
Technology In Courts In Europe: Opinions, Practices And Innovations

By Dory Reiling¹

Abstract:

In 2011, the Consultative Council of European Judges produced an Opinion on justice and information technologies. It was my privilege to act as the supporting expert. This article is a reflection on the process of Opinion 14 and on its final product. It includes an evidence-based analysis of the state of IT in courts in Europe. It provides some insights into the opportunities and risks relating to IT in courts. This article also looks forward, in preparation for the International Conference on Court Administration in The Hague in June 2012. It closes with a critical evaluation of the way IT is changing courts and judiciaries.

The Opinion 14 Process

The Conseil Consultatif de Juges Européens (CCJE) is an advisory body of the Council of Europe (CoE). It is composed exclusively of judges, and advises on issues related to the independence, impartiality and competence of judges. The Council of Europe itself was founded on May 5 1949 by 10 countries; it now has 47 member countries. Its purpose is “to develop throughout Europe common and democratic principles based on the European Convention on Human Rights”². Its institutions include a parliamentary assembly, a council of ministers and the European Court of Human Rights. It is distinct from the European Union, which is primarily a political entity. The CoE is located in Strasbourg, France.

The CCJE produces an Opinion every year. The CCJE, after receiving its terms of reference for its 14th annual Opinion from the Council, first conducted a survey among its members on the use of IT in the courts in the member states. The results served to inform the preparation of the Opinion. A working party consisting of 9 CCJE members, each a judge representing a member state, met in Strasbourg twice to discuss and draft the Opinion. Finally, the draft was discussed and adopted in a plenary meeting of the CCJE in November 2011. It is now on the CCJE Council of Europe web site³.

A Good Thing

First of all, it is important to note that the CCJE welcomes IT as a means to improve the administration of justice, for its contribution to the improvement of access to justice, case-management and the evaluation of the justice system and for its central role in providing information to judges, lawyers and other stakeholders in the justice system as well as to the public and the media. The CCJE encourages the use of all aspects of IT to promote the important role of the judiciary in guaranteeing the rule of law (the supremacy of law) in a democratic state; In the survey, a majority replied that they saw advantages in the use of IT, in terms of efficiency, speed and cost, access to legal information and as service to citizens. A minority also saw disadvantages, mainly in cost and data security.

Article 6 of the European Convention on Human Rights

Leading in the process of producing the Opinion was the application of Article 6 of the European Convention of Human Rights (ECHR). This article provides for access to courts, impartiality, independence of the judge, fairness and reasonable duration of proceedings to everyone. For each aspect of the judicial process that was discussed, we examined what the use of IT could mean for the standards of Article 6. The normative framework also included earlier CCJE Opinions and the Magna Charta of Judges, adopted in November 2010⁴. The Magna Charta summarizes and codifies the main conclusions of the CCJE Opinions already adopted.

Existing use of IT

When thinking about innovating the administration of justice with IT, a look at the existing situation is a useful exercise. For the purpose of the Opinion, the CCJE survey provided some very interesting and poignant information on the use of IT in courts in Europe. Another source of information on the use of IT in those courts is the survey done by the Council of Europe’s Commission on the Efficiency of Justice (CEPEJ). This survey of justice institutions in Europe is conducted every two years. Data collected are published in a report two years later. The 2004 data were published in the 2006

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² www.coe.int

³ http://www.coe.int/t/dghl/cooperation/ccje/textes/Avis_en.asp; All websites were last visited on March 31 2012.

⁴ Magna Charta of Judges, adopted by CCJE in November 2010, available on the CCJE website at www.coe.int. The spelling *Charta* is original.

report. CEPEJ has surveyed the use of IT in courts since 2004, so it provides us with an overview of six years of IT development in courts. The two sources will be used extensively in the discussion that follows.

CEPEJ, for the purpose of its evaluation reports, has categorized IT according to the role of the technology in the court process⁵:

- **Direct support for judges and staff.** This category includes most office technology, document production and calendaring as well as email and jurisprudence databases. It also includes technologies supporting the work in the courtroom.
- **Support for court management** encompasses case registration, case and court management systems and systems for financial management.
- **Support for interaction between courts and parties,** communication technology to transmit information within the organization and to those outside: parties and the general public.

CEPEJ's methodology does not include technologies such as videoconferencing, instant messaging, blogs, wikis, and intranet web sites.

CEPEJ has classified the member states of the Council of Europe into three groups with regard to the level of use of information technology in their courts.

- In the highest scoring group, technology for direct support and court management is in place in all courts, and interaction technology is used to communicate externally. There are 17 countries in this group: Bulgaria, Czech Republic, Lithuania, Switzerland, UK-Northern Ireland, France, Norway, Portugal, Slovakia, Estonia, Turkey, Austria, Denmark, Finland, Malta, Russian Federation and UK-Scotland.
- The intermediate group has mostly implemented direct support and court management technology, but its use of external communication technology is still limited. In the intermediate group are 20 countries: Albania, Bosnia and Herzegovina, Belgium, Latvia, Sweden, Netherlands, Croatia, Italy, Monaco, Poland, Hungary, Luxemburg, FYROMacedonia, Ireland, Romania, Armenia, Slovenia, Spain and UK-England and Wales.
- In the lowest scoring group of 8 countries are Moldova, Azerbaijan, Cyprus, Greece, Montenegro, Andorra and Serbia.

The CCJE survey received replies from 37 countries. Five of the 17 high scoring countries in CEPEJ did not send replies to the CCJE survey. In the intermediate group, only 2 of the 19 countries did not reply, and in the lower group of the 8 countries, five did not reply. This means that the high level countries and the low-level countries are under-represented in the CCJE survey. Consequently, there is probably insufficient evidence on the cutting-edge innovation that is going on in the courts of some high level countries.

Opinion 14

The next part of this article follows the discussion in Opinion 14. Hence, it discusses IT in (1) access to justice, in (2) judicial procedures, and (3) with regard to independence and governance. For each topic, it first sets out the standards laid down in **Article 6** of the ECHR and other Opinions and documents from the CCJE. Next, it analyses to what extent courts have implemented the technology. This analysis is based on the results of the CCJE survey and the surveys by CEPEJ.

1. Access to justice

Article 6 ECHR and Opinion 14

Access to justice is a very general concept that is relevant to judges and courts in different ways. It includes access to courts as laid down in Article 6 ECHR, but also access to legal information.⁶

In Opinion 14, the CCJE states that full, accurate and up to date information about procedure is a fundamental aspect of the guarantee of access to justice identified in Article 6 of the Convention (ECHR). Judges must therefore ensure that accurate information is available to any person engaged in court proceedings. Such information should generally include details or requirements necessary to invoke jurisdiction. Such measures are necessary to ensure the necessary equality of arms. Opinion 14 is not the first occasion for the CCJE to concern itself with access to legal information. According to the Magna Charta of Judges, justice shall be transparent and information shall be published on the operation of the judicial system. CCJE Opinion 6 recommends that states should provide dissemination of suitable information on the

⁵ CEPEJ 2006, European Commission for the Efficiency of Justice, European Judicial Systems Edition 2006 (2004 data). CEPEJ 2008 (2006 data), CEPEJ 2010 (2008 data). http://www.coe.int/t/dghl/cooperation/cepej/evaluation/default_en.asp

⁶ Reiling 2009 part 4

functioning of the judicial system, including landmark decisions delivered by the courts and citizens' guides. Courts themselves should participate in disseminating the information. Opinion 7 contains the demand for increased transparency. The CCJE also warns that IT development should not be used to justify courts being dispensed with. Case law, at least landmark decisions, should be made available on in the internet free of charge, in an easily accessible form, and taking account of personal data protection. It welcomes the use of international case-law identifiers like the European Union Case Law Identifier (ECLI) to improve access to foreign case law.⁷

Opportunities

Evidently, in the context of access to justice, communication technology is the first opportunity that comes to mind. In Opinion 6, the CCJE states that technology should be developed for obtaining documents to start a case, get in touch with the court and obtain information on cases.

The EU has developed a benchmark for stages of such increasingly complex levels of electronic interaction between citizens and governments⁸:

Stage 1: Information online about public services

Stage 2: one-way interaction: downloading of forms

Stage 3: two-way interaction: processing of forms (including authentication), e-filing

Stage 4: Transaction: case handling, decision and delivery (payment).

Access to legal information

Access to legal information is also a very broad concept that includes access to information of a general nature, and/or to help with preventing or resolving problems that could potentially come before a judge, as well as information specifically on access to courts. Courts and judges have a role in ensuring access to legal information. The Internet can improve access to justice and promote transparency. The idea of on line legal information to aid informal problem solving was advocated by Richard Susskind in the 1990s. Accessible information can lead to out-of-court resolution of problems and disputes⁹.

Access to courts

Access to courts is a service to citizens that can improve the individual's chance of a just resolution of a legal problem. When courts publish their own decisions directly for the public, this increases their role as upholders of legal norms and standards, what is known as their shadow function. This refers to the wider normative authority of a judicial decision beyond its significance for the parties in the case.

According to the CCJE survey, courts and court systems increasingly have their own web sites. Less than half of those who responded say all or most courts have their own web sites. Some have portals, a few say they have one site for all courts, a few others have sites only for the Supreme Court. The websites provide general information on the judiciary, the court, its organization, information for court users and for the media, forms to submit to the courts, and case law.

Table 1: Electronic communication in courts in Europe

Facility in all courts	2004	2006	2008
Electronic web forms	13	11	15
Special web sites	18	14	20
Other electronic communication	12	15	16

Source: CEPEJ 2006, p. 69, 2008 p. 86 and 2010 p. 93

The CEPEJ surveys did not ask about web sites in general, but they did inquire about the use of special websites, web forms and other forms of electronic communication. From the results, what emerges is that the use of special websites is increasing. In 2004, nearly half reported they used special websites in more than half or all of the courts. In 2008 there were a few more.

⁷ A new case identification/neutral citation system, a result of the recent Council of EU decision, designed to facilitate cross-border access to national case law (whether from courts or tribunals). **Council conclusions inviting the introduction of the European Case Law Identifier (ECLI) and a minimum set of uniform metadata for case law** [Official Journal C 127 , 29/04/2011 P. 0001 – 0007](#)

⁸ EU Benchmarking p. 16

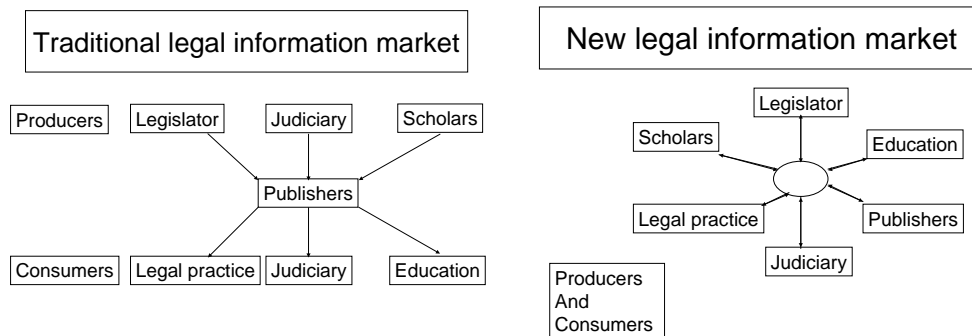
⁹ Reiling 2010.

What does emerge from the CEPEJ surveys is the development towards stage 2: downloadable forms. In 2004, almost a third reported having electronic web forms. In 2008 it had gone up to nearly half. Increasingly, courts also have electronic collections of jurisprudence.

Table 2: Electronic jurisprudence databases in courts in Europe

Facility in all courts	2004	2006	2008
Electronic database of jurisprudence	33	33	41
Source: CEPEJ 2006, p. 69, 2008 p. 86 and 2010 p. 93			

Where courts start to publish their own decisions, the market for legal information changes fundamentally. Traditionally, case law and jurisprudence are provided to publishers by the producers, judiciaries, lawyers or scholars. The publishers then provide them to the consumers, mainly the judiciaries, legal practitioners and educational institutions.



When the producers start to do their own publishing, the role of the traditional publishers becomes less central. Participants in the legal information market all play both roles as producers and consumers.

E-filing

From the CCJE survey, we can see that electronic filing, where legally possible, is still experimental and rare. Legislation enabling e-filing is in force in less than half of the respondents, in 2 it is not yet in force, in 1 it is incomplete, and a large minority say there is no legislation on electronic filing. Almost half say they have no e-filing, less than one third say they have electronic filing, the same number say they have some. The requirements for electronic filing are different: 2 members require an electronic signature, 5 members use a downloadable form and 6 members require a qualified electronic signature. E-filing is used extensively in Austria, but is low, rare or experimental elsewhere.

E-filing, as one-way communication is only stage 2 in the EU Benchmark. In stage 3, there is two-way communication. From the CCJE survey, we learn that less than half of the respondents say they communicate with parties electronically, and two say they do not. A large minority say they communicate electronically with lawyers, some by email and some through the portals.

What makes this analysis less than satisfying is that five out of the 17 members with experience in external communication did not send in replies to the CCJE survey questions. Hence, the picture is incomplete. For example, in the UK-England and Wales, which did not participate in de CCJE survey, there is an example of a stage 4 procedure: Money Claim On line (MCOL) and Possession Claim On Line (PCOL). These processes both support full electronic transactions.

In summary, at present, innovation in access to justice in courts in Europe is mostly in stage 1 (information service) and 2 (web forms) external communication with the users of the courts. In countries where case law is made available to the general public on the Internet, this strengthens the shadow function of the courts, their role as guardians of norms and of the law.

2. IT in the court procedure

Article 6 Right to a fair hearing within a reasonable delay is an essential citizens' right. A fair hearing includes the right to an adversarial hearing before a judge, production of original evidence, having witnesses or experts heard and to present material that is useful for the case. Information processing is central to the judicial procedure. According to ECHR case law, a hearing by videoconference should be in conformity with article 6, which includes the possibility of making a statement to the court and of adequate legal representation, and where necessary, provided for by law¹⁰.

Opinion 14 recognizes that IT offers opportunities for case processing and for knowledge management and state of the art, free of charge access to legal information and case law. Resort to IT facilitates exchanges of documents and access to case processing information for parties and their representatives. Video-conferencing may facilitate hearings in conditions of improved security or remote hearing witnesses or experts.

This Opinion builds on earlier ones, for instance Opinion 11 which states that a hearing should be held whenever the case law of the European Court of Human Rights so prescribes and should comply with all ECHR requirements, thus ensuring for litigants and society at large observance with the minimum standards of a properly designed and fair trial.

Opinion 14 also identified a number of risks:

IT should:

- not diminish the procedural safeguards (or affect the composition of the tribunal) of a fair hearing.
- not prejudice mandatory hearings and the completion of other essential formalities prescribed by law.
- remain confined to substituting and simplifying procedural steps leading to an individualised decision of a case on the merits.
- not replace the judge's role in hearing and weighing the factual evidence in the case, determining the law applicable and taking a decision with no restrictions other than those prescribed by law. The judge must retain, at all times, the power to order the appearance of the parties, to require the production of documents in their original form and the hearing of witnesses.

The aids to judicial decision should not be a constraint; they must be designed and seen as an ancillary aid to judicial decision-making.

Videoconferencing could provide a less direct or accurate perception of the statement. Video-conferencing should never impair the guarantees of the defense.

Implementation

IT has now become a pervasive information tool, as opposed to the administrative tool it once was. Courts operate with distinct processes: case disposition, managing cases and courts, knowledge sharing, and court hearings. They all process information in different ways, and therefore require distinct information technologies.

Office technology

From the CCJE survey, we learn that judges increasingly do their own writing on computers. Court staff write as well, but are also involved in registration and in delivering judgments. About half use models or templates. Some use voice recognition for document production.

Almost half use data in case registration systems for monitoring the length of proceedings; data on individual judges are used for statistical purposes only.

Courts occasionally communicate electronically with parties and/or lawyers, mostly on an informal basis. All courts still keep and archive paper files. Electronic files and electronic signatures are mostly still experimental.

¹⁰ ECHR October 5 2006, Marcello Viola c. Italy, no. 45106/04 [click here for full text](#), ECHR October 27 2007, Asciutto c. Italy, no. 35795/02.

In hearings, electronic files and equipment to project documents, audio and video, also to record hearings are used only occasionally. Some courts record hearings in audio, only a few make use of video recording. Some courts use videoconferencing to hear witnesses, parties and/or experts.

The CEPEJ surveys show how word processing has become a pervasive tool in the back office of the courts. Email and internet connections are increasingly becoming a normal tool on the judge's desk.

Table 3: Technology on the judge's desk in courts in Europe

Facility in all courts	2004	2006	2008
Word processing	40	42	45
Email	31	33	41
Internet connections	33	33	40
electronic jurisprudence databases	33	33	41
electronic files	20	18	21

Source: CEPEJ 2006, p. 69, 2008 p. 86 and 2010 p. 93

With regard to e-files, in 2004 almost half replied they used electronic files in all courts. In 2006, the number had gone down to 18, only to go back up to 21 in 2008. According to the CCJE survey, use of e-files in courts is rare, and experimental at best, except in Austria. All courts still use paper files. A few use electronic files, a few more experiment with electronic files or use them occasionally.

Case law or jurisprudence databases

Jurisprudence databases deserve some special attention because the functionality and capabilities behind them can be very diverse¹¹. A jurisprudence collection is a repository of interesting or innovative decisions for the purpose of developing the law and its application for lawyers. Decisions are supplied on an ad hoc basis. Not every decision goes into the repository. Some infrastructure is needed, but it can be similar to producing the paper version. The purpose of a jurisprudence collection is to present innovative or landmark decisions to aid the development of the rule of law. The process involved can be separate from the regular court process of case disposition. A very different matter is a collection of all decisions in an electronic archive. All decisions need to go in. There is a process in place to ensure they do. This process is part of the regular business process of the court. In this case, the purpose of publication is also public scrutiny and transparency of the courts.

According to the CEPEJ surveys, a large majority had jurisprudence databases in all courts. In 2008 nearly all did. We do not know if these collections are open to the general public.

Knowledge management

Electronic jurisprudence databases are used widely, and increasingly. If the courts in member states have electronic access to sources of legal information, what types of information, and what sources do they have access to? The external sources can be state run or private, such as publishers. In the CCJE survey, less than half use both state and private sources, state sources are used in almost half, a few more use private sources. Below is the breakdown according to type of information and source.

¹¹ Reiling 2009 p. 52-53

Table 4: Sources of legal information databases in courts in Europe

content	state sourced only	privately sourced only	both
national legislation	18	7	8
European legislation	8	2	8
national case law	9	5	9
international case law	4	1	4
law review articles	4	-	4

Source: CCJE survey on the use of IT in courts

More than half of the respondents have access to state-sourced national legislation, less than half get national legislation from private sources. European legislation, where available, is mostly state-sourced, and so is national case law. Access to international case law and law review articles, from different sources, is much less common.

Court management and administration

The CEPEJ surveys include three databases systems for managing courts: Case registration systems, court/case management systems, and financial management systems. In 2004, just over half the member states had case registration systems in all courts. In 2008, that had gone up to two-thirds.

The increase in case registration systems is important, since they facilitate control over the process of case disposition¹². Case registration systems in particular can improve case and case load management, which helps to reduce the time a case is pending.

Court and case management systems were available in all courts in half the member states in 2004, and in 2008 the number had increased to a little over half. It is remarkable to see how court and case management systems are lagging so far behind, even behind the financial management systems.

Table 5 Court management technology in courts in Europe

Facility in all courts	2004	2006	2008
Case registration	25	26	34
Court/case management	17	20	25
Financial management	23	26	31

Source: CEPEJ 2006, p. 69, 2008 p. 86 and 2010 p. 93

The CCJE survey tells us that almost half use data in case registration systems for monitoring the length of proceedings, a slightly smaller number do not. A majority use data on each judge for statistical purposes only.

Tools for the hearing

Tools to support court hearings include electronic case files, equipment to project documents and images, audio and video, tools to record hearings and videoconferencing. Tools to support court hearings are not part of the CEPEJ surveys. From the CCJE survey, we can see that they are used only occasionally. In hearings, electronic files and equipment to project documents, audio and video, are used only occasionally. Some courts record hearings in audio, only a few make use of video recording. Some courts use videoconferencing to hear witnesses, parties and/or experts.

3. IT-governance and judicial independence

Article 6 awards everyone the right of the citizen to an independent and impartial judge or court. Impartiality, and the independence which should safeguard it, are necessary for resolving citizens' legal problems in a fair manner. Judicial

¹² Reiling 2009 part 3

governance needs to serve the goals of impartiality, independence, fair procedure and reasonable delay. Opinion 14 states that, in order to use the opportunities IT has to offer effectively, judges and courts may need to make major changes in their approach to case management, transparency, governance and their information relations with their environment.

Independence and governance

Across Europe, the issue of judicial independence is debated in different ways, depending on the national context. In some countries, independence stands first of all for the freedom and discretion of individual judges. In other countries, the independence debate is framed more in terms of organizing judicial impartiality¹³.

The way courts and judges work should, in the light of the norm in Article 6, be geared towards safeguarding independence and impartiality. When IT is introduced, the way courts work changes. This may entail changes in the way independence and impartiality are safeguarded in the daily work practices of the courts. Therefore, the impact of IT is relevant for independence and impartiality on different levels.

Across Europe, institutional arrangements differ

Safeguarding independence and impartiality is a concern on different levels: the level of the daily work process, that of the court organization, and that of the judiciary as a whole.

The distribution of responsibilities between the legislative, executive and judicial powers as regards the operation of justice is arranged differently across the European states or entities¹⁴. In a majority of states, the Ministry of Justice is responsible for the management of the overall budget for the courts, the public prosecution and legal aid. In some states, this responsibility may be partly delegated to judicial authorities, such as the Council for the Judiciary or the Supreme Court. With respect to the management of courts, it is first of all the court president, or a court (administrative) director who is responsible for the management of the financial resources at the court level.

Decisions about implementing IT for the entire court system are usually taken at the national level. Decisions about developing and implementing IT in court systems are taken by different authorities, depending on the situation. Across the member states, general and IT governance structures differ. According to the CCJE survey, decisions about IT are taken in almost half the countries by the Judicial Council or the national Court Administration, in less than half by the Ministry of Justice, and in a few cases by the Supreme Court. Judges participate in the IT decision making in less than half of the member states.

Opinion 14

Opinion 14 recognizes that IT access to information can contribute to a greater autonomy of judges in performing their tasks, and that IT can be an important tool for strengthening transparency, and objectivity in distributing cases and fostering case management. Information-based management is an opportunity for developing institutional independence. Data from IT systems can be used in evaluating judges, but not as the sole basis for evaluating an individual judge. Opinion 14 also identified a considerable area of risks with regard to IT implementation limiting judicial freedom to decide and infringing on the judicial process. IT should be used to enhance the independence of judges in every stage of the procedure and not to jeopardize it. IT should not interfere with the powers of the judge and jeopardize the fundamental principles enshrined in the Convention. IT has to be adapted to the needs of judges and other users, it should never infringe guarantees and procedural rights such as that of a fair hearing before a judge. Judges need to be involved in decisions that have consequences in those areas.

Managing and developing IT presents a challenge for any organization. For judiciaries, it presents a new and demanding challenge for their governance structures. IT governance should be within the competence of the Council for the judiciary or other equivalent independent body. Regardless of which body is in charge of IT governance, there is the need to ensure that judges are actively involved in decision making on IT in a broad sense. Judges and court staff have both a right and a duty to initial and on-going IT training so they can make full and appropriate use of IT systems.

Funding for IT should be based on its contribution to improve court performance, the quality of justice and the level of service to the citizens.

¹³ Reiling 2009 part 5

¹⁴ CEPEJ 2010 p. 291

Critical Analysis

This next section discusses some of the ways in which IT is changing and innovating the administration of justice. It first analyzes the CCJE Opinion. This analysis, brief as it may be, points to some of the highlights of what is prominent in the Opinion, what its main concerns are, and what, in my view, is missing from it. The final paragraph will look forward to the future of court innovation.

What is prominent?

The CCJE shows great enthusiasm about knowledge management for judges. Electronic access to legal information, particularly jurisprudence databases, is regarded as a great step forward. An open question is, what courts do to share their own knowledge: do they make their own collections of their own case law, and do they use information technology to share knowledge, for instance in a wiki-like application? From the discussion in the section on access to justice, we can see how the market for legal services changes when judiciaries become producers, not just consumers of legal information.

Opinion 14 also welcomes improved access for the public to legal information and to courts. Access to courts using electronic filing and access to case records are regarded as an improved service to the citizen.

What are the concerns?

The CCJE's most pressing concern is the risk IT implementation poses to judicial freedom to determine procedures and to dispose cases. This concern is expressed in over a quarter of the statements in Opinion 14. Interestingly, this concern did not come up in the survey question about disadvantages of IT at all. The risk that implementation of IT poses to the independence of the individual judge to make decisions is evidently regarded as very serious. This concern may well have to do with the circumstance that, in more than half of the CCJE member states, judges are not involved in decisions about developing IT. Those decisions are, in the majority of cases, taken by governing bodies such as the Judicial Council, the Court Administration, the Ministry of Justice or the Supreme Court, without involving the judges.

Apparently, IT that does not directly affect the court process itself, such as an electronic collection of jurisprudence or even e-filing, is regarded with approval by the CCJE. This kind of IT is also relatively easy to implement. IT directly affecting the judicial process evidently causes anxiety, and it may even generate resistance.

In my earlier work, I concluded that the most salient deficiency is that of strategy: a strategic vision of processes administering justice, shaped by knowledge and understanding of the role of information in courts. In order for IT innovations in the court processes to actually improve court processes and not detract from them, the judiciary's leadership and the IT function both need to understand how information works in the courts and the implications for IT. In some cases, changes in the governance structure may be needed to support strategy and policy formation and to support prioritizing funding and budgeting in accordance with the policies. From the above, I think the conclusion is also justified that judiciaries need to have sufficient control over their own IT, which may also require changes in the governance structure.

What did not make it into Opinion 14?

IT is constantly evolving and changing. Therefore, any discussion of IT in courts is going to miss the latest developments, for instance social media, wiki technology and mobile computing. However, in courts in Europe, IT tools for the courtroom are an undervalued topic. This is particularly true in comparison to common law systems like the U.S. where IT has been in use for much longer, and where the immediacy of trials have placed more emphasis on what goes on in the courtroom.

Personally, I would have welcomed a recommendation on cooperation and exchanges between member countries with regard to IT. Court systems can learn from each other's experience with IT, precisely because IT is an evolving phenomenon. The results of experimentation are important for innovation. I have long advocated institutionalizing experimentation which can translate the needs of administering justice into IT applications. Court systems can also learn from the experiences of other court systems and other organizations. For example: the requirements for electronic filing are so different, one wonders whether an exchange of experiences on the requirements for e-filing might simplify its introduction. The CCJE could be a forum for such sharing of experience.

Innovations

The Magna Charta of Judges entrusts judges with responsibility for access to swift, efficient and affordable dispute resolution. Judges need to discern both advantages and disadvantages, to support positive trends and avoid those that are harmful to the administration of justice. Opinion 14 stresses that procedural rights (Art. 6 of the ECHR) of the parties should not be infringed by the application of IT. Judges, being responsible for ensuring the procedural rights of parties as safeguarded in article 6, need to be mindful of those risks but also supportive of the positive trends.

IT and its introduction in courts in Europe have affected the way the courts administer justice. These impacts may entail both risks and opportunities. At this stage, the innovation in courts is mainly in changes in tasks between judges and clerks in some countries. Judges' access to national and international case law databases and other legal information has improved. More IT-savvy countries experiment with increased electronic communication with court users, in web forms and e-filing. Increased access to information, precision, and transparency of the judicial process has increased public scrutiny of the judiciary. Where courts publish their own case-law and decisions on line, the role of courts as setters of standards, their shadow function, has improved.

Standardized forms of justice can be more affordable for the users, but run the risk of being less applicable for individual situations. On the one hand, Opinion 14 sees the risk of a dehumanized justice and tribunals being closed down because of increasing use of information technology. On the other hand, it also identifies new forms of information management enabling higher levels of fairness and equality, also entailing a new perception of justice's symbolism.

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