

## A REVIEW OF THE EFFICIENCY OF JUSTICE AND OTHER ELEMENTS OF THE 2022 – 2025 CEPEJ ACTION PLAN: “DIGITALISATION FOR A BETTER JUSTICE”

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*CEPEJ (European Commission for the Efficiency of Justice) on the 20<sup>th</sup> anniversary of its work adopted the Action plan for the period 2022-2025 named “Digitalisation for a better justice”. Digitalisation has been playing an increasingly important role in the justice system in recent years, but its significance erupted during the COVID-19 pandemic. Since digitalization is our present but even more our future, CEPEJ rightfully decided to focus its Action plan on this aspect of the judiciary. The author will review all aspects of the CEPEJ action plan, but the focus will remain on the efficiency of justice. One of the main conclusions is that the digitalisation of justice is an absolute necessity and all stakeholders should put it among their priorities (in a similar manner as CEPEJ did) but the process of digitalization should be conducted diligently and with proper assessment of its effects. Otherwise, digitalization might have the opposite effect in many areas of society, even leading to the denial of justice.*

**KEYWORDS:** CEPEJ, Digitalisation, Justice, Efficiency, judges,

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## INTRODUCTION

At the 37th CEPEJ (European Commission for the Efficiency of Justice) plenary meeting, which was held on 8 and 9 December 2021 both on-site in Strasbourg in person and online, CEPEJ has adopted an Action plan for the period 2022 – 2025 regarding digitalization in justice (CEPEJ, 2021). This adoption occurred on the 20<sup>th</sup> anniversary of CEPEJ, which was a good reminder that CEPEJ's work includes numerous guidelines and tools, including 15 on mediation, 16 on quality and efficiency, 5 on e-justice; more than 20 groups of indicators based on more than 300 questions also make it possible to better evaluate European judicial systems, but also well beyond. CEPEJ relevance in this field stems from its history, transparent methodology of work, and wide membership – which will be briefly revisited in the following chapter.

### 1. HISTORY AND CEPEJ MEMBERS

The European Commission for the Efficiency of Justice (CEPEJ) was established 20 years ago, on September 18<sup>th</sup>, 2002 (Res 2002). In the quest for improving the rule of law and fundamental rights in Europe, the efficiency of justice plays a crucial role. Hence, the aim of the CEPEJ is set as a two-folded task: on the one side is “to improve the efficiency and the functioning of the justice system of member states, with a view to ensuring that everyone within their jurisdiction can enforce their legal rights effectively, thereby generating increased confidence of the citizens in the justice system” and on the other “to enable a better implementation of the international legal instruments of the Council of Europe concerning efficiency and fairness of justice” (Statute of the CEPEJ, Article 1).

However, in order to achieve goals, any organization has to determine methods and steps that will lead to the accomplishment of its (predetermined) objectives. CEPEJ is no different and already in its Statute, concrete methods for reaching goals were set. Those methods are:

- 1) identifying and developing indicators, collecting and analyzing quantitative and qualitative data, and defining measures and means of evaluation;
- 2) drawing up reports, statistics, best practice surveys, guidelines, action plans, opinions, and general comments;
- 3) establishing links with research institutes and documentation and study centers;
- 4) inviting to participate in its work, on a case-by-case basis, any qualified person, specialist, or non-governmental organization active in its field of competence and capable of helping it in the fulfillment of its objectives, and holding hearings;
- 5) creating networks of professionals involved in the justice area (Statute of the CEPEJ, Article 3).

The creation of the CEPEJ demonstrates the will of the Council of Europe to promote the rule of law and fundamental rights in Europe, on the basis of the European Convention on Human Rights, and especially its Articles 5 – Right to liberty and security, 6 – Right to a fair trial, 13 – Right to an effective remedy, 14 – Prohibition of discrimination (CEPEJ – About the CEPEJ). The Council of Europe has initiated a reflection on the efficiency of justice and adopted Recommendations that contain ways to ensure both its fairness and efficiency. The establishment of CEPEJ, which is ensured by the Directorate General of Human Rights and Legal Affairs, shows the intention of the Council of Europe not only to elaborate international legal instruments but also to promote a precise knowledge of the judicial systems in Europe and of the different existing tools which enables it to identify any difficulties and facilitate their solution (*Ibid.*). The CEPEJ will have, among other duties, the task of continuing the ongoing reflection about the potential offered by new information technologies (IT) to improve the efficiency of justice. The functioning of the CEPEJ is governed by its Statute (Statute of the CEPEJ).

## 2. CEPEJ METHODOLOGY

CEPEJ is constantly working on improving its own methodology. These kinds of methodological reassessments are necessary, if CEPEJ, or any other organization for that matter, wants to stay relevant and fulfill its purpose effectively in the ever-changing world. In the Action plan “Digitalisation for a better justice”, the following improvements in the CEPEJ methodology were proposed:

- 1) Giving more importance to networking and exchange of good practices;
- 2) Better in-house co-ordination at the Council of Europe: the Department for the Execution of judgments of the ECHR and the ECHR could use the CEPEJ indicators while providing the CEPEJ with useful information on dysfunctions within the judicial systems of the member states, the CAHAI for questions on artificial intelligence, the CDCJ and CDPC for coordination on the respective tools concerning the field of justice, etc.;
- 3) Ensuring synergies between CEPEJ intergovernmental activities and cooperation activities, as well as between cooperation activities (2022 – 2025 CEPEJ Action plan).

As we can see, the second proposed methodology improvement is the only mythological improvement *stricto sensu*. The first one is just emphasizing networking and the exchange of good practices. This is the aspect of CEPEJ work that is always one of the focuses but this emphasis obviously indicates the need to increase effort in that area, while the third one is focused on the synergy between CEPEJ’s activities.

### 3. CEPEJ MEMBERS

The CEPEJ is a forum of experts with expertise in various fields in line with the CEPEJ Statute. Every Council of State member State (there are 46 of them currently) is represented by experts. Overall administration and assistance to the experts are provided by a CEPEJ Secretariat. Apart from them, observers are also *de facto* members of CEPEJ. Currently, observers' statuses have Holy See, Canada, Japan, Mexico, United States of America (CEPEJ – Map & Members). On top of that, the Committee of Ministers granted observer status to the additional five countries: Guatemala, Israel, Kazakhstan, Morocco, and Tunisia (CEPEJ – About the CEPEJ).

Apart from states, the following international organizations, and institutions representing judicial professionals, as well as partners have the status of observers of the CEPEJ: European Union (EU), Council of the Bars and Law Societies of Europe (CCBE), Council of the Notariat of the European Union (CNUE), European Union of Rechtspfleger and court Clerks (EUR), European networks of Councils for the Judiciary (ENCJ), European Association of Judges (EAJ), Association of European administrative judges (AEAJ), European Judicial Training Network (EJTN), European Expertise and Expert Institute (EEEI), International Union of Judicial Officers (UIHJ), Organisation for Economic Co-operation and Development (OECD), *Magistrats européens pour la Démocratie et les Libertés* (MEDEL) and World Bank (*Ibid.*).

### 4. ELEMENTS OF THE CEPEJ ACTION PLAN FOR DIGITALISATION

Acting in accordance with its Statute which provided that “The use of information and communication technologies shall be promoted in order to strengthen the efficiency of justice, in particular in order to facilitate access to justice, speed up court proceedings, improve the training of legal professionals, as well as the administration of justice and management of courts” (Statute of the CEPEJ) the CEPEJ created an Action plan for digitalization that is the topic of this paper. To accompany the ongoing digitalisation of judicial systems, while always ensuring that justice is human, efficient and of high quality, the CEPEJ should take into account the following orientations:

#### 4.1. *Efficiency of justice*

The main focus of this article is the first “orientation” that was listed in the Action plan – Efficiency of justice. The efficiency of justice should be achieved through “Supporting digitalization of the administration and management of courts/ prosecution services. The transition from paper to digital court files is ongoing and necessary. Also, the administration of justice must use information technology to optimize its operations, as well as the interconnection links between the various judicial institutions. It is necessary to ensure that the tools chosen by States and courts are the most appropriate

and compatible with quality, efficient, accessible, and impartial justice. The digitalisation of procedures must improve their efficiency, but also the quality of the work to be carried out by judges, prosecutors, the teams assisting them, and lawyers” (2022 – 2025 CEPEJ Action plan).

The court systems throughout the world are notorious for their lack of adaptability to new technologies, often justifying this reluctance to engage in an overhaul of digitalization as concern for privacy and prevention of disinformation (Eltis, 2011). However, most of those claims and concerns were based on scenarios in which digitalization of court proceedings would create an infringement of somebodies rights, while in reality, no clear argument against digitalisation as a general process was demonstrated. Despite this reluctance, court systems throughout the world were forced to accept numerous virtual and digital solutions in order to continue with their work during COVID19 pandemic since reduced activities in courts and lockdown measures have an impact on court operations. The majority of countries were looking for solutions that would limit interaction with courts and suspension of non-urgent cases was one of the applied measures. To enable the functioning of the courts, countries where the level of information technology development allowed introduced modalities of online hearings and/or other use of modern technologies during proceedings like electronic filing. The promotion of alternative dispute resolution and court settlement was also a tool used in some of the countries (Matić Bošković & Novaković, 2021, pp. 188-201). However, in that small sample more digitalized justice system, while general access to justice is improved by virtual courts there was one major exception – it did not help the people that do not have access to the internet, computers on technology in general.

While this concern might seem like an exaggeration in what seems like a more digitalized world, the magnitude of that problem can be grasped only once actual data and information are inspected and elaborated. The International Telecommunication Union’s (ITU) statistics shed an important light and perception on the prospects of digitalization and important consideration regarding current possibilities and potential issues. According to the International Telecommunication Union’s estimate of 2.7 billion people unconnected compares with an updated estimate of 3 billion people unconnected worldwide in 2021. This demonstrates that digitalization is not a linear process and it should consider and adjust to trends in order to avoid denial of justice. The problem and aspects to consider are not only the sheer number of “connected” people but also its distribution.

In 2019, prior to the COVID pandemic, an estimated 3.6 billion people, or nearly half the world’s population, were unconnected. Globally, the number of Internet users grew by 7 percent, and the share of individuals using the Internet – grew by 6 percent between 2021 and 2022 (International Telecommunication Union, 2022). However, growth is unevenly distributed across regions. Areas with a low share of individuals using the Internet have achieved the fastest growth over the past year – following a typical diffusion pattern for new and emerging technologies. Africa, the least connected of ITU’s six world regions, achieved 13 percent year-on-year growth in the share of individuals using

the Internet. Today, 40 percent of the population in Africa is online. The Arab States showed robust growth, with the Internet now reaching 70 percent of the population. In Asia and the Pacific, Internet penetration grew from 61 percent in 2021 to 64 percent in 2022, relative to the region's population. The Americas, the Commonwealth of Independent States, and Europe each achieved 3 percent growth, with more than 80 percent of the population online in each region while Europe remains the most connected region globally, with 89 percent of its population online.<sup>1</sup> The COVID-19 outbreak also has an impact on the exercise of procedural rights of suspects and accused persons. Direct communication with lawyers, interpreters, or with third persons (while the suspects or accused persons are deprived of liberty) is more difficult. In the Netherlands, stakeholders have raised concerns about the effective safeguarding of the right to a fair trial and quality of justice during COVID pandemic (The Netherlands Committee of Jurists for Human Rights, 2020), since the prosecution service has announced plans to make an increased use of its power to decide itself on certain criminal cases.<sup>2</sup> This could have an impact on the right to a fair trial if citizens are not adequately informed.

Research conducted in smaller regions but in more detail also confirms this disparity. A good example is a rather comprehensive research on this topic that has been conducted by Pew Research Center in the USA, which demonstrates some alarming data regarding racial and social disparities (Pew Research Center, 2020). Pew Research Center reported on the results of the disparity in access to computers and broadband connections at home. According to their research, about eight-in-ten whites (82%) report owning a desktop or laptop computer, compared with 58% of blacks and 57% of Hispanics. There are also substantial racial and ethnic differences in broadband adoption, with whites being more likely than either blacks or Hispanics to report having a broadband connection at home. There were not enough Asian respondents in the sample to be broken out into a separate analysis (Matić Bošković & Novaković, 2021, pp. 181-201). When it comes to social disparity, roughly two-thirds of rural Americans (63%) say they have a broadband internet connection at home, up from about a third (35%) in 2007, a Pew Research Center survey conducted in early 2019 concluded (*Ibid.*). Rural Americans are now 12 percentage points less likely than Americans overall to have home broadband; in 2007, there was a 16-point gap between rural Americans (35%) and all U.S. adults (51%) on this question (*Ibid.*). Finally, Pew Research Center reported that disabled Americans are about three times as likely as those without a disability to say they never go online (23% vs. 8%), according to a Pew Research Center survey conducted in the fall of 2016. When compared with those who do not have a disability, disabled adults are roughly 20 percentage points less likely to say they subscribe to home broadband and own a traditional computer, a smartphone, or a tablet (*Ibid.*).

Some concerns regarding achieving universal connectivity were emphasized by the ITU as it was presented in this chapter. While two-thirds of the world can be considered connected, bringing the remaining one-third of humanity online presents a

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<sup>1</sup> Share of individuals using the Internet.

<sup>2</sup> Such decisions by the prosecution service cannot impose a prison sentence and can be contested in court.

daunting task. The hardship lies in the fact that most of those still offline generally live in remote, hard-to-reach areas (International Telecommunication Union, 2022). It also has to be considered that there is a difference between basic and meaningful connectivity. Transferring to meaningful connectivity in which people not only have ready access to the Internet but are able to use it regularly and effectively to improve their lives – is even more challenging (*Ibid.*) since the absolute number of people with internet access will be naturally remedied to a point through continuous urbanization process at least to a point. ITU has listed a useful and exhaustive (but not complete) list of barriers in that quest for global, useful connectivity that includes: slow Internet speed; limited affordability of hardware and subscription packages; inadequate digital awareness and skills; and linguistic and literacy barriers, as well as issues like gender discrimination or the lack of reliable a power source. All these need to be addressed if everyone is to enjoy equitable access to online resources (International Telecommunication Union, 2022).

#### **4.2. Transparency of justice**

CEPEJ will stem towards more transparent justice through “*Promoting digitalisation to improve knowledge on justice in general, in particular on the length of proceedings. New technologies must provide users with better knowledge of procedures, judicial institutions and the respective roles of each of the justice professionals. Each court must have dashboards enabling it to monitor and manage its case flow; this makes it possible to identify and limit potential backlogs, to respect reasonable timeframes, and to better manage the workload of justice professionals*” (2022 – 2025 CEPEJ Action plan).

Despite the fact that it deals with a very important topic, this point hardly deserves a special place in this Action plan. On the one side, it is too vague and provides a rather strict formulation that digitalization must provide users with better knowledge of procedures. It would be more rational to state that digitalization should enable users to understand the procedure better since ultimately, it is on users themselves to decide whether will use it to acquire more knowledge on any matter. On the other hand, the provision that “each court must have dashboards enabling it to monitor and manage its case flow” (*Ibid.*) is too specific and does not leave space to consider the financial restrictions of many courts and provides pointless limitations for more technically advanced countries, where monitoring and managing case-flow might be conducted in a more advanced way.

#### **4.3. Collaborative justice**

Another interesting part is named “collaborative justice” and it encompasses setting up relevant digital tools for interconnectivity between participants in the judicial proceedings (judges, prosecutors, lawyers, other justice professionals, and users). All justice professionals contribute to the same public service, that of justice at the service of the user; they must therefore have easy-to-use, compatible, and efficient communication tools (*Ibid.*)

There are numerous perspectives and views stating that access to justice will be substantially improved by the digitalization of the court and the justice system in general. Virtual courts are seen as one of the main tools to connect justice participants. Some research, even before the COVID-19 pandemic supported this. The experiment conducted by the Montana Legal Services Association has included tests of court appearances by video, staff, and continuing legal education training, meetings, client interviews, mediation, and client self-help clinics. Data includes observation and surveys. The overall conclusion is that the use of video makes a contribution to access to justice (Zorza, 2007, 1, 3). Even earlier, in the late XX century, Even Lederer was contemplating virtual courtrooms, he emphasized that “...we may well be able to substantially enhance access to justice for those who today have little or no access at all. (Lederer, 2018)”. While virtual courtrooms are just the first step and a small part of the digitalization of justice – it comes with the same potential issues if not implemented properly as the ones that were presented in the part regarding the efficiency of justice.

#### ***4.4. Human and People-centered justice***

The human-centered justice part focuses on adequate support of the judges, prosecutors, their teams, and all other justice professionals to help them adapt their essential roles to the digital environment. In its, rather short, elaboration, the focus is given to two aspects. The first one is positive and proclaims the rising efficiency of justice as the main goal of digitalization. However, in the same sentence, a sort of disclaimer is made that, despite digitalization, judges shall remain central figures of the judicial procedures and that digitalization must never seek to replace the judge (2022 – 2025 CEPEJ Action plan).

The second one named people-centered justice is closely correlated with the previous one. The efficiency of justice is revisited again, in the context of digitalization, but this time with more focus on users and justice professionals. *Supporting justice professionals and users with training in order to make full use of digital tools. The training of justice professionals, including lawyers, in the process of digital transformation, is vital because it contributes not only to the efficiency of justice but also to the independence of justice, in that it allows them to act with full knowledge of the law and procedures. Users who so wish should be supported in this digital environment, in particular by training sessions, but proficiency in these digital tools cannot become a condition for access to justice.*

Educating judges in a digital context means just that – adapting them to the digital environment. This is not only desirable but absolutely necessary. There is no doubt that it is more pressing to conduct this education regarding more senior judges, the ones that did not grow in a digital age, and they are the vast majority today, in 2022. This situation will remedy itself to a certain degree in time,<sup>3</sup> but in the current times, some researchers noted that questions such as “...whether judges and lawyers are culturally and mentally ready for the delivery of justice outside a brick-and-mortar courtroom once

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<sup>3</sup> With more members of younger generations that grew up in digital world are becoming judges, a higher level of general digital literacy is expect.

the emergency is over” (Fabri, 2021, p. 2). The level of digital literacy will be an ever-expanding endeavor, since more and more cases will have digital aspects as a part of it, and judges will need to have more understanding of technology than simply use of the computers and court systems (Brookings Institution, 2019).

With that in mind, educating upcoming generations of judges early in their careers is very important. This education should encompass not only digital tools used in courts but particularly educating them to understand more complex digital aspects of crimes. This ability to understand and analyse digital aspects of crimes will be crucial for their ability to deliver justice, as more and more crimes have digital dimensions and crimes related to the digital world are getting more complex every day.

#### **4.5. Informed Justice and Responsible and reactive CEPEJ**

Finally, the last two points in the report are related to informed justice (*increasing the use of the results of the CEPEJ evaluation of judicial systems and other tools. To increase the visibility, understanding; and use of the results of the evaluation exercise, CEPEJ should provide more analyzed information and respond to other requests for specific analyses whenever possible* (2022 – 2025 CEPEJ Action plan) and responsible and reactive CEPEJ (*ensure the visibility of its tools so that they are accessible to all and reflect the expertise of those who developed them The CEPEJ is at the service of justice professionals and users, who can ask, to create specific tailored tools, for a better justice. Its mission is to use all of the expertise at its disposal to answer their request promptly, concretely and efficiently* (Ibid.).

Those actions are formulated in relation to CEPEJ – on the one side to promote and direct the usage of CEPEJ work by others and on the other to clarify actions that should be taken by CEPEJ to improve its visibility. While those points need to be further elaborated and might be a more natural part of the “methodological” section of the Action plan, one has to commend CEPEJ for constantly reassessing itself and striving to improve its work and adjust it to the needs of the ever-changing world.

## **CONCLUSION**

Most widely known for its reports on the efficiency and quality of justice in Europe, the CEPEJ helps to ensure that the public service of justice is efficient, accessible, and of better quality, by placing the needs of the user at the center of the judicial process. The CEPEJ’s expertise includes numerous guidelines and tools for courts and justice professionals, including 16 on quality and efficiency, 15 on mediation, and 5 on e-justice; more than 20 groups of indicators based on more than 300 questions also allow for a better evaluation of judicial systems. The ongoing and future work of the CEPEJ is part of the action plan 2022-2025 dedicated to “digitalisation for a better justice”.

The action plan for 2022-2025 – “Digitalisation for a better justice” puts digitalisation in a center of attention – and rightfully so. Digitalisation is not an option, it is a

prerequisite for justice in modern times. However, a diligent analysis is necessary for its introduction in any part of justice – and the pace of its implementation can differ from region to region and even from court system to court system. If it is not conducted in that manner, a noble quest to improve efficiency and other aspects of justice via digitalization can backfire and endanger primarily the ones who need the justice system the most – low-income citizens and the underprivileged groups.

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## **PREGLED EFIKASNOSTI PRAVOSUĐA I DRUGIH ELEMENATA AKCIONOG PLANA CEPEJ 2022-2025: “DIGITALIZACIJA ZA BOLJU PRAVDU”**

*Evropska komisija za efikasnost pravosuđa (CEPEJ) je na svoju dvadesetu godišnjicu rada usvojila Akcioni plan za period 2022-2025 pod nazivom “Digitalizacija za bolju pravdu”.*

*Digitalizacija ima sve značajniju ulogu u pravosudnom sistemu poslednjih godina, ali je njen značaj povećan tokom pandemije izazvane virusom COVID-19. Pošto je digitalizacija kako naša sadašnjost, tako i budućnost, CEPEJ je opravdano odlučio da svoj Akcioni plan fokusira na oblast digitalizacije u pravosuđu.*

*U ovom radu autor razmatra aspekte CEPEJ Akcionog plana, ali je u najvećoj meri fokusiran na efikasnost pravosuđa. Jedan od osnovnih zaključaka u radu je da je digitalizacija pravosuđa neophodna i da bi svi akteri u toj oblasti trebalo da je posmatraju kao prioritet na sličan način na koji je to uradila Evropska komisija za efikasnost pravosuđa. Međutim, proces digitalizacije treba uspostavljati marljivo uz odgovarajuću procenu njenih efekata. U suprotnom digitalizacija bi mogla da ima negativan efekat u različitim društvenim oblastima, a mogla bi čak da doprinese i uskraćivanju pravde.*

**KLJUČNE REČI:** CEPEJ, digitalizacija, pravda, efikasnost, sudije.