



The twelfth meeting of the Task Force on Access to Justice to the Aarhus Convention
Geneva, 28 February–1 March 2019

For Agenda Item 5 **Tools to promote effective access to justice**

(a) promoting e-justice initiatives and other practical measures to ensure effective review procedure

Dear Mr. Chair, dear Colleagues,

This statement is on behalf of Justice and Environment and the BlueLink Foundation, I am representing.

Our overall assessment of e-justice in Europe is that the introduction of the e-justice elements into the traditional paper-based justice system has been making progress across Europe. However, as everything new, the developments have been disproportional. The new e-justice system is certainly faster than paper-based communication and case handling, but in practice could be heavy, with possible mistakes leading to undesired results and the participants really have to understand the IT basics to be able to navigate this system. Some elements are more advanced than the others like the new e-communications related to court proceedings, and e-forms available online to be filled in electronically. Below, we will present some of the most recent advancements in the e-justice practice in selected countries.

In **Czech Republic**, all kinds of submissions, including evidence etc., can be made both in "old style" paper version or in the electronic form. There are 3 electronic forms: simple email, email with certified electronic signature and via "data box". The first one is not considered as "official" way of submitting a legal submission. Therefore, it must be, within five days, supplemented by an official way of the submission - either "paper" version with a hand signature (normally a verification is not required, the exception do not relate to environmental cases) or the other, above mentioned, electronic forms.

As for the "data boxes", it is a compulsory way of communication between all kind of public bodies. Any individual can decide to ask for (free of charge) establishing of data box. For legal persons, as well as for a number of professions, including attorneys, it is compulsory to have a data box, or in other words, the system will create it automatically for them. Once a subject has a data box, the public bodies shall deliver all documents (judgments, decisions, all kinds of official letters) into the databox. However, the subject is free to choose if he/she/it will also send the submissions to the public bodies via data box, or in other form. It is cheaper (free of charge) and more comfortable for those who use computer and internet on daily basis. As for sending the evidence or any other more extensive files, there is a limit of 20 MB for one "message" via the data box. It can be divided into more messages; but if there is 1 document "bigger" than 20 MB and impossible to "reduce", it is not possible to send it via data box.

In **Hungary**, there is one particular matter, NGO registration and amendment of statutes, by-laws, foundation deeds, change of personnel at NGOs, which works as an e-communication with the court for many years, with minor hurdles. There are e-forms available online, and these can be filled in electronically, also can be submitted electronically. Attaching documents to these forms is easy, only pdf-s are allowed, but this makes it really user-friendly to get signatures on declarations, etc. when people do not need to meet in person, but can send in their documents signed and scanned, via email. Surprisingly, there is no instance so far of misusing this opportunity. All these documents can be sent to the court via a platform called Client Gate.

1-1,5 years ago, e-communication was made mandatory for attorneys (and clients with attorneys) with the court in all cases. There are a number of problems with how the system works. Just a few:

- challenging an administrative decision at court needs to use an online surface for filling in data and uploading attachments. This page uses the Client Gate of the sender. The system sends the motion to the first level administrative authority. Then the authority forwards the motion and the full file to the court. But the court does not get the e-contact of the attorney. The court must write a paper letter to the attorney to ask it to send in its e-contact data to the court to establish e-communication;

- still the judges print out all docs that they receive via e-comms, plus extra sheets that document sending or receiving electronically. So it did not result in less paper use but in fact, a slightly more paper use;

- there are forms online whose title suggests that one can download it, fill it offline and then submit it online later. But to send the document to the court directly is not a valid way of submitting a motion against an administrative decision;

- when filling in the online form for challenging admin decisions, one needs to fill in the data of the defendant, i.e. of the administrative authority. However, there is no such thing as a central database of contact data (reg. number, etc.) of these authorities. So sometimes these fields are left blank, risking refusal for incomplete information;

- attorneys (and legal persons) were obliged to open another way of sending in called Company Gate. It is unclear whether it is valid if an attorney sends in a document via its personal Client Gate and not using its Company Gate. Until lately, only the Bar Association obliged the attorneys to use the Company Gate for e-comms with the court, except in cases relating to NGOs (see the intro). Now it is also a legal requirement. But NGO cases are still managed via the Client Gate, and courts do accept it;

- all this does not mean that there is e-access to files. There is no server at the court where one can access online and check the file of the case. So the whole system is mostly for sending in and receiving documents online, but not having access to the docs. It also means that once a case is electronic, you cannot submit any document at the hearing in paper. Even if you only have it in paper, and you have sufficient number of copies, all you can do is to show it to the court and the parties, and then go home, scan it and then submit it electronically. And then you need another hearing to evaluate what you submitted.

All in all, the e-system is certainly faster than paper based communication and also there is an easier way of managing cases like this, but in practice this is heavy with so many annoying mistakes that one really has to understand the IT basics to be able to navigate this system. This has not resulted in lower level of cases started, as a diversion from court, however there are cases when an NGO sent in a wrong doc to a wrong address, thus believing that it applied a remedy where in fact it did not and the case never started.

In **Austria** written submissions can be sent to authorities/courts in any technically possible form, i.e. also in electronic form. E-mail submissions are only admissible if there are no special forms of transmission for electronic communication between the authority and the parties involved. The technical requirements or organisational restrictions of electronic communication between the authority and the parties involved shall be published on the Internet. To the best of our knowledge, all administrative courts allow submissions by e-mail. In the case of complaints, however, they must be submitted to the authority which made the decision. Therefore, when filing a complaint, it must be checked whether this authority allows electronic submissions, for example by e-mail.

Based on our experience, the electronic file inspection is quite a problem in practice. If the technical possibilities exist, electronic file inspection should also be granted. This can be done e.g. by email, with large files also by USB stick. Nowadays it is hard to imagine that an authority does not have the technical possibilities to send e-mails or to use a USB stick. Nevertheless, many authorities are vehemently defending themselves here and only allow access to the files on the spot, which means that employees of environmental organisations have to drive across Austria in order to gain access to the files.

In a recent case the electronic transmission did not work but the applicant did not recognise it. Without acknowledgement of receipt, however, he was unable to prove that he had made his application on that date.

In **Estonia**, there is an electronic database for communications related to court proceedings, E-toimik (www.e-toimik.ee). Although you can also submit materials to the court by e-mail, it is expected that professional lawyers use this database to directly enter their documents/submissions to the court. You can also use this system to access all of “history” of a given case, i.e. have access to all documents submitted in the case. Additionally, it has a calendar function with email notifications to make sure no-one accidentally misses a deadline. The system is available to anyone with an Estonian ID-card, but as our e-residency program allows basically anyone from anywhere to get a digital ID-card, the use of system is not limited to Estonian residents or citizens.

As to qualitative assessment: the system is quite easy and comfortable to use for anyone with basic internet skills. Some minor things could be improved, though, i.e. search function does not work very well if you want to find something from the documents in the case – you’re better off knowing which document to start looking from, which makes the system unnecessarily clumsy.

In **Romania** emails are used for communication. There are very few on line formats for submission of doc. Some courts have implemented software solutions and digitalized the cases, but not all of them. In any case, for the courts it is mandatory that the documents with original signatures to be also submitted. For the public administration emails and scanned doc are sufficient, but there are some cases when it is not - submission of certified documents like plans etc, where original signature is still necessary.

In **Slovenia**, the judicial practice is widely and freely available online, especially for the second and third instances, including the constitutional court. When it comes to information regarding legal procedures in administrative courts or a basic package of ‘know how’ for potential applicants, the information is also freely available online, on the official webpages of the state administration. If there is not enough information available, there is always a connection available in order to contact a person via email or the telephone number and find out more. Information is far less ‘online’ in other fields of law.

There is an online portal of which the direct translation stands for ‘[e-judiciary](#)’. It enables a person to get a basic online personal identification and grants the user access to certain procedures, like authentication of public documents and registering digital certificates of the authors of public documents, the access to the ‘land register’, the access to starting the procedure of compulsory execution and to the procedures regarding insolvency (which at the moment is not functioning).

When it comes to actually filing a suit or starting a legal procedure online, the system is very limited and especially weak in the sense of online identification capacity (in the majority of cases it is impossible to verify an individual's identity online taking into regard the legal requirements). It is at the moment underdeveloped, but the state plans on developing the area. It is possible to start a procedure online for compulsory execution on the basis of an 'executable document' which is in the Slovenian legal system a document which is, if undisputed, an automatic cause for an execution. Slovenians can also access the 'land registry' online (compiled legal information about real estate in whole of Slovenia), but you cannot enter new information into the registry without an attorney or the notary. In other fields, at this point in time, it is not possible to start procedures online. The system could be much better, but at the moment there is no real effect on access to justice from the point of view of NGOs and individuals – the system is fine as it is.

In **Bulgaria** there an electronic justice portal through which the electronic copies of the court cases, incl. to the copies the documents in the case file could be accessed. In the e-portal there is access only to the cases of the courts connected to the portal. To create a profile in the portal, a registration is needed. It is proceeded in the courts connected to the portal with filling in a written application.

Justice and Environment is interested to explore further and in more detail national e-justice practices and it is encouraging the Task Force to consider supporting such type of studies.