administrative offences cases at all stages of court proceedings. Court proceedings via videoconferencing facilities can be held in all Lithuanian courts.

It should be noted that videoconference facilities can be used only for some procedural actions (for example, to ensure the presence of the arrested person, a witness or other participant in the proceedings who cannot attend the hearing in person) or a judge may decide to handle a case using videoconference through the entire trial process (remote hearing).

In civil and administrative cases proceedings, as opposed to criminal proceedings, courts have ample scope to hold court hearings remotely. Paragraph 1 of Article 1751 of the Civil Procedure Code of the Republic of Lithuania states that the participation of the parties and other participants in the proceedings may be ensured by using information and electronic communication technologies (via video conferencing, teleconferencing, etc.). The same regulation is laid down in the administrative proceedings.

Paragraph 5 of Article 661 of the Code of Administrative Offences sets out that the participation of the participants in proceedings may be ensured by means of information and electronic communication technologies (via videoconferencing, teleconferencing or otherwise).

Meanwhile, in criminal proceedings, only in exceptional circumstances, the entire trial may be held via videoconferencing if it is reasonably assumed that this will result in a faster trial, without prejudice to a full and objective examination of all the circumstances of the case and the rights of the participants in the proceedings. In case of an objection by prosecutor, victim, accused, advocate, civil plaintiff or defendant, their representatives – must be held the ordinary, physical hearing.

3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

According to the law, evidence can be taken via videoconferencing facilities. Paragraph 4 of Article 1751 of the Civil Procedure Code of the Republic of Lithuania expressis verbis provides that information and electronic communication technologies (video conferencing, telecommunications, etc.) may be used to gather evidence. According to paragraph 7 of Article 13 of the Law on Administrative Proceedings of the Republic of Lithuania, the paragraph 5 of Article 82 of the Criminal Procedure Code of the Republic of Lithuania, the use of videoconferences must ensure reliable identification of the participants in the proceedings, witnesses, specialists, experts, translators, objective recording and presentation of data/evidence. It is compulsory to make an audio-visual recording which is annexed to the court's minutes.

At all stages of proceedings the judge may decide that any of the participants (witness, expert, specialist etc) must attend court in person in order to carry out a full and objective examination of the circumstances of the case.

3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the difference

There are no significant differences in the requirements for the use of videoconferencing in civil, criminal, administrative or administrative offences proceedings.

A request for the use of videoconferences in proceedings may be made by any participant in the proceedings or may be used on the initiative of the judge.

The judge must be sure that the use of videoconferencing shall ensure reliable identification of the participants, the objective recording and presentation of the data (evidence), the possibility of exercising procedural rights and the publicity of the proceedings, as well as confidential communication between the participants and their lawyer/representative.

The identity of the participants may be verified by presenting an identity document during videoconference, which shall be recorded in the minutes of the court hearing. The participants are usually warned and sworn in by videoconference, as noted in the minutes of the court hearing.

In criminal proceedings, as opposed to civil and administrative, the law requires a consent of the parties conducting the proceedings remotely. In case of an objection by prosecutor, victim, accused, advocate, civil plaintiff or defendant, or their representatives - must be held the ordinary, physical hearing (paragraph 2 of Article 82 of the Criminal Procedure Code of the Republic of Lithuania).

3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

According to the law, when a case is handled using videoconferences, members of the panel of judges may attend a hearing from different premises of the court. A judge may be outside the courtroom, but should be present at the court's premises.

The parties and other participants of the process may be present in different court or out-of-court premises (the place of work, home or another private place).

3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

Procedural laws set out legal basis and major principles for the use of videoconferences in proceedings. As previously described, the rules governing the use of videoconferences are laid down in the Article 1751 of the Civil Procedure Code, the Article 13 of the Law on Administrative Proceedings of the Republic of Lithuania, the Article 82 of the Criminal Procedure Code of the Republic of Lithuania, the Article 661 of the Code of Administrative Offences.

The provisions of the procedural laws are detailed in secondary legislation:

- The Description of the procedure for the use of videoconferencing technologies in criminal proceedings, approved by Order No. 1R-183 of The Ministry of Justice of 31 May 2021;
- The Description of the procedure for the use of videoconferencing technologies in civil and administrative proceedings, approved by Order No. 1R-309 of The Ministry of Justice of 7 December 2012 (recast in 30 of October 2020);
- The Description of the procedure for the use of videoconferencing equipment during legal proceedings, approved by the Resolution No. 13P-156-(7.1.2) of the Judicial Council of 28 November 2014.

These legal acts establish procedures for the participation of participants in court hearings and the examination of a witness using videoconferencing and teleconference technologies, identification of the participants, recording and submission of data, evidence, the ways of ensuring the publicity of the hearing.

On 27 August 2021 the Council of Judges approved Recommendations for organising remote court hearings. The purpose of these recommendations is to provide useful and practical advice for courts and court hearing participants on organising and attending remote court hearings.

3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent? However, the law states that a case cannot be handled remotely if any of the parties disagrees to remote hearing.

The use of videoconference is optional and may be initialized by the judge or following a request of the participant. In criminal proceedings, as opposed to civil and administrative, in case of an objection to the use of videoconference by prosecutor, victim, accused, advocate, civil plaintiff or defendant, their representatives – must be held the ordinary (physical) hearing.

3.7 What views have been expressed by judges concerning the use of electronic files and proceedings? Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

3.8 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

Applicable to 3.7-3.8:

It should be noted that the majority of cases in Lithuanian courts are handled in electronic form. In 2021, the number of civil and administrative cases handled exclusively in electronic form accounted for about 83 % and this number is increasing every year (compared to: in 2020-80 %, in 2019-74%). The number of civil cases handled in electronic form has also increased steadily, reaching 85.39 % in 2021 (compared to: 82.06 % in 2020 and 75.85 % in 2019).

As concerns videoconferencing, a physical attendance in proceedings remained the main form of case handling but when it's feasible judges often choose videoconferencing in court proceedings, in particular handling civil and administrative cases. In criminal proceedings a remote hearing is more as an exception rather than a rule when it's not possible to ensure when it is impossible to ensure the hearing of case in the usual manner established in Criminal Procedure Code of the Republic of Lithuania. However, videoconferences are widely used for certain actions in proceedings (e. g., participation of arrested in a court hearing when arrest issues are questioned).

There are no official reports have been carried out on these issues yet, however, an increasing number of the remote hearings confirms that videoconferencing has become a standart common practice in Lithuanian courts.

3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

Advantages:

- enables faster court proceedings, as it is not necessary to postpone the hearing when a participant cannot attend the hearing in person;
- reduces travel expenses and time;
- it is convenient to interrogate detainees as it is not necessary to convoy them to the courtroom;
- there is no need to reserve a courtroom (in a case of fully-remote hearing).

Disadvantages:

- challenges in questioning witness, ensuring that witness give evidence without assistance from the party, ensuring that there is no communication between witnesses;
- technical difficulties (low bandwidth, unstable Wi-Fi or other technical issues, which can cause delays or distractions).

4. Use of data tools

4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

Both judges and court employees have the opportunity to use a product developed by the private sector that provides an opportunity to search court practices, decisions, legal acts, etc. Also, the results found have a matrix of connections with links to the law, legal acts of the Republic of Lithuania and the European Union or court cases.

4.2 What kind of tools may use judges? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?

In addition to the above-mentioned equipment, courts have the opportunity to search in Lithuanian Courts Informational System, in interim court decisions.

4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

It is stipulated what data the courts can make public without violating the personal data protection regulations. Too much personalization of documents makes the document useless, and too little - reveals data that can be used to identify persons participating in legal proceedings

4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

The courts have implemented an automatic mechanism for issuing a court order when the data submitted by the applicant is entered into the template and the court order is automatically generated. We don't have any other similar solutions yet.

4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

Such surveys have not been conducted, but the courts have the opportunity to submit demands and suggestions.

4.6 In your experience, what are the advantages and disadvantages of using data tools? Please describe them.

Without a doubt, what tools make the work easier, but the quality of the search results is very important - the private sector has greater opportunities to create and improve such products because they have more users who indicate the errors found and thus allow the system to be improved. However, this does not mean that the courts should not have their own internal

tools - the internal tools should include the part that the private sector does not want or cannot make public due to personal data protection or legal regulation.

5. Forms of automatic proceedings

There are no automatic proceedings in Lithuanian courts

- 5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.
- 5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?
- 5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?
- 5.4 Are there automatic proceedings for decision-making or to assist decision-making?
- 5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.
- 5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.
- 5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.
- 5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence?
- 5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?
- 5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?
- 5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?
- 5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use artificial intelligence in legal proceedings?

6. Responsibilities for operating modern technologies

- 6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

The Judicial Council and the National Courts Administration according to the legislation.

- 6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

Judges and court staff are being involved while determining the initial needs and testing the system developments (when the changes are of huge importance, e.g. development of the new (modernization of) IS).

- 6.3 Are judges involved in the process of creating forms of artificial intelligence within legal - proceedings, such as automatic proceedings?

There are no forms of AI.

7. Criticisms and proposals for use and development of modern technology

7.1 Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

Pro: modern technology increases efficiency of legal proceedings.

Contra: the court may lose its human face, justice must be administered by humans, not computers.

Luxembourg

1. Introduction et définitions

Le questionnaire vise à recueillir des informations utiles concernant les technologies modernes utilisées au sein du système judiciaire de votre pays.

A cet égard, voici ce qu'on entend par les termes ci-après aux fins du présent questionnaire :

Dossiers / procédures électroniques

Définition : l'ensemble de la procédure / du début de la procédure / de la correspondance liée à la procédure avec toutes les parties ou une partie de celle-ci, y compris l'administration interne du tribunal et / ou la gestion de l'affaire se fait généralement par la voie électronique (pas de dossiers ou de documents sur papier).

Visioconférence

Définition : tous les types d'audiences qui se déroulent par visioconférence (y compris les plateformes en ligne).

Outils liés aux données (sur les faits, sur le droit et sur les précédents / la législation)

Définition : les tribunaux / ministères fournissent des outils liés aux données (conçus par un fournisseur privé ou public) utilisés par les juges pour faciliter le jugement des affaires.

Formes de procédures automatiques

Par exemple, des procédures automatiques pour 1) l'établissement des faits, 2) la recherche du droit et des précédents ; 3) les décisions.

2. Utilisation de dossiers / procédures électroniques

2.1 Existent-ils des fichiers / procédures électroniques et y a-t-il des exigences spécifiques à ce sujet ? Veuillez les décrire.

Non.

2.2 Les documents et l'ensemble de la procédure judiciaire sont-ils logés dans des fichiers électroniques ? Si ce n'est pas le cas, veuillez décrire la ou les utilisations les plus importantes des fichiers électroniques.

Non. Les fichiers électroniques les plus importantes concernent uniquement la correspondance greffe et avocats. En matière pénale, le dossier répressif est mis à disposition de l'avocat moyennant un lien OTX (*One-Time-Exchange*, outil de transmission d'informations sécurisé, par un serveur de l'Etat). Le dossier peut alors être téléchargé pendant un délai de 30 jours par l'avocat.

2.3 La procédure s'accompagne-t-elle de signatures numériques ? Les procédures électroniques diffèrent-elles en substance des dossiers et procédures sur papier ?

Voir réponse 2.1.

2.4 Les juges et les tribunaux travaillent-ils tous à l'aide de fichiers électroniques ? Sinon, quels tribunaux les utilisent et quels tribunaux ne le font pas ? Quelle est la raison de cette différence d'utilisation ?

Le choix de travailler à l'aide de fichiers électroniques est à la convenance du magistrat en charge du dossier.

2.5 Les juges ont-ils des ordinateurs à domicile et travaillent-ils à domicile avec les mêmes fichiers électroniques qu'au bureau ? Dans quelle mesure les fichiers électroniques sont-ils accessibles par le tribunal et / ou les parties via des systèmes basés sur un cloud ?

Oui, tous les magistrats peuvent avoir selon leur convenance un ordinateur pour travailler à domicile à l'aide de fichiers électroniques.

2.6 Lorsque des dossiers électroniques sont utilisés, des dossiers sur papier le sont-ils également ? Si oui, dans quelle mesure les dossiers papier sont-ils utilisés et comment se justifie le fait de continuer de les utiliser ? Existe-t-il un processus continu de transition au sein du système judiciaire pour passer des dossiers papier aux dossiers électroniques ? Combien de temps ce processus de transition doit-il prendre ?

Oui, il existe toujours des « dossiers papiers ».

Non, il n'existe pas de processus continu de transition.

2.7 Existe-t-il des lois, des règlements ou des règles de procédure applicables à l'utilisation de dossiers et de procédures électroniques : 1) dans la Constitution ; 2) en droit procédural ; 3) dans d'autres formes de droit, y compris des instruments de *soft law* ? A quoi s'appliquent ces lois, règlements ou règles ? Veuillez décrire leur application.

Non.

2.8 L'utilisation de dossiers / procédures électroniques est-elle facultative ou obligatoire pour les juges / avocats ou, lorsque cela est autorisé, pour les plaideurs agissant sans l'assistance d'un avocat ?

Lorsqu'elle est autorisée, l'utilisation est facultative pour les avocats et les plaideurs (agissant sans l'assistance d'un avocat).

2.9 Des approches différentes de l'utilisation des dossiers / procédures électroniques sont-elles adoptées en fonction du fond de la procédure judiciaire, par exemple, des approches différentes sont-elles adoptées pour les procédures civiles, pénales, administratives, familiales ou celles qui portent sur des questions sociales ?

Voir réponse 2.1.

2.10 Quelles sont les opinions exprimées par les juges concernant l'utilisation des fichiers et des procédures électroniques ?

Les opinions des magistrats sont mitigées à ce sujet.

2.11 Existe-t-il des sondages / enquêtes auprès des juges concernant leur opinion sur l'utilisation et / ou l'utilité des dossiers et procédures électroniques ?

Non.

2.12 Existe-t-il des rapports officiels concernant l'opinion des juges sur l'utilisation et / ou l'utilité des fichiers et des procédures électroniques ? Si oui, que disent-ils ?

Non.

2.13 Selon votre expérience, quels sont les avantages et les inconvénients des fichiers / procédures électroniques. Veuillez détailler.

Rapidité de transmission et économies pour des dépenses sur papier.

3. Utilisation des installations de visioconférence, y compris les plateformes en ligne

3.1 Quels types de procédures judiciaires peuvent se dérouler via des installations de visioconférence et / ou des plateformes en ligne ? Lorsque de telles installations sont utilisées, dans quels tribunaux le sont-elles ?

En matière pénale, la loi prévoit la possibilité de recourir à l'usage de moyens de télécommunication audiovisuelle ou d'audioconférences, à tous les stades de la procédure de l'enquête préliminaire jusqu'à l'exécution des peines.

En raison d'un renvoi aux règles de la procédure pénale par l'article 19 de la loi du 10 août 1992 relative à la protection de la jeunesse, cette même possibilité est donnée en matière de protection de la jeunesse.

3.2 Les preuves peuvent-elles être recueillies par le biais d'installations de visioconférence et / ou de plateformes en ligne ? Dans l'affirmative, peuvent-elles être réalisées dans toutes les juridictions ou seulement dans certaines d'entre elles ? Dans ce dernier cas, dans quelles juridictions peuvent-elles être réalisées ?

Oui, des preuves peuvent être recueillies par le biais de ces installations (audition de témoins ou d'experts) tant par des juridictions d'instruction que par des juridictions de jugement (voir réponse ci-dessus).

3.3 Quelles sont les conditions liées à l'utilisation de visioconférences ou de plateformes en ligne dans les procédures ? Si elles diffèrent d'une procédure à l'autre, veuillez décrire ces différences.

La loi prévoit que le moyen en question doit « garantir la confidentialité de la transmission ». Le juge désigne un officier ou un agent de police judiciaire ou, lorsqu'il s'agit de l'audition d'un détenu, d'un membre de l'administration pénitentiaire afin d'assister à l'audition et d'en dresser procès-verbal (lequel contient, entre autres, une description des conditions techniques dans lesquelles s'est *déroulée l'audition*)

3.4 Les participants (juges, avocats, parties, témoins) à une procédure se déroulant par visioconférence ou sur une plateforme en ligne peuvent-ils se trouver en dehors d'un tribunal ? Dans l'affirmative, tous les participants ou seulement certains d'entre eux peuvent-ils prendre part à la procédure sans se trouver au tribunal ? Si cette possibilité est offerte à certains d'entre eux, lesquels ? Y a-t-il des lieux extérieurs à une juridiction à partir desquels un participant ne peut pas prendre part à une procédure qui se déroule par visioconférence ou via une plateforme en ligne ? Si oui, lesquels ?

Les magistrats et greffiers de la juridiction de jugement doivent se trouver au Tribunal. L'avocat du détenu peut se trouver aux côtés de son mandant. La loi ne prévoit pas de lieu où l'audition serait interdite.

3.5 Existe-t-il des lois, des règlements ou des règles applicables à l'utilisation des visioconférences et des plateformes en ligne : 1) dans la Constitution ; 2) en droit procédural ; 3) dans d'autres formes de droit, y compris le *soft law* ? Que régissent ces lois, règlements ou règles ? Veuillez décrire leur application.

La procédure susmentionnée est régie par une loi du 1^{er} août 2018 (articles 553 et suivants du Code de procédure pénale).

3.6 L'utilisation de la visioconférence est-elle facultative ou obligatoire ? Si elle est facultative, peut-elle être imposée par le tribunal sans le consentement des parties ?

L'usage de la visioconférence est en principe facultatif. Lorsque le juge décide d'y recourir, ce choix s'impose aux parties.

3.7 Quelles sont les opinions des juges sur l'utilisation de dossiers et de procédures électroniques ? Existe-t-il des sondages / enquêtes auprès des juges concernant leur opinion sur l'utilisation et / ou l'utilité des dossiers et des procédures électroniques ?

Pas de sondages ni d'enquête. Les opinions recueillies sont favorables.

3.8 Existe-t-il des rapports officiels concernant l'opinion des juges sur l'utilisation et / ou l'utilité des fichiers et des procédures électroniques ? Si oui, que disent-ils ?

Pas de rapport officiel.

3.9 Selon votre expérience, quels sont les avantages et les inconvénients de l'utilisation de la visioconférence et / ou des plateformes en ligne ? Veuillez les décrire.

L'utilisation de ce moyen de communication permet, le cas échéant, d'éviter des confrontations douloureuses, des déplacements chronophages et coûteux. Elle permet de décharger les services de l'ordre pour ce qui concerne l'audition des détenus.

4. Utilisation d'outils liés aux données

4.1 Existe-t-il des outils liés aux données utilisés par votre système judiciaire : 1) sur les faits, 2) sur le droit et les précédents ? Si oui, veuillez les décrire.

Non.

4.2 Quels types d'outils les juges peuvent-ils utiliser ? Y a-t-il des outils officiels fournis par le pouvoir judiciaire / le ministère ? Si oui, quels sont-ils ? L'utilisation d'outils liés aux données est-elle facultative ou obligatoire ? Si elle est facultative, comment et par qui leur utilisation est-elle déterminée ?

Voir réponse ci-dessus (point 4.1.)

4.3 Existe-t-il des lois, des règlements ou des règles applicables à l'utilisation des outils liés aux données dans votre système : 1) dans la Constitution ; 2) en droit procédural ; 3) dans d'autres formes de droit, y compris le *soft law* ? Que régissent ces lois, règlements ou règles ? Veuillez décrire leur application.

Non.

4.4 Les outils liés aux données facilitent-ils l'établissement des faits et la préparation de la décision judiciaire ?

Voir réponse ci-dessus (point 4.1.)

4.5 Y a-t-il des sondages / enquêtes auprès des juges concernant leur opinion sur l'utilisation et / ou l'utilité des outils liés aux données ? Existe-t-il des rapports officiels concernant l'opinion des juges sur l'utilisation et / ou l'utilité des outils liés aux données ? Si oui, qu'en disent-ils ?

Non.

4.6 Selon votre expérience, quels sont les avantages et les inconvénients de l'utilisation des outils liés aux données ? Veuillez les décrire.

Voir réponse ci-dessus (point 4.1.)

5. Formes de procédures automatiques

5.1 Utilise-t-on des procédures automatiques dans le système judiciaire de votre pays ? Si oui, veuillez les décrire.

Il n'existe pas de procédures automatiques au Luxembourg.

5.2 Existe-t-il des procédures automatiques pour l'établissement des faits ? Les faits générés automatiquement sont-ils acceptés comme éléments de preuve ?

Il n'existe pas de procédures automatiques au Luxembourg.

5.3 Existe-t-il des procédures automatiques pour déterminer le droit applicable et / ou les précédents ?

Il n'existe pas de procédures automatiques au Luxembourg.

5.4 Existe-t-il des procédures automatiques de prise de décision ou d'aide à la décision ?

Il n'existe pas de procédures automatiques au Luxembourg.

5.5 Quels types de conditions sont nécessaires, d'un point de vue technique et juridique, pour l'utilisation d'une procédure automatique ? Veuillez les décrire et exposer leurs avantages et inconvénients.

Il n'existe pas de procédures automatiques au Luxembourg.

5.6 Existe-t-il des initiatives visant à mettre en œuvre des procédures automatiques sur les faits / le droit / les décisions ? Si oui, veuillez les décrire.

Pas à notre connaissance.

5.7 Existe-t-il des lois, des règlements ou des règles concernant l'utilisation de formes d'intelligence artificielle, comme les procédures automatiques : 1) dans la Constitution ; 2) en droit procédural ; 3) dans d'autres formes de droit, y compris le *soft law* ? Que régissent ces lois, règlements ou règles ? Veuillez décrire leur application.

Non.

5.8 S'il n'y a pas encore de mise en œuvre de telles mesures, existe-t-il des projets concernant la mise en œuvre de formes d'intelligence artificielle ?

Il n'existe pas de procédures automatiques au Luxembourg.

5.9 Existe-t-il un code éthique applicable à l'utilisation de procédures automatiques dans les procédures judiciaires ? Si des procédures automatiques sont utilisées, comment l'indépendance de la prise de décision judiciaire est-elle sauvegardée et préservée ?

Il n'existe pas de procédures automatiques au Luxembourg.

5.10 Existe-t-il des règles et des garanties spéciales concernant les procédures automatiques ? Le juge a-t-il le dernier mot / le contrôle sur l'issue et la qualité d'une procédure automatique ?

Il n'existe pas de procédures automatiques au Luxembourg.

5.11 La sécurité des données est-elle assurée pour l'utilisation de procédures automatiques ou lors de leur réalisation ? Si oui, veuillez décrire la situation factuelle et juridique ?

Il n'existe pas de procédures automatiques au Luxembourg.

5.12 Quel rôle, le cas échéant, un commissaire à la protection des données (ou l'équivalent) joue-t-il dans la supervision de l'utilisation de l'intelligence artificielle dans les procédures judiciaires ?

Il n'existe pas de procédures automatiques au Luxembourg.

6. Responsabilités en matière d'exploitation des technologies modernes

6.1 Qui détermine la mise en œuvre des technologies modernes, et dans le système, l'utilisation de dossiers / procédures électroniques et d'outils liés aux données dans votre tribunal / juridiction ?

La mise en œuvre relève de choix individuels.

6.2 Les juges participent-ils au processus de conception et / ou de mise en œuvre de l'utilisation de dossiers / procédures électroniques, de visioconférences et d'outils informatiques ?

Nono.

6.3 Les juges sont-ils associés au processus de création de formes d'intelligence artificielle dans les procédures judiciaires telles que les procédures automatiques ?

Non.

7. Critiques et propositions d'utilisation et de mise au point des technologies modernes

7.1 Décrivez les principaux arguments discutés par votre système judiciaire au sujet de l'utilisation et de la mise au point des technologies modernes dans les procédures judiciaires.

En l'état, il n'existe aucun lieu d'échange « officiel » en la matière.

Netherlands/*Pays-Bas*

1. Introduction and definitions

The questionnaire is aiming to collect the relevant information as regards the modern technology used within the judiciary in your country.

In this regard, for the purposes of the present questionnaire, the following definitions apply:

Electronic files/electronic proceedings

Definition: the whole or part of process/commencement/issue of process/correspondence of the process with all parties, including court internal administration and/or case management generally is electronic (no paper files or paperwork at all).

Videoconference

Definition: all kind of hearings which are held via videoconference (including online platforms).

Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

Yes, there are electronic files/electronic procedures, but these vary greatly by case flow. In criminal and immigration law, files are almost entirely digital. In civil and administrative law, digitisation is still being worked on per case flow.

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

We are aiming for 100% digital files. Until then, the physical file is the leading file and there is a (not always complete) digital work file

2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

In a few processes, an electronic signature is used but the common practice is usually still to put the 'wet signature' on paper which is then scanned. The ambition is to use electronic signatures everywhere. Electronic procedures do not differ in substance from analogue ones.

2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

Electronic files are used in all courts. The judge is free to print out an electronic file and read it from paper. But if in a case flow the digital file is leading, it remains so even if the judge prints out the documents.

2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

Yes. Judges can work from home. They do so either via a judiciary computer or via their own computer with a dongle (2FA authentication) within a secure judiciary environment. All case files of the judiciary are within the judiciary's IT environment and therefore not in cloud-based systems.

2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

See answer to question 2.4. Courts are free to use paper.

See answer to question 2.1. Yard processes in Criminal and immigration law are almost completely digitised. For the case flows in the Civil and Administrative Law sectors, the digital version is currently still voluntary. In time, the digital variant will become compulsory for professional parties. For citizens, the analogue channel will remain.

2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

For civil and administrative law, the 'WEP', the Electronic Procedure Act for Administrative and Civil Law, was created.

2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

For many case flows, the digital variant is currently voluntary. In time, this will become compulsory for professional parties. For citizens, the analogue channel will remain.

2.9 Are different approaches to the use of electronic files/proceedings taken depending on the substance of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

Yes. It even varies by case type within different jurisdictions.

2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

In general, judges support digitisation. The COVID pandemic accelerated this view because it then became clear that only digital files could be worked on. For reading files, (standard) screens and interface still do not appear sufficient and people regularly prefer analogue.

2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

Within the criminal justice sector, there has been a major ergonomics study on digital working.

2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

No.

2.13 In your experience, what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them.

The big advantage is that files are available anytime, anywhere by anyone who has the right to do so. If a file is digital, computers can also help the judge/clerk/parties. Think of something as simple as searching on a particular word or more advanced: finding similar cases.

Disadvantage (risk in case of incorrect implementation) may be that process and form requirements are enforced to such an extent that situational action is no longer possible in appropriate cases ('computer says no').

The transition from analogue to digital creates a hybrid situation that creates extra work and can lead to ambiguity.

3. Use of videoconference facilities, including online platforms

3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms? Where such facilities are used, in which courts are they used?

Within criminal law, it is possible to hear prisoners remotely from the PI (Penitentiary Institution).

For other jurisdictions, this possibility exists through the temporary COVID Act. The application is at the discretion of the judge and often at the request of (one of) the litigants.

The judiciary uses Microsoft Teams for this purpose and that is available to every Court.

3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

Statements made by the accused during video conferencing could be used as evidence. For the time being, this technique is treated with caution and the strong preference is for proceeding in the physical presence of suspects.

3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

In criminal law, there are all kinds of conditions and restrictions on the use of telehearing. Further: the use of telehearing is at the discretion of the judge. The judge directs the hearing incl. the use of videoconferencing facilities.

3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

The online platform supports hybrid sessions where different participants can sit in different locations. Including magistrates.

3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

Criminal procedure law regulates telehearing. In other jurisdictions, telehearing is only possible under the temporary COVID Act for the time being.

3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

Videoconferencing can be imposed on parties under the temporary COVID Act (the judge decides). Beyond that, it is possible only with the consent of the parties.

3.7 What views have been expressed by judges concerning the use of electronic files and proceedings? Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

See answer 2.1.

3.8 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

See answer 2.12.

3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

Advantages: no delays because one of the participants is not physically available (think witnesses, experts, interpreters in addition to litigants); no travel time lost by litigants (makes justice more accessible for e.g. small business owners); increased security (e.g. by not transporting detainees); being able to hear someone in his/her own, familiar surroundings; fewer inconveniences for a defendant in a criminal case (visitation, transport, waiting).

Disadvantages: technology (especially connectivity) is not always reliable; limited functionality (such as parallel mutually confidential consultations); via a screen you get only part of the total (especially non-verbal) communication conveyed, makes direction by the judge based on his or her interpersonal competences more difficult.

4. Use of data tools

4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

There is a tool within which it is possible to find comparable judgments using a simple search engine. There is a tool that searches for anomalies at administrator offices so that the judiciary can conduct targeted monitoring. There is a tool that automatically pseudonymises judgments. The aforementioned tools are still under development and are not yet widely used. There are no tools that help the judiciary assess cases.

4.2 What kind of tools may judges use? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?

To the extent that this question refers to tools like those under question 4.1, the use of these tools is not mandatory, nor are such tools yet widely deployed.

4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

Not unlike the laws and regulations already mentioned. The judiciary is awaiting EU legislation in preparation.

4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

There is a tool that makes it possible to find similar judgments with a simple search engine. This helps the judge with copying text passages and references to previous rulings.

4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

Unknown,

4.6 In your experience, what are the advantages and disadvantages of using data tools? Please describe them.

Advantage: see answer to question 2.13. Data tools can help the judge/clerk/ litigants, e.g. by searching for a particular word, a name, a phone number, or more advanced: finding similar cases.

The disadvantage is that these tools can reinforce bias.

5. Forms of automatic proceedings

5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.

No. The only things that are sometimes automated are bits of procedures that are administrative in nature such as an automatic check for form requirements and completeness of files.

5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?

No.

5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

No

5.4 Are there automatic proceedings for decision-making or to assist decision-making?

No.

5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

The Dutch judiciary is generally very reluctant to automate proceedings. Should the judiciary use automated procedures in the future, they should be fully transparent and traceable. Also, at all times the court should retain the possibility to deviate from the automated process.

5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.

No.

5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

No.

5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence?

There are numerous projects and experiments with forms of artificial intelligence but they all relate to administrative support or administrative handling. None of them relate to automating legal procedures.

5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?

Not for the time being, as automatic procedures are not yet in place.

5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?

We do not know of situations where a system submits a possible decision to the court.

5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?

The judiciary places high demands on data security and has invested heavily for this purpose. However, this is separate from its use in automated procedures.

5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use artificial intelligence in legal proceedings?

This is the subject of research.

6. Responsibilities for operating modern technologies

6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

The information supply organisation (IVO) of the Dutch judiciary organises the implementation of systems in collaboration with the courts. To make strategic choices therein, strategic boards have been set up in which the directors of IVO and courts have a seat.

6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

Yes. judges are involved, both in the boards, and in the steering committees, and in the role of product owner.

6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?

We do not yet know these technical applications in legal proceedings, but if we were to develop them, it would be in close consultation and cooperation with judges at all times. developed.

7. Criticisms and proposals for use and development of modern technology

7.1 Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

Critical issues: the increasing dependence on technology and the companies behind it; technology is not value-free; we are often insufficiently aware what value is implicitly woven into technology; there is the danger of losing the human touch and no or less room for individual assessment by the judge; there may be ergonomic concerns, especially with long and intensive screen work.

North Macedonia/*Macédoine du Nord*

1. Introduction and definitions

The questionnaire is aiming to collect the relevant information as regards the modern technology used within the judiciary in your country.

In this regard, for the purposes of the present questionnaire, the following definitions apply:

Electronic files/electronic proceedings

Definition: the whole or part of process/commencement/issue of process/correspondence of the process with all parties, including court internal administration and/or case management generally is electronic (no paper files or paperwork at all).

Videoconference

Definition: all kind of hearings which are held via videoconference (including online platforms).

Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

Electronic files/electronic proceedings exist and are in use in the judiciary in North Macedonia, although part of the process is still ongoing in paper. ACMIS (Automated Case Management Information System) is in use for about 15 years and all cases are randomly distributed and managed via this system. E-case file is created using this system and all files are electronic (also by scanning of paper files). Still, there is a dual usage of both e-files and paper files (due to traditional approach) and e-filing and deliverance is not available to parties, e-filing is possible only on court's side.

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

As mentioned, all files are electronic but also paper files are in everyday use by court and parties.

2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

Digital signatures are still not in use in the judiciary, it is expected to start in near future. There is no substantial difference from electronic and paper files and proceedings.

2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

All courts and judges use electronic files without exception.

2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

Judges do not have possibility to use the system and electronic files on their home computers. There are no cloud-based systems in use yet.

2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

As mentioned, although primarily e-files are in use, still there is a parallel usage of paper files by all in the judiciary, including parties and citizens. This is due to slow pace of mindset change and habits and it will take some time for a change. New generations of lawyers and young people will bring necessary changes.

2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

Procedural laws contain provisions on use of electronic files and proceedings, and also there is a Law on use of electronic documents, electronic identification and trustworthy services. Everyday use of these tools also impose soft law instruments as opinions and best practice which enables more efficient use and overcoming of issues.

2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

Judges are obligated in use of e-files and proceedings, while obligatory use by other parties is still not imposed.

2.9 Are different approaches to the use of electronic files/proceedings taken depending on the substance of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

Usage do not differ depending on the procedure. However, amendments to both Criminal and Civil procedure on this matter (and especially on online judging) are pending and some details might differ in near future.

2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

Education and security.

2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

It could be fairly said that mostly negative opinions are raised by older judges, not used to digital technology. Still, with time this will diminish to a point of non-relevance.

2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

No, we are not aware of such official reports.

2.13 In your experience, what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them.

Definitely, use of electronic files and proceedings have big advantages and help increasing of efficiency, accuracy and speed of judicial proceedings. Biggest concern, in short term, could be education, and on long term – security of these processes.

3. Use of videoconference facilities, including online platforms

3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms? Where such facilities are used, in which courts are they used?

Videoconferencing is proscribed in procedural laws and could be use in any court, as all courts are equipped with minimum requirements (hardware, software) for it. However, the use of such facilities and platforms are not often and previously mentioned law amendments are awaited as they will provide possibility for wider use.

3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

Yes, evidence could be taken via videoconferencing facilities and/or online platforms, in all courts in the country.

3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

Differences could occur in use of different software or hardware, as there are no strict proscriptions on that matter.

3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

For now, parties and witnesses could be out of court when video proceeding takes place. There are no limitations on place of their whereabouts when using video-conferencing.

3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

Procedural laws contain provisions on use of electronic files and proceedings, and also there is a Law on use of electronic documents, electronic identification and trustworthy services. Everyday use of these tools also impose soft law instruments as opinions and best practice which enables more efficient use and overcoming of issues.

3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

For now it's optional and it could not be proceed without a consent of the parties.

3.7 What views have been expressed by judges concerning the use of electronic files and proceedings? Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

Generally, the use of e-files and proceedings is viewed as positive matter that provides court to be more efficient. As mentioned, the older judges hold opposition to use to some extent, due to their habits and previous non-using.

3.8 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

As we are aware, there are no official reports concerning use of electronic files and proceedings.

3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

It make proceedings more faster and efficient. Software and hardware issues may be considered as disadvantages to some extent at this point of progress.

4. Use of data tools

4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

Ministry of justice have developed free data tools mainly on laws (search, updates), while judiciary have web-sites where court's practice could be find. Also, private companies develop data tools for easier search of laws, other regulations and practice.

4.2 What kind of tools may judges use? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?

As mentioned, such data tools are developed by the Ministry of justice, and provides search od laws, other relevant documents and courts practice and judges use them. This usage is optional and are determined by judges themselves.

4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

There are no specific laws and regulations, however collecting data is managed by the Ministry of justice and Judicial council.

4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

No, they do not.

4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

Judges are in favour of use of such data tools and would like to see more developed tools which provides efficiency. There are no official reports on judicial views on use of such tools we are aware of.

4.6 In your experience, what are the advantages and disadvantages of using data tools? Please describe them.

It helps and improves work of judges and judicial professionals greatly, it makes it easier and simpler, also more faster and accurate.

5. Forms of automatic proceedings

5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.

There some automatic proceedings as search tools and they are mostly used to gather and find laws, regulations and practice.

5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?

Not that we are aware of.

5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

Not that we are aware of.

5.4 Are there automatic proceedings for decision-making or to assist decision-making?

There are automatic proceedings that could help find relevant law provisions or related law and also find relevant court practice by the kind of legal matter.

5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.

There is a general effort of full implementation of digitalisation in judiciary, considering also interoperability and database connectivity among institutions.

5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

No, there are no such, as we know it.

5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence?

Until now there are no publicly announced plans for use of AI in the judiciary.

5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?

There is no specific ethics code on use of automatic proceedings besides the general ethics code for judges. Every judge alone and judges as a branch are responsible for preserving the independence of judicial decision-making.

5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?

There are no special regulations and safeguards on automatic proceedings. Judges doesn't have control on the outcome and quality of an automatic proceeding.

5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?

Apart from the usual data security, we are not aware on any special security.

5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use artificial intelligence in legal proceedings?

There is no such position in N.Macedonia judiciary.

6. Responsibilities for operating modern technologies

6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

From legislative point of view, these processes are regulated by the Law on courts, the Courts procedure book and procedural laws. Governing bodies regulating implementation are Judicial council and, to some extent, Ministry of justice.

6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

Judges do involve in process of devising these proceedings and tools by giving their opinions and involving in the working groups, but their influence is not on desired level. They are involved in implementing.

6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?

No, this issue is still not addressed in our judiciary.

7. Criticisms and proposals for use and development of modern technology

7.1 Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

Without a shadow of a doubt, future judiciary is defined by the use of modern digital technology and AI. It makes and it will make all proceedings much faster, efficient, cheaper and accurate and we should embrace this and invest in it. Our judiciary and government are undertaking serious efforts in establishing a fully digitized judiciary. The main concerns are under-educated staff and judges and security of the processes, as well issues of digital processes diminishing rights of parties in proceedings.

Shpend Devaja

Judge of Supreme Court of

Republic of North Macedonia

Norway/Norvège

1. Introduction and definitions

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Videoconference

Definition: all kind of hearings which are held via videoconference (including online platforms).

Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

Practising lawyers and their authorized legal assistants shall register as users in the online portal ("Aktørportalen") and shall communicate with the courts through this channel. Use of Aktørportalen is mandatory in both civil and criminal cases, including when submitting claims for legal fees. The mandatory use of Aktørportalen applies in all Norwegian courts/instances.

Aktørportalen is also open (but not mandatory) for self-litigants in cases before the Land Consolidation Court. Access by self-litigants will soon be extended to other court/cases.

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

Yes.

2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

Yes.

No

2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

Yes.

2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

Yes, all files are accessible from home office. Provided judges bring their lap tops home or have access to the case management system via another device.

Almost all files are accessible through a cloud-based system (Aktørportalen).

2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

No, only electronic files are used.

2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution;

No.

2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

E-filing and mandatory use of it is regulated in procedural law.

2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

Mandatory for judges and lawyers and assistant lawyers. Norwegian Courts Administration is presently working on practical solutions to enable self-litigants to use electronic filing, in other types of cases than before the Land Consolidation Court.

2.9 Are different approaches to the use of electronic files/proceedings taken depending on the substance of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

Generally the same approach for all kind of cases.

2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

Generally positive expressions to the use of electronic files and proceedings. But quite critical to the fact that judges quite to the lack of support personel manage the technical solutions. For now the judges not only lead court hearings, but at the same time manage to let parties or witnesses in to the meeting on video, sometimes show documents on screens etc.

2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

Not to my knowledge.

2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

Not to my knowledge

2.13 In your experience, what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them.

Example of advantages:

- E-filing is a secure way of distributing documents.

- Time saving compared to exchange of documents by post..
- Court hearings are more efficient and easier. Looking up electronic documents are simpler.
- Electronic signing saves time and travel costs.

Example of disadvantages:

Practical challenges for judges, as outlined above. Judges need to manage all electronic devices and (often) at the same time precede over the court hearing.

3. Use of videoconference facilities, including online platforms

3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms? Where such facilities are used, in which courts are they used?

In civil cases court hearings may be held in whole or in part as remote hearings when it is specifically determined, or it is appropriate and justifiable. Before the court takes the decision for remote hearing, the parties shall be given the opportunity to make their views known.

In criminal cases court hearings to deal with first-time pre-trial detention shall be conducted with the participants physically present. Other court hearings can be held in whole or in part as remote hearings when it is specifically determined, or the court finds it unobjectionable. Before the court takes the decision the prosecution and defence shall be given the opportunity to make their views known..

At the moment Norwegian courts use webex platform. The solution is used by all Norwegian courts.

3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

Yes, It is possible in all district courts and appeal courts.

3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

In courts there is video conference systems. Witnesses or parties can log on through Webex from a computer or a hand hold device.

3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

The legislation don't make it mandatory to be in court for a court hearing. In theory, or during for example the pandemic, all or some parties could participate from outside a court building. In case of taking part outside court this can be made from home or office. For example a defendant may participate from a lawyers office.

3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

No.

Yes, in Civil Procedure Act.

Yes, in secondary law concerning remote hearings in criminal procedure.

It regulates that remote hearings can take place, where from parties can participate, and how the parties, witnesses etc. shall be noticed.

3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

It is optional. After hearing the parties, the judge can decide to use videoconference if it can be done within requirements of due process.

3.7 What views have been expressed by judges concerning the use of electronic files and proceedings? Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

No major objections. To my knowledge no polls etc are available

3.8 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

Not to my knowledge

3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

Main advantages:

- More flexibility for parties,
- Flexible in times of crisis. Video conferencing proved not only useful, but necessary for access to courts during the Pandemic
- Reduces the travelcosts/climate footprints

Main disadvantages

- Remote meeting on video requires access to the necessary equipment and knowledge of the use of equipment and software.
- Court hearings are vulnerable for technical problems.

4. Use of data tools

4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

A case management system, operated by the Norwegian Courts Administration is available to all courts, and data tools on legislation and precedents are available to all professional judges.

4.2 What kind of tools may judges use? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?

Legislation and international legal sources are available electronically for all judges, and so are also most newer legal text books and precedents. The tools are provided by the judiciary. The use of these data tools are optional for judges

4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

No legislation

4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

Yes

4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

Not available, but as described earlier, these tools are necessary and very helpful in the judges work.

4.6 In your experience, what are the advantages and disadvantages of using data tools? Please describe them.

There are in my opinion no substantial disadvantages..The main advantage is that judges have easy access to updated legislation, precedences and major legal text books etc irrespective of their "working station" (home, office or court room)

5. Forms of automatic proceedings

5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.

No

5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?

No

5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

No

5.4 Are there automatic proceedings for decision-making or to assist decision-making?

No

5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.

Not really. It is being discussed but no concrete initiatives to my knowledge.

5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe

No. Use of artificial intelligence, and will require new legislation

5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence?

No

5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?

No

5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?

No

5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?

No

5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use artificial intelligence in legal proceedings?

It follows from the above that there is no such role at present.

6. Responsibilities for operating modern technologies

6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

The Norwegian Courts Administration

6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

Yes

6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?

See answers under 5

7. Criticisms and proposals for use and development of modern technology

7.1 Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

- It is regarded to be time saving.
- Better transparency of the procedure, especially to the public following court hearings.
- Generally better quality of “document” handling.
- The technology – despite high quality - still vulnerable.
- Lack of support personnel for judges to handle the new technology

Portugal/Portugal

1. Introduction and definitions

The questionnaire is aiming to collect the relevant information as regards the modern technology used within the judiciary in your country.

In this regard, for the purposes of the present questionnaire, the following definitions apply:

Electronic files/electronic proceedings

Definition: the whole or part of process/commencement/issue of process/correspondence of the process with all parties, including court internal administration and/or case management generally is electronic (no paper files or paperwork at all).

Videoconference

Definition: all kind of hearings which are held via videoconference (including online platforms).

Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

Yes, electronic proceedings exist in Portuguese courts. In fact, the Portuguese legal system has been undergoing a digital transformation in recent years, with the implementation of electronic proceedings being a key part of this process.

The use of electronic proceedings in Portuguese courts was introduced through Law No. 41/2013, which came into force on September 1, 2013. This law amended the Portuguese Civil Procedure Code, the Portuguese Criminal Procedure Code, and the Portuguese Administrative Procedure Code, among other legal instruments, to allow for the use of electronic means in the processing of legal proceedings¹.

The implementation of electronic proceedings in Portuguese courts has been gradually introduced, starting with a pilot project in 2007 and expanding to cover all types of legal proceedings over time.

The Portuguese common courts use a digital platform called "Citius" to manage electronic proceedings. This platform allows for the electronic submission of documents, as well as for communication between the parties involved in a case and the court. Electronic proceedings are also subject to the same rules and regulations as traditional paper-based proceedings.

Electronic proceedings also exist in Portuguese administrative courts. Administrative proceedings are managed through the "SITAF - Sistema de Informação dos Tribunais

¹ Several legal instruments have paved this path, as a rule through regulatory ordinances: - [Portaria no. 280/2013, of 26 August](#), regulating aspects of the electronic processing of court proceedings, which is still in force; [Portaria no. 114/2008, of 6 February](#), on the electronic processing of court proceedings - Citius; [Portaria no. 593/2007, of 14 May](#), on the means of electronic signature and computer systems to be used in the practice of procedural acts in computer support by magistrates and by the judicial secretariats; [Portaria no. 642/2004, of 16 June](#), on procedural acts and notifications sent by electronic mail; [Portaria no. 337-A/2004, of 16 June](#), on procedural acts and notifications sent by electronic mail; [Decree-Law no. 202/2003, of 10 September](#). The [Portaria no. 1178-E/2000, of 15 December](#), which, at the time, determined that the procedural documents to be presented in digital form should be presented in 3,5" diskettes or in CD-ROM.

Administrativos e Fiscais" platform, which is similar to the Citius platform used in civil and criminal proceedings.

There are specific requirements for electronic proceedings in Portuguese courts. Some of the key requirements include:

Use of Digital Signatures: All parties involved in electronic proceedings are required to use digital signatures to sign documents. Digital signatures provide an equivalent level of legal validity and enforceability as traditional handwritten signatures.

- **Electronic Filing:** Documents must be filed electronically using the electronic platform. Parties cannot file paper documents, unless specifically authorized by the court.
- **Technical Requirements:** Parties are responsible for ensuring that they have the necessary technology and equipment to access and use the electronic platform. This includes having a computer with internet access and compatible software, such as Adobe Acrobat Reader.
- **Security Measures:** The courts have implemented various security measures to protect the confidentiality and integrity of electronic proceedings. Parties must take reasonable steps to protect their own computer systems and data.
- **Electronic Service of Documents:** The courts use the electronic platform to send electronic notifications to parties through its lawyers.

The requirements for electronic proceedings in Portuguese courts are aimed at ensuring the security, efficiency, and fairness of the legal process. Parties must comply with these requirements to participate in electronic proceedings.

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

The electronic processing in Portuguese courts reached its globalization at the end of 2018, being applied in all procedural areas, in all courts, from the first instance to the higher courts. However, some procedural phases of criminal proceedings are still not covered by the electronic processing²

In 2019 changes were introduced in the code of civil procedure³ to give an undoubtedly electronic character to the processing of cases before the judicial courts⁴, relegating the physical file to a secondary function, of mere assistance to the processing of the case, which should be carried out, whenever possible, electronically.

² namely in the common process (throughout the inquiry and instruction phase), in the special summary proceeding (until the trial phase), in the abbreviated special proceeding (until the process is finished), and in the highly summarized special proceeding (until the court order accepting the application of the sanction). In these cases, the form of presentation of the procedural acts is regulated by [Portaria n.º 642/2004, of June 16th](#).

³ [Decree-Law No. 97/2019 of July 26](#) - Amends the Code of Civil Procedure, modifying the system of electronic processing of judicial proceedings

⁴ Code of Civil Procedure

Article 132.º

Electronic process

1 - The process has an electronic nature, consisting of structured information contained in the information system supporting the activity of the courts and electronic documents.

2 - The processing of cases, including the practice of written acts, is carried out in the information system that supports the activity of the courts, under the terms defined by ordinance of the member of the Government responsible for the area of justice.

3 - In the event of unavailability of the system referred to in the previous number, the acts of judges may exceptionally be performed on paper, with the secretariat proceeding to digitize them and insert them into that system.

4 - The electronic processing of proceedings must guarantee the respective completeness, authenticity and inviolability, as well as respect for the secrecy of justice and for the regimes for the protection and processing of personal data and, in particular, that relating to the processing of data relating to the judicial system .

5 - Communications between courts or enforcement agents and public entities and other legal persons that assist the courts in the context of judicial proceedings can be carried out electronically, by sending structured information and interoperability between the information system supporting the activity of the courts and the information systems of the said entities, under the terms set out in the ordinance of the members of the Government responsible for the area of justice and for the public entity in question.

6 - The process may have a physical support, to be constituted in the terms defined by ordinance of the member of the Government responsible for the area of justice, with the objective of supporting the respective processing.

The processing of cases, including the practice of written acts, is performed in the information system supporting the activity of courts, and the acts of the magistrates, exceptionally in situations of unavailability of the system, may be performed on paper with the subsequent scanning and insertion in that system. It is foreseen that the secretariat will have to digitalize the documents that are submitted in paper format and subsequently insert them in the system.

Although it is established that the procedural documents and the documents attached to them must be submitted electronically (article 144), a limit is established to guarantee that the process is complete and based on truth. The judge is given the possibility of requiring that the documents and/or the originals of the documents be produced on paper, when, for example, he doubts the authenticity or genuineness of the documents or when it is necessary to examine the handwriting or signature of the documents.

Electronic files have become an integral part of the justice system in Portugal and are used for a variety of purposes. Some of the most important uses of electronic files in Portuguese courts include:

- Case management: electronic files are used to manage all aspects of a case, including filing and serving of documents, scheduling of hearings, and communication between parties and the court. This allows for a more streamlined and efficient process, reducing the amount of paperwork and administrative work involved in managing a case.
- Access to information: electronic files make it easier for parties and their lawyers to access case information from anywhere at any time. They can access the electronic files remotely, eliminating the need for physical presence in the court.
- Greater transparency: electronic files improve transparency in court proceedings, as all parties can access the same information simultaneously. This helps to prevent the manipulation or alteration of documents, ensuring greater fairness and impartiality in court.
- Collaboration: electronic files facilitate collaboration among parties and their lawyers, allowing them to share information and collaborate on documents in real-time. This speeds up the process of preparing documents and ensures that all parties have access to the latest information.
- Security and integrity: electronic files are more secure than paper files as they can be encrypted and stored in secure databases. This ensures the confidentiality, integrity, and authenticity of the information.
- Cost reduction: the use of electronic files reduces the costs associated with paper-based processes, such as printing, mailing, and storage.
- Sustainability: electronic files can also promote sustainability by reducing the environmental impact of paper documents and physical storage.

While paper-based files may still be used during the transition period, the ultimate goal is to move towards an electronic justice system, with electronic files as the primary means of communication and storage of information.

2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

Yes, it includes the use of digital signatures. The use of digital signatures is mandatory for electronic documents to have legal value in court, and it is one of the main requirements established by law.

In substance, electronic proceedings in Portuguese courts do not differ significantly from paper files and proceedings in terms of the legal requirements and procedures that must be followed. They have been designed to replicate the traditional paper-based process. The same rules and procedures apply to both electronic and paper-based proceedings, and parties involved in legal proceedings are expected to comply with the same legal and procedural requirements.

2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

Yes, all judges and courts in Portugal are required to work with electronic files, in accordance with the applicable legal framework, and are equipped with the necessary technology and infrastructure to do so.

The use of electronic files and proceedings is, in general, mandatory for all civil, criminal, and administrative cases, and requires all parties involved in legal proceedings to use electronic means to communicate and submit documents to the court.

2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

Judges in Portugal are typically provided with computers and other equipment in their court offices, which they use to access and work with electronic files. These computers are connected to the court's network, which allows judges to access electronic files and communicate with other parties involved in legal proceedings.

Some judges may be able to access electronic files from outside the court office through a virtual private network (VPN) although judges are generally expected to carry out most of their duties within the court premises.

In certain cases, there may be situations where remote access is necessary, whenever the judge needs to review case materials. In these cases, judges are provided with secure access to electronic files from a remote location, using secure virtual private network (VPN) connections or other secure means.

2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

In Portugal, where electronic files are used, paper-based files are generally not used, as the electronic files are considered to have the same legal value as paper-based files.

Notwithstanding the electronic nature of the process required by law, the process may have a physical support, with the objective of supporting the respective processing.

The physical support of the process should only contain the documents, the records and the procedural terms that, being relevant to the material decision of the cause, are indicated by the judge, in a reasoned order in each process, considering them not to be relevant, such as, for example, requests for changing the appointment of a trial hearing, orders and respective compliance acts (aimed at acts of mere procedural management and responses), internal communications, among others ⁵.

2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

The use of electronic files and proceedings in the Judiciary is governed by a set of laws, regulations, and procedural rules. The most important legal framework governing electronic files and proceedings in Portugal are:

- [Law No. 41/2013, of June 26](#), approving the Code of Civil Procedure, which was amended in 2013 to allow for the electronic filing of legal documents and the use of electronic means in legal proceedings.
- [Portaria no. 280/2013, of 26 August](#), regulating aspects of the electronic processing of court proceedings (common courts);
- [Portaria No. 380/2017, of December 19](#), regulating the electronic processing of cases in administrative district courts, tax courts, central administrative courts and the Supreme Administrative Court

⁵ [Article 28 of Portaria No. 280/2013](#), regulating aspects of the electronic processing of court proceedings.

- [Portaria No. 209/2017, of July 13](#), regulating the system for requesting, issuing, providing and consulting the electronic certificate within the scope of proceedings before judicial courts, administrative and tax courts and within the competence of the Public Prosecutor's Office
- [Portaria No. 246/2016, of September 7](#), regulating access to the Information Technology System to support court activities by court administrators and by the Commission for the Monitoring of Justice Auxiliaries and the professional identification document attesting to the status of judicial administrator.

Some of the key legal provisions and requirements related to electronic files and proceedings in Portugal include:

- Digital signatures: the use of digital signatures is mandatory for all electronic documents submitted to the court, and must comply with the technical requirements set out in [Decree-Law No. 12/2021, of February 9](#), ensuring the implementation in the internal legal order of Regulation (EU) 910/2014 on electronic identification and trust services for electronic transactions in the internal market.
- Electronic communication: all communication between the court and the parties involved in legal proceedings must be carried out through electronic means, and must comply with the technical requirements set out in [Law No. 16/2022, of August 16](#) (Electronic Communications Act)
- Electronic storage and archiving: all electronic documents submitted to the court must be properly stored and archived, and must comply with the technical requirements set out in [Portaria No. 368/2013, of December 24](#) which approves the Regulation of Archivistic Conservation of the Judicial Courts and Administrative and Fiscal Courts
- Data processing: processing of data concerning the judicial system must comply with the provisions of the [Law No. 34/2009, of July 14](#)⁶.

2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

The use of electronic files and proceedings in Portuguese courts is mandatory for judges and lawyers, unless in situations excepted by the law.

Whenever it is a case that does not imply the appointment of a lawyer, and the party is not represented, the presentation in court of the procedural acts that must be presented in writing shall be carried out:

- By handing it in at the court office.
- By post (under registration).
- By fax.
- By electronic means.

2.9 Are different approaches to the use of electronic files/proceedings taken depending on the substance of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

In general, the use of electronic files and proceedings in Portuguese courts is standardized and consistent across different types of legal proceedings, regardless of the substance of the case.

2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

The use of electronic files and proceedings in Portuguese courts has been generally well-received by judges, who see it as a significant step forward in modernizing the judicial system and improving the efficiency and effectiveness of legal proceedings.

⁶ to the extent that it does not conflict with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Data Protection Regulation)

However, some judges also expressed concerns about the quality and reliability of the electronic systems used for filing and accessing case information, as well as the potential for technical problems or security breaches.

The system is sometimes slow, and system failures mean that many of the acts to be performed are postponed. Sometimes the practice of judicial acts takes more time when done electronically than manually.

In recent years, the Judicial High Council has made public its demands for control over the IT system of the courts, as a matter of independence of the judiciary⁷. In the last Annual Meeting (2022, Vila Nova de Gaia) the President of the Supreme Court of Justice and of the Judicial High Council, on the theme of "Independence of the Judicial Power", recalled that the control of the tools/platforms by the Judicial High Council is also an expression of that independence⁸.

2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

In a mini-survey conducted among participants in an annual meeting of Judges hosted by the Judicial High Council in 2018, the majority of judges that participated claimed control by the judicial power of the digital platform that manages court cases.

In 2020, the Portuguese Judges' Union Association conducted a survey on judicial activity in the last two weeks of March 2020, amidst the pandemic⁹.

The Permanent Observatory of Justice¹⁰ integrates an international project on the use of technologies by judges in 15 different countries, aiming to understand the attitudes and perceptions of judges in relation to the use of technologies in the courts and to develop a comparative analysis of different jurisdictions at the international level¹¹. The project started in August 2021 and will be completed in March 2023.

Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

Since 2015, several situations that contend with the independence of the judiciary have been identified and are disclosed in the Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, produced as part of an official visit to Portugal between January 27 and February 3, 2015¹².

Additional concerns have been raised regarding the adequate protection of the electronic data mass, in particular given its confidential nature. The Ministry of Justice, through the Institute for Financial Management and Equipment of Justice, is currently responsible for the management and maintenance of the electronic system. Following the 2014 computer crash, some judges and legal experts have publicly expressed concern that an institution within the Executive continues to administer the entire electronic database of the courts, creating avenues for inappropriate and improper interference.

The Special Rapporteur considered that the management and maintenance of the courts' electronic database system should be under the full responsibility of the judicial bodies. This independence from the executive will strengthen the independence of the entire judicial system and its accountability, particularly with regard to the management of confidential information.

Within the measures presented in the so-called "Justice Pact"¹³ which aimed to improve the functioning of the judicial sector (suggested by the President of the Republic Marcelo Rebelo de Sousa, in 2016, during the formal opening of the judicial year), those responsible for that agreement, which was unanimously endorsed, stated that "the control and governance of

⁷ in <https://www.publico.pt/2018/11/29/sociedade/noticia/juizes-querem-mandar-sistema-informatico-tribunais-1852977>

⁸ In <https://www.csm.org.pt/wp-content/uploads/2022/10/XVI-encontro-anual-do-CSM-Discurso-Presidente-CSM.pdf>

⁹ In <https://www.publico.pt/2020/04/03/sociedade/noticia/juizes-trabalham-casa-admitem-dificuldades-1910958>

¹⁰ <https://opj.ces.uc.pt/en/>

¹¹ <https://opj.ces.uc.pt/en/inquerito-internacional-a-juizes-as-sobre-a-utilizacao-de-tecnologias-nos-tribunais/>

¹² In <https://digitallibrary.un.org/record/797665>.

¹³ in <https://eoonline.s3.amazonaws.com/uploads/2018/01/acordos-justica-final-1.pdf>

justice information is, and will increasingly be, the central point of power in the judiciary" and, therefore, as explained in the document, "the control over information cannot be located only in the executive branch, under penalty of jeopardizing the independence of justice". The President of the Republic recognized, already at the beginning of 2021, that although he managed to have the support of all judicial partners, which is very difficult, the political power did not apply this pact very much, in what was easier to apply¹⁴.

2.12 In your experience, what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them.

Electronic files and proceedings can bring several advantages and disadvantages to the Portuguese court system. Here are some examples:

Advantages:

- Increased efficiency: Electronic filing and case management systems can reduce the time and effort required for administrative tasks, such as filing and searching for documents. This can lead to more efficient court processes and faster resolution of cases.
- Improved accessibility: Electronic documents can be accessed from anywhere with an internet connection, which can make it easier for lawyers and judges to work remotely and for citizens to access court records.
- Reduced storage space: Electronic records take up less physical space than paper records, which can help to reduce the need for storage facilities and associated costs.
- Enhanced transparency: Electronic records can help to improve transparency and accountability in the justice system by providing easier access to court records.

Disadvantages:

- Technical issues: Electronic filing and case management systems can be vulnerable to technical issues such as system crashes, cyberattacks, and data breaches.
- Learning curve: Electronic filing and case management systems require some degree of training and familiarity, which can be a barrier for some court staff or legal professionals who are not technologically savvy. In addition, not all court users may have access to the necessary hardware or software to use electronic systems, which can create access barriers for some parties or legal professionals.
- Costs: The implementation and maintenance of electronic filing and case management systems can require significant financial investments.
- Resistance to change: Some lawyers and judges may be resistant to the adoption of electronic filing and case management systems due to concerns about security, privacy, or the impact on traditional legal practices.
- Inequality in access to justice: While electronic records can improve accessibility for many people, some individuals may not have access to the internet or the necessary technology to access electronic records.

3. Use of videoconference facilities, including online platforms

3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms? Where such facilities are used, in which courts are they used?

In Portugal, videoconferencing facilities and online platforms can be used for several types of court proceedings. These include, for example:

- Hearings: Many types of hearings can be held using videoconferencing facilities or online platforms, such as pre-trial hearings, procedural hearings, and some types of trials. This can include both civil and criminal proceedings.

¹⁴ <https://rr.sapo.pt/noticia/politica/2021/01/19/justica-marcelo-admite-que-pacto-de-2016-nunca-saiu-do-papel/222900/>

- Mediation: Mediation proceedings can also be held via videoconferencing facilities or online platforms in Portugal. This can allow parties to participate in mediation sessions from remote locations, which can improve access to justice and reduce costs associated with travel.
- Depositions: Depositions, which are a type of pre-trial discovery process, can also be conducted using videoconferencing facilities or online platforms in Portugal. This can enable witnesses or experts to provide testimony without needing to travel to the courthouse.
- Appeals: In some cases, superior courts may allow appeals to be filed and heard electronically, using online platforms or other electronic filing systems.

Video conferencing is available in all courts, of all instances, at the national level.

3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

Yes, evidence can be taken via videoconferencing facilities and online platforms in all Portuguese courts, whatever the jurisdiction (civil, criminal, administrative) or instance (first instance, appeal or supreme court).

3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

The requirements for the use of videoconferencing or online platforms in Portuguese Courts are outlined in the law (Portuguese Code of Civil Procedure, Portuguese Code of Criminal Procedure, Administrative Procedure Code), as well as in specific regulations and protocols issued by the judicial authorities.

In general, the use of videoconferencing or online platforms in Portuguese Judicial Courts is allowed if it is not possible or feasible for the parties or witnesses to appear in person, or if it is necessary to ensure the proper administration of justice. The court must ensure that the necessary technical support is available, and the parties must be given notice of the use of such technologies and an opportunity to object.

The use of videoconferencing or online platforms must also comply with certain principles, such as the principle of immediacy, orality, and equality, which require that the proceedings are conducted in real-time, that the parties have the opportunity to present their arguments and evidence, and that they are treated equally and fairly.

Moreover, the use of videoconferencing or online platforms is subject to certain conditions and safeguards to ensure the protection of the rights of the parties and the fairness of the proceedings, such as the need to ensure the right to defense, the right to a fair trial, the protection of the rights of the victims, and the confidentiality and integrity of the proceedings.

Although there are no substantial differences in the requirements for the use of videoconferencing between the different procedures, it is possible that specific requirements and procedures for the use of videoconferencing or online platforms may differ depending on the type of proceeding, such as civil, criminal, or administrative proceedings, and on the specific characteristics of each case. This could certainly be the case in cross-border evidence-gathering situations.

3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

The law provides for situations in which certain participants may take part in proceedings held via a videoconference or online platform being outside a court.

However, as with any other form of remote participation, there are certain conditions and technical requirements that must be met for this to be allowed. For example, the electronic means used must ensure the authenticity and integrity of the legal proceedings and must

allow for real-time communication between all parties involved in the hearing. In addition, the use of remote participation must be authorized by the court and agreed upon by all parties involved.

Experts from establishments, laboratories or official services are heard by teleconference from their place of work, both in civil or criminal proceedings¹⁵.

In civil proceedings, witnesses residing outside the municipality where the court or trial is located may be heard by means of technological equipment that allows communication, by visual and audible means, in real time, besides the court, from the municipality or parish facilities, when protocolled, or from another public building in the area of their residence (Article 502 of the Civil Procedure Code). The President of the Republic has the prerogative to be heard at his/her residence or at the headquarter of the respective service. The same happens with the and foreign diplomatic agents who grant similar privileges to representatives of Portugal (Article 502 of the Civil Procedure Code).

The testimony of the parties shall, as a rule, be given in person at the final hearing, except where it is urgent or the deponent is unable to appear before the court. For parties residing outside the court district, or the respective island, in the case of the Autonomous Regions, the regime of hearings through videoconference provided for witnesses shall apply (Article 456 of the Civil Procedure Code).

The Criminal Procedure Code (Article 318), in turn, admits, exceptionally, that the taking of statements from the assistant, civil parties, witnesses, experts or technical consultants may, ex officio or upon request, not be made in person, but may be requested from the judge of another court, by appropriate means of communication, if:

- a) those persons reside outside the municipality where the court of the case is located.
- b) there is no reason to believe that their presence at the hearing is essential for the discovery of the truth; and
- c) serious difficulties or inconveniences, functional or personal, are foreseeable in their travel.

When, for justified reasons, the assistant, a civil party, a witness, an expert or a technical adviser is unable to attend the hearing, the President may, either on his own initiative or at his request, order that statements be taken from them at the place where they are, on a day and at a time to be notified to them (Article 319).

However, although it is admitted that prisoners may give evidence in any enquiry or judicial proceeding, regardless of the location of the court, in the prison where they are, through videoconference, this is, as a rule, prevented to prisoners who assume the legal-procedural quality of defendant in the proceeding in question, or the hearing of the prisoner take place in the proceedings falling within the competence of the supervisory court (competent to enforce the penalties).

It is also important to mention that during the period of the COVID pandemic an exceptional and transitory regime was in force that allowed for the creation of virtual courtrooms in all courts (first instance and higher courts) that allowed participants (judges, lawyers, parties, witnesses) to held proceedings outside the court through remote communication means.

In situations where the conditions to do so in person were not met, the trial hearings, as well as other diligences involving the examination of witnesses, were carried out through adequate means of distance communication, namely teleconference, video call or other equivalent, whenever possible and appropriate, although the statements of the accused or the testimony of witnesses or parties should always be made in a court, unless otherwise agreed upon by the parties, or if proven to be over 70 years old, immunosuppressed or suffering from a chronic disease which, according to the guidelines of the health authority, is considered to be a risk

3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

¹⁵ article 486, paragraph 2, of the Code of Civil Procedure and article 318(1)(a) of the Portuguese Code of Criminal Procedure

Yes, there are laws, regulations, and rules governing the use of videoconferences and online platforms in Portugal. These laws are found in various sources, including the Constitution, procedural law, and other forms of law, including soft law.

Constitution: The Portuguese Constitution does not specifically address the use of videoconferences or online platforms in legal proceedings. However, it does establish the right to a fair trial, which includes the right to participate in one's own defense and the right to be heard. These principles are relevant to the use of remote participation in legal proceedings.

Procedural Law: The main legislation governing the use of videoconferences and online platforms in legal proceedings in Portugal is the "Código de Processo Civil" (Civil Procedure Code) and the "Código de Processo Penal" (Criminal Procedure Code).

Other Forms of Law: In addition to constitutional and procedural law, there are other forms of law that address the use of videoconferences and online platforms in legal proceedings in Portugal. For example:

Soft Law: The European Commission for the Efficiency of Justice has approved Guidelines on videoconferencing in judicial proceedings¹⁶ that provide a set of key measures that States and courts should follow to ensure that use of videoconferencing in judicial proceedings does not undermine the right to a fair trial as enshrined in Article 6 of the European Convention on Human Rights (ECHR) and meets the requirements of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. For cross-border videoconferencing situations, a Guide on videoconferencing in cross-border court proceedings¹⁷, prepared by the Council of Europe, a Guide to Good Practice on the Use of Video-Link under the 1970 Evidence Convention¹⁸, prepared by the Hague Conference on Private International Law, are available online.

3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

The use of videoconferencing in Portuguese courts is generally optional, and its use can be decided by the court on a case-by-case basis. However, there are some situations where the use of videoconferencing may be mandatory or imposed by the court without the consent of the parties.

As it was previously mentioned, experts from establishments, laboratories or official services are heard by teleconference from their place of work, both in civil and criminal proceedings.

In some cases, the particularities of the evidence in the specific case may justify a more forceful application of the principles of immediacy and orality, recommending that the witness testify in person in court. This may be the case, for example, if there is a need to promote a confrontation between witnesses, or if the judge decides to reopen the hearing for a witness to be questioned in person, or if it is technically impracticable to compare witnesses with documents in a hearing conducted electronically.

For example, in certain types of administrative proceedings, such as disciplinary proceedings, the use of videoconferencing may be mandatory under the law. Additionally, in some emergency situations, such as the COVID-19 pandemic, the court may require the use of videoconferencing or other remote communication methods to ensure the safety and well-being of all involved.

3.7 What views have been expressed by judges concerning the use of electronic files and proceedings? Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

We don't have access to specific views expressed by Portuguese judges through polls/soundings regarding the use of videoconferencing in judicial proceedings. However, in general, there are varying views on the use of videoconferencing in courtrooms among judges and legal professionals. Some judges and legal professionals see videoconferencing as a useful tool to enhance access to justice and efficiency in court proceedings, while others

¹⁶ <https://rm.coe.int/cepej-2021-4-guidelines-videoconference-en/1680a2c2f4>

¹⁷ <https://www.consilium.europa.eu/media/30607/qc3012963ptc.pdf>

¹⁸ <https://www.hcch.net/pt/publications-and-studies/details4/?pid=7072&dtid=3>

have expressed concerns about the potential limitations of technology and the impact on fair trial rights, including the ability to properly assess witness credibility and conduct cross-examinations.

These views have been discussed and debated in legal literature and institutional reports. For example, in a 2021 article published by the International Journal for Court Administration¹⁹, the authors discussed the experiences of different countries in implementing remote court proceedings during the COVID-19 pandemic, including Portugal. The author noted that while videoconferencing can enhance access to justice, it also poses significant challenges, such as potential technical difficulties, the need for appropriate infrastructure and equipment, and the impact on fair trial rights.

3.8 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

We are not aware of any official report concerning judicial views on the use and/or utility of electronic files and proceedings

3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

While the use of videoconferencing can offer some benefits, it is important to balance these with the potential drawbacks and ensure that the technology is used in a way that maintains the integrity of the court proceedings.

Advantages:

- **Accessibility:** videoconferencing can make it easier for individuals to participate in court proceedings without needing to travel to the court. This can be especially beneficial for individuals who live far away or have mobility issues. It can also improve access to justice for people who may otherwise have difficulty attending court in person, such as those in remote areas or with disabilities.
- **Cost savings:** The use of videoconferencing can save money on travel expenses, especially when witnesses or experts need to testify from other countries or regions. This can result in significant savings for litigants, court staff, and taxpayers.
- **Efficiency:** Videoconferencing can save time and reduce delays in court proceedings, particularly when participants are in different regions. This can help courts to manage their dockets more effectively and improve the overall speed and efficiency of the justice system.
- **Flexibility:** Videoconferencing can provide greater flexibility in scheduling court proceedings, particularly in cases where participants have conflicting schedules or are located in different time zones.
- **Improved safety:** During the COVID-19 pandemic, the use of videoconferencing has helped to reduce the spread of the virus by limiting the need for people to gather in person. This has enabled courts to continue to function despite public health restrictions and has helped to ensure that people's right to access justice is not compromised during the pandemic.

Disadvantages:

- **Technical difficulties:** Videoconferencing relies on technology, which can sometimes fail, leading to delays or interruptions in proceedings. This can be frustrating for participants and can cause delays in the justice system.
- **Reduced non-verbal communication:** Videoconferencing can limit the ability of participants to read non-verbal cues and body language, which can affect the credibility of testimony or arguments. This can be especially problematic in cases where the credibility of witnesses is a key issue.
- **Distractions:** Participants may be more susceptible to distractions during videoconferencing, which can make it difficult to maintain focus and attention on

¹⁹ Sanders, Anne - [Video-Hearings in Europe Before, During and After the COVID-19 Pandemic](#)

the proceedings. This can lead to errors and oversights in the evidence and arguments presented.

- Reduced formality: The use of videoconferencing can make proceedings seem less formal, which can impact the perception of the seriousness of the case. This can be particularly important in criminal cases where the seriousness of the proceedings must be maintained.
- Privacy concerns: Videoconferencing can raise privacy concerns, particularly in cases where participants are located in public places or other areas where their conversations can be overheard.

4. Use of data tools

4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

Yes, there are several data tools used by the Portuguese judiciary to support decision-making processes. Here are some examples:

On facts:

- SITAF - Sistema Integrado de Informação e Gestão dos Tribunais Administrativos e Fiscais (Integrated Information and Management System of Administrative and Tax Courts): This tool allows judges and court officials to manage cases, issue orders and decisions, and access information related to proceedings in administrative and tax courts.
- CITIUS - Sistema de Gestão Processual (Case Management System): This tool is used by judges and court officials in civil, criminal and labor courts to manage cases, issue orders and decisions, and access information related to proceedings.

Both systems already provide for obtaining automatically information on the parties or other intervenient from public databases (e.g. civil identification, commercial registry, tax authorities), which enable the court to be more swiftly informed, for instance, of the death of a party, the dissolution of a legal entity or the modification of the professional domicile of attorneys, or the alterations introduced in the identification system for parties who are legal entities, which guarantees the univocal identification of these parties and enables the adoption of a set of automatisms that contribute to simplifying and speeding up the work of the court registries.

On law and precedents:

- DRE - Diário da República Eletrónico ²⁰ : (Electronic Diary of the Republic): This tool provides access to legislation, including laws, decrees, regulations, and other legal instruments.
- DGSJ ²¹ : case-law database managed by the Ministry of Justice with decisions given by ordinary and administrative courts.
- Jurisprudência Portuguesa – ECLI ²² : the Judicial High Council in Portugal has a publicly accessible database of case law. This database allows users to search for case law by ECLI (European Case Law Identifier), keywords, case number, court, and date of decision, among other criteria.

4.2 What kind of tools may judges use? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?

Judges in Portugal may use various data tools to assist them in their work, such as legal databases, search engines, and other software applications.

²⁰ <https://dre.pt/dre/home>

²¹ <http://www.dgsi.pt>

²² <https://jurisprudencia.csm.org.pt>

Currently the official information systems supporting the activity of common and administrative courts are developed by an institute of the Ministry of Justice. These tools allow judges to manage cases electronically, access case files, and perform various administrative tasks, and its use is mandatory.

New tools, called *Magistratus* and *MP Codex*, are in an advanced stage of development. They are new interfaces for electronic processing and case handling, for judges (common and administrative courts) and prosecutors, respectively. *Magistratus* includes new features, which include intelligent consultation of processes, the possibility of making personalized notes, managing a personal agenda, among others. The *MP-Codex* integrates, in addition to the procedures already mentioned, interoperability with the procedure at the investigation stage, which, by this means, will join the proceedings in court entirely electronically.

Another example is the SIIP - Integrated Information System for Procedural Proceedings, designed to help the criminal police bodies, the prosecutors and the judges in the task of organization, analysis and presentation of the evidence in criminal proceedings.

The SIIP is a tool that brings together all the elements of the paper-based procedure, constituting a true electronic process, which is essential to speed up consultation, analysis and display of evidence in criminal processes, especially those with a large dimension. It allows to cross-reference data and establish connections between evidence and/or intervenient parts, providing a quick access to the records and is easy to use.

It was created mostly by judges, who made the application available for free use by Portuguese judges, through a protocol signed in 2018 with the Superior Council of the Magistracy, identical to the one that had been granted with the Attorney General's Office in 2018.

In addition to these official tools, judges may also use other data tools at their discretion, such as legal databases on law and precedents, which provide access to legal information and jurisprudence. The use of such tools is generally optional, but judges are expected to use them to the extent necessary to fulfil their duties effectively and efficiently.

The specific tools to be used may be determined by the judge or by the court where the judge is serving. However, the use of official tools provided by the judiciary may be mandatory for certain tasks, such as electronic case management.

4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

In Portugal the Portuguese codes of civil, criminal and administrative procedure contain provisions on the use of data tools in the legal system to manage cases electronically and to support decision-making processes (see answer 2.7)

In addition to constitutional and procedural law, there are other forms of law that govern the use of data tools in the legal system. For example, the General Data Protection Regulation (GDPR) and the Portuguese Data Protection Law regulate the processing of personal data in the legal system.

4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

Yes, data tools can facilitate fact-finding and preparing the judicial judgment. They can help judges access and analyse vast amounts of information and data quickly and efficiently, which can be particularly useful in complex cases or cases involving a large amount of evidence.

Data tools can also assist judges in identifying relevant legal precedents and other relevant legal information, which can help to ensure that their judgments are well-reasoned and based on sound legal principles. Additionally, data tools can improve the consistency and predictability of judicial decision-making by providing judges with access to standardized legal data and analysis.

4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

We are not aware of any official polls/soundings among judges concerning their views on the use and/or utility of data tools.

4.6 In your experience, what are the advantages and disadvantages of using data tools? Please describe them.

The use of data tools system has both advantages and disadvantages.

Advantages:

- Efficiency: Data tools can save time and effort in conducting legal research, fact-finding, and preparing judgments.
- Accuracy: Data tools can help ensure the accuracy of legal research and analysis, as well as reduce the risk of errors in judgments.
- Consistency: Data tools can help ensure consistency in the application of the law and in the interpretation of legal precedents.
- Accessibility: Data tools can facilitate access to legal information, including for people who may not have access to legal resources such as law libraries.
- Cost-effective: The use of data tools can be a cost-effective way to conduct legal research, especially when compared to traditional legal research methods.

Disadvantages:

- Technical difficulties: The use of data tools requires technical expertise and may pose challenges for those who are not familiar with the technology.
- Lack of context: Data tools may not provide the context necessary to fully understand the legal issues at hand.
- Quality of data: The quality of the data used by data tools can vary, and inaccurate or incomplete data can lead to erroneous results.
- Bias: Data tools may incorporate bias, whether intentional or unintentional, into legal research and analysis, which can lead to discriminatory outcomes.
- Over-reliance: The use of data tools may lead to over-reliance on technology, which can reduce critical thinking and analysis skills.

5. Forms of automatic proceedings

5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.

Yes, there are automatic proceedings in use in the Portuguese judiciary. One example of this is the electronic notification system, which is mandatory in Portugal for lawyers and parties who are registered with the electronic justice system.

Under this system, notifications and procedural acts are sent electronically, and the parties are automatically notified via email or SMS when there are new developments in their case. This system helps to streamline the process and reduce the time and costs associated with traditional paper-based systems.

Another example is the electronic filing system, which allows lawyers and parties to file documents and submissions electronically rather than having to submit paper copies. This saves time and reduces costs associated with printing and mailing documents.

There is also the automated enforcement proceedings system, which allows for automatic enforcement of certain types of judgments, such as those related to unpaid debts. Under this system, the enforcement is carried out automatically without the need for court intervention.

Overall, these automatic proceedings help to streamline the judicial process, reduce costs, and increase efficiency.

5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?

There are currently no automatic proceedings for fact-finding in the Portuguese judiciary. Facts are typically established through the examination of evidence presented by the parties, including witness testimony, expert reports, and documents.

Automatically generated facts or evidence, such as those produced by algorithms or other computer programs, are generally not accepted as evidence on their own in the Portuguese judicial system. They may be considered as part of the evidence presented by the parties, but their weight and credibility will be evaluated by the judge or tribunal based on the circumstances of the case and the reliability of the technology used to generate the evidence.

5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

There are no automatic proceedings for ascertaining the applicable law and/or precedent in Portugal. The responsibility of determining the applicable law and interpreting the relevant legal provisions falls on judges and other legal professionals involved in the case. However, legal databases and search engines may be used as a data tool to support legal research and analysis in order to determine the applicable law and/or precedent. Ultimately, it is the responsibility of the judge or legal professional to ensure the accuracy and relevance of the legal sources used in their decision-making.

5.4 Are there automatic proceedings for decision-making or to assist decision-making?

There are no fully automated decision-making proceedings in use in the Portuguese judiciary. However, there are some tools and systems that can assist judges in their decision-making process.

These tools provide judges with access to a vast amount of legal information and can help them identify relevant legal principles, statutes, and case law.

It is important to note that these automated tools are not meant to replace judges or their decision-making process, but rather to support them and facilitate their work. Ultimately, the final decision is always made by the judge based on their legal expertise, knowledge, and interpretation of the law.

5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

The answer to this question is prejudiced in view of the previous replies.

5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.

In recent years, there have been some efforts to modernize and digitalize the Portuguese judicial system. For example, from 2015 to 2022, the Portuguese government launched a Justice Digital Transformation Plan²³, which includes a series of measures to simplify and streamline administrative procedures, including those related to the judicial system. Additionally, the Portuguese judicial system has been implementing new technologies such as e-filing and online case management systems in recent years, which can facilitate the use of data tools and potentially open the door for more advanced automated proceedings in the future. However, at the moment, there are no known specific initiatives to implement automatic proceedings on fact/law/decisions in Portugal.

5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

²³https://justica.gov.pt/Portals/0/Ficheiros/Organismos/JUSTICA/DOCTransformacaoDigitalDaJustica_individuais_9_2_22.pdf

In Portugal, there are no specific laws or regulations that govern the use of artificial intelligence, including automatic proceedings, in the judiciary. However, the use of technology is regulated by general laws and regulations that apply to all sectors, including the judiciary.

The Constitution of the Portuguese Republic guarantees the right to access to justice and the right to a fair trial. The principles of legality, impartiality, and transparency also apply to the judiciary. The Code of Civil Procedure and the Code of Criminal Procedure provide the general framework for judicial proceedings, but they do not specifically address the use of artificial intelligence.

The General Data Protection Regulation (GDPR), which is applicable in Portugal, governs the use of personal data, including data processed through artificial intelligence systems. The GDPR requires that the processing of personal data is lawful, fair, and transparent, and that data subjects are informed about the processing of their data.

The Council of Europe has published recommendations for member states on the use of artificial intelligence in the justice system. These recommendations emphasize the importance of ensuring that artificial intelligence is used in a way that is transparent, explainable, and respects human rights and to establish multidisciplinary teams to oversee the implementation of AI tools, ensure transparency and accountability, and protect fundamental rights. It is important to highlight the "Ethical Guidelines for Trustworthy AI", prepared by an Independent Group of Experts" created by the European Commission, which constitutes an official document on a world scale, with proposals in the field of AI ethics. UNESCO presented the World Agreement on the Ethics of Artificial Intelligence, adopted by the 193 Member States of UNESCO at the 41st Session of the General Conference, held in November 2021.

Overall, the application of laws and regulations to the use of artificial intelligence in the judiciary is still developing, and there is currently no specific legal framework for the use of automatic proceedings. As such, any use of such technology in the judiciary would likely be subject to a case-by-case assessment of its compatibility with the general principles of legality, impartiality, and transparency, as well as considering the recommendations of the Council of Europe to ensure transparency and respect for human rights.

5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence?

The Government recently launched the so-called *Govtech Strategy*²⁴ focusing on artificial intelligence and emerging technologies to transform Justice.

It intends to use the same technology that is at the basis of *ChatGPT*, using a "machine learning" model, in which the computer system will improve its knowledge to inform people about the different services in the judicial sphere and the records that are available via the Internet.

The new strategy, which relies on partnerships with universities and start-up companies in the technological area, will also be applied in the scope of the validation of the authenticity of documents necessary for processes to grant nationality, in which artificial intelligence should speed up the dematerialisation of requests.

The anonymization of court decisions, allowing their public disclosure without jeopardising personal data, is also included in this project. The technology will allow the automation of this process, removing the need to allocate judicial officials to this task, which has been done manually until now.

5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?

As of now, there is no specific ethics code governing the use of automatic proceedings in legal proceedings in Portugal. However, the use of artificial intelligence and other automated

²⁴ <https://govtech.justica.gov.pt/>

decision-making systems is generally subject to the principles of data protection and privacy laid out in the General Data Protection Regulation (GDPR) and other relevant laws.

The Agency for Administrative Modernisation (AMA), as the public institution responsible for promoting and developing administrative modernisation in Portugal, has been providing documents and instruments with the aim of supporting and promoting the progressive and gradual adoption of an ethical, transparent and responsible AI²⁵.

Regarding the independence of judicial decision-making, it is important to note that any use of automatic proceedings must be subject to appropriate oversight and accountability mechanisms to ensure their transparency and fairness. Judges must be able to understand and explain the basis of any automated decision, and they remain ultimately responsible for rendering a legal decision that complies with the law and is based on a thorough consideration of the facts and arguments presented. To preserve the independence of judicial decision-making, it is important that the use of automatic proceedings does not unduly influence or replace the role of judges in legal proceedings. Instead, these tools should be seen as supportive and complementary to the work of judges, providing additional information and analysis that can help inform their decision-making process.

5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?

There are currently no specific regulations or safeguards in Portugal regarding the use of automatic proceedings in legal proceedings.

If automatic proceedings were to be used, it is likely that a judge would still have the final say and control over the outcome and quality of the proceeding. The judge would be responsible for ensuring that the legal sources and relevant facts were accurately and appropriately inputted into the automatic proceeding, and for reviewing and analysing the output generated by the proceeding. The judge would also be responsible for making the final decision based on the legal sources and facts presented in the proceeding, as well as any additional information or evidence presented during the legal proceedings.

5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?

Yes, data security is an important aspect of the use of automatic proceedings. In Portugal, there are several laws, regulations, and guidelines that govern the processing and protection of personal data, including data used in automatic proceedings.

The General Data Protection Regulation (GDPR), which is applicable in all European Union member states including Portugal, regulates the processing of personal data in automatic proceedings. The GDPR requires that personal data be processed lawfully, fairly, and in a transparent manner, and that appropriate technical and organizational measures be taken to ensure the security of personal data.

In addition to the GDPR, there are several laws and regulations in Portugal that specifically address data protection and security. The National GDPR implementing law sets out detailed requirements for the processing of personal data and provides for the rights of data subjects. The Cybercrime Law also criminalizes certain acts related to data security, such as unauthorized access to computer systems and the theft of personal data.

In terms of factual situation, the Portuguese authorities have implemented several measures to ensure data security in the use of automatic proceedings, with secure IT systems and processes to safeguard data used in automatic proceedings.

5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use artificial intelligence in legal proceedings?

In Portugal, the Data Protection Commissioner is known as the National Data Protection Commission (Comissão Nacional de Proteção de Dados or CNPD).

²⁵ <https://tic.gov.pt/documentos/guia-para-uma-inteligencia-artificial-etica-transparente-e-responsavel-na-administracao-publica>

The law No. 34/2009, of 14 July 2009 establishes the legal framework applicable to the processing of data regarding the judicial system.

The responsibility for data processing and application development is distributed among several entities (higher councils, attorney general's office). The powers of the entities responsible for data management are exercised in a coordinated manner, through a Commission for the Coordination of the Management of Data Relating to the Judicial System, composed of representatives of these same entities.

The competence of supervisory authorities does not cover the processing of personal data by courts in the exercise of their judicial functions [Article 55(3) GDPR]. For that reason, the CNPD doesn't have any role in overseeing the use artificial intelligence in legal proceedings when it comes to processing operations of courts acting in their judicial capacity, which is the case.

That does not mean that their activities are not subject to the GDPR, since this would be contrary to Article 8(3) of the Charter of Fundamental Rights (CFR) but rather that the monitoring of personal data by the judiciary should be entrusted to specific bodies within the judicial system of the Member State. Moreover, Article 80 of the Law Enforcement Directive (Directive (EU) 2016/680) states that courts and other independent judicial authorities should always be subject to independent supervision.

At the moment a proposal is being prepared to create a body within the judiciary to assume a supervisory role when the processing of operations of courts or other judicial authorities is at stake.

6. Responsibilities for operating modern technologies

6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

The Ministry of Justice (Ministério da Justiça) is responsible for setting the general policy for the implementation of electronic files/proceedings and data tools in Portuguese courts. The computer systems used to manage court cases and the activity on these platforms is managed by an organ of the Ministry of Justice, the Institute of Financial Management and Equipment of Justice (IGFEJ).

6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

Judges are usually involved only in the later stages of system implementation when the solution is almost produced, with a view to gathering information from the user's point of view, and not in the design and architecture of the programmes.

6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?

In general, judges are not directly involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings. The development of AI systems typically involves a team of data scientists, software engineers, and legal experts who work together to design, build, and test the system.

However, judges may be involved in providing input or feedback on the design of AI systems to ensure that they are aligned with legal and ethical principles, and that they promote fair and impartial decision-making. Judges may also be involved in testing and evaluating AI systems before they are deployed in real-world legal proceedings.

At this moment we've judges collaborating in a project involving AI to provide the anonymisation of court decisions, allowing their public disclosure without jeopardising personal data. The technology will allow the automation of this process, removing the need to allocate human resources to this task, which has been done manually until now, and promote wide publication of judicial decisions at all levels.

7. Criticisms and proposals for use and development of modern technology

7.1 Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

The Portuguese judiciary has discussed several arguments regarding the use and development of modern technology in legal proceedings. Some of the main arguments are:

In favour:

- **Efficiency:** The use of modern technology can help streamline legal processes, reducing administrative burdens and saving time for judges, lawyers, and court staff.
- **Access:** Technology can increase access to justice by making legal proceedings more accessible to individuals who may have difficulty attending court in person due to distance, disability, or other factors.
- **Accuracy:** AI tools can analyse large volumes of data and identify patterns and trends that may not be immediately apparent to human judges, which can improve the accuracy and fairness of legal decisions.
- **Transparency:** AI systems can be designed to be transparent, which can help ensure that the decision-making process is fair and unbiased. This can increase trust in the legal system.
- **Consistency:** The use of AI tools can help ensure that similar cases are treated consistently, reducing the potential for bias or other factors to influence legal decisions.

Against:

- **Bias:** AI tools can perpetuate and even amplify biases that exist in the data they are trained on, which can result in unfair and unjust legal decisions.
- **Reliability:** The use of technology can create technical issues, such as system failures, which can lead to delays and inaccuracies in legal proceedings.
- **Privacy:** The use of technology can pose privacy risks, such as the potential for data breaches or unauthorized access to sensitive information.
- **Complexity:** Some judges and lawyers may not have the technical skills necessary to effectively use and understand modern technology in legal proceedings, which could lead to misunderstandings or errors.
- **Cost:** The implementation of new technology can be expensive and may not always result in the anticipated benefits. This could create financial challenges for some court systems.

The use of modern technology in legal proceedings can bring significant benefits, but also raises important concerns that must be addressed. It is important to weigh the potential benefits against the risks and to design and use technology in a way that promotes fairness, transparency, and justice for all.

Romania/Roumanie

1. Introduction and definitions

The questionnaire is aiming to collect the relevant information as regards the modern technology used within the judiciary in your country.

In this regard, for the purposes of the present questionnaire, the following definitions apply:

Electronic files/electronic proceedings

Definition: the whole or part of process/commencement/issue of process/correspondence of the process with all parties, including court internal administration and/or case management generally is electronic (no paper files or paperwork at all).

Videoconference

Definition: all kind of hearings which are held via videoconference (including online platforms).

Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

A: There is an electronic file concept implemented in the ECRIS system: all the electronic documents related to a file make up the electronic file. The access to this information can be direct, from ECRIS (Electronic Court Registry Information System), or via a third-party application (Dosar Electronic (Electronic File), which also includes TDS - Transmittere Documente în mod Securizat (Secure Document Transmission). "Dosarul Electronic" is one of the third-party applications allowing access to the electronic file). ECRIS and the TDS application contain electronic procedures:

- for summoning and serving procedural documents to natural or legal person parties or their legal representatives,
- for sending decisions via email (directly from ECRIS or via the TDS application).

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

A: At the HCCJ level, the recent files (initiated and/or disposed of in recent years) contain all the documents, including those related to judicial proceedings. Any exception is due to technological limits which do not allow: the transfer between courts of large documents, the rapid transfer of information from the prosecutor's office (indictments are generally large), the storage and transfer of audio-video evidence.

Dosarul Electronic is used to access the file for consultation only by:

- judges, assistant magistrates and prosecutors - via an interface intended for this purpose, and the access is validated using the email address and a verification code received by SMS,

- the parties to files - via an interface intended for this purpose, and the access is validated using the email address and a verification code received by SMS

2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

A: ECRIS includes no digital signature facilities. Dosarul Electronic allows the digital signing of procedural documents and served decisions, bearing the digital seal of the institution. The procedural documents sent electronically are identical to those sent in paper format.

2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

A: We do not have precise information but, based on the information we do have, most of the high courts (especially the courts of appeal) use an application similar to Dosarul Electronic (which allows access to the electronic files in ECRIS). All judges have accounts enabling access to ECRIS and have permissions to access electronic files.

2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

A: Using their own home computers, judges: can draw up certain documents and transfer them to a memory stick or via email, access their work mailboxes, have access to electronic files exclusively through the Dosarul Electronic application and only for consulting documents, but they do not have access to ECRIS. No cloud-based system is implemented at judicial and governmental level.

2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

A: Currently, paper-based files are the basic form. All electronic documents are attached to the file in paper format, all paper-based documents are scanned and attached to the electronic file. It is not possible to estimate the time required to replace paper-based files with electronic ones. There are institutions or parties which cannot comply with electronic judicial procedures at this time. By law, access to justice cannot be restricted.

2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

- A: Articles 154(6) of the Code of Civil Procedure reads as follows “Summons and other procedural documents can also be served by the court registry by fax, email or by other means that ensure the transmission of the text of the document and the acknowledgement of its receipt if the party gave the court the appropriate details for this purpose. Service of procedural documents shall be accompanied by the extended electronic signature of the court, which will replace the court seal and the signature of the court clerk in the mandatory entries of the summons”.
- “Summons and other procedural documents mentioned in paragraph 6 are deemed as served when the system returns a message that they reached the recipient using the details provided by the recipient.”
- Article 163(11)(1) of the Code of Civil Procedure provides that when documents are served as provided in Article 154(6), the message of serving the recipient received from the system constitutes proof of serving. It will be listed and attached to the case file. Moreover, according to Article 165(3), in the case of summoning or serving another procedural document as provided by Article 154(6), the procedure is deemed as

performed on the date entered on the printed copy of the dispatch, certified by the clerk who sent such document.

- The Code of Criminal Procedure also allows, as per Article 257(5), the summoning by email or any other electronic messaging system, with the consent of the person served.
- as per Article 264 of the Code of Criminal Procedure, the other procedural documents can be served in observance with the provisions on summoning. In the case of persons deprived of liberty, the other procedural documents are served by fax or by any means of electronic communication available at the place of detention.

2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

A: The use of electronic files/procedures is optional for lawyers and litigants (acting without the assistance of a lawyer).

2.9 Are different approaches to the use of electronic files/proceedings taken depending on the substance of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

A: There are no different approaches to the use of electronic files/procedures depending on the substance of the legal proceedings.

2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

A: No opinion polls were conducted among judges regarding the use of electronic files and procedures.

2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

A: Answered in the answer to Question 2.10.

2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

A: There are none.

2.13 In your experience, what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them.

A: Advantages: reduction of costs, speed of procedures, transparency of the content of files and procedures.

Disadvantages: standardisation of the content in the sense of restricting information; in the case of computer system errors, certain delays or technical incidents may occur.

3. Use of videoconference facilities, including online platforms

3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms? Where such facilities are used, in which courts are they used?

A: All courts use video conferencing systems, especially in criminal matters, for the hearing of persons deprived of liberty. Video conferences are also used for the hearing of parties in civil matters (according to the regulations, the presence of the party in another court is necessary) and the hearing of undercover witnesses.

3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

A: No.

3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

A: Video conferencing platforms have unitary configurations at the court level (video terminal, video camera), and the communications infrastructure is secured and provided by STS - the Special Telecommunications Service (authorised by law to provide these services).

3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

A: Parties are allowed to be outside a court in the following situations: parties in prison or police custody, parties being heard in another court in the country, parties abroad in a legal institution or with whom an authorised video conference procedure can be initiated; at a party's request, a judge can approve the hearing of a person under other technological conditions.

3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

A: To the best of our knowledge, there are no such regulations.

3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

A: Optional. There is no procedural provision for requesting consent.

3.7 What views have been expressed by judges concerning the use of electronic files and proceedings? Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

A: There are no views or opinion polls among judges on the usefulness of electronic files and procedures.

3.8 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

A: No.

3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

A: Advantages: reducing the costs incurred with bringing persons under arrest to the court, saving time, ensuring procedural procedures.

Disadvantages: none.

4. Use of data tools

4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

A: Power BI is used by the Ministry of Justice for statistical data analysis. Within the HCCJ, the clerks responsible for judicial statistics can use Excel Power Pivot to process statistical data.

4.2 What kind of tools may judges use? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?

A: Not applicable.

4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

A: There are not.

4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

A: Not applicable.

4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

A: There are no opinion polls or views on the use of data tools and no official reports.

4.6 In your experience, what are the advantages and disadvantages of using data tools? Please describe them.

A: Advantages: complex and personalised data processing. Disadvantages: the costs incurred with the software (including updating), the data tools set-up and training (end users, IT department); difficulties encountered during use by end users.

5. Forms of automatic proceedings

5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.

A: There is used an automatic procedure intended for electronic serving of summonses and communications. The clerk configures and validates in the ECRIS system the parties and their service details (name, procedural status, postal address, email address, mobile phone), the summonses or communications together with the documents attached to them, and, using the TDS application, selects the parties to which the necessary documents will be sent automatically, based on their email addresses (summonses, communications, judgments and any other type of documents related to the disposal of the cases are signed using the institution's electronic seal).

5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?

A: There are no automatic fact-finding procedures. Automatically generated facts can be accepted as evidence (e.g. read receipts for the email messages sent by clerks as part of the electronic summoning and communication procedures using the TDS application).

5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

A: There are not.

5.4 Are there automatic proceedings for decision-making or to assist decision-making?

A: There are not.

5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

A: The types of technical and legal requirements for the use of automated procedures are not known.

5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.

A: We are not aware of the existence of such initiatives.

5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

A: There are not.

5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence?

A: We are not aware of the existence of any projects dedicated to artificial intelligence, although there may be ongoing projects (e.g. the future version of the ECRIS system) which include artificial intelligence algorithms in certain clearly defined contexts (e.g. for the automatic translation of hearing records, for the anonymisation of the personal data in the published judgments and original drafts of the judgments, for the complex search of the case law).

5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?

A: There were no special regulations and safeguards with respect to the automated procedures.

5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?

A: There are not.

5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?

A: The automatic procedures also include a security component at the TDS application level as well as at the user level (authentication).

5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use artificial intelligence in legal proceedings?

A: There are not.

6. Responsibilities for operating modern technologies

6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

A: The Ministry of Justice is the owner of the ECRIS system, and the IT department within it coordinates the specific IT activity of the courts. Data tools may be endorsed by this department.

6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

A: Judges can be consulted for these activities.

6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?

A: No.

7. Criticisms and proposals for use and development of modern technology

7.1 Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

A: The advantages and disadvantages of using modern technology in the judicial system were discussed in principle. With regard to Dosarul Electronic and TDS (the summoning and communication of procedural documents by electronic means), the use of video conferencing systems, the majority opinion being favourable to the use of these electronic procedures.

Judge Ph. In Law Rodica Aida Popa
High Court of Cassation and Justice from Romania

San Marino/Saint-Marin

1. Introduction and definitions

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In this regard, for the purposes of the present questionnaire, the following definitions apply:

Electronic files/electronic proceedings

Definition: the whole or part of process/commencement/issue of process/correspondence of the process with all parties, including court internal administration and/or case management generally is electronic (no paper files or paperwork at all).

Videoconference

Definition: all kind of hearings which are held via videoconference (including online platforms).

Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

The San Marino Judiciary and the Government of the Republic of San Marino are investing heavily in economic and human terms in the technological modernisation of the judicial system and judicial procedures. It is a time of transition and strong adjustment.

Today, it is possible for lawyers to file judicial applications by electronic registered mail (T.Notice). Judges may then in turn send scanned decisions and judgements by e-mail, and their filing is certified by the Registrar.

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

Pending the ongoing process of technological modernisation, the procedural law envisages a mixed system. The case file is still in paper format, and the digital file is currently being introduced. Lawyers can file applications by electronic registered mail (T.Notice), while judges can send scanned decisions and judgements by e-mail, and their filing is certified by the Registrar.

2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

The process of technological modernisation also includes the introduction of both the digital file and the digital signature within a reasonable timeframe, although to date these have not yet been fully implemented.

The mixed paper/electronic system applied today makes no procedural difference between electronic and paper filings.

2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

All Judges and Courts currently use such mixed (paper/electronic) system. This homogeneity is facilitated by the small size of the legal system of the Republic of San Marino, which is typical of a microstate, and which allows for a fruitful dialogue between the Courts, and with all the entities involved in the jurisdiction.

2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

This is currently not possible. This need is also being addressed.

2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

As mentioned above, a major technological upgrading process is currently underway, with the active contribution of both the government authorities through dedicated staff and the allocation of financial funds, and of the judiciary, which is constantly engaged in an important accompanying work.

Precisely because this transition and adaptation process is underway, the current system is still mixed (paper/electronic). Ongoing efforts are aimed at replacing paper-based files, in order to achieve full computerisation and digitalisation of the process as quickly as possible.

2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

The main regulations concerning the use of IT procedures were introduced by Decree-Laws initially adopted, in particular, during the pandemic emergency period (Covid-19) in order to allow the safe continuation of judicial activities.

Several technical-practical aspects were then further regulated by implementing and organisational provisions of the Head Magistrate intended for Registry staff and Magistrates.

2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

It is optional.

2.9 Are different approaches to the use of electronic files/proceedings taken depending on the substance of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

There is currently no difference.

It should be specified that the ongoing technological modernisation activity includes an initial testing activity in administrative proceedings, which has already started, and which will then apply to civil proceedings and finally to criminal proceedings.

2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

There is currently a lively and in-depth debate among Judges and lawyers about the benefits, but also the limitations, of using computer and electronic systems in the judicial field.

2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

There are no formal polls. However, it should be noted that the small number of Judges of the San Marino Judiciary, as a Microstate, allows for a continuous discussion between Magistrates and Lawyers with regard to the best judicial practices, and therefore also with regard to the use of IT systems and tools applied to judicial procedures.

2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

The characteristics of the Microstate and the small number of Judges and Lawyers allow for a timely discussion between all those involved in the jurisdiction in order to make the necessary corrections, although there are no official reports.

2.13 In your experience, what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them.

The San Marino legal system is currently going through an important phase of technological modernisation. This transition needs constant attention, especially in this initial phase, because of the innovations it implies.

According to my personal experience, IT tools applied to proceedings benefit the parties and their lawyers, but also the Judges in the management of the file when their physical presence in court cannot be guaranteed. Moreover, precisely for these reasons, these systems made it possible to ensure the continuity of judicial activities even in the midst of a health emergency (Covid-19).

Among the possible disadvantages, I would highlight those related to the risk of reduced authenticity of oral evidence (e.g. testimonies) gathered during proceedings by means of remote hearings using electronic systems.

3. Use of videoconference facilities, including online platforms

3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms? Where such facilities are used, in which courts are they used?

All proceedings can avail themselves of hearings by video conference.

3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

All oral evidence of the proceedings may be taken during hearings by video-conference.

3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

There are no differences between the different judicial procedures.

The requirements are as follows. The hearing must be held in a courtroom, where the Judge, the Registrar and an IT expert are present. The parties and their lawyers may have physical access to the courtroom or by remote connection via video-conference. This connection is made by accessing the same connection platform previously communicated to the lawyers by the IT expert, who then forwards an access link before the start time.

3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

Everyone, except the Judge and the Registrar, may access the hearing by video conference link from outside the Court.

There are no specific places outside the Court. The parties and their lawyers, as well as witnesses, can have access to it from any available location.

- 3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

The main regulations concerning the conduct of hearings by means of video-conference were introduced by Decree-Laws adopted, in particular, during the pandemic emergency period (Covid-19) in order to allow the safe continuation of judicial activities.

Several technical-practical aspects were then further regulated by implementing and organisational provisions of the Head Magistrate intended for Registry staff and Magistrates.

- 3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

It is optional. Without the consent of the parties, a hearing cannot be held by video-conference.

- 3.7 What views have been expressed by judges concerning the use of electronic files and proceedings? Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

At this time of transition, there is currently an in-depth debate among Magistrates and lawyers about the benefits, but also the limitations, of using applied IT systems.

- 3.8 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

There are no formal polls. However, it should be noted that the small number of Magistrates of the San Marino Judiciary, as a Microstate, allows for a continuous discussion between Magistrates and Lawyers with regard to the best judicial practices, and therefore also with regard to the use of technology applied to judicial procedures.

- 3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

In my personal experience, holding hearings by video-conference has had advantages and disadvantages. One of the advantages was to facilitate the parties, lawyers and witnesses in the conduct of the proceedings and in the taking of oral evidence remotely. Moreover, precisely for these reasons, hearings by video-conference made it possible to ensure the continuity of judicial activities even in the midst of the health emergency.

Among the possible disadvantages, I would first of all mention those relating to the technological limitations of the terminals used by the parties, which often entailed connection problems to the detriment of the orderly conduct of the hearing. In addition, there is still the risk of reduced authenticity of oral and witness evidence taken in proceedings through hearings conducted by remote video-conference.

4. Use of data tools

- 4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

With regard to databases and search engines, a major modernisation and adaptation phase is also underway.

As far as the search of laws is concerned, there is already a database and a specific search engine (www.consigliograndeegenerale.com) where all laws adopted by Parliament can be found.

As far as the search of judicial decisions is concerned, all decisions of the Guarantor's Panel (the highest body responsible for assessing the constitutionality of rules) are promptly computerised and published on the dedicated website accessible to everyone (www.collegiogararante.sm).

A specific memorandum of understanding was then signed between the administrative authorities, the Court, lawyers, and the San Marino Legal Institute under which all the maxims of San Marino case law are published on a dedicated website (www.giurisprudenzasm.org).

However, the decisions of all remaining judges are promptly converted into digital format in their entirety and made available to magistrates for their study and research activities. Lawyers can also access them at any time and make copies of judgements in their entirety.

4.2 What kind of tools may judges use? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?

In addition to the public search engines already mentioned (www.consigliograndeegenerale.com, www.collegiogarante.sm and www.giurisprudenza.org) each Judge can also access a folder shared by the Magistrates, containing all the decisions adopted by the Judges, for research and study purposes.

4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

The sources of law that regulate databases and search engines are differentiated.

The search engine for laws (www.consigliograndeegenerale.com) is regulated by ordinary law.

The search engine for judgements (www.collegiogarante.sm) of the Guarantor's Panel (the highest body responsible for assessing the constitutionality of rules) is regulated by the Rules of Procedure adopted by the Guarantor's Panel.

The database of case law maxims (www.giurisprudenzasm.org) is regulated by a specific memorandum of understanding signed in 2019 between the administrative authorities, the Court, the Professional Association of Lawyers and Notaries and the San Marino Legal Institute.

Finally, the database containing the judges' decisions promptly converted into digital format in their entirety, placed in a special shared electronic folder, is regulated by the Head Magistrate's internal provisions.

4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

Databases with judgements published in their entirety allow for an easy search of any precedents applied to the concrete case, and thus can be a useful aid for the judge who has to prepare the judicial decision in the new case.

4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

There are no formal polls. However, it should be noted that the small number of Magistrates of the San Marino Judiciary, as a Microstate, allows for a continuous discussion between Magistrates and lawyers with regard to the best judicial practices, and therefore also with regard to the use and improvement of available databases.

4.6 In your experience, what are the advantages and disadvantages of using data tools? Please describe them.

The availability of modern databases and efficient search engines is crucial, as it allows timely access to judicial precedents applicable to the specific case. Therefore, it is important to carry on with the constant work of updating and modernising the databases and centralised search engines.

This turns out to be even more important in a micro-state jurisdiction, where the timely search for precedents, in relation to the small number of judicial cases, allows the Judge to harmoniously and homogeneously apply the decision, and the private parties to benefit from

the predictability of the outcome of the judgement with a consequent reduction of the judicial demand.

In my personal experience, I have not noticed any disadvantages in this respect.

5. Forms of automatic proceedings

5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.

No, there are not.

5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?

There are no automatic proceedings. There are, however, databases that make it possible to search for judicial precedents applied to similar cases.

5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

No, there are not. However, the available databases make it possible to search for judicial precedents, and thus also to identify, in a uniform manner, the law applied to similar cases.

5.4 Are there automatic proceedings for decision-making or to assist decision-making?

No, there are not.

5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

Not applicable.

5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.

No, there are not.

5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

No, there are not.

5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence?

No, there are not.

5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?

No, there are not.

5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?

No, there are not.

5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?

Not applicable.

5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use artificial intelligence in legal proceedings?

Not applicable.

6. Responsibilities for operating modern technologies

6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

An important phase of transition and technological modernisation of the San Marino judicial system and judicial procedures is currently underway. It was the result of fruitful discussions between the Government, the Judiciary and the San Marino Professional Association of Lawyers, also considering the experience gained during the health emergency (Covid-19), which suddenly forced the jurisdiction to apply IT tools immediately.

Economic resources specifically allocated in the financial laws, but also technological and human resources, are dedicated to this fundamental modernisation process with the active commitment of all those involved, including the Judiciary.

Indeed, the specificities of the Microstate allow for a direct and immediate dialogue between all those involved in the jurisdiction. This dialogue is indispensable in order to be able to effectively continue this process of technological modernisation.

Special working groups with a mixed composition were then set up in order to quickly achieve the computerisation of proceedings. Thanks to the direct impulse of the Judiciary, the internal organisation of the court was also innovated by setting up special offices with IT experts to help with this process.

6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

The current process of technological modernisation also involves the San Marino Judiciary.

6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?

Since the process of creating forms of artificial intelligence has not yet begun, the answer is no.

7. Criticisms and proposals for use and development of modern technology

7.1 Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

The San Marino Judiciary, the Lawyers, the Government and the public administration are strongly committed to the technological and IT modernisation of the San Marino judicial system, to which economic, technological and human resources have been dedicated.

All the stakeholders of the jurisdiction are aware of the importance of this process, and contribute by means of a constant dialogue, made possible and effective by the small size of the legal system of the Republic of San Marino, and by the natural proximity between the users and the institutions typical of a Microstate.

The current technological transition still includes a mixed paper/electronic system, but ongoing efforts are aimed at replacing it in order to achieve digitalisation of the process within a reasonable timeframe.

Constant discussions among the stakeholders of the jurisdiction have highlighted the undeniable advantages of a technological modernisation, but also some critical aspects that

practical experience has revealed during the health emergency (Covid-19): both with regard to the inadequacy of the available technological systems and with respect to the potential risks concerning the authenticity of oral evidence taken through hearings by video-conference.

Finally, with regard to the hypothesis of applying Artificial Intelligence to judicial proceedings, a in-depth and cautious reflection is underway among the stakeholders of the jurisdiction, as well as a comparative study with respect to the experiences of other jurisdictions, in order to be able to understand exactly the potential but also the related risks.

With regard to this, the San Marino judiciary is very attentive to developments in artificial intelligence applied to decision-making processes.

In particular, the Judiciary is interested in and paying attention to both the guidelines outlined in the Ethical Charter on the Use of Artificial Intelligence in Justice Systems and their Environment, adopted on 3 December 2018 by the European Commission for the Efficiency of Justice (CEPEJ), but also with regard to the proposal for a Regulation drafted by the European Commission on 21 April 2021 (*“Proposal for a Regulation of the European Parliament and the Council. Laying down harmonised rules on Artificial Intelligence (AI act) and amending certain Union legislative acts”*).

Slovenia/Slovénie

1. Introduction and definitions

The questionnaire is aiming to collect the relevant information as regards the modern technology used within the judiciary in your country.

In this regard, for the purposes of the present questionnaire, the following definitions apply:

Electronic files/electronic proceedings

Definition: the whole or part of process/commencement/issue of process/correspondence of the process with all parties, including court internal administration and/or case management generally is electronic (no paper files or paperwork at all).

Videoconference

Definition: all kind of hearings which are held via videoconference (including online platforms).

Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

A specialised website e-Sodstvo¹ (e-Courts) enables electronic communication in enforcement of civil cases (e-lzvršba), land registry cases (e-ZK), insolvency cases (e-INS) and in family matters (communication between courts and social services). Civil enforcement on the basis of an authentic document is an informatized procedure where claims can be filed online, with the support of a specific legislative framework, and integrated to the CMS. A simultaneous submission of cases in paper form is not required. In 2021, 99,90 % of those claims were filed electronically; with no limit to the value of the disputed amount in these cases.

The possibility to electronically submit all kinds of documents is provided to enforcement agents, notaries, lawyers, bankruptcy agents, as well as clients and other participants in court proceedings via the courts' website e-Sodstvo (a digital certificate is required). The Supreme Court encourages the electronic submission of documents.

In land registry cases, insolvency cases, court registry cases and family matters certain types of documents must be submitted to court by notaries, lawyers, bankruptcy agents, state authorities and social services in electronic form. In Criminal, Administrative, Civil and Commercial litigious cases, currently efforts are taking place to upgrade the informatized CMS to fully support electronic communication by the end of 2023.

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

¹ Available at: <https://evlozisce.sodisce.si/>

Currently, it is the case in judicial proceedings that are fully digitalised (enforcement of civil cases, land registry cases and insolvency cases).

2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

Yes, the process includes digital signatures.

No, e-proceedings do not differ in substance from paper files and proceedings.

2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

Not all judges and courts work with e-files, but only those working on enforcement of civil cases, land registry cases, insolvency cases and family cases.

Currently, only some judicial proceedings are fully digitised, while in others the development is still taking place.

2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

All judges are equipped with portable computers and suitable means to work remotely (e.g. from their homes).

Currently, Court information systems do not employ cloud-based services for storing of electronic files but use their own ICT environment.

2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

This decision is left to the judges, but in most cases only electronic files are used.

In Criminal, Administrative, Civil and Commercial litigious cases, currently efforts are taking place to upgrade the informatized CMS to fully support electronic communication by the end of 2023. See also the answer to 2.1.

2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

The use of e-files and proceedings is prescribed by the procedural law, governing the mandatory and optional electronic e-filing and e-service: the use of a web portal for e-filing, a secure electronic drawer for e-service and the electronic signature.

2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

It is binding only for professionals (lawyers, notaries, court staff, judges, state officials and insolvency administrators) in land registry cases and in insolvency cases.

2.9 Are different approaches to the use of electronic files/proceedings taken depending on the substance of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

The access and use (studying of cases) of electronic files are provided by a single application regardless of the type of proceedings. However, the IT supported proceedings may partly differ because of the use of different case management systems for different types of proceedings.

2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

Usually, immediately after the introduction of new technologies, systems and workflows judges are reserved, but when they master the new system and unleash its potential, they are confident with it and usually ask for additional features. Therefore, information systems are constantly upgraded according to the requirements of users (including judges).

2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

The development of every information system is governed by a specific project group, usually led by seconded judge(s), with judges as members of the project groups, which assures the relevance of developed system(s). Additionally, peer-to-peer trainings on the use of those systems are carried out, where the users can express their comments, views, and suggestions.

2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

No, but the project group (also comprised of several judges) keeps track on suggestions, comments, and requests of the users, which often end up as requirements for new features.

2.13 In your experience, what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them.

Advantages:

- optimising decision-making processes: on the basis of a functional analysis in planning IT support for a procedure;
- supporting decision-making and the subsequent verification of decisions with the use of data collected by using information support for the proceedings (identifying bottlenecks, lengthy tasks, etc.);
- accelerating decision-making processes by using IT support for court proceedings, for example savings in data entry through the principle of “enter once, use many times”, savings due to easier file tracking, savings due to the automatic generation of frequent writs (by using verified templates), savings due to the optimisation and automation of logistics tasks;
- better organisation of the work due to uniform working methods;
- easier access to data in external records that are required in court proceedings;
- easier access and analysis of data collected in relation to individual proceedings.

Disadvantages:

- continuous system upgrades due to frequent legislative changes that require time and financial resources;
- increased need to recruit engineers to develop and maintain systems;
- increased need to educate system users;
- increased collection of personal data and the associated risk of their protection.

3. Use of videoconference facilities, including online platforms

3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms? Where such facilities are used, in which courts are they used?

The Slovenian Civil Procedure Act, which is also in use in proceedings before Labour, Social and Administrative Courts, determines the requirements for the Court's videoconference in civil matters.

The Slovenian Criminal Procedure Act determines the requirements for the Court's videoconference in criminal cases.

Videoconferencing facilities are used mostly before courts of first instance, especially for the purpose of interrogating the witnesses and the experts. In criminal proceedings videoconferences are held very often.

3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

Yes, in Slovenia evidence can be taken via videoconferencing facilities in all courts (which have suitable equipment). General provisions of Slovenian Civil Procedure Act and Criminal Procedure Act, which present legal base for the decisions of Slovenian Courts, allow taking of evidences via videoconferencing facilities.

3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

Article 114.a of the Slovenian Civil Procedure Act requires the consent of the parties for the videoconference. The videoconference can be used for the Court's hearings and for the purpose of taking of evidence.

Slovenian Criminal Procedure Act provides, that the Court's hearings in criminal proceedings may be held via videoconference (Article 84.a). Court's hearings in criminal proceedings can be held via videoconference 1.) if both parties of the proceedings give their consent for the videoconference, or 2.) if the circumstances of the case require videoconference for the purpose of carrying out criminal proceedings successfully (Article 304.a of Criminal Procedure Act).

According to the Slovenian Criminal Procedure Act accused persons, witnesses and Court's experts may be interrogated via videoconference. Accused persons and witnesses may be interrogated via videoconference on conditions, provided in Article 244.a of the Criminal Procedure Act. According to this Article especially protected persons and anonymous witnesses may be interrogated via videoconference. Accused persons and witnesses may be interrogated via videoconference also upon a request of a competent authority to a foreign state and in cases when there exist other justified reasons why a person is not able to reach or should avoid the interrogating authority. Court's experts are interrogated via videoconference if there are justified reasons why Court's expert is not able to reach or should avoid the interrogating authority (Article 244.a, para. 3 of the Criminal Procedure Act).

The most evident comparison between Slovenian civil and criminal procedure shows, that consent of the parties for carrying out a videoconference is essential (criminal hearings may be carried out via videoconference also without consent of the parties, if the requirements of the law are met).

3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

Yes, it is permissible for the participants of the proceedings held via a videoconference to be outside of a court. No legal restrictions are prescribed.

3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

The laws that govern the use of videoconferences in Slovenia are entailed in our procedural laws.

As already described in the answer to the question No. 3.3. of this questionnaire, Slovenian Civil Procedure Act in the Article 114.a regulates videoconference in civil proceedings. It describes conditions for the use of a videoconference in the civil proceedings, the most important is the consent of the parties.

As already described in answer to the question No. 3.3. of this questionnaire, Slovenian Criminal Procedure Act describes conditions for the use of a videoconference in criminal proceedings in Articles 84.a, 244.a and 304.a.

Slovenian legislation in English language is available at the website: <http://www.pisrs.si/Pis.web/cm?idStrani=prevodi>. Criminal Procedure Act is in Slovenian language called Zakon o kazenskem postopku (ZKP), Civil Procedure Act is in Slovenian language named Zakon o pravdnem postopku (ZPP).

Regarding the application of the rules governing the videoconference in civil and criminal proceedings there is no specific case-law yet.

3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

The use of videoconference is optional.

In civil proceedings the party's consent for the videoconference is obligatory.

In criminal proceedings videoconference can also be mandated by the Court and not only with the consent of the parties. Namely Article 304.a of the Slovenian Criminal Procedure Act allows that a videoconference is held without consent of the parties if the circumstances of the case require videoconference for the purpose of carrying out criminal proceedings successfully.

3.7 What views have been expressed by judges concerning the use of electronic files and proceedings? Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

What views have been expressed by judges concerning the use of (electronic files and proceedings – considered as an error in the questionnaire, because this question is question No. 2.10. of this questionnaire; instead:) videoconferences and/or online platforms? Are there any polls/soundings among judges concerning their views on the use (and/or utility of electronic files and proceedings – considered as an error in the questionnaire, because this question is question No. 2.11. of this questionnaire; instead:) of videoconferencing.

In Slovenia, there are no polls/soundings among judges concerning their views on the use of videoconferencing.

To provide answers to this question the Slovenian Supreme Court, its Analysis and Research Division, conducted a short survey among Slovenian Courts.

The results of the survey show, that what worries Slovenian judges the most is the breach of the principle of the direct adduction of evidence, which could be severely narrowed in cases of examining the evidence, for example the witnesses' testimony via videoconference. Without direct contact there is no direct impression, which is important for a judge especially

when questioning parties, witnesses, and experts. For that reason, videoconferencing is mostly used only when there are no other options, or when a videoconference is more suitable (for example a testimony of protected witnesses).

Judges prefer to perform hearings in person, directly in the courtroom and not via videoconference. But there are also very important positive aspects of the videoconferences in the proceedings, that are undisputed among judges. Especially when there are no other options to have a court hearing, for example when witnesses are abroad, the use of videoconferencing helps a judge to close the case in a reasonable time.

3.8 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

Are there any official reports concerning judicial views on the use (and/or utility of electronic files and proceedings – considered as an error in the questionnaire, because this question is question nr. 2.12. of this questionnaire; instead:) of videoconferencing and/or online platforms? If so, what do they say?

There are no official reports concerning judicial views on the videoconferencing and online platforms in Slovenia.

3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

To provide answers to this question the Supreme Court, its Analysis and Research Unit, conducted a survey among Slovenian Courts.

The Slovenian judges see the advantages and the disadvantages of the videoconferences in the proceedings.

The advantages of using videoconferencing in proceedings are:

- proceedings are faster and more economical;
- videoconferencing is an efficient way to protect vulnerable witnesses (protected or anonymous witnesses; children);
- videoconferencing enables judges to interrogate persons who are for example ill (during recent pandemics) or abroad (soldiers on missions abroad in labour disputes or when the costs of an attendance of a witness at hearing is extremely high or disproportionate) and consequently unable to attend court's hearing;
- many Slovenian courts pointed out that videoconferencing in criminal cases enables hearings that would otherwise not take place due to the lack of prison officers.

The disadvantages of using videoconferencing in proceedings are:

- no direct contact and no direct impressions;
- it is practically impossible for a judge to determine whether a witness is answering alone and without help or suggestions of other persons;
- a judge cannot completely ensure the identity of a witness;
- a dissent of the parties to have a videoconference can disable a court to have a videoconference;
- lots of technical problems and difficulties may appear during a videoconference and there are possible incompatibilities of IT facilities;
- unsuitable or non-existent equipment for videoconferencing at Slovenian courts; for example, for a proper Zoom videoconference a single camera in Court room is not enough; a judge has to be able to see all the participants at once;

- a transcription of a videoconference is time consuming.

4. Use of data tools

4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

On facts:

Court users are provided with electronic access to several official registers kept by other state authorities, for access to data records needed to conduct court proceedings (for example data on citizenship, employment, addresses, taxable income, transaction accounts, ownership of vehicles, weapons, and real estate).

On law and precedents:

- national web portal for publication of legislation and case-law — publicly available
- judicial web portal for publication of the case-law of national courts (first instance courts' decisions are not published online yet) — publicly available
- commercial providers for publication of legislation and jurisprudence — The Supreme Court provides access to the content of one of the providers for all judges and court staff.

4.2 What kind of tools may judges use? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?

Judges can use web applications, provided by the Supreme court or other state authorities. On law and precedents judges can use web pages, provided by the Supreme court or other state authorities or commercial provider. Use of the tools on facts is binding. Use of the tools on law and precedents is optional, determined by a judge.

4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

The Courts Act provides the most general basis for obtaining data from official registers of other state authorities. The legislation governing a particular area of law may specify in more detail which data may or must be obtained ex officio by the court using electronic means.

4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

Yes, they do, but not in a sense of preparing decision's draft by Artificial Intelligence.

4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

No.

4.6 In your experience, what are the advantages and disadvantages of using data tools? Please describe them.

Advantages: Rapid access to data, relevant for judicial decision making.

Disadvantages: Difficulties in establishing or upgrading electronic connections or electronic access to data.

5. Forms of automatic proceedings

5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.

Yes. Processing of enforcement requests for authentic documents (COVL) is automatized since 2008. A decision is automatically generated on the basis of the filled in content and sent to the parties. From that stage on, decision making is again analogue. This is however rule-based, not AI.

5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?

No.

5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

No.

5.4 Are there automatic proceedings for decision-making or to assist decision-making?

No.

5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

No specific requirements.

5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.

Yes. For ascertaining applicable law and/or precedent new search tools are being developed and will be integrated in case management applications. There are plans to identify similarities in received cases to increase the uniform application of law. Tools to assist in document/decision preparation are planned and will integrate such search tools (mainly for the creation of references, common phrases, etc.).

5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

No.

5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence?

Slovenian judiciary is already using AI for speech-to-text and is developing tools for automatized pseudonymisation of decisions.

5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?

No.

5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?

Yes (considering for example the proceeding mentioned under 5.1).

5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?

Yes. Data security is a wide subject, which is covered internally by General security policy guidelines (2021). On the normative level, "Rules on electronic operations in civil procedures and in criminal procedure" (OG 158/20) define, e.g., the types of users, access and associated rights and responsibilities which are relevant for data security.

5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use artificial intelligence in legal proceedings?

Not relevant at the moment.

6. Responsibilities for operating modern technologies

6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

The Supreme Court is responsible for the entire ICT support of all court proceedings and operations.

6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

Judges are involved by default as being project managers, project members or members of the steering committees, having a definitive impact of all ICT projects.

6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?

Yes (see 6.2).

7. Criticisms and proposals for use and development of modern technology

7.1 Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

In the future modern technology will contribute to the quality of the judicial process in larger extent and facilitate digital transformation of the judiciary. The implementation of different AI tools is being considered in Slovene judiciary in the field speech-to-text, anonymisation, knowledge base and intelligent search, online dispute resolution and automatic data extraction, summarisation, and classification.

Use of the modern technology of the next generation opens questions and concerns in the field of adjudication, data protection, organisation and security.

Spain/Espagne

1. Introduction and definitions

The questionnaire is aiming to collect the relevant information as regards the modern technology used within the judiciary in your country.

In this regard, for the purposes of the present questionnaire, the following definitions apply:

Electronic files/electronic proceedings

Definition: the whole or part of process/commencement/issue of process/correspondence of the process with all parties, including court internal administration and/or case management generally is electronic (no paper files or paperwork at all).

Videoconference

Definition: all kind of hearings which are held via videoconference (including online platforms).

Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

Spain is divided into 19 Autonomous Communities, 12 of them have justice administration as their own competence, where material resources and IT projects are part of them. The electronic file is entirely implemented in 13 Autonomous Communities, and partially, in 5 of them.

Electronic file needs IT development to promote electronic communications with parties and lawyers and the collaboration with main stakeholders, Implementation process is also needed.

The Law 18/2011, of July 5, regulating the use of information and communication technologies in the Administration of Justice, establishes some principles in the use of technologies in Justice.

Requirements:

The electronic judicial record is the set of electronic data, documents, procedures, and proceedings, as well as audiovisual recordings corresponding to a judicial procedure, whatever the type of information it contains and whatever the format in which they have been generated.

A general identification number shall be assigned to those documents that may generate a new procedure, which shall be unique and unalterable throughout the process, allowing its unequivocal identification by any judicial body in a data exchange environment.

The foliation of electronic court files shall be carried out by means of an electronic index, signed by the acting judicial office, as appropriate. This index shall ensure the integrity of the electronic court file and enable its retrieval whenever necessary, whereby the same document may form part of different electronic court files.

The transfer of files shall be replaced for all legal purposes by the making available of the electronic court file, with the right to obtain an electronic copy of the file for all those who have it in accordance with the provisions of the Law 18/2011.

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

Yes. In most of the Courts of Spain, the entire judicial proceeding is in electronic files.

2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

The process includes digital signature. The electronic file is linked with an e- signature platform, allowing resolutions to be signed through the platform and be directly part of the electronic file.

In the Spanish judiciary, the competent public administration, shall provide court clerks, prosecutors, forensic experts and other personnel in the service of the Administration of Justice, with electronic signature systems, which may jointly identify the holder of the post and the position and also identify the office or judicial body in which they provide their services.

The substance of electronic proceedings does not differ from electronic files, they are made of documents, resolutions and communications as paper files are. Electronic files make a more secure and agile proceeding due to electronic communications and digital signature.

In relation to the difference between paper and electronic files, among other advantages, the dematerialization of the file means the possibility of immediate or very quick communication. Other advantage is the easier management of the file, the communication of proceedings between Prosecution and Courts without necessity of physical transport, easy options of teleworking.

It contains a main menu with the main functionalities and shortcuts that allow quick access to the documentation. The documents must have a title that allows, before clicking, to recognize the type of document it is (for example, legal action, admission decision, recording of the hearing, etc.).

Nowadays, the Ministry of Justice works for a model based and oriented to data. In that sense, it is important to mention the *project of Law of Digital Efficiency of the Public Service of Justice (currently, in the Parliament -project 121/000116-)*. This project Law would substitute the Law 18/2011.

This Law in project foresees *the entry, incorporation, and processing of information in the form of metadata, in accordance with common schemes*. With purposes, among others, for interoperability, electronic processing, statistics, anonymization and pseudo-anonymization of data and documents. This model allows the sustainability of the e-file, the interoperability between different systems, and the sending of information.

2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

In Spain, the e-file is completely implemented in the territory of competence of the Ministry of Justice (5 Autonomous Communities), and almost totally implemented in the Autonomous Communities that have their own competence on Justice.

2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

In general, Judges have been provided with laptops and surfaces. They can access to the electronic file in the office and out of the office.

The CLOUD-based system is exceptional in Spain, only the Spanish National Court has got the tool where files are allocated to be consulted by judges¹, courts and lawyers, through a secure access and connection.

2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a

¹ The Cloud data base is named CLOUD and was, firstly, implanted for criminal courts.

continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

In accordance with Article 135.4 of the Civil Procedure Law, the writings and documents only can be presented on paper when the parties are not obliged to use electronic means and when the documents are not susceptible to conversion into electronic format. The only parties not obliged to the use of electronic means are natural persons in those proceedings in which is not necessary the intervention of a lawyer. This, doesn't mean the prohibition of printing documents in paper, if convenient, for study, for notes, or for preparing the trial. However, these support papers do not constitute the judicial (electronic) file.

However, some courts have decided to suppress all paper-based proceedings once the electronic file has been implemented, while in other courts, paper-based proceedings are kept in old proceedings until they end. In the courts where electronic files are used, the incoming cases are only in electronic file. Besides, pending cases based in paper are kept until the end of the proceeding.

There is a process of change, the digitalization of Spanish courts began 12 years ago, there is an ongoing process that was enhanced by the pandemic with a special commitment by all institutions.

2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

Yes:

The Organic Law 6/1985, of 1 July, on the Judiciary (art. 230) rules as compulsory the use of IT tools available at justice administration.

The Law 18/2011, of July 5, regulating the use of information and communication technologies in the Administration of Justice, establishes (among other aspects) the general principles in the use of technologies in Justice, the electronic file, electronic identification, electronic processing, electronic documents, electronic communications, and the electronic registry.

The main objectives of Law 18/2011 of 5 July are: a) To speed up the public process thanks to the possibilities offered using technology and communications. b) To generalize the use of new technologies for legal professionals. c) To define, in a regulation with the status of Law, the set of minimum requirements for interconnection, interoperability and security necessary in the development of the different applications used by the actors in the judicial world, in order to guarantee security in the transmission of data and any other requirements contained in the procedural laws.

Law 42/2015, of October 5, amended the Civil Procedure Law to make mandatory, the use of electronic communications. Therefore, the civil procedural law, itself, contains provisions designed for the electronic file. Important Articles of the Civil Procedural Law regulate some aspects of the electronic proceeding - presentation of documents and writings, communications, obligation of professionals and legal persons (not natural persons) to communicate with the Courts electronically, electronic auctions-.

Below the range of law, there are some other regulations:

-With regulatory rank (Royal Decree), Royal Decree 1065/2015, of November 27, about the electronic communications in the Administration of Justice and by which the LexNET system is regulated, regulates the entry of documentation in the Courts by electronic way, including the technical characteristics that the documents must comply with, in order to be incorporated into the e-file.

-As in Spain there are 12 Autonomous Communities with transferred competence on Justice, the *State Technical Committee of the Electronic Judicial Administration* (CTEAJE) is the body of cooperation. This committee involves the General Council for the Judiciary -that, by the way, presides right now the Committee-, the Ministry of Justice, the Prosecution Service, and the Autonomous Communities. The CTEAJE adopt decisions in the Plenaries, and works through working groups that issue documents of soft regulation (handbooks, guidelines) on interoperability, security, electronic identification, electronic transfer, electronic processing. And many other topics related to the right functioning of the electronic file.

2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

In accordance with Article 230 of the Organic Law of the Judiciary, the Courts and the Prosecutor's offices are obliged to use any technical and electronic means, available to them for their activity and exercise of their functions.

According to the Civil Procedural Law, the use of electronic communications is compulsory for Courts, for legal persons, and for professionals (Lawyers, and *Procuradores*). Not for citizens -natural persons- (that can communicate in paper in those proceedings in which they do not need lawyer). This means the entry of writings and documents directly to the electronic file.

2.9 Are different approaches to the use of electronic files/proceedings taken depending on the substance of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

The electronic file is based on the same approach for all jurisdictions.

However, there are specialized applications for some particular functions of some jurisdictions. For example, in Criminal Cases, the System for Administrative Records to Support the Administration of Justice (*SIRAJ*) ensures the electronic recording of Judgements and Precautionary Measures, and their immediate communication to the Security Forces. Another example: in the Contentious-Administrative jurisdiction, the *file uploader* is designed to allow sending an administrative file from Public Administration to the Court.

2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

In general, Spanish judges are in favor of the implementation of electronic files and proceedings.

2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

No. The Ministry of Justice recently launched some surveys to assess the level of satisfaction on the implementation of Digital Justice, but only on the implementation.

2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

In the CGPJ there is a committee or commission on IT.

2.13 In your experience, what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them.

My experience on the matter is positive. At first it is difficult to adapt to, but in the end, the advantages are important. Sometimes a mismatch occurs, but once detected it is solved.

In general, the advantages are important: the possibility of immediate or very quick communication; the easy management of the file, the communication of proceedings between Prosecutors and Courts without need of physical transport, easy options for teleworking, etc.

3. Use of videoconference facilities, including online platforms

3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms? Where such facilities are used, in which courts are they used?

All Spanish Courts have video conference facilities and an online platform developed. In some cases, facilities are shared by several courts.

As a general rule, the videoconference has been established by Article 229 of the Organic Law for the Judiciary, as a tool, when needed, for statements, interrogations, testimonies, confrontations, explorations, reports, ratification of expert opinions and hearings. All kind of Courts can use videoconference.

The use of the video conference depends on the judicial decision of each Court based on reasons of public utility, public security, public policy, or any other condition, where physical presence can be burdensome or damaging and, in particular, in the cases where a minor is concerned.

At the legal level, Law 3/2020, of September 18, *on procedural and organizational measures to deal with COVID-19*, though for COVID circumstances, determined to carry out procedural acts preferably by videoconference.

At the technological level, the *Virtual Desktop for Digital Interaction (EVID)* has been launched: It allows civil servants a set of functionalities to manage a videoconference. In 2022, numerous functional enhancements have been included in EVID. For example, document signing while video conferencing, and a system of electronic - non cryptographic - identification.

3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

Yes, evidence can be taken via video conference. Witness declaration, legal experts, hearings can be held by video conference if the judge authorizes it. Interventions of persons can be carried out by videoconference, including the functionality of signing electronically a document, while the videoconference continues.

The System for Administrative Records to Support the Administration of Justice (SIRAJ) allows the Judge to know immediately the criminal record of an accused. And vice versa, it allows the police to know any judicial measure, moments after it is registered by the Court.

3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

Video conference shall allow two-way and simultaneous communication of image and sound and visual, auditory and verbal interaction between two persons or groups of persons who are geographically distant, ensuring in all cases the possibility of contradiction of the parties and the safeguarding of the right of defense, when so agreed by the judge or court.

The *Letrado de la Administración de Justicia* of the Court –Court office- that has agreed the measure shall accredit from the judicial seat itself the identity of the persons who intervene by means of the videoconference, by means of the prior remittance or direct exhibition of documentation, by personal knowledge or by any other suitable procedural means.

Regarding the differences between proceedings, currently, under the force of the Law 3/2020, of September 18, on measures to deal with COVID-19, the main speciality is in the criminal jurisdictional order, where the physical presence of the defendant is necessary in trials for serious crimes. The physical presence of the investigated or accused person, at their own request or their legal defense, is also required at the hearing for prison or in trials when any of the accusations request a prison Judgement of more than two years. When the physical presence of the accused or the investigated is arranged, the physical presence of his lawyer will also be necessary.

Regarding technical requirements, Law 18/2011 (in force) foresaw a separate videoconferencing legal regulation. However, this regulation has not been carried out yet.

The *Project of Law on Digital Efficiency of the public justice service* contain more specific regulation. It establishes the obligation of Public Administrations to provide videoconference systems that ensure compatibility, interoperability, and compliance with data protection regulations. In addition to that, this Law in project regulates new concepts, as the notion of *secure access points* (devices with some technological requirements) and *secure places* (spaces that, in addition to technological requirements, have public officials to assist the parties, and guarantees of security and autonomy in the declaration).

- 3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

The Judge or Tribunal must be physically in their official site. The other participants can be outside of the Court.

In the case of prosecutors, the Procedural Criminal Law, Article 306 rules that, where the necessary technical means are available in the judicial bodies, the public prosecutor may intervene in the proceedings of any criminal procedure, including the appearance, under Article 505, by means of videoconferencing or any other similar system allowing two-way and simultaneous communication of image and sound.

Regarding the lawyers, if authorized by the judge, they can intervene by video conference, except for the physical presence of the accused at felony trials. It is recommended to be, if not in the Court, where the hearing or trial is held in a room close by, even though it is not compulsory and in most of the video conferences held parties and lawyers are at their offices or places.

- 3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

To the regulatory situation, described in question 3.3, an important mention must be added: the *Guide for the celebration of telematic Judicial Proceedings* (General Council for the Judiciary, 21 February 2021).

It contains recommendations and good practices structured in several blocks: internal actions of the Courts, external actions (with or without the intervention of citizens), confidentiality, publicity and technical requirements contained in an Annex -with the proposal of self-evaluation-.

This includes that the technological means used to carry out telematic procedural acts comply with minimum security requirements, in accordance with the provisions of the Judicial Interoperability and Security Scheme (EJIS).

- 3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

The videoconference is foreseen in the Organic Law for the Judiciary as a possible tool. The norm makes the tool available and possible to use, as an option. Law 3/2020, of September 18, on procedural and organizational measures to deal with COVID-19, in the field of the Administration of Justice, establishes videoconference as preferential -with exceptions in criminal cases-.

The Law in project (Project of Law of Digital Efficiency of the Public Service of Justice) subjects this realization to clearer norms of electronic identification (with reference to Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification).

- 3.7 What views have been expressed by judges concerning the use of electronic files and proceedings? Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

I am not aware of the existence of specific surveys on the matter.

The surveys carried out so far by the Council for the Judiciary, ask, generically, about the satisfaction with the material means.

- 3.8 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

There are reports and guidelines of the General Council of the Judiciary, as Institution. I have referred to them when answering the previous questions.

3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

In my Court, the use of videoconference is not frequent. Sometimes some expert or testimonial evidence is practiced. There is usually no problem in practice. The practice of evidence by video conference is usually carried out when the parties agree about this method.

In general, the use of video conference is a useful tool for the public services, avoids commuting, saves the costs and time of it. Is an effective measure for public security, leaving prisoners at prison for hearings, and makes easier the exercise of Justice.

4. Use of data tools

4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

There is an IT system for precedents of the General Council for the Judiciary. The *Judicial Documentation Centre (CENDOJ)* is the technological centre of the General Council of the Judiciary. The Judicial Documentation Centre is a technical body of the CGPJ, whose functions are the selection, organization, treatment, dissemination and publication of legal, legislative, jurisprudential and doctrinal information.

The Data Office belongs to the Ministry of Justice. The objective is to exploit the information that the Ministry of Justice has got, in order to improve the management and application of public policies. The office lines of work are: Citizen information portal, data laboratory, which seeks to help resolve conflicts, providing complex analytical information, laboratory of Artificial Intelligence techniques, and Advanced dashboards.

The Ministry of Justice works for a model based and oriented to data. In that sense, as mentioned in question 2.3 the project of Law of Digital Efficiency of the Public Service of Justice (today, in the Parliament – project 121/000116) foresees a model with a wider use of metadata.

4.2 What kind of tools may judges use? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?

In addition to the system described in the previous question, the CGPJ facilitates the access to private legal databases, as well as the access to legal journals and books.

4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

The Organic Law of the Judiciary contains the specific regulation on data protection in the Administration of Justice.

The current regulation of data use, in Law 18/2011, mainly refers to its security and protection.

The approach of the Law of Digital Efficiency of the Public Service of Justice Project is broader. As mentioned before, it has provisions for a data-oriented electronic system, with greater use of metadata, which allows the file to be more sustainable, and facilitates interoperability. This means more possibilities and a more complete and specific regulation.

The computer and communication systems used in the Administration of Justice will enable the exchange of information between judicial bodies, as well as with the parties or interested parties, in structured data format, in the terms that are determined in the applicable technical regulations, defined by the State Technical Committee for Electronic Judicial Administration.

4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

No.

4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

I am not aware of their existence.

4.6 In your experience, what are the advantages and disadvantages of using data tools? Please describe them.

In my opinion, the use of databases is essential. All my decisions are always based on prior consultation of legal databases, in which I search for the applicable law, precedents and doctrine. Today, the legal reality is very complex and requires the consultation of databases in order to find the appropriate solution.

5. Forms of automatic proceedings

5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.

Not in the judiciary system, although few exceptions.

However, some automatic applications that help the judiciary are able: *Textualización de grabaciones* or textualization of recordings, which enables to process video or audio files with the aim of extracting the corresponding text from the oral interventions made in trials, hearings, and recorded appearances, in an automated way. The tool is based on neural learning techniques and is integrated with the recording systems of the courtrooms. It offers greater agility in the management of information and is integrated with the Horus Viewer for the visualization of contents.

In 2022, four new systems, based on cutting-edge Artificial Intelligence technologies, big data and deep neural networks, have been made available to users in order to improve the agility and efficiency of Justice.

-Legal dictation, that enables the professionals of the Administration of Justice, especially magistrates, judges, lawyers of the Administration of Justice and prosecutors, the possibility of quickly and accurately carrying out specialized transcriptions of legal texts using the recognition software of voice and translation

-Forensic dictation, that improves the daily work of the professionals of the National Institute of Toxicology and Forensic Sciences (INTCF) and the Institute of Legal Medicine (IML,) increasing their productivity and speeding up their work, since it allows them to dictate medical reports up to three times more fast with a maximum precision and agility.

-Document classifier, that allows the processing of the documents that make up a file (individually or jointly), providing ease and/or cost savings.

-Document anonymizer.

The Ministry of Justice has launched successful automation projects, such as the *Cancellation of criminal records* and the granting of *Nationality by residence*, and for Spanish people of Sephardic origin.

5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?

No, there aren't.

5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

No.

5.4 Are there automatic proceedings for decision-making or to assist decision-making?

No.

5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

In accordance with the current Law (Law 18/2011), Article 42, in case of automated action, the definition of the specifications, programming, maintenance, supervision and quality control and, where appropriate, the audit of the information system and its source code, must be established by the State Technical Committee of the Electronic Judicial Administration.

The Law in project extends the degree of guarantees (automated actions can be identified, traced and justified; it is possible to perform the same actions in a non-automated manner; it is possible to disable, revert or leave without effect the automated actions).

5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.

There are some studies and projects about automatic proceedings. As an example of the ongoing process, there is a specific proceeding in the contentious administrative courts and in small claims.

Work has been done between the Ministry of Justice and the Autonomous Community of Catalonia, for proactive communications of evictions to Social Services electronically, so that these services can look for a habitational solution. This initiative is not, at the moment, in use.

5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

The guarantees for the use of artificial intelligence techniques would be, at least, those for automated actions (questions 5.5).

In this issue, it should be taken into account that European countries are attentive to the work of the European Commission (EU) for an AI Liability Directive.

And also, to the work of the Committee on Artificial Intelligence (CAI) of the CoE, whose tasks include examine the feasibility and potential elements of a legal framework for the artificial intelligence, based on Council of Europe's standards on human rights, democracy and the rule of law.

5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms or artificial intelligence?

There are pilot projects developed about automatic applications like auctions, nevertheless the automatic proceedings projects need to have a further development before their implementation.

5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?

No

At the moment, in Spain, the automated proceedings are related only to clear administrative actions or for support tasks.

5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?

Yes, always.

The general norms are explained in question 5.5.

5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?

Yes. First, the right to guarantee the security and confidentiality of the data that appears in the files, systems and applications of the Administration of Justice, is recognized in the Law in force (Law 18/2011). The use of information by the systems of Justice must comply with the Organic Law 15/1999, of December 13, Protection of Personal Data, and with the special norms that the Organic Law of the Judiciary establishes for the Administration of Justice data protection staff. In this line, the competences that correspond to the Administration of Justice data protection staff, are exercised by the General Council of the Judiciary, in case of jurisdictional purposes.

This protection is strengthened by the Project of Law of Digital Efficiency of the Public Service of Justice, with constant direct references to both, the national Law and the Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data. In addition to that, special rules have been established in the project for new practices, such as the prohibition of recording and reproduction by individuals of trials held by videoconference.

5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use artificial intelligence in legal proceedings?

In general, it ensures that the principles established in the Personal Data Protection Law are complied with (Legality, Purpose, Proportionality, Quality, Security, Adequate level of protection, etc.).

6. Responsibilities for operating modern technologies

6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

In Spain, the competences on resources (human and material, including IT resources) for the Justice is of the Ministry of Justice, and of the Autonomous Regions to which this competence has been transferred.

The State Technical Committee of the Electronic Judicial Administration (CTEAJE) includes these Administrations, and also, the Council of the Judiciary and the Prosecutor's Office, to make decisions on common requirements for the IT system. The composition of its bodies is established in the Royal Decree 396/13, de 7 de junio, regulating the Committee. It is, basically, as follows: chaired by the Secretary of State for Justice and the Vice-President of the General Council of the Judiciary, in accordance with a biennial rotation. The rest of the members being the following: The Vice-President of the General Council of the Judiciary. The Prosecutor of the Chamber, head of the Support Unit. One member for each of the Autonomous Communities with powers in this area, with the rank of Director General, at least.

On the other hand, in accordance with article 230 of the Organic Law of the Judiciary, it is the General Council of the Judiciary or the State Attorney General's Office, which can address instructions to judges and prosecutors, respectively, regarding the use of electronic systems.

6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

Yes. In different forms. The working groups of implementation of the e-file of course include Judges. The General Council for the Judiciary has representatives in the working groups of the CTEAJE, and actually, presides this body.

6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?

There are Judges in the role of advisors, and taking part in the working groups of the CTEAJE.

But right now, as mentioned before, the automatic proceedings are related just to administrative aspects.

7. Criticisms and proposals for use and development of modern technology

7.1 Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

In Spain, at a congress held in Burgos (2022), the judges concluded:

- New technologies must be used to facilitate the activity of judges.
- It is possible to use artificial intelligence to help the judges, but not to replace them.
- An effort is needed to provide judges with the appropriate computer equipment. Computer equipment should be last generation.
- Procedural management systems must be approved and compatible in all the territories of the Autonomous Communities.
- There should be computer technicians available for the judges, to solve the application problems that may arise.

On the other hand, the most discussed issues are:

Some judges think that evidence by video conference should be exceptional. In general, and always adopting the due guarantees, they highlight its usefulness, for example, to take a statement from the prisoners from the Penitentiary Center without moving them to the judicial building. However, they highlight the risk that, during the conference call, for example, the witness may be receiving instructions during his statement by means that cannot be easily detected. This risk could be avoided if the witness testified from another judicial building, but not if he is allowed to testify from his home or workplace.

Some judges believe that videoconferencing makes it difficult to find the truth. They believe that in the hearing before the judge, the questions are asked in a more direct way and it is easier to reach the truth.

I think, these opinions are reasonable and, therefore, the use of videoconference to practice evidence or to hold a trial should be exceptional.

In the criminal field, holding a trial by videoconference must be motivated by, and obey certain causes: security, public order, witness protection, etc. Guarantees must be articulated so that the communication between the lawyer and the defendant is effective.

In all other cases, I believe that the videoconference should only be used when there is an agreement between the parties of the process. At my Court, we only admit videoconferencing when there is an agreement between the parties. Usually the parties agree.

Finally:

Judges are not opposed to the use of artificial intelligence technologies, as long as they are intended only to assist the judge, not to replace him.

The judges think that the use of artificial intelligence technologies can be useful, for example, to facilitate the assessment of the evidence or to assess the risk in precautionary measures. But the final decisions must be agreed by the judges.

In my opinion, replacing the judge's decision, with a decision adopted using artificial intelligence techniques, could be contrary to the right to effective judicial protection.

Sweden/Suède

1. Introduction and definitions

The questionnaire is aiming to collect the relevant information as regards the modern technology used within the judiciary in your country.

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Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

Yes. Electronic files and electronic proceedings exist. There are some specific requirements, for example when it comes to archiving.

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

A judgement in all cases except criminal cases of first instance courts must be printed on paper and signed by the judge. Other documents can be digital. If a party has a written plea, the court usually scan and upload the document and when the case is closed, delete the document. Later this year, it will be possible to sign a judgement digitally in all cases (which means all judgements will be digital).

2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

The digital service Sign and Send Documents Digitally currently supports BankID and Freja eID+ as electronic identifications (e-IDs) for private individuals. In district courts (courts of first instance) judgements in criminal cases must be signed by a digital signature.

2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

Yes, all judges and courts work with electronic files.

2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

Today each judge has a laptop. It is possible to work from your home, for example when he or she is writing a judgement. The judges can access the same electronic files from home as in the office. However, the judge normally works at the court's premises.

- 2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

Please look at 2.2.

- 2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

The most important regulations are the procedural rules.

- 2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

Judges are bound to use electronic files. Electronic files and proceedings are to a certain extent optional for litigants and their lawyers. The same rules for electronic files/proceedings apply for litigants acting without the assistance of a lawyer.

- 2.9 Are different approaches to the use of electronic files/proceedings taken depending on the substance of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

No.

- 2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

The judges generally support the use of electronic files and proceedings.

- 2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

No. But normally judges participate in the development of new digital systems.

- 2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

The Swedish court administration has made calculations of the benefits of some electronic services that we have developed. These show that several of our digital systems result in significant cost savings for the courts. But we also know that it is expensive to support electronic files and proceedings.

- 2.13 In your experience, what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them.

It is both time and cost efficient. It reduces the risk of errors. In a state of crisis, for example war or power outages, it is more risky.

3. Use of videoconference facilities, including online platforms

3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms? Where such facilities are used, in which courts are they used?’

Court proceedings are always held in in a courtroom where the judge/judges need to be present. Participation via videoconferencing by parties, lawyers or witnesses is permitted only after approval from the court or the presiding judge.

3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

Yes. It can be taken in every court, but it requires a decision by the judge. There are no legal limitations to what evidence can be taken via video.

3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

It is always the presiding judge who decides if it is appropriate for a certain participant to attend the proceeding via video. Usually, this decision is taken after a request by the person in question to attend this way, often due to a long distance to the court where the proceedings are held. As for the requirements, see the answer to question 3.5 where the applicable law is included. There is no right for a person to attend the proceedings via video, and the decision that he or she must attend in person cannot be appealed.

3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

As stated in 3.1, there are no proceedings held via video or online in Sweden. The proceedings themselves are always held in a physical courtroom. The participants who have been given permission to attend via video or online may, however, be outside a court. This applies to everyone. There is a possibility to attend via video in another court (one closer to where the person is), but they can also attend online using their own computer or phone from their own homes or any other suitable location. If a participant was to connect to the hearing from a less suitable location (in public, too noisy, etc) it would be up to the presiding judge to decide if they could remain in the proceedings this way or to instruct them to go somewhere else.

3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

Yes, the procedural laws in Sweden contain provisions on the use of video during proceedings. Chapter 5 section 10 of the Code of Judicial Procedure and section 14 of the Law on Administrative Procedure (as regards the parties in a case) states:

Anyone who is summoned to participate in a meeting before the court must appear in the courtroom or where the meeting is otherwise held.

If there are reasons for it, the court may decide that the person who is to participate in a meeting can participate by audio transmission or audio and video transmission. The judge presiding in the court may decide on the matter if it arises during a session.

When deciding whether there are grounds for participation through audio transmission or audio and video transmission, the court, or the presiding judge, shall take particular account of

1. the costs or inconveniences that would arise if the person who is to participate in the meeting has to appear in the courtroom,
2. if someone who is to participate in the hearing feels afraid to be present in the courtroom,
3. if it can be assumed that someone who is to participate in the meeting is being pressured, and
4. if it is necessary for security reasons.

Participation according to the second paragraph may not take place if it is inappropriate with regard to the purpose of the person's attendance and other circumstances.

- 3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

The rules are optional and are used by the discretion of the judge. As the proceedings always takes place in the court, the parties and witnesses can always choose to attend them in person. If a party has an opinion regarding someone else attending via video they can voice these opinions to the court, and they can be taken into account when the decision to allow that participant to attend via video. The court is not, however, bound by the parties opinion.

- 3.7 What views have been expressed by judges concerning the use of electronic files and proceedings? Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

Please look at 2.11.

- 3.8 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

Please look at 2.12.

- 3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

Please look at 2.13.

4. Use of data tools

The meaning of the term "data tools" is not entirely clear to us. Do you mean software? Due to this uncertainty, we find it difficult to give an answer.

- 4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.
- 4.2 What kind of tools may judges use? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?
- 4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.
- 4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

- 4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?
- 4.6 In your experience, what are the advantages and disadvantages of using data tools? Please describe them.

5. Forms of automatic proceedings

- 5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.

There are no fully automatic proceedings. There are semi-automatic proceeding as regards data transfers between the courts and other government agencies, mostly in criminal cases.

- 5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?

There are automatic proceedings to some extent. Validity of evidence is governed by laws and legal principles and does not differ regarding automatically generated facts or non-automatically generated facts.

- 5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

Yes, for ascertaining the applicable law but not for identifying precedent.

- 5.4 Are there automatic proceedings for decision-making or to assist decision-making?

No.

- 5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

Technical requirements are: reliable, accurate and accessible data as well as the proper infrastructure and software. Legal requirements are: lawfulness of automatic proceedings and/or decision making.

Advantages of automatic proceedings could be faster and more effective proceedings, less strain on court employees, empowerment of case parties etc. Could be advantageous on cases where the parties agree, for instance mutual divorce. Disadvantages could be less trust in the courts and their decisions, incorrect decisions, adverse effects on fundamental rights (the right to be heard etc).

- 5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.

No, no such plans.

- 5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

No explicit laws governing the use of artificial intelligence yet but it is in the works on both EU and on a national level.

- 5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence?

Yes, there are a number of ongoing projects regarding artificial intelligence.

- 5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?

There is no ethical code. Independence of judicial decision-making is governed by applicable laws hence there is no automatic or semi-automatic proceeding without explicit legal grounds.

- 5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?

A judge always has the final saying in all decisions. Automation is only used in parts of proceedings, they are never fully automated. There is always a human (judge) in the loop.

- 5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?

Yes, there is no automation regarding data without explicit legal grounds and sufficient IT and information security measures in place.

- 5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use of artificial intelligence in legal proceedings?

Don't see the Data protection officer as someone overseeing the use of artificial intelligence other than in the development or training of artificial intelligence where vast quantities of data (sometimes personal data) is required. As regarding the adherence to data protection laws there is the principle of finality that is interesting for the DPO to govern regardless of the use of artificial intelligence or not. Legal grounds for the use of data is always a requirement. Once the purpose of the processing of data is determined the use of artificial intelligence does not contradict that purpose as long as the output of the system fulfils its intended purpose.

6. Responsibilities for operating modern technologies

- 6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

This is a co-operation between the Swedish National Courts Administration and the chief judges. Also, the judges participate in the development of new digital systems.

- 6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

Yes, the judges participate in the development of new digital systems.

- 6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?

7. Criticisms and proposals for use and development of modern technology

- 7.1 Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

The judges generally support the use of electronic files and proceedings.

Türkiye

1. Introduction and definitions

The questionnaire is aiming to collect the relevant information as regards the modern technology used within the judiciary in your country.

In this regard, for the purposes of the present questionnaire, the following definitions apply:

Electronic files/electronic proceedings

Definition: the whole or part of process/commencement/issue of process/correspondence of the process with all parties, including court internal administration and/or case management generally is electronic (no paper files or paperwork at all).

Videoconference

Definition: all kind of hearings which are held via videoconference (including online platforms).

Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

Yes. Within the framework of National Judiciary Informatics System (UYAP) all files and transactions are managed in an electronic environment. Within this scope, electronic file system is used. It is used according to a user-based authorisation restriction system. With Law No. 5070 on Electronic Signature, all files and decisions issued on UYAP and signed through secure electronic signature bear same legal consequences as the ones that are manually signed.

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

Yes. All files, all court processes, the files prepared within the scope of investigations, correspondences with other institutions and organizations are present both in files and in electronic environment. Except for large-scale maps, sketches etc., all files that are compatible with electronic environment are kept in electronic files.

2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

Yes. This process includes use of digital signature and digital signature bears the same consequences as wet ink signature. It is not different from paper file and paper works within this context.

2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

Yes. All judges and prosecutors effectuate processes and transactions related to file in an electronic environment.

2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

Yes. Through the VPN system on the laptops provided by the Ministry, judges have the same access as in courthouse. All litigants have access to the information and files of the case-file to which they are a party through UYAP portals.

2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

Yes. The use of electronic file is present throughout the country, however as certain legislations oblige use of paper for certain files and due to user habits and usual work-flow, paper is still being used. All works and processes to decrease paper usages continue. An estimated calendar is not foreseen for this process.

2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

Yes, there is. The use of UYAP has its place in the Criminal Procedure Code (Law No. 5271), the Code of Civil Procedure (Law No. 6100) and in other laws and bylaws. In these legislations the UYAP informatics system is defined and the followings are regulated: The fact that data will be saved and kept on UYAP in cases where litigation and other adjudication proceedings are carried out in electronic environment; how to bring a lawsuit in electronic environment; what kind of procedure will be followed in exceptional cases where the hard copy of a file in electronic environment is needed; the fact that the secure electronic signed file registered on UYAP will be valid in case it is in conflict with the file with wet ink signature. In addition to abovementioned legislations, the Directorate General for Information Technologies of the Ministry of Justice has issued circulars for UYAP applications.

2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

While it is obligatory for judges, prosecutors and judiciary personnel, it is optional for the litigants and lawyers.

2.9 Are different approaches to the use of electronic files/proceedings taken depending on the substance of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

There is not any difference. Electronic files are used in all adjudication works regardless of the subject of the case.

2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

There is not a recent study on this. However, during the transition phase from physical to electronic environment, judges showed resistance. Seeing its benefits and the speed it added to adjudication, their resistance turned into satisfaction.

2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

The Directorate General for Information Technologies of the Ministry of Justice has not conducted any recent survey.

2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

The Directorate General for Information Technologies of the Ministry of Justice has not issued any recent report.

2.13 In your experience, what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them.

The advantages of use of electronic file/transactions: Safety, speed, transparency, accessibility to accurate information, decreasing bureaucracy, to be able to work from anywhere, time saving, economising, protecting the environment.

Disadvantages: Judicial activities are hindered for a short-term because of rare system interruptions that happen in extraordinary situations.

To explain the issue in detail within this framework;

The use of electronic file has many advantages. It enables swift access to all files and makes it possible for all litigants to make transactions remotely without having to go to courthouse. It is possible for lawyers to bring lawsuit remotely through UYAP. The citizens are able to examine files through UYAP citizen portal, present information and file to their file and carry out their appeal procedures without going to courthouse. For judges and prosecutors, they are able to electronically examine the files and exchange correspondences with other institutions and organizations. Additionally, they are able to carry transactions that must be carried out within the jurisdiction of another courthouse or the Office of Chief Public Prosecutor through rogatory and instruction on electronic file system. The inspectors (who are from the profession of judge or prosecutor) are able to carry out their inspections swiftly on UYAP, in addition to going to the related area. It is seen that in this way it is possible to save time and other resources. Exceptional interruptions that occasionally happen can be counted as a disadvantage as they slow down judicial processes.

3. Use of videoconference facilities, including online platforms

3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms? Where such facilities are used, in which courts are they used?

Conference systems (e-hearing and SEGBIS (simultaneous and electronic audio-visual informatics system) are used in trial phase of civil proceedings and in prosecution and investigation phases of criminal proceedings for statement-taking.

3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

Evidence can be collected by taking statements from suspect, accused and witness during investigation and prosecution processes. According to the Code of Civil Procedure, SEGBIS shall be used if the parties give consent and the court approves.

3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

As it is abovementioned, SEGBIS shall be used if the parties give consent and the court approves. In civil courts, it is possible to hold e-hearing meetings if the demand of the lawyer is accepted by the judge. While the e-hearing system is used only in civil procedures while taking the lawyer's statement, SEGBIS is used, along with civil procedures, for taking statement from the suspect or the defendant who is a party to the investigation and prosecution.

Within the context of criminal prosecutions and investigations, SEGBIS is used for individuals who are outside the jurisdiction of the Office of Chief Public Prosecutor and the court or for

individuals who are not able to appear before the court. This opportunity can be used if the excuse presented is accepted. It can also be used for individuals who are in penal institutions and treatment institutions. These individuals can be heard and participate in hearings from where they are through SEGBIS. Additionally, if it is possible to use video and audio communication techniques, all kinds of transactions made during the investigation or prosecution phase are recorded with SEGBIS within the scope of the procedures and principles in the laws. However, if victimised children, individuals who cannot be brought to trial and whose testimony is obligatory for revealing the truth testify, registration is mandatory.

3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

If the defendants, complainants and witnesses are outside the jurisdiction of the trial court in adjudications carried out through video-conferencing and online platforms, they are able to participate in trials to which they are a party through SEGBIS. However this situation does not apply to the judge of the court. In other words, the judge cannot hold a hearing outside the courtroom by connecting with SEGBIS. Lawyers are able to participate in Civil Court trials through online platforms from where they are. As it is mentioned above, suspects or defendants are able to participate in hearings from penal institutions or treatment institutions through SEGBIS.

3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

Yes, there are. Within the framework of e-Hearing, the basis and procedures related to the principles and procedures of the participation in hearings and procedural transactions by the lawyers of the case are regulated. Within the framework of SEGBIS, necessary principles and procedures related to the hearing of individuals who are required to be heard by the public prosecutor, judge or the court through audio and image informatics systems, recording and storing of these hearings and establishing the necessary technical infrastructure are regulated.

To explain this in detail, according to the Constitution of Turkish Republic, it is the duty of the judiciary to conclude trials as quickly as possible and at minimum cost. It is regulated in the Constitution that everyone has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through legitimate means and procedures. Within this framework, in the Code of Civil Procedure and Code of Criminal Procedure that regulate the rules of procedural law, the usage area of SEGBIS is regulated. In addition, there is by-law on the use of SEGBIS. In the abovementioned laws, the methods and conditions of using SEGBIS by the subjects of adjudication are explained. The relevant by-law regulates the necessary principles and procedures related to the hearing of individuals who are required to be heard by the public prosecutor, judge or the court through audio and image informatics systems, recording and storing of these hearings and establishing the necessary technical infrastructure.

3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

It is not obligatory to use video-conferencing in criminal investigations and prosecutions. The individuals that are explained in detail in above-mentioned must be outside the jurisdiction of the related court and must be in a position to be unable to appear before the court. However, in criminal investigations/prosecutions, if victimised children, individuals who cannot be brought to trial and whose testimony is obligatory for revealing the truth testify, it is obligatory to record the hearing through SEGBIS. According to the Code of Civil Procedure, the

SEGBIS shall be used if the parties give consent. For the Criminal Procedure, the court or the prosecution authority do not ask for the consent of the parties. It is essential to use necessary means to conclude investigations and adjudications in a swift and fair way.

On the other hand, in civil procedures, it is possible to hold e-Hearing meetings if the demand of the lawyer is accepted by the judge.

3.7 What views have been expressed by judges concerning the use of electronic files and proceedings? Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

A recent official study has not been prepared by the Directorate General for Information Technologies of the Ministry of Justice.

3.8 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

A recent official study has not been prepared by the Directorate General for Information Technologies of the Ministry of Justice.

3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

The advantages of video-conferencing systems: Thanks to hearing of individuals who are not in the hearing hall via video-conferencing regardless of place and time, adjudication activities accelerated, work-load of judiciary and adjudication expenses decreased. With recording the hearings and rewatching these records, fine details are not overlooked. Secondary traumatization of individuals from fragile groups are prevented through hearing in private environments via video-conferencing systems. Thanks to these systems, the individuals whose identities should be confidential give statement via deterioration of their images and voices without any safety concern.

The disadvantage of the hearings held through video-conferencing systems is that judicial activities are hindered for a short-term because of rare system interruptions that happen in extraordinary situations.

4. Use of data tools

4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

In 1999 The Ministry of Justice laid the foundations of the UYAP Informatics System which is an e-justice system designed to ensure the use of digital technologies in providing judicial services.

This system is run by the Directorate General of Information Technologies in cooperation with the stakeholder bodies and its main objective is to provide our justice system with faster, more reliable, more economical and more transparent judicial services.

UYAP Informatics System is an integrated system which covers the Constitutional Court, the Court of Cassation, the Council of State, regional courts of justice, regional administrative courts, the Justice Academy of Türkiye, the Council of Judges and Prosecutors, the affiliated and related institutions of the Ministry of Justice (all the administrative and judicial justice across the country including the chief public prosecutions, courts, execution and bankruptcy offices; Institution of Forensic Medicine, Institution of Prisons and Detention Houses Workshops, the directorates of probation) Other institutions and organizations along with the external integrations are provided with data exchange within this framework. UYAP Informatics System is operational in all the judicial units across our country and thereby all kinds of judicial and administrative proceedings can be conducted electronically.

In the light of all the above information to define the UYAP Informatics System, it is an information system constituting the e-justice pillar of e-government which provides all the

units, public institutions and organizations, lawyers and citizens covered by the system with judicial services electronically by making use of all the technological developments required in the e-transformation process.

The systems such as the distance learning system, sound and image processing systems as well as the modules operational within the scope of each unit and displays on those modules are equipped with information security system and integrated with other institutions and organizations via UYAP Informatics system.

All the information and displays-screens in the UYAP Informatics System is developed and updated periodically due to certain reasons including legislative amendments and new display updates.

Additionally, with the UYAP Legislation Application the user can easily access the legislation or case-law they are looking for as follows:

The daily updated legislation; the Supreme Judicial Jurisprudence exceeding 38,000 by the criteria including "Legislation Type, Legislation Name, Legislation Number, Legislation Content, Date and Issue of Official Gazette"; by type of case law, text content, name of department/board, base number, decision number, concept to be searched.

Also the followings can be reached with the UYAP Legislation Application;

- Up-to-date legislation with daily updates.
- Previous version of the amended legislative texts
- Questioning the Legislation and Jurisprudence according to the text content
- Decisions of the Constitutional Court
- The decisions of the ECtHR on Turkey
- The precedent decisions of the Court of Cassation and the Council of State
- The decisions of the Court of Disputes

4.2 What kind of tools may judges use? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?

The precedents can be accessed rapidly by means of the file content and higher judicial decisions search systems. Using these search systems are optional and on the initiative of judges. By means of the integrations in the UYAP system all the data needed can be reached instantly.

4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

No.

4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

Yes.

4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

There is no such official work recently conducted by the Directorate General of Information Technologies of the Ministry of Justice.

4.6 In your experience, what are the advantages and disadvantages of using data tools? Please describe them.

The precedents can be quickly accessed via the file content search and higher court decisions search systems. These are optional and on the initiative of judges. Again, thanks to the integrations within the UYAP system, all the data needed can instantly be accessed. It has no disadvantageous aspect.

5. Forms of automatic proceedings

5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.

Many procedures regulated previously are all automatically done. Moreover, the system includes various smart warning systems for informing the users. For example, in the case of opening a file without paying case fee, the relevant judge is notified of this. And the Central Monitoring System (MTS) is necessarily used for the subscription commitments. From the outset to the final stage of the monitoring process all the procedures are automatically done.

5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?

There is no such proceedings in use. However, works are in progress for establishing decision support mechanisms (e.g. determination of inconsistencies in the indictment via artificial intelligence)

5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

There is no such automatic processing.

5.4 Are there automatic proceedings for decision-making or to assist decision-making?

The works are in progress for facilitating acts and deeds of judges concerning the indictment and decision processes.

5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

Automatic procedures are done technically under the Personal Data Protection Law and so personal information of any citizens cannot be accessed uncontrollably, and thereby the privacy protection is ensured. However, as stated in the Article 38 (A) of the Criminal Procedure Law, UYAP informatics system is authorized in all kinds of automatic procedures relating with the administration of justice. Therefore, all the automatic procedures are done as intra-system actions. Under the established rules like “use of conscientious conviction” in the judicial context, contrary to the case of “supersession of human being”, pure “human centred” perspective is held.

5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.

Smart Assistant-Artificial Intelligence Chatbot; In order to enable the artificial intelligence chatbot application, as the one being used by the e-sale portal since 2021, to be available in other portals, separate systems have been set up for each of those portals. After completing the trainings on the artificial intelligence for Institution Portal and Citizen Portal, the chatbots became available.

Execution Archive Scanning (OCR-YZ); According to the planning of the Directorate of Execution Affairs, the archive scanning procedures still serving across Türkiye are those that were firstly introduced in some pilot units in January 2022.

Slang and Object Detection in Images; In order to solve the problems and confusion while loading the images of the estates and assets offered for tender on e-sale portal, certain services were developed to detect the 81 types of object and slang/aggressive words in the text contents of the loaded images by analysing via Artificial Intelligence. These services taken live in October 2022.

- 5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

There is no such legislation.

- 5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence?

Digital Transformation Office of the Presidency of Turkey published the National Artificial Intelligence Strategy which states that works on ethical guidelines for artificial intelligence are in progress.

- 5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?

There is no law but the National Artificial Intelligence Strategy was published and as this document states, works on ethical guidelines for artificial intelligence are in progress. Automatic processes are not decision makers but designed to facilitate/accelerate the proceedings by giving advice to the judges and prosecutors who are the decision makers. Therefore, automatic processes have no effect on the independence of judicial decision making.

- 5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?

Automatic processes are not decision makers but designed to facilitate/accelerate the proceedings by giving advice to the judges and prosecutors who are decision makers. Thus whether these advices are observed or not will be under control of judges and prosecutors.

- 5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?

Data Access is permitted via the role-based identity management systems only to the persons and units authorised by law. At the stage of automatic process, the resource data used as training data is both stored and processed by the Personal Data Protection Agency (KKVK) under the Personal Data Protection Law. All kinds of software or systems, including artificial intelligence based ones which we developed and carry on, and thereby any access or any attempt to access by whom, when and to which data, all are continuously monitored by the relevant units via certain methods such as the digital logging and active monitoring.

- 5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use artificial intelligence in legal proceedings?

There is no such status.

6. Responsibilities for operating modern technologies

- 6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

The Council of Judges and Prosecutors, the Ministry of Justice, the Turkish Grand National Assembly, Higher Judicial Authorities.

- 6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

Judges and prosecutors are represented at the works conducted by the above mentioned authorities. Moreover, the users give their feedback, including demands, complaints and suggestions, about the implementation process.

6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?

Judges and prosecutors give their feedback, including demands, complaints and suggestions, about the implementation concerning the creation process of the artificial intelligence forms.

7. Criticisms and proposals for use and development of modern technology

7.1 Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

Regarding the use of artificial intelligence in the judicial system, there are some concerns about the human to be superseded by the artificial intelligence. But, it is targeted to design the artificial intelligence projects for our system in a way to provide support to the judicial roles avoiding such supersession of human being.

Ukraine

1. Introduction and definitions

The questionnaire is aiming to collect the relevant information as regards the modern technology used within the judiciary in your country.

In this regard, for the purposes of the present questionnaire, the following definitions apply:

Electronic files/electronic proceedings

Definition: the whole or part of process/commencement/issue of process/correspondence of the process with all parties, including court internal administration and/or case management generally is electronic (no paper files or paperwork at all).

Videoconference

Definition: all kind of hearings which are held via videoconference (including online platforms).

Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

Since 2017, electronic document circulation system - the "Unified Judicial Information and Telecommunication System", - has been introduced into the Ukrainian judicial system, in order to ensure the exchange of documents in electronic form between courts, between the court and the participants of the court proceedings, between the participants of the court proceedings, as well as recording the court proceedings and participation of the participants in the court proceedings in the court session in the videoconference mode.

Since October 2021, separate modules of this Unified judicial information and telecommunication system, namely, "Electronic cabinet", "Electronic court" and videoconference subsystem, have already started operating.

Gradually, at the legislative level, laws are adopted that contribute to the development of this system and its introduction into procedural legislation.

The procedural legislation of Ukraine does not envisage such a concept as "electronic proceedings", as this is related to the fact that judicial proceedings in Ukraine are carried out in paper form only.

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

Currently, not all court proceedings in Ukraine are in electronic files.

At present, the "Electronic court" module allows participants in the court proceedings to submit documents to the court in electronic form, as well as to send procedural documents to such participants in electronic form, along with documents in paper form

in accordance with the procedural legislation of Ukraine. The users can send to the court any documents and materials in electronic form provided for by the procedural legislation of Ukraine.

- 2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

Yes, the "Electronic court" module provides for the possibility of putting an electronic digital signature on procedural documents.

- 2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

Judges and courts in Ukraine currently do not work with electronic cases to the full. Almost all cases are in paper form. The parties to the case can send procedural documents in electronic form through the "Unified Judicial Information and Telecommunication System", yet they are attached to the case in printed paper form.

- 2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

Currently, judges have access to the "Unified Judicial Information and Telecommunication System" only from their workplace. Accordingly, judges can attach, sign with an electronic digital signature and send a court decision to the Unified Register of Court Decisions only when they are at their office computer.

- 2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

In Ukraine, almost all court cases are in paper form. If the parties to the case sent a procedural document in electronic form through the "Unified Judicial Information and Telecommunication System", its copy is printed and attached to the case files.

The judicial system is still in the stage of transformation to electronic justice. Representatives of the judicial system of Ukraine and other branches of government in their speeches constantly emphasise the need for a faster transition from a "paper" to an "electronic" court. However, at the moment, due to various factors (including martial law in Ukraine, lack of proper material and technical support, shortage of staff, high workload of courts, etc.), full transition to electronic proceedings does not appear to be possible.

- 2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

Yes, there are.

At the legislative level laws are adopted in Ukraine, which amend the procedural codes for the purpose of introducing and using electronic proceedings. For example, in 2021, amendments were introduced to the Code of Criminal Procedure of Ukraine, which established the legal basis for the application of the information and telecommunication system of pre-trial investigation in the activities of participants in criminal proceedings.

Also, the Regulation on the procedure for the functioning of individual subsystems (modules) of the "Unified Judicial Information and Telecommunication System", which was approved by the Decision of the High Council of Justice, defines, in particular, the procedure for holding procedural actions in electronic form applying subsystems (modules); peculiarities of the application of other software in the courts and bodies of

the judiciary in the transition period before the start of the operation of the Unified judicial information and telecommunication system as part of all subsystems (modules).

- 2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

The use of electronic files/proceedings in Ukraine is not binding.

As for the use of electronic proceedings by the litigants, according to information available on the Internet (<https://zib.com.ua/ua/151108.html>), the statistics of one of the courts of the administrative jurisdiction of the city of Kyiv for January 2022 show that only 3 % of claims were submitted through the "Electronic Court", and the rest were received by mail or directly through the court registry. A similar situation was observed in local courts of general jurisdiction. Lawyers also rarely used the "Electronic Court" when submitting procedural documents.

- 2.9 Are different approaches to the use of electronic files/proceedings taken depending on the substance of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

No, they are not used. The procedure for making procedural actions in electronic form using the subsystems (modules) of the "Unified Judicial Information and Telecommunication System" in Ukraine is defined in the procedural codes, as well as in the Regulation on the procedure for the functioning of individual subsystems (modules) of the "Unified Judicial Information and Telecommunication System", approved by the Decision of the High Council of Justice.

- 2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

In general, judges are positive about the electronicisation of the judicial system, as they understand that electronic proceedings should become the main tool for overcoming legal nihilism with the help of ensuring open and accessible justice, speeding up the terms of consideration of disputes and improving the quality of judicial acts, transparency of the judicial system. However, along with this, there are certain concerns as to the readiness of the legal community and the judicial system of Ukraine as a whole to introduce information computer technologies into the Ukrainian judiciary, in view of the low level of development of information technologies in the judiciary of Ukraine, including in the material aspect.

- 2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

In Ukraine, sociological surveys are periodically conducted among judges, lawyers, prosecutors and other citizens regarding the use of electronic proceedings.

- 2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

Currently, no such official reports have been found in the public domain.

- 2.13 In your experience, what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them.

The advantages of electronic proceedings can definitely include the fact that electronic proceedings significantly increase the efficiency of justice as a whole, simplifies access to the case of its participants, and also saves organisational, financial and time costs associated with sending case files from one court to another and participants' familiarising with them.

At the same time, despite positive aspects of electronic proceedings it does have some shortcomings. Among them one can mention the fact that electronic proceedings requires high level of protection of information, restriction on its application as to

specific categories of disputes, as well as its inaccessibility for specific categories of citizens (age, property etc.)

3. Use of videoconference facilities, including online platforms

- 3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms? Where such facilities are used, in which courts are they used?

Currently, the legislation of Ukraine provides for the possibility of holding all court proceedings through videoconferencing, and it has already become a common element of judicial proceedings in Ukraine. The possibility of holding a court hearing in this format started to be actively used in all courts back in times of establishment of quarantine and the introduction of restrictive anti-epidemic measures in order to prevent the spread of the acute respiratory disease COVID-19 on the territory of Ukraine.

- 3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

In the procedural legislation of Ukraine, there is such a concept as "electronic evidence", i.e. it is the information in electronic (digital) form containing data on circumstances relevant to the case, in particular, electronic documents (text documents, graphic images, plans, photographs, video and sound recordings, etc.), websites (pages), text multimedia and voice messages and other data in electronic form.

- 3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

The requirements for holding a court hearing in videoconference mode are almost identical in all proceedings. For instance, in order to hold a session in videoconference mode, the participant of the case must submit an application for participation in the court session in videoconference mode no later than 5 days before the court hearing. One of the programs, with the help of which one can participate in a court hearing in videoconference mode, is the "EASYCON" service. In order to participate in the court session remotely through this program, one needs to register and get authorisation in it with an electronic digital signature.

- 3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

According to the current legislation of Ukraine, judges administer proceedings only at the premises of the court. However, the parliament is currently considering a draft law to introduce a possibility of judicial proceedings in videoconference mode outside the court premises in the event of a threat to the judge's safety, as well as establishing the possibility for a witness, interpreter, specialist, expert, court secretary to participate in a court hearing in videoconference mode outside the court premises.

As for the other parties to the case, their participation in the videoconference mode can be held both through another court premises and outside the court premises. If the party to the case participates in the videoconference mode outside the court premises, such participation is carried out using their own technical means and electronic digital signature. It is worth noting that currently (before the adoption of the above-mentioned draft law), if a party to the case is a witness, interpreter, specialist, expert, then he or she participates in the court hearing by videoconference only in the court premises.

- 3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law,

including soft law? What do any such laws, regulations or rules govern? Please describe their application.

In Ukraine, the procedural codes, the Law of Ukraine "On the Judiciary and the Status of Judges", as well as other laws and subordinate legal acts (resolutions, orders, instructions, etc.) regulate the issue of holding court hearings in videoconference mode.

In the procedural codes, a separate rule defines the requirements and rules for the participation of the parties to the court hearing in videoconference mode. The Law of Ukraine "On the Judiciary and the Status of Judges" defines the general right of the parties to participate in a court hearing via videoconference. The instructions set out the procedure for holding court hearings in videoconference mode.

- 3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

The procedural legislation of Ukraine stipulates that the parties to the case have the right to participate in the court hearing via videoconference. It follows from this that the use of videoconferencing means is not binding. Also, the court, taking into account the petition submitted by the party to participate in the hearing in videoconference mode and objective factors, may decide to hold the court hearing in videoconference mode. That is, the above shows that making a decision regarding the holding of a court hearing or hearings in videoconference mode is not an obligation, but a right of the court.

- 3.7 What views have been expressed by judges concerning the use of electronic files and proceedings? Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

In Ukraine, sociological surveys are periodically conducted, in particular, among judges regarding the use of electronic proceedings. The majority of judges positively perceive the introduction of electronic proceedings, since they see the positive side of it, namely: electronic proceedings can significantly increase the efficiency of justice on the whole, simplify access of the participants to the case, as well as save organisational, financial and time costs associated with sending case files from one court to another and participants' familiarising with them.

- 3.8 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

Currently, no such official reports have been found in the public domain.

- 3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

Today, in Ukraine, the videoconferencing system has been implemented in all courts of general jurisdiction; it is in demand in the vast majority of cases, and has acquired special relevance in the conditions of quarantine and military operations on the territory of Ukraine caused by the armed attack of the Russian Federation. The use of videoconferencing in courts ensures compliance with the principles of publicity and openness of court proceedings. The widespread use of this system contributes to increasing the efficiency of judicial proceedings, since it allows to avoid the delay in the trial related to impossibility of the participant to arrive in the court session and to save money that citizens need to spend on a trip to the court. In addition, the advantages include, first of all, ensuring social isolation, safety of participants, judges and court staff.

Among the disadvantages of holding court hearings in videoconference mode, it is necessary to single out new possibilities for the abuse of procedural rights on the part of unscrupulous participants, since the procedure for identifying participants in court cases is largely imperfect and raises reasonable doubts as to whether the judge will be

able to identify the participant without error, especially in the absence of the electronic digital signature of the latter. As a result, in the future, court decisions may be challenged by the participants who will claim that in fact they have not participated in the hearings and that their interests have been improperly represented by other persons. In addition, technical malfunction of electronic devices, lack of communication, sound and image, are those factors that the participants in the case can refer to when challenging court decisions. The above are only examples of possible procedural abuses, the list of which is inexhaustible.

4. Use of data tools

- 4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

The followings data registers operate in Ukraine:

1. The Unified State Register of Pre-trial Investigation is an electronic database, according to which collection, storage, protection, accounting, search, summarisation of data on criminal offenses and the course of pre-trial investigation in criminal proceedings are carried out.
 2. The Unified State Register of Court Decisions is an automated system for collecting, storing, protecting, accounting, searching and providing electronic copies of court decisions.
 3. The Unified Register of Advocates is an electronic database that includes information about advocates who have acquired the right to exercise advocate's activities in Ukraine and practice it in accordance with the law. Thanks to this system, judges verify the credentials of advocates.
 4. The Register of Judicial Decisions of the Constitutional Court of Ukraine includes information about the decisions of the Constitutional Court of Ukraine, which have been adopted since its establishment.
 5. Automated court information systems are computer programs and databases used to automate various processes in the court system, including the collection and processing the data on court cases, the distribution of cases among judges, and other tasks.
- 4.2 What kind of tools may judges use? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?

Judges can use all official databases, the information from which will be useful to them in order to adopt the correct decision in the case.

- 4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

The Law of Ukraine "On Access to Court Decisions" defines the procedure for access to court decisions in order to ensure the openness of the activities of courts of general jurisdiction, the predictability of court decisions, and to promote the uniform application of legislation.

The Regulation on the Unified Register of Pre-trial Investigations determines the procedure for forming and maintaining the Unified Register of Pre-trial Investigations (hereinafter - the Register), as well as providing information from it.

The Law of Ukraine "On Advocacy and Practice of Law" and the Procedure for Maintaining the Unified Register of Advocates of Ukraine determine the creation and maintenance of the Register of Advocates of Ukraine, as well as access to it.

4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

Indeed, data registers help judges when drafting decisions, as they include information about various court cases that may have similar factual circumstances and legal issues. The use of data registers makes it possible to find the relevant legal norm faster and more efficiently and to substantiate the decision on the basis of previously adopted court decisions.

The use of data registers also allows for more consistent and transparent judicial practice, which is important for ensuring legal stability. In addition, the use of data registers contributes to the development of information technologies in the judicial system, which is important for increasing its efficiency and accessibility for citizens.

4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

Unfortunately, there are currently no publicly available surveys (survey results) and reports on judges' use of data tools.

4.6 In your experience, what are the advantages and disadvantages of using data tools? Please describe them.

Given my experience as a judge, I can point out the following advantages of using data tools:

- facilitating the work of judges: data registers allow to quickly and efficiently find the necessary information, which helps to reduce the time for preparing and drafting decisions;
- ensuring the unity and stability of judicial practice: the use of data registers allows to avoid contradictory decisions and to ensure the unity and stability of judicial practice;
- improving the efficiency and quality of the functioning of the judicial system: the use of data registers allows to reduce the number of judicial errors and ensure a more transparent and consistent jurisprudence;
- ensuring accessibility for citizens: the use of data registers allows for a faster and more accessible access to information about court decisions.

Despite the advantages, the use of data registers has some shortcomings:

- lack of flexibility: the defined formats and structures of data stored in the register may be limited, which may make it impossible to store some information that is important for decision-making;
- the need for training: judges need some training to use the data registers, which can take time and effort, which can lead to delays in court work;
- issues of data security: judges must ensure the security of the data which they keep in the registers to avoid access by unauthorised persons to them;
- risk of errors: when collecting and entering data, errors may occur, which may lead to an inaccurate or incorrect court decision.

5. Forms of automatic proceedings

5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.

In the judicial system of Ukraine, there are several automatic proceedings that can help judges in their work and contribute to improving the efficiency and accuracy of the

deliberation of cases. The unified judicial information and telecommunication system includes a number of these automatic proceedings. They include:

- automatic determination of judges and jurors: With the help of special algorithms, it is possible to automatically determine the judge to transfer a case to him or her, as well as determine the composition of the entire panel of judges for deliberation of this case and the jurors;
- automatic generation of statistical data, summarising, analytical indicators of the work of the judicial system.
- automatic sending by means of electronic communication of original electronic court documents (including the texts of court summons in the form of SMS messages) to the participants of the court proceedings at their request.

In addition, the official website "The Judiciary" provides an opportunity to use the automatic calculation of the court fee for the relevant case.

All these automated proceedings reduce the risk of errors and ensure more accurate court decisions.

5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?

Currently, there are no automatic fact-finding proceedings in Ukraine, yet the procedural legislation provides for such a notion as "electronic evidence" - information in electronic (digital) form including data on circumstances relevant to the case, in particular, electronic documents, websites (pages), text, multimedia and voice messages, metadata, databases and other data in electronic form.

5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

The legislation of Ukraine does not provide for automatic proceedings for establishing the applicable law and/or precedent.

5.4 Are there automatic proceedings for decision-making or to assist decision-making?

There are no other automatic proceedings which allow to reduce the risk of errors and ensure more accurate court decisions, than described under question 5.1 of this questionnaire,

5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

The requirements for automatic proceedings in the court system may be different, but in general they should include the following points:

- the rules and procedures used in the automatic proceedings must be clearly defined and logically laid out. They must be clear and accessible to users.
- the system must understand the problem and know what steps need to be taken to resolve it. This means that the system must have sufficient knowledge and experience to perform its functions.
- the system must have a sufficient amount of data to perform its functions. This may include data on legislation, case law, the circumstances of a particular case and other data necessary for decision-making.
- the system must be reliable and secure to ensure data protection and prevent possible errors. This means that the system must be protected against hacking and criminal actions, and must be well tested and checked for errors.

- the system must be able to be updated and maintained from a technical point of view to avoid errors and problems.
- the system must meet the requirements of the legislation regulating automated proceedings in the court system.

Compliance with these requirements helps ensure the efficient and reliable operation of automated proceedings in the judicial system.

5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.

In February 2021, the High Council of Justice approved the draft order of the Cabinet of Ministers of Ukraine "On Approval of the Plan of Measures for the Implementation of the Concept of Artificial Intelligence Development in Ukraine for 2021-2024", which was adopted by the Cabinet of Ministers of Ukraine on May 12, 2021.

In its Decision, the High Council of Justice proposed to launch a pilot project on the basis of one court of first instance in the part of the automated review system using artificial intelligence of court cases on administrative offenses with a formal composition. However, due to the large-scale military aggression by the Russian Federation against Ukraine, which began on February 24, 2022, less attention is being paid to the development of artificial intelligence in Ukraine, as there are currently more pressing issues that require immediate resolution.

5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

Currently, in Ukraine, the issue of using forms of artificial intelligence has not been resolved at the legislative level.

5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence?

As noted in 5.6 of this questionnaire, in May 2021, the Cabinet of Ministers of Ukraine approved the "Plan of measures for the implementation of the Concept of the Development of Artificial Intelligence in Ukraine for 2021-2024".

5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?

There is a Code of Judicial Ethics in Ukraine. However, it does not regulate the use of automatic proceedings in court proceedings.

5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?

Currently, there are no automatic court proceedings in Ukraine.

5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?

Currently, there are no automatic court proceedings in Ukraine.

5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use artificial intelligence in legal proceedings?

Currently, there is no automatic court proceedings using artificial intelligence in Ukraine, therefore it is impossible to answer the question about the role of the Commissioner for Personal Data Protection in this area.

6. Responsibilities for operating modern technologies

6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

The head of the court apparatus is responsible for the proper organisational support of the court, the judges and the judicial proceedings, the functioning of the Unified Judicial Information and Telecommunication System, etc. Accordingly, the head of the court apparatus, together with the employee of the court's information networks and databases, are responsible for the implementation and operation of the electronic files/proceedings system and the use of data tools in the court.

6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

Yes, judges in Ukraine are involved in the process of developing the use of electronic files, proceedings, videoconferences and data processing tools. For example, during the implementation of the electronic proceedings system in Ukraine, judges and other participants of the judicial proceedings participated in the testing and discussion of the new system. Judges also participate in the development and improvement of the processes of using videoconferencing and data processing tools used in the judicial system of Ukraine. Moreover, the participation of judges in the development of these processes is very important, as they have considerable experience in jurisprudence and can help make the processes more efficient and convenient for all participants in the judicial proceedings.

6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?

If there were a process of creating forms of artificial intelligence in Ukraine as part of court proceedings, I can state that judges would be definitely involved in this process. After all, as stated above in 6.2 of the questionnaire, the participation of judges in the development of these proceedings is very important, as they have considerable experience in jurisprudence and can help make the proceedings more efficient and convenient for all participants in the judicial proceedings.

7. Criticisms and proposals for use and development of modern technology

7.1 Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

The use and development of modern technologies in the judiciary is one of the topical issues discussed among judges in Ukraine. In view of the implementation of electronic systems in judicial practice, judges are actively discussing the issue of increasing the efficiency of the judiciary, reducing the time for deliberation of cases and improving the quality of court decisions. Judges also discuss the use of videoconference and data processing tools in the judicial activities. In some cases, judges also express their concerns about possible errors and inaccuracies when using modern technologies and draw attention to the need to ensure the protection of personal data and information confidentiality.

The main arguments for the use and development of modern technologies in the proceedings were:

- improving the efficiency and quality of court decisions through faster and more accurate data collection and analysis;
- ensuring transparency and openness of the court by publishing relevant data and documents online;

- reduction of court costs due to electronic data storage and processing, as well as the possibility of remote court hearings;
- increasing trust in the judicial system through the use of modern technologies, which allow to ensure a more objective and safe process of making judicial decisions;
- the need to ensure interaction between judges and other participants in the court proceedings with the help of electronic means and information technologies, which allows to reduce the time for processing documents and reduce the probability of errors.

It is certain, that in the course of the discussions, questions were repeatedly raised regarding insufficient resources for the implementation and support of the relevant systems; the possibility of technical problems and work failures, as well as ensuring the security and confidentiality of data in the virtual space.

However, in general, judges in Ukraine participate in the development and implementation of relevant technological initiatives.

United Kingdom/*Royaume-Uni*

1. Introduction and definitions

The questionnaire is aiming to collect the relevant information as regards the modern technology used within the judiciary in your country.

In this regard, for the purposes of the present questionnaire, the following definitions apply:

Electronic files/electronic proceedings

Definition: the whole or part of process/commencement/issue of process/correspondence of the process with all parties, including court internal administration and/or case management generally is electronic (no paper files or paperwork at all).

Videoconference

Definition: all kind of hearings which are held via videoconference (including online platforms).

Data tools (on facts and on law and precedents/legislation)

Definition: courts/ministry provide data tools (organised by private or state provider) used by judges to facilitate the judgment of the case.

Forms of automatic proceedings

For example, automatic proceedings for 1) fact finding, 2) for law and precedent finding; 3) for decisions.

2. Use of electronic files/electronic proceedings

2.1 Do electronic files/electronic proceedings exist and are there any specific requirements? Please describe.

Yes, electronic filing of documents is now commonplace in the higher civil courts. It is mandatory for legally represented litigants but optional for non-legally represented litigants. In the lower civil courts in England there is an on-line procedure for certain types of debt claims and claims for possession of land (see below). Electronic filing may also be used in the family court. In the family court there is also an on-line procedure for divorce where the case is undefended. In Scotland simple claims (for £5,000 or less) may also be submitted on-line.

2.2 Are all documents and the entire judicial proceeding in electronic files? If not all, please describe the most important use(s) of electronic files.

Where mandatory electronic filing applies, the entire court record is kept electronically.

2.3 Does the process include digital signatures? Do electronic proceedings differ in substance from paper files and proceedings?

Digital signatures are not required, but the user of electronic filing must apply for an account (which will be password protected). The substance of the proceedings do not differ from paper files and proceedings. But in relation to small claims (less than £10,000, or in some cases £25,000) where either litigants are not legally represented or both litigants are legally represented, there is a pilot study in operation testing out an on-line court.

2.4 Do all judges and courts work with electronic files? If not, which courts use them and which courts do not use them? What is the rationale for the difference in use?

Electronic files are used in the higher courts and in selected lower courts (on pilot schemes). The electronic and IT infrastructure is not yet capable of allowing electronic files to be used in all courts.

2.5 Do judges have computers at home and work at home with the same electronic files as in the office? To what extent are electronic files accessible by the court and/or parties via cloud-based systems?

Judges are issued with laptop computers by the Ministry of Justice. They can be used at home to access files through a site known as “eJudiciary”.

2.6 Where electronic files are used, are paper-based files also used? If so, to what extent are paper-based files used and what is the rationale for their continued use? Is there a continuous process of change in the judiciary from paper files to electronic files? How long will this process of change take?

In some cases paper files are used as well as electronic files. To some extent this depends on the preference and computer literacy of the judge dealing with the case. The rationale is that some judges are still more comfortable with a paper file. The trend, however, is towards greater use of electronic files. It is likely to take some time.

2.7 Are there any laws, regulations or procedural rules that govern the use of electronic files and proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law instruments? What do any such laws, regulations or rules govern? Please describe their application.

The use and format of electronic filing is mainly regulated by “soft law” in the form of Practice Direction 51 O made under the Civil Procedure Rules. The on-line pilot study is regulated by Practice Direction 51 R made under the same rules. In the family court there are a number of Practice Directions made under the Family Procedure Rules (PD 36G (Private Law Proceedings relating to Children), PD 36M (Certain Public Law Proceedings relating to Children) PD 36N (Financial Remedies), PD 36P (Placement of Children); PD 41A (Online divorce etc); PD 41B (Consent orders in divorce cases); PD 41C (appeals from family court). Many of these are pilot schemes which do not operate in all family courts, but only those in specified locations.

Various court guides (the softest of soft laws) give guidance on the preparation of electronic files: they should be in pdf form; individual documents should have hyperlinks or electronic “bookmarks” and documents should be the subject of optical character recognition (OCR) so that they are word searchable. But this guidance is often ignored.

Criminal courts have a duty under the Criminal Procedure Rules (rule 3.2) to actively manage cases, including making use of technology. In criminal cases a cloud-based system known as Common Platform contains case materials accessible by the judiciary and the parties. It is still in the development phase, so is not available in all criminal courts.

2.8 Is the use of electronic files/proceedings optional or binding for judges/for lawyers or, where permissible, litigants acting without the assistance of a lawyer?

The use of electronic filing is required for legally represented parties, but not for litigants acting without the assistance of a lawyer.

2.9 Are different approaches to the use of electronic files/proceedings taken depending on substantive of the legal proceeding, e.g., are different approaches taken to civil, criminal, administrative, family proceedings or proceedings concerning social matters?

Electronic files are used in both civil and administrative cases. They can also be used in family cases. In criminal cases a cloud-based system known as Common Platform contains case materials accessible by the judiciary and the parties.

2.10 What views have been expressed by judges concerning the use of electronic files and proceedings?

Anecdotally, most are comfortable with electronic files (especially where there is a paper back up). But there is no formal expression of opinion. Some senior judges are particularly enthusiastic about the increasing use of electronic files.

2.11 Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

Not as far as I am aware.

2.12 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

Not as far as I am aware.

2.13 In your experience what are the advantages and disadvantages of electronic files/electronic proceedings. Please describe them.

The advantage of electronic files is that they are easily accessible from anywhere. Not all electronic files, however, are easy to navigate. Where the file has hyperlinks to individual documents they are much easier to navigate than when they do not. Parties are requested to provide individual documents with electronic “bookmarks” but this is often not done. In addition, where the document is a long one, it is often much slower to scroll through the document on screen as opposed to turning the pages.

3. Use of videoconference facilities, including online platforms

3.1 Which kinds of court proceedings can be held via videoconferencing facilities and/or online platforms. Where such facilities are used, in which courts are they used?

Videoconferencing can be used in all courts and for all types of proceedings; although the default position is that trials and appeals are heard with personal attendance. A number of different platforms have been used for this purpose (Skype for Business, Microsoft Teams, Cloud Video Platform etc) Case management hearings can also take place by telephone. In civil and administrative cases guidance on the use of videoconferencing is contained in Practice Direction 32, Annex 3. In family cases the court has power to allow a witness to give evidence by video link or other means: Family Procedure Rules r.22.3. In criminal cases courts have a wide power to receive applications, representations and information by live link or other electronic means, and have power to conduct hearings by those means (Criminal Procedure Rules r 3.5 (2) (d)). In a criminal trial a defendant may give evidence by live link if the court so directs, but the court’s power to do so is limited in the case of defendants who are under 18 or who suffer from a mental disorder. The power is contained in S 33A of the Youth Justice and Criminal Evidence Act 1999. The court may give a direction permitting other witnesses to give evidence remotely (Youth Justice and Criminal Evidence Act 1999 s 27; Criminal Justice Act 2003 s 51; Criminal Procedure Rules r 18.24), although this is usually done only in the case of vulnerable or intimidated witnesses. This applies both to evidence in chief and to cross-examination.

In family cases the evidence of children is sometimes given by way of a video-recorded interview.

In many cases, in order to preserve the principle of open justice, proceedings may be live-streamed. The power to do this is in Police, Crime, Sentencing and Courts Act 2022, s 198; and Remote Observation and Recording (Courts and Tribunals) Regulations 2022. Persons watching remotely may be required to identify themselves.

3.2 Can evidence be taken via videoconferencing facilities and/or online platforms? If so, can it be taken in all courts or just some? If the latter, in which courts can it be taken?

Evidence can be taken by videoconferencing. See above.

3.3 What are the requirements for the use of videoconferencing or online platforms in proceedings? Where they differ across different proceedings, please describe the differences?

Normally, the permission (or direction) of the court is required. Arrangements will normally be made so that members of the public can see the hearing or the evidence, unless the court has directed that the hearing be held in private.

3.4 Is it permissible for the participants (judges, lawyers, parties, witnesses) in proceedings held via a videoconference or online platform to be outside a court? If so, can all or only some participants take part from outside a court? If only some, which ones? Are there any places outside a court from which a participant may not take part in proceedings held by videoconference or via an online platform? If so, which ones?

During the COVID pandemic hearings and trials (apart from jury trials) were held remotely with all participants outside the courtroom. That can still happen although many trials and hearings are now "hybrid" (i.e. some participants are outside court and others are present in court). This has proved to be less satisfactory than a hearing in which either all participants are present in court or none of them are. In the case of the reception of evidence, a witness who give evidence remotely will be outside court. In the case of witnesses giving evidence from abroad, the government of the territory concerned must permit this (and in some cases a witness will have to give evidence from a British Embassy or consulate).

3.5 Are there any laws, regulations or rules governing the use of videoconferences and online platforms: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

See above.

3.6 Is the use of videoconference optional or binding? If optional, can its use be mandated by the court without party consent?

It is within the discretion of the court. If the court exercises that discretion to direct the use of videoconference (either for the reception of evidence or for the conduct of a hearing) the consent of the parties is not required.

3.7 What views have been expressed by judges concerning the use of electronic files and proceedings? Are there any polls/soundings among judges concerning their views on the use and/or utility of electronic files and proceedings?

See above.

3.8 Are there any official reports concerning judicial views on the use and/or utility of electronic files and proceedings? If so, what do they say?

Not as far as I am aware.

3.9 In your experience, what are the advantages and disadvantages of using videoconferencing and/or online platforms. Please describe them.

The main advantage of videoconferencing is that parties have easy access to it. In some cases, however, there are problems in supervising what goes on in the room in which parties are (for instance) giving evidence. It is important that a witness gives their evidence unprompted and without intervention by a third party. One further disadvantage is that there is less immediacy in the proceedings than would be the case if the proceedings took place with the parties, their legal advisers and witness all physically present.

4. Use of data tools

- 4.1 Are there any data tools used by your judiciary: 1) on facts, 2) on law and precedents? If so, please describe them.

I am not aware of any data tools used for the ascertaining of facts. Facts must normally be proved by evidence. In some cases, however, where documents (including witness statements or transcripts) are supplied in electronic format, they will be searchable by computer. Legal databases for researching the law are in widespread use.

Word processing is also commonplace (although it may not be seen as a “data tool”). I have not referred to word processing any further.

- 4.2 What kind of tools may judges use? Are there official tools provided by the judiciary/ministry? If so, what are they? Is the use of data tools optional or binding? If optional, how and by whom is their use determined?

The court service (i.e. the Ministry of Justice) provides judges with access to on line databases for legal research. There is also an electronically accessible set of training materials at the Judicial College website, to which judges have access. The use of all these tools is optional. It is the judge who decides which ones to use (and how often to use them).

- 4.3 Are there any laws, regulations or rules governing the use of data tools in your system: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

Not as far as I am aware.

- 4.4 Do data tools facilitate fact-finding and preparing the judicial judgment?

They undoubtedly facilitate preparing judgments. I find them indispensable.

- 4.5 Are there any polls/soundings among judges concerning their views on the use and/or utility of data tools? Are there any official reports concerning judicial views on the use and/or utility of data tools? If so, what do they say?

Not as far as I am aware.

- 4.6 In your experience what are the advantages and disadvantages of using data tools. Please describe them.

5. Forms of automatic proceedings

- 5.1 Are there any automatic proceedings in use in your judiciary? If so, please describe them.

I have taken “automatic” to mean “without human intervention”. On that basis there are no automatic proceedings as far as I am aware.

- 5.2 Are there automatic proceedings for fact finding? Are automatically generated facts accepted as evidence?

There are no automatic procedures for fact finding. But evidence produced by computer is admissible evidence on which a court may find facts.

- 5.3 Are there automatic proceedings for ascertaining the applicable law and/or precedent?

Not as far as I am aware.

- 5.4 Are there automatic proceedings for decision-making or to assist decision-making?

Not as far as I am aware.

5.5 What kind of requirements, from a technical and legal point of view, are necessary for the use of any automatic proceedings? Please describe them and set out their advantages and disadvantages.

Not applicable.

5.6 Are there any initiatives to implement automatic proceedings on fact/law/decisions? If so, please describe them.

The Head of Civil Justice has been promoting in speeches the introduction of semi-automated proceedings for debt recovery, insolvency and the like. The Civil Justice Council (an advisory body) has also recommended the introduction of semi-automated procedures. The government did introduce an On-Line Procedure Bill into Parliament in 2017, but it never became law.

5.7 Are there any laws, regulations or rules about the use of forms of artificial intelligence, like automatic proceedings: 1) in the constitution; 2) in procedural law; 3) in other forms of law, including soft law? What do any such laws, regulations or rules govern? Please describe their application.

Not as far as I am aware.

5.8 If there is no implementation yet of such measures, are there any projects concerning the implementation of forms of artificial intelligence?

Not as far as I am aware.

5.9 Is there an ethic code governing the use of automatic proceedings in legal proceedings? If automatic proceedings are used, how is the independence of judicial decision-making safeguarded and preserved?

Not as far as I am aware. In all procedures for on-line proceedings, the final decision is taken by a judge.

5.10 Are there any special regulations and safeguards with respect to automatic proceedings? Does a judge have the final saying/control on the outcome and quality of an automatic proceeding?

There are no automatic proceedings as far as I am aware. In all procedures for on-line proceedings, the final decision is taken by a judge.

5.11 Is data security implemented for the use of automatic proceedings or in the making? If so, please describe the factual and legal situation?

Not applicable.

5.12 What role, if any, does a Data Protection Commissioner (or equivalent) have in overseeing the use artificial intelligence in legal proceedings?

Not applicable.

6. Responsibilities for operating modern technologies

6.1 Who determines the implementation, and on the system, of electronic files /proceedings and the use of data tools in your court/jurisdiction?

The use of these tools in proceedings is governed by rules of court and practice directions. Rules of court are made by procedure committees and approved by senior judges and relevant government departments. Judge sit on all such committees. Data tools (i.e. access to legal databases) is provided by the Ministry of Justice.

6.2 Are judges involved in the process of devising and/or implementing the use of electronic files/proceedings, video conferences and data tools?

See above.

6.3 Are judges involved in the process of creating forms of artificial intelligence within legal proceedings, such as automatic proceedings?

Not yet.

7. Criticisms and proposals for use and development of modern technology

7.1 Describe the main arguments discussed by your judiciary concerning the use and development of modern technology in legal proceedings.

The drive towards the increased use of on-line and internet based processes is driven by a number of factors. These include: the complexity of the law; the complexity of current procedural rules; the accessibility of justice (especially for small claims); the increasing (and sometimes prohibitive cost of employing lawyers); the reduction in the availability of state funding for making or defending claims (leading to an increase in unrepresented parties).