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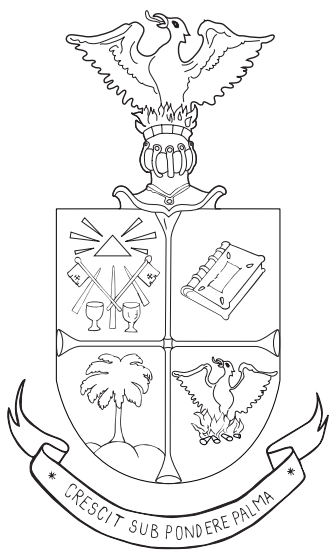

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Online Justice – Opportunity or Risk?

Introduction

"Before the Law sits a gatekeeper. To this gatekeeper comes a man from the country who asks to gain entry into the Law. But the gatekeeper says that he cannot grant him entry at the moment. The man thinks about it and then asks if he will be allowed to come in later on. It is possible, says the gatekeeper, but not now. (…) The man from the country has not expected such difficulties: the Law should always be accessible for everyone, he thinks." These phrases, some of the most quoted ones of Franz Kafka's novel The Trial, formulate the most fundamental requirement of access to justice: it has to be accessible for everyone. As the courts' organisational and procedural models have developed, access to justice has become increasingly important and, in the course of formulating the details of judicial reforms, an increased emphasis has been placed on the modification of those provisions that produce effects contrary to such access.

The implementation of the right of access to justice has been hindered over time by various obstacles; the latest challenge that the judiciary must overcome results from the dynamic development of information technology (hereinafter: IT). It is increasingly seen that this trend is profoundly changing the current models of socioeconomic processes and is having impacts beyond those of the Industrial Revolution. There are small differences of opinion only as to the length of the change process.[2]

IT development poses a dual challenge to justice systems. First, disputes originating from digitally established legal relationships cannot necessarily be resolved within the traditional framework of court proceedings (due to the accessibility and handling of evidence and the provision and processability of case file documents). Second, the digital era has brought about changes in societal expectations regarding the administration of justice. The current expectations of the functioning of the courts are based on a set of basic principles and standards that have resulted from twohundred years of evolution. However, the radical changes in everyday life entailed by IT development may necessarily transform expectations vis-á-vis the judiciary as well. The process of digitalisation has also been recognised by the legal literature, in particular by AngloSaxon legal scholars.[3] It may not be a coincidence that the AngloSaxon countries were the

1 university professor, Department of EU Law and Private International Law)

2 This process is convincingly presented by Yuval Noah Harari in: 21 Lessons for the 21st Century. Animus, 2018, Budapest; pages 1580

3 Richard Susskind: Online Courts and the Future of Justice. Oxford University Press, 2019,

first to realise that guaranteeing access to justice was a systemic issue.[4] In Hungary, Zsolt Ződi's researches on the interplay between IT and law are to be highlighted[5]; the domestic legal literature, nevertheless, has so far failed to carry out a systemic analysis of "the pressure" exerted on the administration of justice by IT development. The present study therefore primarily aims at raising awareness of this phenomenon. Chapter I introduces the "gatekeepers" of the relevant Hungarian rules, which, because of their effects, impede the implementation of access to justice in the offline world as well: in addition it presents the digital developments carried out in the past few years to mitigate, in essence, their adverse consequences. Chapter II gives an overview of the fundamental principles on justice that may *prima facie* be infringed in "court proceedings not taking place in a courtroom". The following three chapters present the most successful online court platforms and their regulatory specificities, as well as the EU's single digital market; finally, a number of thesis statements are formulated to inspire further discussions.

I. Access to justice

This extremely complex and multifaceted fundamental right cannot be reduced to the simple assertion that if a country properly ensures the enforcement of civil claims through the courts and enacts a legislation to provide the organisational and procedural framework necessary thereto then it meets its obligation in respect of guaranteeing access to justice. It is no coincidence that, from time to time, a central focus is placed again and again on the issue of what the gatekeepers, as referred to by Kafka in his novel, are that hinder the parties' access to courts. After World War II – and based on the ideas of the AngloSaxon countries –, the reforms of access to justice were implemented in three waves. The first one focused on guaranteeing legal aid on the basis of social considerations. The second one, started in the 1970s, aimed at strengthening the enforcement of the rights of disadvantaged groups by way of defining the rules of collective redress mechanisms (public interest litigation, class actions). The third one – due to the exponential growth in the number of legal disputes – sought to shift the focus from the courts to outofcourt alternative dispute resolution methods. The above process of development has been supplemented, as

Oxford – hereinafter: Susskind; Ethan Katsh – Orna RabinovichEiny: Digital Justice. Oxford University Press, 2017, New York – hereinafter: Katsh – Rabinovich; Nick Bostrom: Superintelligence – Paths, Dangers, Strategies. Oxford University Press, 2014, New York

4 Tom Bingham: The Rule of Law. Penguin Books, 2011, New York; pages 1035 and 90109

5 See among others: Zsolt Ződi: Platformok, robotok és a jog. Új szabályozási kihívások az információs társadalomban (Platforms, robots and the law. New regulatory challenges in the information society). Gondolat, 2018, Budapest; Kódokba zárt jog (Law encrypted in codes) in: In Medias Res, issue no. 2019/2, pages 169186; Big Data a jogtudományban és a jogalkalmazásban (Big Data in the legal literature and in the application of law) in: Közjegyzők Közlönye (Journal of Notaries), issue no. 2019/1, pages 2336

of the beginning of the 2000s, by an ever-increasing need to take advantage of IT tools in the courts' proceedings and for the elaboration of online dispute resolution mechanisms.

The aforementioned three waves of the development of civil procedural laws have reached each European country's justice system, although at different times, and today they are considered to be natural and widely accepted. At the time of their inception, the reform ideas triggered repugnance and professional criticisms. Similarly, there is now a perceptible opposition to the concept of digital courts, but the historical examples show that what is unimaginable today will be the codified rules-based everyday practice the day after tomorrow.[6]

1. Organisational issues

Due to the differing nature of civil claims, it is difficult to resolve all of them in an efficient manner within a heterogenous organisational and procedural framework. The divergent and scattered regulation, on the other hand, reduces predictability, transparency and costeffectiveness. A number of different legal policy objectives and viewpoints regarding the addressing of the courts' issues of organisation and competence are known. For instance, there is a view according to which – in addition to efficiency and case distribution considerations – the provision of career advancement opportunities for judges also has to be taken into account in the drafting of the rules of competence of the Code of Civil Procedure.[7] In Hungary, a division of competencies exists between the civil courts of first instance (which entails that there is a division of competencies between the civil courts of second instance as well), based on a structured judicial system in which more complex cases and cases of higher litigation value are dealt with by high courts, while the remainder of the legal disputes are heard by district courts. It is a fact that the above structure is deeply rooted in the traditions of the Hungarian civil procedural regimes and also exists in numerous other European countries; nevertheless, its efficiency may be questioned for a variety of reasons. The duplication of the courts of first (and second) instance means that a larger number of judicial organisational units with separate leaders and case allocation orders have to be maintained, which is a transparent and comprehensible system only for the judges, whilst the parties to the proceedings, to a greater extent, and their legal representatives, to a smaller extent, struggle to understand it.

Together, the rules of competence and territorial competence form a guarantee

6 The most commonly voiced counterarguments against digital courts are summarised by Susskind, pages 179250

7 Pribula, László: A polgári perrendtartás megvalósult hatásköri modelljének értékelése - a történeti fejlődés tükrében (The assessment of the implemented model of competencies of the code of civil procedure – in the light of historical development) in: Jogtudományi Közlöny (Journal of Legal Sciences), issue no. 2020/1, pages 2134

for the right to a judge assigned by law, and at the same time they create a matrix through which the caseload of the courts may be influenced and adjusted as well. The starting point of the rules of territorial competence is that a court's general territorial competence has to be determined according to the place of domicile of the defendant under constraints, this rigid regulation is, however, softened by the rules of special territorial competence. Hence, the rules of territorial competence favour either the defendant or the plaintiff by way of designating the territorially competent court in the vicinity of the place of domicile of one of them. Such designation, nonetheless, is of significance only if there is a need for the physical presence of the party in the courthouse and loses its impact if the provision of case file documents, access to court papers and the holding of court hearings may also be ensured using online tools.

The above is justified by the success of the 2009 modification of the procedure relating to orders for payment. Until the entry into force of Act L of 2009 on the order for payment procedure, this nonlitigious procedure had also fallen within the courts' competence: as a general rule, the submission of orders for payment and statements of claim had been governed by the very same rules of competence and territorial competence. Following the 2009 modification that placed the handling of orders for payment within the competence of public notaries, and as a result of the simultaneous introduction of electronic orders for payment, the rigidity of the rules of territorial competence has been alleviated, and the current situation is that which public notary shall issue a particular order for payment is designated centrally; thus, the competent notary may not necessarily be the one – in compliance with the previously applicable general rule of territorial competence – according to the defendant's place of domicile. Experience shows that the above solution has been beneficial for everyone; orders for payment procedures have become quicker and more effective, while the division of work between the public notaries can also be settled in an efficient manner.[8] The success of the procedure relating to orders for payment also proves that the rules of competence and territorial competence are primarily of relevance if the parties' physical presence is required; on the other hand, if a service is to be received mainly or exclusively online then the importance of such detailed rules diminishes.

8 Judit Molnár: A fizetési meghagyás kibocsátása iránti kérelmek feletti hatósági kontroll terjedelme a jogszabály változások tükrében (The scope of the authorities' control over applications for the issuance of orders for payment in the light of legislative changes) in: Jogtudományi Közlöny (Journal of Legal Sciences), issue no. 2014/5, pages 239247; Judit Molnár: Alternatívák most és a jövőben is? Az egymillió forintot meg nem haladó pénzkövetelések érvényesítése Magyarországon (Alternatives today and in the future as well? The enforcement of pecuniary claims not exceeding 1 000 000 HUF in Hungary) in: Jog, Állam, Politika (Law, State, Politics), issue no. 2016/2, pages 151164

2. The absence of legal knowledge

It is a constantly recurring argument that ignorance of the law is no excuse for not complying with it. A distinction has to be drawn between ignorance of the law and the situation in which one of the parties involved in a legal relationship seeks to explore his legal options with due diligence, but he has only a limited amount of available resources. The latter situation is illustrated through an everyday example by Katsh and Rabinovich[9]: After seven years of marriage, with two young children and some assets, the fictional couple Sara and Joseph decide to divorce. Sara would like to obtain some information about her options; hence, she reaches out to a lawyer in her area. The attorney describes the legal process that awaits her, preparing Sara for lengthy and costly court proceedings. The lawyer also instructs Sara to restrict her communications with her husband. Her searches on the internet later on uncover options such as mediation, but she is swayed by the lawyer. Although Sara feels that she still does not know enough about her options, she files a legal action with the court through her lawyer. Sara and Joseph's divorce case is assigned a court date several months after the filing date. At the fixed date, they arrive at the courthouse only to find that their hearing is postponed for several months. The lawyer seeks to convince Sara that the postponement is good news, as it gives them more time to prepare. Sara assumes that this is an inevitable part of dealing with courts and the law.

One evening, while conducting additional online research, she comes across an online dispute resolution system for specifically handling family cases called *Rechtwijzer*[10]. The software asks each of the parties a series of questions in plain, everyday language, and then structures their communication with one another in an attempt to produce an agreement. Parties can communicate with one another online, twentyfour hours a day, seven days a week, from the convenience of their own home, office, or any other place with internet access. If an agreement is reached between the parties, a lawyer reviews it to ensure it is legal. If the parties fail to agree, they can ask for a lawyer to assist them online in reaching an agreement. The entire process can be completed in a brief period and at much lower cost than the typical court case.

The above example perfectly illustrates the most important consequence of the absence of legal knowledge: vulnerability. Realising that, the individual States seek to mitigate the latter consequence, principally by way of the dissemination of information related to the enforcement of claims (procedural legal information), and, to a lesser extent, by means of the provision of substantive legal information (*e.g.* through the development of a legal aid lawyer scheme or substantive measures for the organisation of procedures, etc.). One of the common characteristics of legal disputes originating from private law relationships – except for certain types of actions concerning the status or capacity of persons – is that the court's proceedings constitute an *ultima*

9 Katsh – Rabinovich, pages 149150

10 https://rechtwijzer.nl/

ratio means of dispute resolution, since the parties are entitled to dispose freely of their substantive rights, which includes that they are also given the opportunity to seek to reach a common position before a forum of alternative dispute resolution. Irrespective of the high quality of the functioning of the judicial system concerned, the parties' interests are certainly better served by their common agreement than by a court decision, having regard primarily to the fact that such an agreement is far more frequently followed by the parties' voluntary compliance. The presentation of the various options for the resolution of legal disputes originating from private law relationships and of their advantages and drawbacks should be carried out in a manner that is much more organised than it is today, because there is currently no single platform or forum that would make such a presentation in a clearly understandable way.

3. Court administration

The costs of court proceedings include not only the court's fees, but also – and principally – the time needed for the administration of justice. It is precisely the latter that is reduced as a result of the use of IT tools: paradoxically, it is not the period of time required for the adjudication of a case that is shorter, but it is rather the parties' desire to have their case settled faster and faster that is stronger. One of the most timeconsuming parts of judicial proceedings is the hearing phase: if several hearing dates are to be fixed then the parties become obliged to attend each of the hearings, either in person or by way of their legal representative. The travelling and waiting time wasted by the parties and their legal representatives increases the length of proceedings, which has an impact on the costs of litigation (lawyers' fees) and also results in additional costs relating to loss of earnings suffered by the party concerned.

The length and efficiency of court proceedings are directly affected by the degree of organisation and level of efficiency of the court administration. The handling of submissions, the sending out of decisions and the provision of access to case file documents from the beginning to the end of the legal process may add many days and weeks to the overall length of proceedings and may also increase their costs. The most spectacular development project of the last couple of years within the Hungarian justice system that was intended to have an impact on the aforementioned fields, was named the Digital Court project in 2018.[11] The latter includes all types of IT applications and instruments available to the judges, clients and judicial employees. A distinction can be made between the IT solutions that are specifically designed to assist judges in their adjudicating activities and those that support the parties to proceedings. The former comprise a series of applications to facilitate completing forms and are now

11 Osztovits, András: Az ítélkezés jövője a digitális világban (The future of the administration of justice in the digital world) in: A bírói hatalom gyakorlásáról szóló 1869. évi IV törvénycikk megalkotásának 150. évfordulója (The 150th anniversary of the elaboration of Act no. IV of 1869 on the Exercise of Judicial Power), Hvgorac, 2019, Budapest; pages 141146

capable of automatically completing the summons and notice forms under the new Code of Civil Procedure within the courts' document management programme. In addition, an application to fill in the forms used by the administrative and labour courts automatically is currently being introduced.

The judges' work is also assisted by a special application that monitors deadlines and limitation periods in the fields of both criminal and civil law. This application sends automatic messages to judges to inform them of the most important and timebound procedural acts, in particular to warn them about the expiry of limitation periods, the deadlines for putting the minutes of hearings and court decisions into writing or the date on which a decision establishing the termination of the court's proceedings must be delivered following the stay of proceedings.

Moreover, the Digital Court project covers the fields of drafting and standardising court decisions, as well as the development of their publication and anonymisation. The representatives of the various legal professions and the parties to proceedings have been demanding for a long time that court decisions be published in a transparent structure and be expressed in understandable terms, avoiding diverging patterns and wordings that vary from one high court to another or from region to region. The first step in the process of the publication of court decisions is anonymization, which had long been carried out in paper format and had constituted a serious obstacle to the rapid publication of decisions. There is now a new IT system to automate and, thus, to accelerate the process of anonymization efficiently.

There are currently around 900 speech recognition software sites at the Hungarian courts to help judges through the transcription of audio recordings in an automated manner, without human intervention. After further development, speech recognition may achieve a level of quality which will completely replace the work of human typists in the field of putting minutes and decisions into writing, resulting in a reduction in handling times and lengths of proceedings.

In order to facilitate access to justice, a number of digital tools to assist lodging submissions and provide interfaces for courttoclient and clienttocourt electronic communications and other online information platforms have been developed. Among the aforementioned IT solutions, the development of electronic communications should be particularly highlighted; it has been strongly supported by the legislator in the last ten years. In the majority of court proceedings, legal representatives and legal persons may lodge their documents instituting proceedings and their further submissions only by electronic means, and the courts are also obliged to send out their decisions electronically. This legislative and technological development in itself has significantly diminished the length of proceedings and has bypassed the practical problems arising from the postal service of documents, a method previously used as a general rule. Today, the lawfulness of the service of documents has to be established on the basis of postal acknowledgements of receipt much less frequently, since no such interpretational uncertainties may arise with regard to electronic service.

With the aim of informing the parties, an online service has been set up to advise them on the expected length of the various types of proceedings, with the help of which citizens can get an idea of the average length of proceedings (based on statistical data collected in the previous years) in the various types of cases at the court concerned. This online service is also useful because it enables the plaintiffs in civil lawsuits, where more than one court may have competence to hear their case, to learn in advance about their options and to compare the average lengths of proceedings before the different courts.

Another novel IT solution is that the parties are now capable of submitting their complaints relating to the functioning of the courts on an online platform as well, which makes the processing and settling of complaints more efficient and more transparent.

One of the oldest and most tangible obstacles to the exercise of the right of access to justice is the parties' physical distance from the courthouse. In the event that the parties are required to travel to another country or county, they may face serious organisational and workrelated difficulties, irrespective of their age group. One of the most spectacular development projects within the Hungarian court system in the past couple of years has been to establish a remote interviewing network that is capable of recording and transmitting images and audio in and from courtrooms.

This short overview reveals that an increasing number of procedurals steps can be already taken online at the Hungarian courts, which facilitates the judges' work, accelerates court proceedings and promotes the implementation of access to justice. The above progress, however, generates a set of selfamplifying processes in terms of the relationship between society and the courts. The more the average length of proceedings decreases, the more society's expectations concerning the judiciary grow: what was deemed to be a reasonable period of time one or two years ago, which would have been accepted in advance by the parties, is or will be considered too lengthy today or tomorrow. IT development is therefore both a blessing and a new challenge to be faced by the courts.

II. The principles of the administration of justice

The basic principle that comprises the most attributes and entails the richest caselaw within the principles on justice is the right to a fair trial. The latter includes the principles of publicity, immediacy and oral proceedings. The principle of publicity ensures the possibility of society's control over the functioning of the courts and incorporates the media's right to report on judicial proceedings, with restrictions that vary from country to country. Image and sound recordings of court hearings may be made only with the consent of the parties present, and the lack of such consent or the absence of the party's physical presence in the courtroom entails that public control over the functioning of the courts cannot be exercised appropriately in an *ex post* manner. As part of England's recent judicial reform, audio recordings of online court hearings

have later been uploaded and published. In such a situation, society's control over the functioning of the judiciary can thus essentially be exercised without a limit in time.

Judicial practice attaches particular importance to the principles of immediacy and oral proceedings. This is also shown by the rule according to which the evidence taking measures taken by the first instance judge at the court's hearings can only be reviewed at the appellate stages of proceedings to a limited extent. The above rule and its related caselaw are based on the realisation that the judge best placed to assess the frequently contradictory and incomplete pieces of evidence correctly is the one who had the opportunity to actually and directly ascertain their truthfulness during the first instance proceedings.

The entirety of the principle of oral proceedings, closely related to immediacy, also applies only to first instance proceedings. One of the cumbersome aspects of oral hearings is that if, despite having been duly summoned, the witness or expert fails to appear before the court, or if a required material piece of evidence is not submitted, and consequently the court's hearing has to be postponed to a date several weeks or months after the original date, then such postponement, in itself, results in the significant protraction of proceedings. One of the conceptual modifications introduced by the new Code of Civil Procedure has therefore been to limit the application of the principle of oral proceedings: in the preparatory phase of the proceedings, the court is given a power of discretion to decide whether a preparatory hearing is to be held or whether the parties' written statements are sufficient for determining the framework of the legal dispute and the taking of evidence. If a preparatory hearing is to take place then the parties have to be summoned to it and it must take place in a courtroom, which makes the preparatory phase, aimed primarily at clarifying the parties' position, rather uneasy and overly formalised.

In its caselaw related to Article 6 of the European Convention on Human Rights (hereinafter: Convention), the European Court of Human Rights (hereinafter: ECtHR) has examined, on a number of occasions, the implementation of the principle of oral proceedings (frequently intertwined with the principle of immediacy); the relevant findings were summarised by the ECtHR's Grand Chamber judgement, delivered on 6 November 2018, in the case of Ramos Nunes de Carvalho e Sá v. Portugal[12]. The ECtHR has identified three exceptional situations: i. the court can fairly and reasonably decide the case on the basis of the case file, ii. the case raises purely legal issues of limited scope and iii. the case concerns highly technical issues where the existence of a speedy decisionmaking process is of particular importance, such as certain social security cases (paragraph 190). By contrast, the ECtHR has found that holding a hearing is necessary where there is a need to assess whether the facts were correctly established by the authorities, where the circumstances require the court to form its own impression of litigants by affording them a right to explain their personal situation or where the court needs to obtain clarification on certain points, *inter alia*

12 Applications no. 55391/13, 57728/13 and 74041/13

by means of a hearing (paragraph 191). The ECtHR has previously examined whether the lack of a public hearing at a lower-instance court may be remedied by a public hearing at the appeal stage. In a number of cases, it has found that if the appellate court has full jurisdiction – in particular to order the taking of evidence, to review the earlier assessment of pieces of evidence or to reestablish the facts of the case – the lack of a hearing before a lower level of jurisdiction may be remedied before that court by holding a public hearing. If, however, the appellate court has no such jurisdiction then an infringement of Article 6 of the Convention may be found (paragraph 192).

In respect of alternative dispute resolution mechanisms to be used through online platforms, Susskind analysed whether such mechanisms complied with the right to a fair trial, as stipulated by Article 6 of the Convention, and he concluded that if they could be followed by a procedure in which the principles of justice were to be fully respected then the possible deficiencies of the alternative dispute resolution forum did not conflict with the Convention. Susskind also raised the question whether the principles of publicity, immediacy and oral proceedings took precedence over the other principles of the administration of justice, and whether the former principles excluded the possibility of any change aimed at placing the venue of dispute resolution outside the courtroom or, eventually, to the online space. According to Susskind's opinion, consideration has to be given to both the advantages and drawbacks (a violation of the sofarknown contents of the basic principles) of online dispute resolution mechanisms. The solution he recommends is to enable, primarily, the judge seized with the case to decide whether the legal dispute at hand is to be resolved only on the basis of written preparatory materials and written statements or whether it is to be dealt with through the ordinary way of court proceedings, within the traditional framework of hearings.

III. Online court models

The implementation of the vision of online courts has already begun in many countries, which may constitute good starting points for further developments. In England and Wales, the HM Courts & Tribunals Service prepared, in 2015, a report in which the introduction of an internetbased court service, to be called Her Majesty's Online Court, was proposed. According to the proposal, a threetier court service should be set up for low-value civil claims. Tier one would help users with a grievance to classify and categorise their problem, to become aware of their rights and obligations, and to understand the options and remedies available to them. Tier two would provide online facilitation to bring a dispute to a speedy, fair conclusion without the involvement of judges and with the assistance of online facilitators. Tier three would provide online judges, who could hear the parties and who would be entitled to decide, at any time, to proceed with the dispute resolution process, pursuant to the general rules of procedure, in a courtroom. In 2016, the Secretary of State for Justice approved the above report and provided an amount of GBP 1 billion for the implementation of

judicial reform, part of which was dedicated to the establishment of online courts.

Susskind welcomes the establishment, of the Traffic Penalty Tribunal in England and Wales in 2000. It is entitled to deal with appeals submitted against penalty charge notices. The tribunal's platform enables the opposing parties to establish realtime contacts with each other by any internetbased device (smartphone, tablet). The parties are given the option of communicating with each other by various means, for instance, either via messages or by chat. Similarly to the idea of the aforementioned online court service, the platform is not operated by judges but by administrators who are responsible for assisting the parties, upon their request, in clarifying their position. Once both parties have uploaded or presented their evidence and arguments, the appealing party is free to decide whether to ask for the delivery of an edecision without any further hearing or to request a telephone hearing be held in the simultaneous presence of the administrator and the opposing party. The statistics of the past two years show that hearings have been requested in only 10 percent of incoming cases; 11 percent of the cases have been settled on the date of their receipt and 25 percent of them have been decided on within one week, while 70 percent of them have been adjudicated within 4 weeks.

From among the Chinese development projects, Susskind highlights the use of artificial intelligence. The Supreme People's Court is currently building a platform that contains 94 million cases, 46 million documents, 24,000 court staff files, 10 million pieces of statistical data and 100 million items of case information. They seek to improve their case management and ongoing judicial reform by using the method of Big Data analysis. In 2000, Singapore was the first country in the world to introduce a judicial form completion application, the use of which became obligatory for attorneys. In 2016, a programme called "The courts of the future" was launched under the leadership of the President of the Supreme Court, with the objective of using artificial intelligence and online dispute resolution methods. The following year, another programme was initiated to hold ehearings between the parties in cases involving low-value civil claims and labour disputes. Susskind also presents two initiatives from Australia. The first includes a service enabling judges and lawyers to communicate and exchange documents with each other online, without the need for their appearance in the courtroom; the second is a platform specifically for insolvency proceedings, in which form completion applications assist in the automation and processing of submissions.

In the United States of America, researchers at the University of Michigan developed an online service called Matterhorn, which was first put into use in 2017 at a district court in Michigan. This service is now operational at more than 40 courts in eight different States. It was originally designed to improve the efficiency of communications between the courts and citizens. Matterhorn is available 24 hours a day through smartphones and is mainly suited for the resolution of low value civil claims and family disputes. Moreover, the platform also transmits the court's decision to the parties. Another online court was launched in Utah in 2018 to deal with legal disputes with a litigation value of less than USD 11,000. This platform provides the parties with the

possibility of directly negotiating with each other to reach a friendly settlement without the involvement of a court or of requesting the assistance of facilitators to offer them guidance on fundamental legal issues and help them to reach an agreement. Facilitators are also responsible for assisting the parties in the submission of the necessary court papers if the parties fail to reach an agreement. In addition, facilitators may decide to bring the case before a judge, and the latter may either order the hearing of the parties or, upon their request, adjudge the dispute without holding a hearing, on the basis of the submitted written documents.

In Susskind's opinion, the best known and most advanced online dispute resolution mechanism currently operates in British Columbia, Canada under the name of the Civil Resolution Tribunal. This mechanism was launched in mid2016 to resolve pecuniary disputes with a litigation value of no more than CAD 5,000, while as of 2019, it can also be used in respect of claims for compensation for damage caused by a car accident below the value of CAD 50,000. The service offered by the tribunal has four tiers. Tier one consists of helping users to understand their legal situation; tier two aims at assisting the parties in reaching an informal agreement. If the parties cannot resolve their dispute by negotiation, tier three proposes the intervention of a case manager, who tries to help the parties to reach an agreement. Finally, if the latter phase also fails, tier four includes the delivery of a decision by an independent member of the tribunal (who, nevertheless, does not qualify as an ordinary judge).[13]

IV. The Digital Single Market in the European Union

In its programmatic paper, the European Commission (20152019) articulated the need for the establishment of a digital single market.[14] Initially, the latter primarily aimed at harmonising the various online economic and commercial services, but later on the policymakers started to realise that such harmonisation also necessitated the improvement of the efficiency of crossborder enforcement actions. The development of the above process at EU level is well illustrated by the fact that the conclusions, adopted on 9 June 2020, of the Council of the EU on shaping Europe's digital future expressly refer to the implementation of access to justice, which can be facilitated and improved by the digitalisation of the justice systems of the Member States throughout the European Union. The Council therefore called on the Commission to facilitate the digital crossborder exchanges between the Member States in both criminal and civil matters and to ensure the sustainability and ongoing development of the technical solutions that have been developed for crossborder exchanges.

The two most important online platforms that currently provide assistance in that regard are ejustice.eu and ecodex. They help users to fill in – in all the official languages of the EU – a number of forms attached to the various EU pieces of legislation adopted

13 Susskind, pages 165176

14 A Digital Single Market Strategy for Europe – COM(2015) 192 final

within the framework of judicial cooperation in civil and criminal matters, to gain knowledge of the contact details of the competent national courts and authorities and to familiarise themselves with the relevant national laws.

In this field, the most farreaching piece of EU legislation has been Regulation no. 524/2013/EU of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes, on the basis of which the European Commission set up an online dispute resolution platform. The latter has taken the form of an interactive webpage that is accessible through a single entry point for consumers and traders who seek to resolve their disputes originating from online transactions outside the judicial process. The online dispute resolution platform provides general information regarding the outofcourt resolution of contractual disputes between traders and consumers arising from online sales and service contracts. It allows consumers and traders to submit complaints by filling in an electronic complaint form available in all the official languages of the institutions of the Union and to attach relevant documents. It transmits complaints to an alternative dispute resolution entity competent to deal with the dispute concerned and offers, free of charge, an electronic case management tool that enables alternative dispute resolution entities to conduct the dispute resolution procedure with the parties through the online platform. The Commission is responsible for the development, operation and maintenance of the platform and provides all technical facilities necessary for its functioning. The platform also offers an electronic translation function, which enables the parties and the alternative dispute resolution entity to have the information exchanged through the platform and necessary for the resolution of the dispute translated, where appropriate. Finally, the platform provides complainants with the possibility of requesting assistance from experts (the platform's contact points).

V. The regulation of online courts

According to Katsh and Rabinovich, all successful dispute resolution systems can be conceptualised as a triangle, the sides of which represent three elements: trust, experience and convenience. The regulation of both court proceedings and outofcourt, alternative dispute resolution mechanisms should include all three elements, but not necessarily to the same degree. The benefits of early online dispute resolution platforms were mostly in the area of convenience. As a result of technical progress and the rapidity and unlimited nature of gathering and processing data, the enhancement of the expertise side – by way of the replacing human judges – is the most important task of today. The processing and evaluation of data, facts and pieces of information are the key elements of all civil court proceedings, in respect of which the means of modern technology have immeasurably greater capacity than humans.[15]

Susskind makes a distinction between two regulatory models: the first one is based

15 Katsh – Rabinovich, pages 37-38

on the idea of introducing the use of digital tools within the framework of the courts' existing organisational and procedural rules, while the second one opts for the development of a completely new organisational and procedural regime. The latter model attributes a key role to online courts and assigns only a complementary function to the existing traditional framework. It would work mainly in first instance proceedings, which would provide the possibility of switching from a first instance online process to an ordinary appellate court procedure. The statistical figures in Hungary also demonstrate that 60 percent of lawsuits are concluded with final and binding effect at first instance[16], and the most timeconsuming procedural phases are concentrated in the first instance proceedings; therefore, if they can be shortened and made more efficient then it would have a positive impact on the overall length of proceedings as well.

Susskind supports the second model and gives an illustrative example, pointing out that it is not possible to change a tyre on a moving vehicle. He assumes that online courts should be accessible through a platform that would be able to assist the parties in obtaining information on their procedural and substantive rights, filling in forms, approximating their legal positions and reaching an agreement and that such assistance functions in themselves would greatly lessen the courts' workload. If the parties fail to reach an agreement, they should be entitled to lodge and clarify their submissions, to be heard and, ultimately, to have a decision in their case made through the platform or by other online means. This model, nonetheless, is not suitable for resolving all types of civil disputes and so, if the case involves complex legal issues, the platform's legal assistant may refer it for treatment under the conventional court procedure.

VI. Thesis statements

The present short overview has sought to raise awareness of the impact of IT development on the administration of justice and the consequential changes in the requirements to be complied with by the courts. The understanding of this phenomenon is made difficult by the fact that there is no absolute limit to which IT can be developed; what is unimaginable today will become a reality in a couple of years or decades. However, due to the dynamics of the development process, it can already be stated that the twohundredyear old judicial and procedural structure will not be able to manage, in a systemic manner, the changing socioeconomical expectations. Hence, safeguarding the right of access to justice requires radical changes.

The Digital Revolution, with an impact several orders of magnitude greater than that of the Industrial Revolution, has already started, in which the smooth and predictable operation of the justice system continues to be one of the cornerstones of social peace and has an effect on economic growth. Therefore, the country in which the above phenomenon is first acknowledged will be able to gain a significant competitive advantage by appropriately answering the following question: Are courts

16 https://birosag.hu/ugyforgalmi-adatok/birosagi-ugyforgalom-2019-eves-adatai

primarily buildings or service providers? Finding a solution that is compatible with the currently known principles of justice, based on professional and social consensus and works efficiently in practice will take a long time, and I intend to promote the launch of the solutionseeking process by drawing up the thesis statements below, hoping that they will be able to inspire further discussions.

1. IT transforms our economic and social practices, and an increasing proportion of civil law relationships are established online. The courts and the procedural legal framework of proceedings need to be made suitable for managing the above changes; the dominance of "databased" proceedings, in addition to "paperbased" proceedings, should be reached.
2. The majority of the principles of the administration of justice and the procedural principles thereof create an almost twohundredyear old structure, which increasingly hinders the efficiency and timeliness of proceedings. This model mainly gives priority to the courts' decisionmaking competence, while it attributes less importance to their role as service providers. The diversity and the acceleration of the development of legal relationships require an improvement in the flexibility of the organisational and procedural structure of the courts.
3. In practice, the effectiveness of access to justice is already impeded by many legal and nonlegal factors the number of which continues to grow due to the diversity and – partly – differing nature of online legal relationships. The direction of the changes to be made is the dismantling of obstacles and the expansion of the right to access to justice.
4. It is appropriate to distinguish between the concepts of digital court and online court. The former means the integration of IT tools into the existing organisational and procedural frameworks, while the latter seeks to rethink the current settings by imagining the courts mainly as service providers and by shifting the venue of court proceedings from the courtrooms to the online environment.
5. Digital courts and online courts are not mutually exclusive but rather as complementary forums, between which procedural interoperability should be guaranteed.