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DEFINING GROUNDS FOR THE EMERGENCE OF A COMMON E-COURT SYSTEM. JUDICIAL CROSS-BORDER COOPERATION FACILIATED BY TECHNOLOGY WITHIN THE EU FRAMEWORK

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ABSTRACT

With the proposals on digitalisation of EU cross-border judicial cooperation and access to justice in civil, commercial and criminal matters, EU has taken a step forward towards the creation of a common network of judicial systems, where the inefficiencies affecting cross-border judicial cooperation and hurdles to access the justice in cross-border civil, commercial and criminal cases are adressed. These proposals serve as a prove that one of the main objectives of EU is to create a framework allowing for a possible common e-Court system to emerge. Moreover, the use of technologies in the judicial systems worldwide becomes not only more appealing with all the benefits it brings, but rather more of a necessity nowadays. The evolution of complex, incompatible, traditional judicial and legal systems, as in the nature of all things, comes with numerous challenges and risks regarding the procedures, justice, and the rule of law. This research aims to evaluate current status of judicial cooperation within EU framework, tries to assess the level of digitalization of a court system and alternative ways of conflict resolution (ADR) in EU and finally draws a conclusion whether there are grounds for a digitalized court cooperation amongst the EU member states. The object of this research is the nature and the definition of judicial cooperation, its history of evolution and developmental perspectives. The study reviews current practical risks that come with the development and digitalization of judicial cooperation and court practices and tries to define the aspects leading to a possible emergence of an operational and functional integrated judicial area in EU with a view to answering the primary research question: to what extent can the judicial system in the EU cooperate further and to what extent this cooperation is desirable in the lights of digitalization? The answer for the research question will expand the discussion about the impact that digitalization of court and out-of-court procedures and judicial cooperation have on each other

Keywords: Judicial Cooperation, Digitalization, Alternative Dispute Resolution (ADR), e-Court System

INTRODUCTION

With the end of the 20th Century, Europe decided to set new objectives to achieve a truly integrated European judicial framework. These objectives were first mentioned in the Presidency Conclusions in Helsinki in 1999. Since then, EU has gone a long way to achieve a judicial area where mixed methods of judicial cooperation coexist. The idea for a judicial cooperation has been first articulated with the enforcement of the Lisbon Treaty in 2009, where several legal measures have been introducted with the aim to enhance the supranational level of the European judicial framework. One of the examples would be the expansion of the jurisdiction of the European Court of Justice on the former third pillar, thereby making it possible to overrule national logic of the states, when justified[1]. Moreover, the need to digitise judicial cooperation, and – at the national level – judicial processes and procedures, arises not only from the fact of the worlwide digitalisation of society, but also with the aim to increase the efficiency of civil and criminal procedures, to increase the access to justice and uphold the rule of law. With that, the e-government possibilites are worth mentioning, as in author's opinion, the application of Information and Communication Technologies (ICTs) to government's legal sector and procedures may additionally contribute to efficiency and transparency and ease judicial practice to some extend.

With the necessity for the merging of technologies into traditional ways of conducing legal procedures, access to justice has always been a substantial and significant issue around the world. The aim to improve the judicial framework by further cooperation and digitalization of justice system, poses many new challenges and risks. People in many countries still face various hurdles to access justice, procedures are costly, the management of court's processes is complex. In some countries judicial work is still paper-based, the use of tele- and audio- technologies is more of an exception, if not possible at all. The reasons for that hesitancy for implementation are diverse, those include concerns regarding the privacy and security of the data, the complexity in matching the technology and legal needs, costly implementation and maintaninance of IT systems, and skills

[1] . Gary Duncan, (2006), *The Inside Threat: European Integration and the European Court of Justice.*

required to conduct the proceedings digitally[2]. Nevertheless, many legal professionals and scholars think that technologies are a real facilitator to gateway justice, moreover, it is thought to be a tool to increase the efficiency of the justice sector[3]. The technological and inter-communicational evolution introduce facilitators to judicial policy makers to produce a more transparent, dynamic, operational access to justice to all the litigants.

In order to draw a conclusion which would satisfy the set research question of this paper, the work employs qualitative information from secondary sources. As this study is analytical and descriptive, it relies greatly on the review and the discussion of literature, practices of different countries, legislation, and case law on the relevant subject matter. The thesis is formed with the references to the thematic content and textual cross-analysis with the aim to identify the common ideas and discrepancies within the field. Relevant literature is addressed with the complementation of case law, to demonstrate the topicality of the subject and its notoriety in the judicial system. The literature and studies were selected to generate a comprehensive review of the current state of cooperation, harmonization, uses of advanced technologies within the judicial court and out-of-court systems to shape the risks and challenges encountered, with the references to world's practices, and emphasis on European Union. The purpose of this paper is not to give a general overview on the state of things, but rather to give a critical analysis and point out the instruments which EU is trying to pursue the common aims in the judicial field with.

Additionally, this paper is focused mainly on the civil matters, omitting criminal law. The history of judicial cooperation is discussed to give the context on the subject, concepts of E-government and E-justice are discussed to signify the importance of these to achieve the aims of the paper. The primary focus of this research, however, is addressed to finding the measurements and criteria by which the level of integration and subsequent creation of judicial area can be assessed.

Before the primary research question can be answered, some other sub-questions must be taken into consideration in each successive chapter. The first chapter focuses on the stages of development and digitalization of judicial cooperation to answer the question on how this topic has been addressed by the EU. The second chapter addresses the practice of different EU member states regarding the use of technologies in court and out-of-court processes as well as touches upon the e-government application in the legal sector and tries to answer the question of what are the drawbacks with the implementation of such technologies in this matter? The conclusion of the

[2] . Anne Skove, Colleen M. Berryessa, Lonnie Schaible & Ibrahim Aissam. (2021). *Justice in the New Digital Era: The Pitfalls and Benefits of Rapid Technology Adoption by Courts.* Trends St. Cts., 61.

[3] Antonio Cordella, Francesco Contini, (2020), *Digital Technologies for Better Justice, A toolkit for Action*.

study will sum-up these chapters, and provide a final synthesis, accordingly, answering the primary research question.

2. THEORETICAL BACKGROUND

The possibilities of free movement of goods, services, capital, and citizens, in legal terms, led to the situation, where cross-border legal relationships started to involve more than one legal system. Thus, cooperation amongst judicial actors of European Member States is a key to achieve a common area of justice, freedom, and security, as referred to in the Treaty of the European Union[4]. Within such an area, in theory, nobody should be anyhow discouraged or limited to exercise the rights; consequently, no differences between the national systems, whether administrative or legal, should form an obstacle. That being the case, over years, collective measures and procedures have been adopted to ensure a high degree of legal certainty for citizens in cross-border relations, with the aim to guarantee as easy and effective access to civil justice as possible and simplify the cross-border mechanisms of cooperation between diverse court systems. Due to the developments in the primary law in this regard[5], the European initiatives in this field of judicial cooperation are ample and diverse, covering such fields as family law or rules for non-contractual obligations, amongst others.

Over the years, several specific instruments have been adopted to ease matters of the recognition of decisions and determination of jurisdiction[6], harmonization of conflict of law[7], facilitation of

[4] Article 3(2) of TUE
[5] Article 81 of Treaty of Functioning of the European Union
[6] For the main legislation adopted see: : Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000; Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations; Regulation (EC) No 805/2004 of 21 April 2004 creating a European Enforcement Order for uncontested claims; Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.
[7] In the field of the harmonization of conflict-of-law rules, see the Regulation (EC) No 593/2008 (Rome I) and the Regulation (EC) No 864/2007 (Rome II) which seek to improve the legal certainty and predictability of the outcome of litigations concerning non-contractual obligations. Together with the Regulation (EU) N. 1259/2012 which establishes a comprehensive legal framework for divorce and legal separation.

access to justice[8] and convenient cross-border cooperation between courts[9]. These incorporate provisions which are aimed to ensure the efficient cross-border flow of judicial and extrajudicial documentation for the purpose of service amongst Member States. Good management of documents as a matter of fact is a crucial part of every judicial case and it in turn directly impacts the workload of the court actors in the daily life. Both - the good administration of justice and the exercise of the rights of parties are greatly dependent on the smooth, safe, and prompt management of these transmission procedures[10]. Thus, the main goal is in principle to ensure that the recipients are informed with undue delay about the pending proceeding against them, which would allow them to exercise their right of defense as provided by the EU Charter of the Fundamental Rights[11] and the national constitutional charts. Simultaneously, this must ensure the claimant's legitimate interests, hence avoiding paralysis in the judicial system.

Notwithstanding the progress achieved, the outcome is a compound regulatory framework which makes it difficult for both authorities and practitioners to familiarize with this supranational level of legal environment and be competent in cross-border litigation and adjudication[12]. To add up, some of the measures establish 'optional common procedures'[13], and since they rely profoundly upon background rules of national procedural law, they as a result create a collateral EU-wide legal regime for a designated legal issue[14]. A great part of legal instruments established with the aim to simplify judicial cooperation in civil matters have been adopted mainly through Regulations, which in turn do not require any other internal act to make it into law. However, the situation is even more subtle, since the given regulations make direct reference to domestic procedural rules, or sometimes even lacking those, as a result requiring tight coordination between the two legal levels.

[8] See the Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes; the Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure; Regulation (EC) No 1896/2006 of 21 May 2008 on certain aspects of mediation in civil and commercial matters.

[9] See for instance the Regulation 1206/2001 adopted to simplify and expedite judicial cooperation in taking of evidence in civil matters.

[10] See the Regulation 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) and the Regulation 1206/2001 adopted to simplify and expedite judicial cooperation in taking of evidence in civil matter.

[11] Article 47 of CFR

[12] Velicogna M., Ontanu E. A. (2018). *Improving access to justice in cross-border litigation: Lesson from EU experiences*. Public Sciences & Policies on Justice Administration and Policies Journal.

[13] For a comprehensive overview see B. Fauvarque-Cosson, M. Behar-Touchais. (2012). *Implementation of optional instruments within European civil law*.

[14] Mańko R. (2015). *Europeanisation of civil procedure. Toward common minimum standards?* European Parliamentary Research Service.

According to the analysis aimed at exploring the actors' experiences with certain judicial cooperation instruments, even though the goal of the EU legislator was to smooth and speed up the case management and handling, the procedures of judicial cooperation adopted so far have been acknowledged to be too problematical to deal with, even for experiences users. The substantial dependence on domestic rules, diverse national practices and linguistic schemes are examples of many other obstacles that affect the appropriate application of cross-border cooperation procedures even at present[15].

One of the major issues at hand can represent the EU legal framework regulating the cross-border management of judicial and extrajudicial documents. According to the evaluation carried out in 2014 by the request of the EU Commission, when remission to national legal traditions was made, a critical malfunctioning of the relevant legislation occurred due to the application of very diverse preconditions provided for in the EU Member States[16]. Namely, when the management of documentation is concerned, the problem lies on the limited competence of EU, that does not allow it to define a standardized European concept of service of documents. The supranational institute of legislation which aims to ensure the cross-border service of judicial and extrajudicial documents is unquestionably enshrined in the principle of the procedural autonomy of Member States[17]. Correspondingly, the EU cannot interfere with the domestic procedural laws, thereby merely providing rules that cover the flow and service of document in cross-border relations, in turn making a gap between the possibility of harmonization on the European level in comparison with the national one, where this process is more politically nuanced.

2.1. Judicial Cooperation and steps to its Digitalization

The digitalization of justice has been one of the main objectives on the agenda of both EU and national legislators and policy makers for at least a decade with the aim to improve judicial cooperation amongst Member States[18]. At the EU level, the latest and most promising initiative

[15] Supra nota.
[16] MainStrat, Study on the application of Council Regulation (EC) No 1393/2007 on the service of judicial and extra judicial documents in civil or commercial matters, report realized upon request of the EU Commission, 2014.
[17] According to the principle of subsidiarity and the provisions of Article 81 of the Treaty of Lisbon.
[18] Kramer, X.E. (2016). *Access to justice and technology: Transforming the face of Cross-border civil litigation and adjudication in the EU.* E-Access to Justice. University of Ottawa Press: Ottawa, ON, Canada. Available at SSRN., 351-375.

was the proposal of the Commission on digitalization of judicial cooperation of December 2021[19]. However, the goal in achieving the omnipresent digitalization of judicial cooperation amongst Member States has been complicated since the differences in the level of digitalization of justice between Member States are significant. Even before the COVID19 pandemic, some of the Member States had been more advanced in this matter, while others were loitering. Incipiently, the decentralized approach has been taken, and generally the digitalization on the EU level has been promoted on a voluntary basis, following the principles of proportionality and subsidiarity.

One of the leaps forward was related to the recast of the Service and Evidence Regulations[20], which have been adopted in 2020 and will come into force starting from 1st July 2022. These measures will enhance the digital cross-border communication by obliging the competent authorities of the Member States to communicate with each other using a decentralized IT systems (e.g. exchange of standard forms), which in turn would contribute in resolving the issue described above regarding the flow and transmission of judicial and extrajudicial documentation. Author assumes that these IT systems would be connected via an interoperable system like e-Codex, which the Commission proposed to adopt in 2020.

In 2021 the impact assessment was conducted to see the potential in further digitalization of both civil and criminal justice. The assessment covered an extensive overview of the already existing instruments. Afterwards, the Commission published the final proposal for the Regulation on the digitalization of judicial cooperation and access to justice on December 2021[21]. The proposal is based on Article 81 (2) and 82(2) TFEU, establishing the facilitation of judicial cooperation in civil matter and the cooperation amongst judicial and other competent authorities in criminal matters and the enforcement of decisions. Even though the scope of the proposal is focused on cross-border cases, EU simultaneously was aiming to advance the digitalization on the national level as well. The decision on Article 81 (2) is the most obvious one, following the principles of subsidiarity and proportionality. Nevertheless, these instruments in fact are not currently included

[19] Proposal for a Regulation of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation, COM (2021)759 final

[20] Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast), OJ L405/40; Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (recast), OJ L 405/1.

[21] Supra nota.

in the proposed Regulation, since the Service and Evidence Regulations have just been amended, additionally providing for their own specific rules.

2. DIGITALIZATION OF COURT SYSTEMS

Rule of law is a crucial and fundamental principle which supports access to justice, the delivery of which is based greatly on the court systems. Born and raised on tradition and formality, any new implementation or change will most likely cause more challenges and obstacles to resolve and overcome[22]. Currently, the increased interest in the topics such as e-governance, digitalization of court processes, automation of various legal proceedings[23], and as an ultimate result - possible integration of state judicial systems[24] has been especially evident due to the latest pandemic, where every institution and system have been demanded to find new ways of operating within the new realms of reality.

Specifically, utilization of information and communication technology (ICT) in judicial proceedings is a topical problem in European Union. For instance, Several Member States had already advanced in implementation of ICT in their court systems and judicial proceedings[25]. These include basic digitalization of court administration, complete online handling of court procedures as well as the advanced use of videoconferencing. Whereas some Member States are still at the very start of implementation of ICT technologies in their judiciary sector.

The use of digital technologies, such as e-management systems for documentation, the creation and implementation of judicial information systems, established of information resources, the

[22] Supra nota.
[23] Zhurkina, Olga & Filippova, Elena & Bochkareva, Tatiana. (2021). *Digitalization of Legal Proceedings: Global Trends*
[24] Fijnaut, C. (2019). *A Peaceful Revolution: The Development of Police and Judicial Cooperation in the European Union*.
[25] E.g. Austria and Germany introduced an automated handling of their payment procedure (Mahnverfahren) since 1980s, implemented fully electronic procedures since 1990s. In England, the Money Claim Online (MCOL) system was initiated in 1999. Some of the national procedures and experiences are reported in The Circulation of Agency in E-Justice: Interoperability and Infrastructures for European Transborder Judicial Proceedings. (2014) ed. Francesco Contini and Giovan Francesco Lanzara.

widespread and successful use of such technologies in courts ensures the transparency, efficiency, and quality of court proceeding.

For the purposes of this paper, the focus will not be on traditional litigation, but on a more popular way of settling disputes (especially considering cross-border cooperation and digitalization) – Alternative Dispute Resolution. Moreover, the focus of the next chapter will be on implementation if not all, but one of the most promising technologies, such as videoconferencing and other digital means of communication, implementation of AI.

2.1. Implementation of technologies in ADR

Alternative Dispute Resolution is an out-of-court option to settle disputes. The methods and procedures of ADR are considered to be more efficient and productive when dealing with resolving of disputes, compared to the traditional court procedures[26]. That is why EU started to promote ADR by adopting initiatives to secure effective remedies for the litigants. Two of them being the Consumer ADR Directive 2013/11 and the Online Dispute Resolution Regulation 543/2013. The ADR Directive required the implementation by each EU Member State of ADR methods by 2015. That contributed to the growing widespread popularity of ADR to ensure the access to the tools dealing with consumers' claims. ADR methods include, amongst others, mediation, negotiation, conciliation, and arbitration which proved their efficiency in settling the dispute. The latter, is the most common method due to the fact of being the most closest 'relative' of traditional adjudication, thus, the use of technology in this field of ADR have proliferated during the last decade[27]. Arbitral tribunals can considerably rely on IT technologies to cost-effectively, without the violation of due process, give the parties greater access to justice. Nevertheless, the use of technologies in arbitration proceedings raise questions regarding the confidentiality, privacy, security, due process, technical issues, and the presentation of evidence.

To give the context, article 19 of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration provides that: "parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings".

[26] K. Joamets, Solarte Vasquez. (2019). *Current challenged of family mediation in Estonia. Journal of Contemporary European Studies*, 109-120.
[27] G.L. Benton, S.K. Andersen. (2020). *Technology arbitration revisited*. Dispute Resolut. J., 1-21.

Otherwise, if parties cannot reach the agreement, the decision of how the proceeding will be conducted falls in the hands of arbitral tribunal[28]. The problem may arise, when one of the parties disagrees on the procedure the tribunal deems appropriate, for instance, the use of video- and tele-communication to conduct hearings remotely. Especially this might be a strong argument, as article 18 of the UNCITRAL Model Law provides, that "the parties shall be treated with equality and each party shall be given a full opportunity of presenting his case". Case law finds conduction hearings remotely admissible, even if one party disagrees. For instance, Judicial Courts do not consider remote hearings to violate or diminish the due process or fairness. In 2020, the Austrian Supreme Court (OGH) in its ruling has concluded, that conducting hearings remotely is allowed under 2013 Austrian Arbitration Law even if one party is against it[29]. In contrast, in the same year, the Swiss Supreme Court rejected to conduct hearings remotely.[30] The Court states that conducting hearings virtually would violate the Swiss Civil Procedure Code, providing those hearings must be conducted in the physical presence of all in a courtroom. Therefore, virtual hearings lack a legal basis in Swiss State Courts. However, as a rule, it is not applicable to arbitration procedures.

ADR also includes mediation, which is considered to be one of the oldest and most popular forms of ADR. Mediation is charectarized as an assisted negotioation on a voluntary basis with the guidance of a specialist – mediator. One of the first instruments of regulation of this form was adopted in EU with the Mediation Directive (2008/52/EC), which covered civil and commercial disputed. The Directive aimed to foster the implementation of ADR methods amongst European Member States.

Digitalization also affected mediation greatly, providing human mediators with the possibilities of using the special software to conduct medtion processes remotely. *Mediation Room* and *Juripax* can serve as the good examples of integrated mediation platforms. Such platforms help all the actors to mediation to increase the time- and cost-efficiency of the final outcomes. Another example of a success in the ditialization of mediation can be found in automated negotiation (stages of mediation), which introduce methods for calculation of settlements of disputes without a human third-party intervention.

[28] S.Sarkar, S.Chauhan, A. Khare. (2020). *A meta-analysis of antecedents and consequences of trust in mobile commerce*, 286-301.
[29] M. Scherer, F. Schwarz (2020). *In a 'First' worldwide, Austrian Supreme Court confirms arbitral tribunal's power to hold remote hearings over one party's objection and rejects due process concerns.* Kluwe Arbitration Blog.
[30] U. Boller, M. Ademaj. (2020*). Federal Supreme Court: no legal basis for conducting the main hearing via video conference in civil proceedings without the parties' consent*. Lexology.

That being said, technological intervention in mediation processes is not considered a digitalized 'third party', which would have serves as an alternative to a human third party, but rather a 'fourth party'. The concept of the latter implies that "the technology changes the communication process, opening up new imaginative ways for mediators to intevene, and parties and lawyers to engage, in the process"[31].

In general, using videoconferencing and tools to conduct hearings remotely is a growing trend in arbitration proceedings, though the technology is not universal. Thereby the question of trust comes in when rendering an award, according to the fundamental principles of arbitration such as due process and fairness.

Lastly, the questions of implementation of AI-based technologies in ADR arise, when AI cannot entirely function on their own within the legal field. It is evident that a thorough planning of the implementation of such advanced technologies as AI is needed. Principles of ADR take into consideration such notions as procedural justice and fairnes and EU Commission emphasized those principles for the development of ADR within EU in its report[32]. With the fast-paced development of AI, it is a central goal to build the trust and secure use of AI-based technologies by means of transarency and responsibility. This approach has been already initated and presented in General Data Protection Regulation (GDPR) in article 14[33]. In this respect, AI could work in two ways, first would be AI as a tool for the neutral, and the second being AI as the neutral itself[34].

Within the first method, AI could facilitate the management of documentation, researches and standatized drafting, while making it possible to estimate the outcomes, evaluate the damages, detect lies, and propose achievable solutions. AI also could have a possibility in this instance to advise human decision-makers for a simplied and promts solutions[35].

[31] P. Zourdoumis, (2014), *From ADR to ODR: Can technology shape the future of mediation practice?* International Institute for Conflict Engagement and Resolution.
[32] European Commission. (2020). White Paper on Artificial Intelligence; a European approach to excellence and trust (65).
[33] European Union, European Parliament and of the Council (2016). Regulation (EU) 2016/697 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.
[34] M. Shawani, (2020), *ADR and Artificial Intelligence: Boon or Bane?* LexForty Legal News Network.
[35] Ibid.

Accordingly, in the second method, AI would serve an alternative to a human third-party, when both sides would give the last, best offers on the table and the algorithm would evaluate and based on its database render the closest to its model solution decision[36].

Overal, it can be presumed that ADR would definitely benefit from AI-based systems, amplifying the process, making the the ADR processes more time-efficient and less burdensome when it comes to analysation and drafting of documentation. In the long run, AI could faciliate cost-efficiency of disputes. Additionally, AI is said to be more trustworthy, making it more probable for people to open their confidential information to an unbiased robot, than a person[37].

However, there are also some drawbacks. One of them being the need for huge investments in the development of AI technologies and their first-time implementation in the procedures, because the higher the intelligence of the AI-based systems, themore costly it gets. Some concernes are related to privacy and system vulnerability, as anyhow the data 'trusted' in by the parties may also be accessed by professionals who developed the system. Plus, like other technological inventions, AI can be penetrated by malware, it could malfanction, lag, and glitch. Another consideration is the legal framework for AI, as it is currently lacking. Though already the legislation regarding the defining scope of AI is under development. In 2021, the European Commission has already published the AI Act draft, which would set the objective on the development of AI and set the scopes of operability[38].

2.1. Online Dispute Resolution as digital format of ADR

If ADR has been recognized as one of the most efficient ways of resolving the dispute omitting the traditional court, then with its digitalization, the new digital format of ADR has emerged. This format is now known as Online Dispute Resolution (ODR) and now serves as one of the most efficient mechanism of ADR. ODR helps to reduce access barriers to justice, increases effectiveness, making it possible to challenge even some elements of ADR[39].

[36] Ibid.
[37] Natali Helberg, Theo Araujo, Claes H. De Vreese, (2020). *Who is the fairest of them all? Public attitudes and expectations regarding automated decision-making*. Comput. Law Secur. Rev. 39.
[38] See European Commission, Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain union legislative acts, 2021.
[39] Susan Sturm, Howard Gadlin. (2007). *Conflict Resolution and Systemic Change*.

It could be said that ODR is a combination and implementation of existing methods of ADR that are digitalized[40]. ODR was firstly introduced as one of the new methods of ADR in 2000s[41], although there have been no unified definition, ODR is considered as a private dispute resolution tool, as any ADR models[42].

With the global switch to digitalization, justice systems worldwide started to embrace the transition to e-Justice. The goal of digital justice is not to improve the ways the justice can be delivered, but also how the technology can serve to settle, prevent, and even resolve disputes[43].

There are three factors which may affect directly the legitimacy of a judicial decision[44]:

1) individuals should believe that their opinions are taken into account[45];

2) the decision making should be impartial, meaning that it should be neutral, and all opinions should be treated equally, without any favoritism[46];

3) citizens must trust the judicial system and its representatives[47].

Thus, the satisfaction of each side with procedural justice may greatly affect their perception on the legitimacy irrespective of their preferred outcome. It can be assumed that the likelihood of the satisfaction of the sides with the decision-making process will be increased. Which corresponds to the adversarial situation, where one wins, and one loses. The acceptance only possible when each and every one exercised the right to be heard fairly.

With the development of technologies and their algorithms, ODR can be tailored to process parties' needs, interests, and preferences, offering a fair, fast, efficient access to justice.

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[40] Susan N.E. (2010). *The next generation of Online Dispute Resolution: The Significance of Holography to Enhance and Transform Dispute Resolution, Cardozo J. of Conflict Resolution*.
[41] See e.g. Katsh. (1996). *Dispute Resolution in Cyberspace*
[42] Collin Rule. (2002). *Online Dispute Resolution for Business, B2B, E-Commerce, Consumer, Employment, Insurance and Other Commercial Conflict*.
[43] Ibid.
[44] Amy Gangl. (2003). *Procedural Justice Theory and Evaluation of Lawmaking Process, Political Behavior*, 119-149.
[45] Ibid.
[46] Ibid.
[47] Ibid.

Nowadays, the eKantonrechter could serve as one of the best implementations of ODR framework in the court system. The Netherlands judiciary completed this digital switch in 2014. The process has been simplified and fully digitalized. If the parties agreed to bring their dispute before the court, they have to fill out a special form. Due to the nature of the procedure (which is consensual and not adversarial), the procedural rules are less complex. The process itself is conducted completely over the internet, except the hearing, which must be conducted in the courtroom with a physical presence of both parties. To authenticate themselves, the parties log into the judiciary's system using DigiD (alternative to Estonian ID card). After several extra steps with authentication, for the security purposes, the system then gives the information to the court, which in turn checks it for admissibility. After the hearings, and all the documentation provided by the parties to the system, the judgement is uploaded into the digital case file[48].

If such online systems further penetrate the court systems on a national level the author assumes, that the possibility of digitalized cooperation between such systems in European Union can become reality. Moreover, in lights of a fast development of technologies, such as Big Data, Smart Contracts, Artificial Intelligence, Blockchain and others, with their implementation and further combination, the efficiency of such digitalized courts would be undeniable.

2.2. Introduction to e-Government and its application within the legal sector

Governments of many countries are faced with the necessity to reinvent government systems to be efficient and provide people with cost- and time-effective services, using innovative information and communication technologies. This development of new digital government led up to the e-Government implication. The first steps of reinventing the government date back to the end of 20th century, when administrative reforms and their development have experienced TQM (Total Quality Management[49]), in 1980s, and the Reinvention and Reengineering of Government in 1990s[50]. These changes started to shape the concept of e-Government, which is a dynamic composition of functions, goals, and structures. The e-Government initiatives are mixture of sophisticated emerging technologies which support the transformation of the traditional

[48] Dory Reiling. (2017). *Beyond Court Digitalization with Online Dispute Resolution.*
[49] William Johnson Miller. (1996). *A working definition for total quality management (TQM) researchers*. Vol. 1, issue 2, 149-159
[50] Samantha L. Durst, Charldean Newell. (1999). *Better, Faster, Stronger: Government Reinvention in the 1990s*

government to the new, more effective, and operational ways of working. However, what exactly an e-Government is? In this paper, the e-Government is defined in both – narrow and broad senses. In the narrow sense, in State of Texas' Electronic Government Strategic Plan, e-Government is defined as such: "Government activities that take place over electronic communications among all levels of government, citizens, and the business community, including: acquiring and providing products and services; placing and receiving orders; providing and obtaining information; and completing financial transactions"[51]. Defined in a broad sense by Gartner: "e-Government is the continuous optimization of service delivery, constituency participation and governance by transforming internal and external relationships through technology, the Internet and new media"[52]. Recognizing the notion of e-Government, several features can be defined: 1) the possibility to use government services through the non-traditional technological means; 2) empowering the access to government services and information anywhere, anytime with the equal access requirement.

From a technical perspective, E-government is an integrated tool, which comprises three main sets of technology: a) infrastructure; b) technological solutions; c) exploitation of public portals[53]. When an e-Government infrastructure enables implementation of various applications addressing specific problems and risks within the government management, the technological solutions may lead to the most positive impact when providing access to services in public portals. Thus, the more the internal and external governmental communication there is, through the exploitation of public services the government offers, the more solution for public services is delivered. For the purposes of this paper, concluding the various views on the concept of e-Government, it is defined as a tool for governments to transition the infrastructure through the usage of the most innovative ICT, specifically web-based Internet applications, with the aim to improve the quality of services, greater opportunities to access the institutions and processes, to make them more transparent.
In this paper, only the notion of e-Government is discussed, which is frequently misunderstood with e-Governance, and the latter is beyond the scope of e-Government. e-Governance is the way for citizens to directly participate in political activities beyond the governmental scope of functions, it may include e-Democracy, e-Voting, and participation in political activities online, whereas e-Government is a mere delivery of the services and information to the public using digital means.

[51] Electronic Government Task Force of State of Texas. (2001). *A Feasibility Report on Electronic Government*
[52] Baum, C. and A. Di Maio. (2000). *Gartners four phases of e-government model*
[53] Zhiyuan Fang. (2002) *E-government in Digital Era: Concept, Practice, and Development*

There are no definitive measures on how to identify whether the government is switched to e-Government indeed, or it is in the state of transition, or it has not even started the process. However, the article provides with characteristics that can show the success of implementation of e-Government projects all over the world[54]:

1) Comprehensiveness. This means that citizens have the greatest access possible to the services, so they are able to do whatever they need whenever they need;

2) Integration. All technological applications the government uses need to be intragovernmental, meaning have a very close integration with each other, so the data flow is secure and easily accessible;

3) Omnipresent. This characteristic is directly connected to the access to the jurisdiction portal of e-government, with all the connected sites and applications, which are easily available to users;

4) Transparency/Easy to use. e-Government is designed and operated in a way which would enable even the most novice users to find the information or use the services they need;

5) Accessible. The designing of the portals are as accessible to all kinds of people as possible, so everyone has equal possibilities to access and use the e-government services;

6) Security. The data provided by people to the e-Government systems is protected and is confidential, the records are created and stored by the government and non-accessible to everyone;
7) Privacy. The data about citizens is protected by the government;

8) Re-engineered. Electronically replicated services, processes and procedures is not e-Government. It is necessary to re-design, re-evaluate and re-make overall mission of the jurisdiction and create an infrastructure that creates a more efficient, simplified government-citizen relationship;

[54] Ibid.

9) Interoperability. The e-Government is a constant up-to-date body, which provides with the relevant information and services in the most time-efficient manner;

10) Be developed for E-governance systems. The e-Government is designed in such a way, that it is easily can implement democratic processes, such as e-making of policies, which would lead to building up an e-Community, for the democratic decision-making and active participation of the society.

Combined, all these characteristics make up for the successful e-Government, where the close relationship between various governmental institutions, businesses and citizens exists.

As mentioned in the previously, one important characteristic of the e-Government is democracy. Democratic governments are built on the idea of the constitutional state and the principle of rule of law[55]. e-Government thereby may be described as a domain, where legal regulations play a significant role. The legal system is dynamic. To catch up with the constant changes in society, statutory laws are continually amended: administrative institutions, courts or bodies of appeal clarify the applicable laws and etc. Following e-Government principles, it implies that the laws are processed by means of information and communication technologies: for instance, some legal rules regulate the processing of electronic documents, how this handling may be carried out, and to what extend and on which basis the government may keep track of the activities by logging in. When a government plans to transform statutory laws and other legal means into computer programs, in order to be able to automate application of the law, the doctrines of sources of law and other legal principles is crucial to follow in this matter[56]. Thus, the ICT systems in government administration are under development, they are based and influenced greatly on law in a very direct and comprehensive manner.

After the crisis period, the EU started to focus to improve the economic performance. One of the initiatives was to implement DSM[57]. The main aim of this project is to empower and promote electronic solutions and technological advancements for implementation in public services' communications between individuals and companies. This also covers the interoperability and was

[55] Massimo Tommasoli. (2013). *Rule of law and democracy: Addressing the gap between policies and practices*
[56] Dag Wiese Schartum og Anne Gunn B. Bekken. (2011). *Developing eGovernment Systems – legal, technological, and organizational aspects*, 69.
[57] See, European Commission, Commission staff working document 'A digital single market strategy for Europe – analysis and evidence', Brussels, 6 May 2015, SWD (2015) 100 final, 3.

set in motion. For instance, Tallinn's Ministerial Declaration on e-Government covers e-Government solutions with e-Justice and sets out juridical principles explaining ICT solutions in those sectors based on the interoperable framework[58]. Article 2 (1) of Decision (EU) n. 2015/2044 defines what interoperability is: "the ability of disparate and diverse organizations to interact towards mutually beneficial and agreed common goals, involving the sharing of information and knowledge between organizations, through the business processes they support, by means of the exchange of data between their respective ICT systems". It is therefore needed from all MSs to create and reconvert all digital platforms and databases to be able to interconnect and link them to a central ICT infrastructure.

The definition of interoperability adopted under the doctrine is aimed to adopt three main aspects:

1) 'Technical Interoperability': to encapsulate "technological characteristics and elements that link information systems, such as interconnection services, data integration services, and communication protocols"[59];

2) 'Semantic Interoperability': to describe the way how different organizations are able to understand what the shared information means – "it is usually associated with classification systems, ontologies, and data formats'[60];

3) 'Organizational Interoperability': to set and achieve common goals amongst integrated services[61].

With such a wide definition of interoperability set out by the European Union, e-Government principles seem to be interconnected, due to the similar characteristics such as 'intra- and inter-governmental integration'[62]. When European Commission set the Digital Agenda for Europe, the emphasis on the promotion of ICT solutions in sensitive areas such as Justice[63]. In light of this, e-

[58] See, for further development, Tallinn Declaration on eGovernment at the ministerial meeting during Estonian Presidency of the Council, 6 October 2017, EU2017.EE
[59] Carlos E. Jiménez-Gómez and Mila Gascó-Hernández. (2017). *Achieving open justice through citizen participation and transparency,* 160
[60] Ibid.
[61] Ibid.
[62] Yannis Charalabidis. (2011). *Interoperability in Digital Public Services and Administration: Bringing E-Government and E-Business*. Ch., 6.
[63] See European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'The Digital Agenda for Europe – Driving European growth digitally', Brussels, 18 December 2012, SWD(2012) 446 final, 12

Justice was presented as a key priority to achieve the set digital approach (i.e. Commission's Action Plan regarding e-Government). Therefore, one of the priority actions under the e-Government plan was set to "…make the European e-Justice Portal a one-stop shop for information on European Justice and access to judicial procedure in the Member States"[64]. e-Justice is closely connected term to e-Government, which, in the European Union, is conceived as a tool to provide the information to EU citizens, legal professionals and businesses with the aim to support cross-border access to justice[65].

The e-Justice Portal serves as an interoperable platform due to the fact that "it also provides a single access point via interconnections to the information in national registers with relevance in the area of justice, such as the interconnected insolvency registers[66] search, now available in the e-Justice Portal"[67]. The e-Justice Action Plan also sets out the emphasis 'on the interconnection of registers which are of interest to citizens, businesses, legal practitioners and the judiciary"[68], thus, making it possible for the portal to serve as a common ground for judicial operators and citizens' needs. Furthermore, it is a well-known fact that the judiciary system has for a long time been demanding an interoperable and interconnected system, so all the organic European courts and litigators are able and allowed to carry on procedural communications between different Member States' courts in a faster manner[69].

[64] See European Commission, 'EU e-Government Action Plan 2016-2020 –Accelerating the digital transformation of government', 8
[65] Supra nota.
[66] Michael Bogdan. (2017). *The new EU rules on electronic insolvency registers*. Masaryk University Journal of Law and Technology, Vol. 11, 175-182.
[67] For further information, 'European e-Justice Portal –insolvency registers', last modified 8 October 2020.
[68] See Council, Multiannual European e-Justice Action Plan 2014-2018, Brussels, 14 June 2014, 2014/C 182/02, Recital 21.
[69] George Pangalous, Ioannis Salmatzidis and Ionis Pagkalos. (2015). *Electronic cross-border access to legal means and procedures in Europe –the Greek eCodex pilot*. European, Mediterranean & Middle Eastern Conference on Information Systems, June 1st–2nd, Athens, Greece.

CONCLUSION

The aims of this research paper were to evaluate current status of judicial cooperation within EU framework, to try to assess the level of digitalization of a court systems and ADR methods in EU and conclude whether the grounds for a digitalized court cooperation between EU Member States can be established. The problem of the emergence of a common digitalized judicial area was solved using different sources to seek possible answers for the gaps and benefits, based on a thorough exploration of the EU legal framework, various instruments facilitating digitalization of the judicial sector and such concepts as e-Government.

In the first chapter, the author presented an overview of the legal framework of the European Union, the development of judicial cooperation has been covered. The practical issues with the complexity of a created framework have been established. One of the aims that EU legislator adopted regarding the judicial cooperation, namely, to smooth and speed up the court management and flow of documentation, has proved to be too troublesome. Moreover, the limited possibilities of EU legislator, and that is the dependence on domestic rules, diverse national practices, and linguistic schemes, make it harder to properly apply cross-border cooperation procedures. However, the perspectives of EU on digitalization of the judicial cooperation between Member States have been assessed. It has been concluded that the initiatives proposed by EU were promising and the current status of proposals is pending on the assessment by the EU legislator. The current developmental status of the legal framework is getting more and more attention from the EU, digitalized ways of conducting judicial processes has become one of the main objectives, facing practical challenges, but upholding the rule of law principle.

The study explained that even though the diversity between judicial systems is a big obstacle, the regulatory framework and the fast-paced implementation of various digital tools, making it possible to think about a common judicial integrated area. Contemporary development of legally permissible ways of conducting digitalized court processes is thus a production of a catalog of contributions to the future developmental perspectives in this area.

The second chapter talked about the risks and challenges regarding the digitalization of judicial practices and court systems. Even though the litigation has not been covered in depth, the need for the implementation of technologies, incorporation and penetration of traditional legal framework has been discussed. Nevertheless, ADR has been assessed, it was determined that the method of settling disputes out-of-court is now one of the promising tools to ease the workload and enhance the access to justice. The implementation of digitalized communication such as videoconferencing has been touched upon. Additionally, implementation of one of the most promising technologies such as AI has been assessed. Drawing conclusions on its main benefits which brought about within the ADR, and their main drawbacks, such as trustworthiness and lack of legal framework, which is currently under development. It was determined that the creation of a possible common e-Court system within EU has started to be shaped. More cases and disputes are being settled and resolved by the means of technologies, and new digitalized ways of working.

Finally, the concept of e-Government has been introduced. The historical development and general aspects have been covered. The overview showed how such digitalized model of government can contribute to providing more efficient and operational ways of services to businesses and people. The measures assessing the level of digitalization of government has been presented. It led to the thought of facilitation of services, including access to justice. The interoperability has been described, which aimed at three main aspects: 1) technical interoperability; 2) semantic interoperability; 3) organizational interoperability. It was concluded, that the principles founding e-Government directly correlate with the aim to create a common, interoperable, digitalized area, where every sector is in close communication with each other, again, contributing to the emergence of a integrated and interconnected system.

Nevertheless, it was found that the most serious issues lie in several dimensions. First is the complexity of the relationship between supranational regulatory level with national levels of regulation. Second, the digitalization of traditional litigation has not been very successful, as the complex system which had been established centuries ago is not flexible, and thus the implementation of technologies in this judicial sector has been ‘clumsy’ and requires a change in the legal framework from the inside. In conclusion, this topic clearly indicates that the grounds for the emergence of a common court system have just started to materialize. It is going to be intriguing to observe the future of the evolution of judicial cooperation between EU countries, and how the challenges will be modified to satisfy the legal needs of the digital world. It is clear that the research gaps could be filled in future researches and studies.

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