
High Level Conference “For a People-centred e-Justice”

THE DIGITALISATION OF JUSTICE IN EUROPE AND THE IMPORTANCE OF THE ROLE OF LAWYERS

Ladies and Gentlemen,

- On behalf of the legal profession of the European Union, I would like to thank you for inviting the Council of Bars and Law Societies of Europe (CCBE) to participate in today’s discussions on a People-centred e-Justice. The CCBE is recognised as the voice of the European legal profession representing the bars and law societies of 45 countries, and through them more than 1 million European lawyers.
- It is no longer a question whether our environment will become more digitalised as this reality is already happening. Digitalised technologies have the potential to reduce costs in multiple ways, including, for example, the functioning of courts. Digital Justice can facilitate greater access to Justice for everyone, and it is essential that it facilitates those who need it most.
- The CCBE has always welcomed EU initiatives on the digitalisation of justice, as they are:
 - a way to foster interoperability of different national systems, and
 - a useful tool for lawyers which, if properly managed, could allow them to organise their work more efficiently and significantly improve their clients’ access to justice, including better and faster justice.
- Nonetheless, the CCBE has also stressed that any perceived need to increase efficiency through the use of technology should not sacrifice the consistent delivery of justice. Hence, safeguards must be adopted to guarantee that the implementation of e-justice systems does not jeopardise the independence of the judiciary and the right to a fair trial.
- Therefore, lawyers must remain consulted and structurally involved at policy and implementation level in relation to any initiative on the digitalisation of justice, as they represent one of the main user groups of e-justice systems.
- E-justice needs to consider lawyers’ requirements and obligations in terms of deontology, data protection, professional liability or rules of evidence.
- For instance:
 - Lawyers must have access to the e-justice systems in other Member States, including tools to access electronic evidence in a cross-border context.
 - Professional secrecy obligations must be respected when developing systems which improve cross-border access to electronic evidence. This is one of the most important shortcomings of the E-evidence Proposal: Unlimited access to data shall be possible and there is no technical tool to identify and separate lawyer-client data, which – in an offline world – would be protected by the right of the client to confidentiality.

- Hearings through videoconference must make sure lawyers can talk confidentially with their clients during hearings.
 - The technical arrangements in place for the use of videoconferencing should ensure, as much as possible, a true-to-life hearing experience, including full communication and interaction of all the parties to the procedure.
 - Electronic signatures and seals on submissions from lawyers must be easily verifiable in cross-border cases in all countries, and technical requirements must be harmonised in the member states.
- In view of these examples, we can see a need for EU-wide minimum standards to ensure that national and EU e-justice systems are able to guarantee rights to a fair trial and take into account the specific needs of all stakeholders involved, including those of lawyers.
 - In this context, e-CODEX deserves particular attention due to its high importance for the future of the legal profession.
 - The CCBE strongly welcomes the proposal for a regulation presented by the European Commission on the e-CODEX system and its handover to eu-LISA. However, such proposal must be supported by sufficient safeguards.
 - It is absolutely essential that lawyers remain involved in the future development of such an important tool as e-CODEX as we are one of its main users. In this regard, the CCBE welcomes the recognition of the involvement of the legal professions and other stakeholders in the governance of the e-CODEX system, within the work of the Advisory group and the Programme Management Board. However, we think that some clarifications might be needed regarding the conditions and the effectiveness of such involvement.
 - Along with these considerations, the CCBE calls to maintain the independence of the judiciary and the right to a fair trial in the development of the European e-justice infrastructure. We welcome the creation of a specific governance in the e-CODEX proposal. However, the CCBE also asks for clarifications on how the proposed governance structure will effectively ensure the independence of the judiciary in practice. The proposed regulation might need stronger requirements to ensure this principle, such as a clear separation of services and personnel and data and administration inside eu-LISA to ensure a clear separation between the justice side and the Home Affairs/Law enforcement side.

(Artificial Intelligence)

- With the great benefits offered by technology also comes a great responsibility to ensure that the use of technology in justice remains ethical, fair and human centred. It is of paramount importance that such considerations are also taken into account in the development of the use of Artificial Intelligence in our judicial systems. Much debate is still needed to critically assess what role, if any, AI tools should play. Change should be embraced where it improves or at least does not worsen the quality of our justice systems.
- AI systems should be introduced only when there are sufficient safeguards against any form of bias or discrimination.

- Recently the European Commission has underlined that the final decision-making must remain a human-driven activity and decision. While the CCBE welcomes this statement, the approach needs to be strengthened. This is why we call on the Commission to further underline the right to a human judge.
- Moreover, we firmly believe that minimum safeguards and principles should be upheld to counter the potential risks and impact of AI tools within court systems:
 - Principle of identification - which means the possibility to identify the use of AI: all parties involved in a judicial process should always be able to identify, prior to and within a judicial decision, the elements resulting from the implementation of an AI tool.
 - Principle of non-delegation: Under no circumstances should the judge delegate all or part of their decision-making power to an AI tool. In any case, a right to a human judge should be guaranteed.
 - Principle of transparency: The parties should be able to verify the data input and reasoning and functioning of the AI tool.
 - Principle of discussion: The parties should be able to discuss and contest AI outcomes in an adversarial manner outside the deliberation phase and with a reasonable timeframe.
 - Principle of neutrality: The neutrality and objectivity of AI tools used by the judicial system should be guaranteed and verifiable.

(Conclusion)

- We firmly believe that our efforts should be centred around how digitalisation can benefit society in the long term by focusing on improving the quality of justice from a user perspective. One must remain vigilant that digitalisation efforts stay focused on improving the quality of our justice systems and are not only introduced for achieving efficiency gains or cost savings.
- This requires a structural dialogue and collaboration among all justice stakeholders, such as EU institutions and agencies, national Ministries of Justice, judges, councils of the judiciary, court staff, and especially legal practitioners such as lawyers.
- Therefore, the CCBE proposes to establish a kind of High-Level Expert Group on the digitalisation of justice and the use of AI in justice as advisory body to the European Commission. This expert group should involve all justice practitioners. It could consider the various challenges regarding the digitalisation of justice and offer the necessary intellectual and ethical guidance not only from the perspective of the administration of justice, but also from a users' and practitioners' point of view.