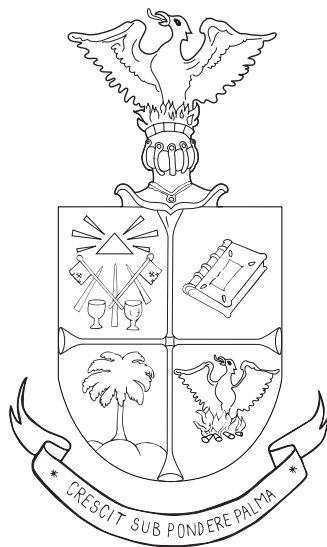


## **Karoli Mundus II.**



# KAROLI MUNDUS II.

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## THE UYAP-SYSTEM - A NOTEWORTHY PROGRESS IN THE EUROPEAN INTEGRATION PROCESS OF TURKEY

### Introduction

The current SARS-CoV-2 pandemic has revolutionized the whole world, on the other hand, accelerated the process of digitization and significantly extended the application of digital techniques to almost every area of life. In this context, the Council of the European Union adopted conclusions on 3 October 2020, stressing the importance of investing in digital assets as a result of the Covid-19 crisis.<sup>2</sup>

However, as more and more public services and more and more transactions are implemented in cyberspace using IT systems, the protection of these IT systems is becoming more and more important, as criminals adapt to the new situation and move their activities to cyberspace. One element of protection is the use of increasingly modern systems, which clearly benefit countries that have already been committed to the digitalisation of public services, such as Turkey, which has been making significant efforts to build and operate the UYAP system for years.

As far as the UYAP is concerned, it has been carried out by the Ministry of Justice since 2000 and all the judicial units and agencies use it in their daily processes, so we can see how important this system is. UYAP currently has 34,250 users and 24,714,923 files stored. Nearly 50,000 new files are being entered into the system daily.<sup>3</sup>

Turkey has been seeking for the highest possible degree of integration since one of Mustafa Kemal Atatürk's main objectives was to make Turkey part of the family of European people. The accession process that started in 1998 has still not been completed, but it can be easily seen to what extent the aspect of being accessed contributed to the modernisation of the country, including justice, as the country has regularly been confronted with European standards by the reports of the Committee and the resolutions of Parliament. The main problem of the Turkish justice system -

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1 Assistant Professor, Department of EU Law and Private International Law

2 Council of the EU, 'Digital justice: Council adopts conclusions on digitalisation to improve access to justice' (Press release, 13 October 2020) <[www.consilium.europa.eu/en/press/press-releases/2020/10/13/digital-justice-council-adopts-conclusions-on-digitalisation-to-improve-access-to-justice/](http://www.consilium.europa.eu/en/press/press-releases/2020/10/13/digital-justice-council-adopts-conclusions-on-digitalisation-to-improve-access-to-justice/)> accessed 8 March 2021.

3 Ali Riza Cam, 'Turkey's eJustice system (UYAP)' (*Justice, Law and Security*, 11 June 2007) <<https://joinup.ec.europa.eu/collection/justice-law-and-security/document/turkeys-ejustice-system-uyap>> accessed 1 July 2021.

just like the Hungarian one - is the issue of excessive caseloads which often leads to protracted cases and is manifested in condemnations of Turkey in Strasbourg as well.

In order to ease this burden, the reform of the judicial system has been realised, especially in the regular court system by setting up district courts and by the re-organisation in the public administration court system. Furthermore, since the millennium, a great deal of increase in resources and staff expansion have been accomplished and procedures in smaller councils have also resulted in the reduction of average caseloads of court councils. The wide application of computer equipment, IT networks and electronic procedures, which preceded the development of similar Hungarian systems, also made communication between parties and court, the court and other state bodies and courts between each other significantly faster and more efficient. The creation of the electronic database of court decisions helps to explore and integrate case law.<sup>4</sup>

UYAP is an e-justice system, part of the e-government, which was developed to ensure a fast, reliable, adequately functioning and accurate judicial system. As a central network project, it includes all the courts, offices of public prosecutors, prisons and other judicial and state bodies. UYAP is the most significant information system of Turkey which was prepared and created by the Ministry of Justice in order to correct the functioning and adequacy of justice and to create a more efficient and less bureaucratic judicial system for the people and the institutions concerned.<sup>5</sup>

If we examine the Ministry of Justice Strategic Plan 2010-2014<sup>6</sup>, and the High Council of Judges and Prosecutors 2012-2016 Strategic Plan<sup>7</sup> and the Ministry of Justice Strategic Plan 2019-2023,<sup>8</sup> we can see that all of them had a main objective to develop the UYAP system until at the present as well.

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4 Adrienn Prieger, 'The impact of European integration on Turkish judiciary' (Doctoral dissertation, KRE, 2018) 241.

5 Ministry of Justice, IT Department, 'UYAP - National Judiciary Informatics System' (ACA-Europe, Seminar in Istanbul on 1 October 2009) 3. <[www.aca-europe.eu/seminars/Istanbul2009/ist09\\_uyap.pdf](http://www.aca-europe.eu/seminars/Istanbul2009/ist09_uyap.pdf)> accessed 12 January 2021.

6 Ministry of Justice, 'Strategic Plan 2010-2014' (Strateji Geliştirme Başkanlığı, 2010) <<https://sgb.adalet.gov.tr/Resimler/SayfaDokuman/24122019093411StrategicPlan.pdf>> accessed 13 July 2021.

7 High Council of Judges and Prosecutors, '2012-2016 Strategic Plan' (2012) <[www.cjp.gov.tr/Eklentiler/Dosyalar/d5f1624b-0f04-4db3-9e19-e82987de7302.pdf](http://www.cjp.gov.tr/Eklentiler/Dosyalar/d5f1624b-0f04-4db3-9e19-e82987de7302.pdf)> accessed 15 July 2021.

8 Ministry of Justice, 'Stratejik Planı 2019-2023' (Strateji Geliştirme Başkanlığı, 2019) <[https://sgb.adalet.gov.tr/Resimler/SayfaDokuman/27102020154519Stratejik%20Plan%20\(2019-2023\)%2023.10.2020.pdf](https://sgb.adalet.gov.tr/Resimler/SayfaDokuman/27102020154519Stratejik%20Plan%20(2019-2023)%2023.10.2020.pdf)> accessed 15 July 2021.

## History of UYAP

The first studies about making the judicial system electronic were made in 1998. At the end of the year 1999, the Information Technology Department was created within the Ministry of Justice to realize the modernization of the justice system.

Later, technological companies were involved in deciding which information technologies should be used, and it was decided to have the whole modernisation covering all the judiciary units.

The project, National Judiciary Informatics System (UYAP), started as part of the e-government in 2000.<sup>9</sup>

The accession partnership between Turkey and the EU was adopted on 8 March 2001 and the Government of Turkey has prepared the National Programme for the Adoption of the Acquis (NPAA) so as to achieve the purposes stated in the Accession Partnership. The basic priorities of the Accession Partnership and NPAA include the modernisation of justice and penal reform. The aim of the legal harmonisation process is not only to make the necessary modifications to the existing legislation but also to strengthen institutions responsible for executing or applying new procedures. So, in order to realize these prospects, UYAP was created to make a network covering all the courts, offices of public prosecutors and law enforcement agencies together with the central agency of the Ministry of Justice.<sup>10</sup>

UYAP was created in two phases. First, the central organization was established in Ankara: the objective of the first phase was to automate the central agency and the subordinate units of the Ministry. The phase ended in 2002.<sup>11</sup> It was followed by the nation-wide automation of the UYAP provincial units.<sup>12</sup> By 2003, the infrastructure and software were installed in the provinces<sup>13</sup> and the relationship was created with the Ministry Center of Ankara.<sup>14</sup> In 2004, all judges and prosecutors and also all the meeting rooms were equipped with computers, and judges and prosecutors received an IT training<sup>15</sup>. (In Hungary, this must be achieved by 2020).<sup>16</sup> Following

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9 Commission, '2001 Regular report on Turkey's Progress Towards Accession', SEC (2001) 1756, 84.

10 UYAP, 'UYAP History' < <https://www.e-justice.gov.tr/UYAP-History> > accessed 14 August 2021.

11 Commission, '2002 Regular Report on Turkey's Progress towards accession' COM(2002)700 final 21

12 UYAP (n 9).

13 About the administrative division of Turkey, see: Prieger (n 3). 145. n 746.

14 Commission, '2003 Regular Report on Turkey's progress towards accession', COM(2003) 676 final, 21.

15 Commission '2004 Regular Report on Turkey's progress towards accession', COM(2004)656 final, 26.

16 'Digitalisation significantly transforms the work of courts. - Digital Open Day in Debrecen'

the enactment of the Law No. 5070 of 15 January 2004 on Electronic Signature, the Ministry of Justice reached an agreement with the public e-signature provider about the delivery of e-signatures for all judges, prosecutors and staff.<sup>17</sup> (Just to note, this has still not been achieved in Hungary.) By 2005, UYAP was functioning in several courts and penitentiaries, enabling several tasks, like court procedures, which were formerly paper-based, to be carried out electronically. Court records could be accessed through network by judges and prosecutors, and most of Turkey's courts and the offices of public prosecutors were now connected.<sup>18</sup> The database of the Court of Cassation and the Council of State was created and connected to the network in 2005.<sup>19</sup> It was necessary and this is what makes this sequel so important, because formerly Turkey had been criticised by the Committee for the following 'Day to day practice shows differences in the interpretation of the law in practical cases. As a result, there is a lack of clarity, transparency and legal certainty. There is evidence that in some cases the judge, invoking the same law provisions, decided to grant an acquittal while in other cases the opposite decision was taken. This in turn raises the question of the predictability of interpretation of the law.'<sup>20</sup> By 2006, the main courthouses<sup>21</sup>, all judges and prosecutors had been provided with notebooks and Internet access. By this time, it was planned to have e-suits and case law accessible on network and the connection of jurisdiction with all state institutions.<sup>22</sup> In March 2007, the lawyer portal was integrated to the network, thus lawyers became able to follow their pending cases electronically, initiate new cases, send documents concerning their cases to courts and pay duties or advance litigation costs all electronically.

In May 2007, the Ministry of Justice signed two protocols with the Telecommunication Institute and the Chamber of Notaries about sharing information.<sup>23</sup> The second phase of the project had been finished by the end of 2007, and judges and prosecutors already gave positive feedback about the functioning of the system

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(Birosag.hu, 13 December 2018) <<http://projektjeink.birosag.hu/hirek/20181213/digitalizacio-jelentosen-atalakitja-birosag-munkajat-digitalis-nyilt-nap-debrencben>> accessed 12 January 2020.

17 UYAP (n 9); Ministry of Justice, IT Department, 'Fast, transparent and effective justice system - UYAP national judiciary informatics system' [pdf], (ACA-Europe, Seminar in Istanbul on 1 October 2009) 22. <[www.aca-europe.eu/seminars/Istanbul2009/ist09\\_uyap.pdf](http://www.aca-europe.eu/seminars/Istanbul2009/ist09_uyap.pdf)> accessed 18 January 2019.

18 Commission, 'Turkey 2005 Progress Report' COM(2005)561 final, 105

19 Ibid.

20 COM(2002)700 final, 21-22.

21 In Turkey, several courts use one court building, which is known as courthouse in English terminology and which may be the equivalent of the old Hungarian expression "törvényház-courthouse" (Today, the Hungarian language no longer distinguishes between the court as an organization and as a building).

22 Commission, 'Turkey 2006 Progress Report' COM(2006)649 final, 59.

23 Commission, 'Turkey 2007 Progress Report', COM(2007)663, 59.

and the goals achieved.<sup>24</sup> The Ministry of Justice issued a regulation and according to it documents would not move physically between institutions after 1 July 2008. All documents need to be sent electronically, verified by e-signature, correspondence between legal institutions is to be done by e-signature.<sup>25</sup> (This must be achieved also in Hungary by 2020.<sup>26</sup>)

Legal institutions and agencies use infocommunication technologies in everyday practice. All court procedures, cases and suits have been transferred into electronic circumstances.<sup>27</sup> The judicial system and all other institutions concerned have a completely integrated and automated process among each other on the e-signature infrastructure of UYAP. This created an electronic office atmosphere with no paper-work needed.<sup>28</sup> In most courts, cases are distributed by an automated information technology system which provides lawyers and parties with secure access to essential information concerning court procedures and which is also used as a statistical data provision.<sup>29</sup> In 2015, the first quality surveys which were made by involving the public, the parties concerned and the bar associations showed that the IT system responsible for signing needed further development. Resolutions of the Constitutional Court, the Court of Cassation and the Council of State are accessible by a separate system, but they are difficult to search as no key words are added and no short summaries are attached which impede the creation of an integrated judicial practice of the country.<sup>30</sup>

Another project meant to be accomplished within the framework of UYAP is ‘The Development Programme of Expertise System Portal’ the objective of which is to develop a web-based expertise system portal. In this project, users will have access to information on how to go on, how much fee to pay and how much money is meant to be paid during the lawsuit for damages.<sup>31</sup> According to an agreement with the mobile phone service providers, informative text messages can be sent to clients

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24 Ibid.

25 UYAP (n 9).

26 ‘Digitalisation significantly transforms the work of courts. - Digital Open Day in Debrecen’ (Birosag.hu, 13 December 2018) <<http://projektjeink.birosag.hu/hirek/20181213/digitalizacio-jelentosen-atalakitja-birosag-munkajat-digitalis-nyilt-nap-debrecenben>> accessed 12 January 2020.

27 UYAP (n 9); Commission, ‘Turkey 2015 Progress Report’ COM(2015)611 final, 15.

28 UYAP (n 9).

29 COM(2015)611 final, 15.

30 Ibid.

31 The system enables users, potential court clients to access formerly delivered court decisions in similar cases by providing keywords and parameters necessary which will appear on screen about the lawsuit concerned. Reports on similar cases will be extracted with relating statistical information, such as the number of lawsuits in the given area, the duration of suits, the number of accepted, partly accepted and denied demands, the cost of suits, the number of changes of claim and amount of money paid to the defendant. L.: UYAP (n 9).



to warn them about their appointment to appear in court. Users may request to be notified either by e-mail or text message, if any event specified by them is about to take place.<sup>32</sup> Furthermore, after the test phase was finished, courts and other judicial institutions were provided with “video- and voice recorders” and “videoconference systems”.<sup>33</sup> Connection with other national and international institutions’ and organizations’ databases is being planned in the way to the accession to the EU also within the framework of UYAP. Connections between central databases of the EU and EU members states are also being sought.<sup>34</sup>

## **The structure of UYAP**

### **Basic features of UYAP**

UYAP has a central file system and structure, all servers are in Ankara. This saves money, hardware and staff. The processing of all data in the UYAP database is real-time, so all data is integrated, factual, reliable and up-to-date. The software is designed with complete flexibility to be comfortable to use in any court, regardless of size, type of work or intensity. Data is stored and transmitted within a single system, so data will not be cluttered or duplicated.<sup>35</sup>

During the design of the system center, the size of the system, the speed of technological changes, the goals of the system development, the warranty process of the system, the cost of the services and the maintenance after the warranty were considered. This, according to IBM and ORACLE, which are experts in this field, is unique in Europe in terms of capacity and capability: the capacity of the center is enough for more than seventy thousand users and can be developed if necessary.<sup>36</sup>

UYAP consists of different modules that are interconnected, with separate user interfaces for each module.

The modules are as follows:

- criminal law system, civil law system
- administrative legal system
- prosecution system
- the Court of Cassation system
- probation supervision system
- decision support system

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32 Ibid.

33 Ibid.

34 UYAP (n 9); Ministry of Justice, IT Department (n 16).

35 UYAP, ‘Infrastructure’ <<http://www.e-justice.gov.tr/Infrastructure>> accessed 15 August 2021.

36 Ibid.

- lawyer information system
- enforcement and insolvency system
- penitentiary system
- citizen information system
- personal management system, financial and care system
- training management system
- document management system
- forensic system
- general support system

The system is also linked to a legal database, giving judges and prosecutors access to up-to-date legal sources online, in particular, legislation, regulations, circulars, case law, studies, form and template texts, model decisions.<sup>37</sup> There is also an electronic mail system connected to UYAP, which has 55,000 active users. There are virtual discussion forums within the judiciary that allow for the sharing of information. Each user can share their own experiences, problems, and ideas with other users and ask others questions, find solutions to their problems.<sup>38</sup>

The UYAP is designed to be linked to other public institutions and organizations. In this sense, the link with the personal data and address register as well as the criminal record was first provided, and it was certain that it would provide an opportunity to query personal identification and criminal records. This integration continued with other projects, such as the deployment of POLNET (Police, Gendarmerie) and TAKBIS (Land Office).<sup>39</sup> Driving licenses and the land register can be queried immediately by the judge at the hearing. Prosecutors may, in accordance with their limited powers, examine driving licenses and title deeds. On the other hand, posts can be tracked immediately by court users.

### **UYAP is a structural unit**

**The e-Justice portal** is available to users for UYAP applications, distance learning, Help Desk, database, e-mail and forum, e-signature and information security features, which are the main features of the UYAP system. However, the e-Justice Portal is also there to provide information on issues such as maintenance notifications and updates. They are published on the portal for expert lists, sunny hours, weather forecasts and interest rates, etc. information.<sup>40</sup> In Hungary, the Electronic Administration Portal

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37 UYAP (n34); Ministry of Justice, IT Department (n 16).

38 UYAP (n34); Ministry of Justice, IT Department (n 16), 9.

39 In Hungary, from 1 January 2018, the law also allows courts to have direct access to public credit registers (cf. Section 112 of the Code of Civil Procedure).

40 UYAP, 'Projects' <[www.e-justice.gov.tr/Projects](http://www.e-justice.gov.tr/Projects)> accessed 29 August 2021.

(<https://e-ugyintezes.birosag.hu/>) plays a similar role, enabling the electronic submission of complaints, the preliminary estimation of the duration of proceedings, access to the case file, the Court's Electronic Information and Alert System.

**The Citizens' Portal** provides citizens with access to executive offices, all ordinary and administrative courts. This service is provided by the Ministry of Justice. The Citizens' Information System has been developed to ensure rapid access to justice and to make the best possible use of judicial services. Citizens can access the portal via the Internet using an e-government password, e-signature or mobile signature. This allows citizens to follow their own affairs.<sup>41</sup>

With the help of the **Lawyer Portal** (<https://avukat.adalet.gov.tr>), lawyers can open online cases and online enforcement procedures (e-tracking) via UYAP via e-signature, mobile signature or e-government password and online connection within office hours. Lawyers can see their pending and closed cases within the scope of their power of attorney. Lawyers may view other cases without power of attorney with the approval of the competent judge. Lawyers can request a copy of the case file electronically, submit electronically signed documents to cases, learn about the status of the case, view the date of the hearings, and pay the fee and costs electronically. Lawyers can also subscribe to the SMS notification system to be notified of their cases immediately. Lawyers may also inquire at the enforcement offices of the debtors' registered address, if they make a deposit with their chamber card or Vakıfbank account.<sup>42</sup>

The **UYAP Institutional Portal Information System** is a service offered by the Ministry of Justice for both public and private institutions. Through the institutional portal, institutions can track their cases online, which are completed or pending before ordinary and administrative courts and bailiffs.<sup>43</sup>

The **Expert Portal** is a service provided by the Ministry of Justice for experts working in court cases. With this service, experts can track their files electronically without going to court. In this project, the user will have access to information on how to proceed, how much fee to pay, and how much money he will pay during the lawsuit, given the lawsuit for damages involved.<sup>44</sup>

UYAP is a very noteworthy system, because it directly or indirectly has influence and impact over the daily life of 5,951 judges and 3,739 public prosecutors, 818 administrative judges, 30,000 auxiliary court staff, 1,159 trainee judges, 300 high court members, 66,000 lawyers (approx.), 58,000 detainee and prisoners, 31,000 prison staff.<sup>45</sup>

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41 UYAP (n 39); Ministry of Justice (n 16) 10.

42 UYAP (n 39); Ministry of Justice (n 16) 11.

43 UYAP (n 39).

44 The system allows users (potential court clients) to access decisions made in similar cases by entering keywords and the necessary parameters that will appear on the screen in relation to the lawsuit in question. Reports of similar cases will be extracted together with the relevant statistical data. UYAP (n 9); Ministry of Justice (n 16) 23.

45 Çam (n 2).

UYAP is very important because of the prevention of corruption. Destruction of files are impossible because of electronic recording and all the activities are logged in the system.<sup>46</sup>

## Conclusion

The Turkish judiciary has certainly made a great stride in the EU accession process. Turkey's judicial system has been largely harmonized with judicial systems of EU countries. With the reform of the appeal system, substantial progress has been made in ensuring the right to an effective remedy and changes of criminal law rules, procedural laws, court rules, and through the development of financial and human resources, as well as judicial infrastructure, especially IT systems, have led to significant efforts to ensure a fair process, particularly in terms of equality of arms and the timely assessment.

During its way to proceed to the accession to EU and as a reply to its requirements, the Turkish government is paying high attention to the National Programme for the Adoption of the *Acquis Communautaire*. Modernising jurisdiction is a basic priority of the programme, so UYAP, which has been developed in the eras of different governments, was fully supported by all the competent authorities.<sup>47</sup> Despite the indisputable results so far, the development of UYAP is far from complete. Other national and international institutions' databases are planned to be integrated into UYAP as the country is proceeding to the accession to the EU.<sup>48</sup>

So, the UYAP database can be connected to the central databases of the EU or the Member States, thus creating an extended network that can also benefit the European courts. In the nearest future, it will be possible to connect UYAP to such backbone networks as TESTA (Trans-European Services for Telematics between Administrations) and other systems of EU Member States. Achieving this goal will result in the secure and fast transmission of international requirements (like applications for legal aid, extradition cases and deliverance of convicted persons). In addition, the UYAP's case and document manager system, as well as text editor software was designed to be independently used by other judicial systems. There is therefore no obstacle to these main components being taken over by other European courts, as they have already been transferred to other relating institutions in Turkey.<sup>49</sup>

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46 UYAP (n 39).

47 Ali Rıza Çam, 'Turkish IT project UYAP' (CCBE, 17-18 February 2009), 3-4. <[https://www.ccbe.eu/document/E-Justice\\_Portal/17-18\\_02\\_2009/Abstracts/13\\_Abstract\\_-\\_Turkish\\_IT\\_project\\_UYAP\\_-\\_Ali\\_Rza\\_Cam.pdf](https://www.ccbe.eu/document/E-Justice_Portal/17-18_02_2009/Abstracts/13_Abstract_-_Turkish_IT_project_UYAP_-_Ali_Rza_Cam.pdf)>, accessed 18 August 21.

48 Ibid.

49 Ibid.

The establishment of the UYAP system fully meets the strategy of the EU E-Plus, the objective of which is to create a high-level information society and fill the gap between judiciary staff and legal aid seekers. An article about UYAP was published in the edition of May 2008 of the European Journal of ePractice, which discusses the principles of the EU in the area of modernising justice, with particular reference to the role and function of UYAP in this process and to the demonstration of the potential of the Turkish judicial system.<sup>50</sup>

Having overviewed the history and the presently working functions of UYAP, it is apparent that the Turkish judiciary becoming electronic preceded the digitalisation of the Hungarian judicial system with years or, in some cases, even with a decade. UYAP is probably one of the most advanced nation-wide court justice systems in the world and an excellent example of best practices for national courts. For this reason, the Turkish example can be instructive for the Hungarian system as well as for other European countries' systems. It is not only about the advantage of time, as John Hunter, leader of the IT Department of the European Court of Human Rights concludes in his study for the EU and the European Council: 'UYAP is probably one of the most advanced nation-wide court justice systems in the world and an excellent example of best practice for national courts. We can only congratulate the Turkish Ministry of Justice for accomplishing UYAP and the advantages it provides to Turkish national courts and the rule of law'.<sup>51</sup>

The coronavirus pandemic was a significant stimulus for the digitalization of the Hungarian court organization as well and for the expansion of the electronic service of the Hungarian court organization. Indeed, the correlation is partly optical, as the digital developments affecting the Hungarian judicial system were largely completed by the beginning of 2020, so the coronavirus pandemic can be considered a stress test of these systems rather than an urgent reason for digitalization. Rather, the role of the coronavirus pandemic is to point out possible directions for the further development of this system and to make the use of non-personal electronic administration more widespread than planned. In this development process, the UYAP system can provide excellent examples and valuable experiences for the Hungarian court organization.

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50 Ibid.

51 John Hunter, 'Expert report on the UYAP System (National Judicial Network Project) - Project on Support to the Court Management System in Turkey,' 17 October 2008, SCMS/EO.005 <<https://1library.net/document/zglmo56q-october-scms-expert-report-national-judicial-network-project.html>> accessed 7 July 2021.