

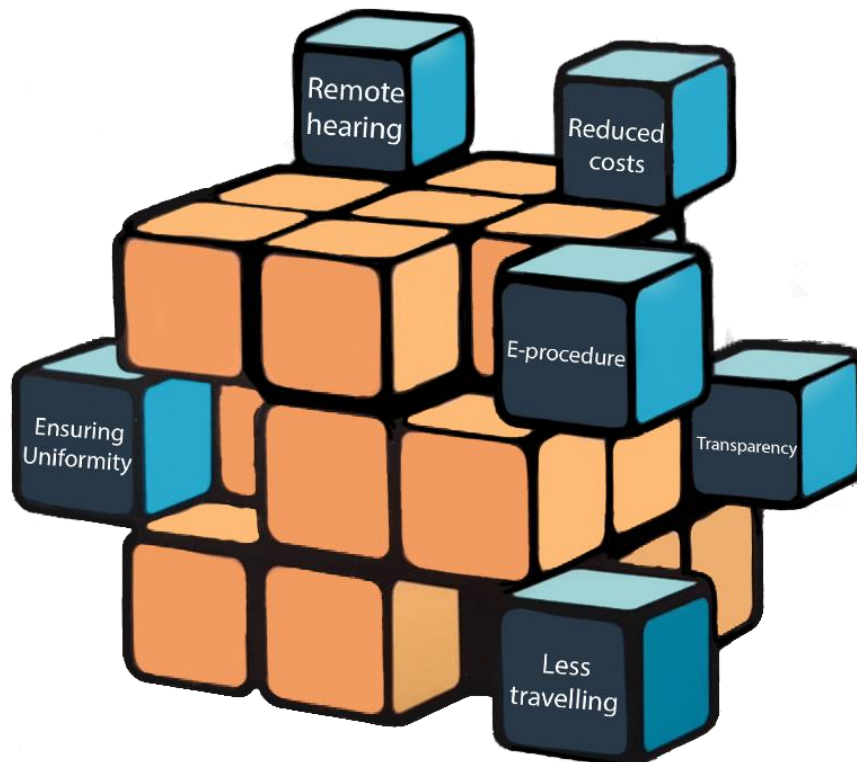


Themis competition 2022.

Semi-final C: EU and European Civil Procedure

The end of courts?

Revamping the access to justice in cross-border cases



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Foreword

'Before the Law stands a doorkeeper on guard. To this doorkeeper there comes a man from the country who begs for admittance to the Law. But the doorkeeper says that he cannot admit the man at the moment. The man, on reflection, asks if he will be allowed, then, to enter later. "It is possible," answers the doorkeeper, "but not at this moment."'

Franz Kafka, *The Trial*

When physical courts closed their doors due to the emergency measures and limited the judicial procedures to exceptional cases, it came as the final straw for the conventional justice systems. One of the most important pillars of the social and economic life of our society was struggling to adapt, which prompted an urgent search for alternatives for the revision of court justice services.

Even before the pandemic, conventional justice systems were facing pressure from the decreasing number of cases, because of the increased mobility of people across national borders and new forms of trans-national e-businesses and e-commerce.¹ In a desperate effort to keep up with the increasing need to access justice amidst the struggle of conventional justice systems, the European Union implemented several legal instruments, such as the European e-Justice Portal, European e-Justice Digital Service Infrastructure. Alternative dispute resolutions are gaining support in a wide range of areas, however, they are also becoming more and more anachronistic for many kinds of contemporary disputes. The initiative to broaden the original legal principles and legal instruments is hindered by a cage implemented by long-established national practices and local understanding on how courts should operate.²

By reducing the gap between the broadening spectrum of disputes and the current conservative nature of existing dispute resolutions, online dispute resolutions could provide up-to-date access to justice across nations. Our paper focuses on the feasibility of online courts on an international scale, while describing various concepts already existing in the EU Member States. As such, our paper aims to answer the question, whether the mass spread of online courts would mean extinction of physical courts or they would be able to complete each other.

¹ Oliver and Roth, 'The internal market and the four freedoms - Internal Market and the Four Freedoms', 41 *Common Market Law Review* (2004) at 407.

² Velicogna, In search of smartness: The EU e-Justice challenge, 4 *Informatics* (2017) at 38.

1. Definition of online courts

Before the internet became part of our lives, most people felt that the online environment was – and for many more, it still is – a magical and mysterious phenomenon. It connects people without physical limitations on time and space while introducing new and more convenient ways for communication. It is only natural that a new platform of exchange generates disputes due to the larger volumes of collected and processed data. Nevertheless, the rapid development of technology is also influencing the capacities of the internet, which can become a powerful tool for dispute resolution and prevention.

The term ‘Online Dispute Resolution’ first appeared in the late 1990s. The definition expanded along with the Internet, in particular in connection with online shopping and other transactions.³ As there are also several different terms for online courts, our paper chooses to adhere to the Online Dispute Resolution (ODR) guidelines by the Council of Europe, which states that the ODR needs to be implemented as an ancillary aid to judicial decision-making which doesn’t constrain the judiciary. According to the guideline, the term ODR refers to ‘any online information technology (IT) used by a court to resolve or assist in resolving a dispute.’⁴ In a way, the ODR proposes an unusual concept: for a selected few legal areas, the judicial system should evolve the legal procedures to have judges without courtrooms, justice without lawyers and court as a service not as a place. Nevertheless, the ODR is not meant to replace conventional dispute resolution processes. According to Susskind, it is supposed to be a whole new concept of collecting, processing data and formulating a solution entirely or largely conducted by or through an Internet-based system.⁵

There is widespread confusion regarding the use of the term ODR: the legal instrument outlined by the guidelines still has to be labelled in a manner that excludes other related but different concepts to avoid confusion. As long as the EU doesn’t coin a specific term, there is a risk, that the legal experts confuse the term with other legal instruments. The guidelines outline a general idea of serving justice unconventionally, as such, it is recommended to take up the term ‘cyber justice’ or ‘digital court’ as Marek Świerczyński suggested.⁶

³ Hörnle, ‘Encouraging Online Alternative Dispute Resolution (ADR) in the EU and Beyond’, 38(2) *European Law Review* (2013) 187.

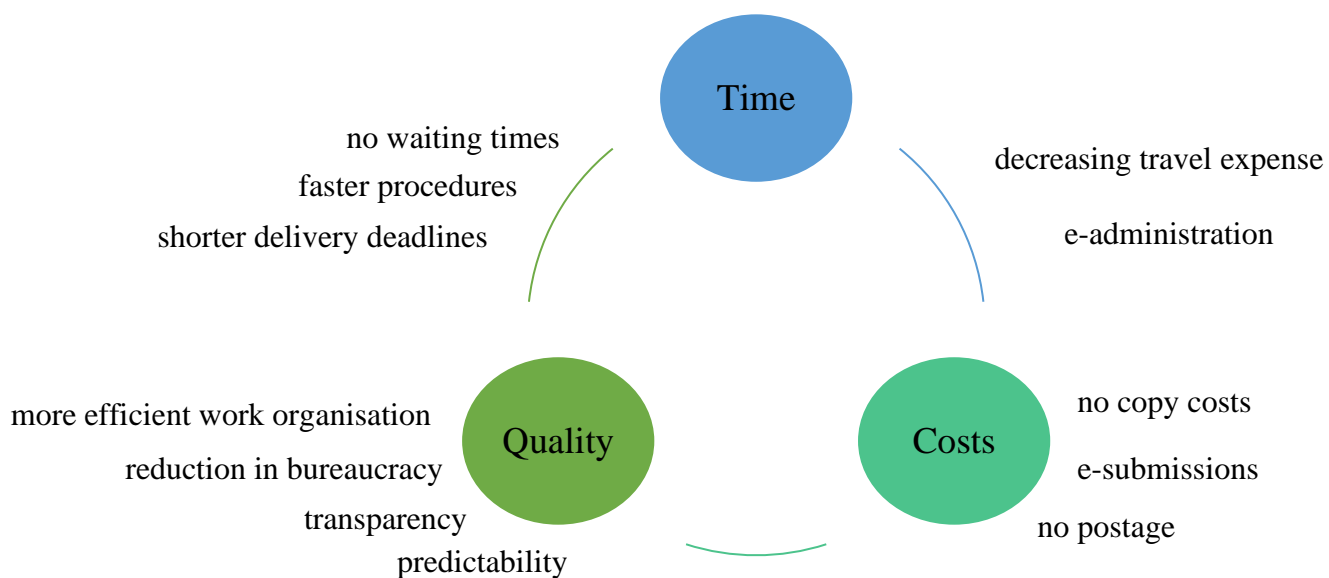
⁴ Council of Europe, *Online dispute resolution mechanism in civil and administrative court proceedings - Guidelines adopted by the Committee of Ministers of the Council of Europe on 16 June 2021 and explanatory memorandum* (2021), available at [1680a4214e \(coe.int\)](https://www.coe.int/t/e/treaties/ODR/20210616_guidelines_explanatory_memo_en.pdf)

⁵ R. Susskind, *The end of lawyers*, (2010), at 218.

⁶ M. Świerczyński, *Critical evaluation of new Council of Europe guidelines concerning digital courts* (2021),

A. What are the benefits of digitalized dispute resolution?

As the judiciary is always changing and evolving, they are always striving to provide the most critical and up-to-date components of modern societies, namely access to justice and rule of law. However, the traditional courts were established roughly one thousand years ago, where people had a much-limited flow of information. As such, most paper-based judicial systems couldn't efficiently keep up with the increased workload. Meanwhile, the developments in digital technology have undoubtedly improved the judiciary by enhancing time and cost-efficiencies, case management and widening the doors of access to justice.



As Richard Ross put it, ‘the main concern to date has been on how the „special properties of electronic media” will invite improvement or will require adjustment in particular bodies of law (...).’⁷ The access to justice is an essential requirement for the functioning of society. It requires ‘an effective possibility for the litigants to bring an action before the court in a particular case in terms of procedural requirements, timeframe, and costs, without being hindered unreasonably by practical impediments’.⁸ In general, national courthouses provide access to justice, which is influenced – sometimes hindered – by the prohibitive costs of legal

available at [Critical evaluation of new Council of Europe guidelines concerning digital courts Pobierz Pobierz PDF](#)

⁷ R. J. Ross, *Communications Revolutions and Legal Culture: An Elusive Relationship*, (2002), at 637-638.

⁸ Onțanu, ‘Encoding Justice: A Quest for Facilitating Access to Justice by e-Handling of CrossBorder Litigation. The Example of the European Uniform Procedures’ 22 *The 50th Anniversary of the European Law of Civil Procedure* (2020), 473, at 485.

proceedings, time constraints, lack of available and affordable legal representation and there are the issues with physical capacities of the courthouse and geographical barriers.⁹ These factors weigh even more in transnational litigation, as usually provisions of criminal and civil justice areas were tailored to fit national levels.

Over time, several legal instruments were introduced by the European Union to fill out the gaps for specific legal issues, such as the European Order for Payment, the European Small Claim, the European Account Preservation Order¹⁰ and the European Online Dispute Resolution (ODR) platform for traders and consumers.¹¹ These legal instruments encourage the parties - who otherwise would be barred because of financial issues, disability, and personal obligations - to bring their case before the courts, due to the support of online tools.¹² In parallel, the Council of Europe published a guideline aimed at the use of IT tools in civil and administrative proceedings. The guidelines serve as a 'soft' law instrument: they focus on the key principles of a fair trial and effective remedy, as established by the European Court of Human Rights in its case law, without compromising the benefits, such as the cost-efficiency and speedy dispute resolutions. The four most important fundamental principles in the guideline as recommended to the Member States:

1. Member States should promote trust and confidence in ODR while providing the public with a transparent explanation of their design and use to avoid legal ignorance and lack of information,
2. ODR should not serve as a substantial obstacle to access to justice, all parties should be informed about the operation of ODR, how to file an application or monitor the progress of the proceedings,
3. Similar to the general procedural rules should be implemented in court proceedings involving ODR, unless the specific nature of a particular ODR mechanism requires otherwise,

⁹ The geographical locations of courts are meant to enhance the foreseeability of jurisdictions and ensure a reasonable balance of workload. In the digital era these circumstances are slowly losing their benefits. See also the United Nations Development Programme (UNDP) practice note on 'Access to Justice' available at [Access to Justice Practice Note | United Nations Development Programme \(undp.org\)](#)

¹⁰The EU established provisions based on the Treaty on the Functioning of the European Union Art. 81(1).

¹¹ The website is available under the following link: <https://ec.europa.eu/consumers/odr/main/?event=main.home2.show>

¹² L. Laird, *J.J. Prescott: Go to court without leaving home* (2016), available at [J.J. Prescott: Go to court without leaving home \(abajournal.com\)](#)

4. ODR should implement security mechanisms to identify parties to proceedings, as it is crucial to have top-notch cybersecurity in place for the ODR systems and their integrity.¹³

The guideline provides a straight direction for the Member States on the practical use of the principles. As emphasised in the first sentence under the title of access to justice ‘justice is for everyone.’ This concept symbolises the internationally coordinated initiative to potentially remove if not at least ease access to justice.

B. What are the disadvantages of online courts?

When the European judiciaries were hit by the pandemic and struggled to devise mechanisms to carry out basic court activities and services, most of them opted to implement different levels of ODR. However, they faced several problems in trying to find ways to safeguard the right to an effective remedy and fair trial. Emergency legislation and technical solutions also came under fire as the urgency behind the pandemic faded, and the inherent problems of digitalisation came to light.

Even before the pandemic, the critics were already listing the general issues with online courts: they deliver a second class form of justice for those of limited means and alienate the digitally deprived.¹⁴ The particular challenge of providing a user-friendly, fair and transparent platform for society while balancing the needs of less digitally inclined proves to be quite difficult for the national authorities. The digital divide is a real problem in many Member States and while technology provides new ways to solve problems, society shouldn’t exclude the less fortunate from access to justice.

While ODR must be adapted to the needs of judges and other users, it should never infringe guarantees and procedural rights.¹⁵ The European Union Agency for Fundamental

¹³ R. Jokubauskas and M. Świerczyński, *New Council of Europe guidelines aimed at the use of IT tools in civil and administrative proceedings (the Online Dispute Resolution (ODR) guidelines)* (2021), available at [New Council of Europe guidelines aimed at the use of IT tools in civil and administrative proceedings \(the Online Dispute Resolution \(ODR\) guidelines\) \(coe.int\)](https://www.coe.int/t/e/treaties/ODR_guidelines.aspx)

¹⁴ Fair Trials, *Safeguarding the right to a fair trial during the coronavirus pandemic: remote criminal justice proceedings* (2021), available at <https://www.fairtrials.org/news/safeguarding-right-fair-trial-during-coronavirus-pandemic-remote-criminal-justice-proceedings>

¹⁵ The Charter of Fundamental Rights of the European Union only provides protection when the EU law rights are engaged (Art. 51). The right to an effective remedy and to a fair trial are fundamental rights enshrined in the Charter (Art. 47). These rights cover the access to a lawyer, legal aid, translation, or interpretation, and also the right to be present at trial in criminal proceedings.

Rights published a bulletin, which indicated that remote hearings on default could harm the minimum standards of suspects and accused.¹⁶ Another study points out the possible infringements of fundamental rights, in particular the effective participation in proceedings, including one's right to be present at trial and access to adequate facilities for the review of evidence.¹⁷ Furthermore, some reports show that during COVID-19, when remote hearings gained popularity, some suspects and lawyers have not been able to exchange confidentiality, and time constraints also posed a serious problem.¹⁸ The negative effects of ODR are also visible in civil proceedings, especially in cases relating to family matters and minors with respect for private and family life (Art. 7 of the Charter of Fundamental Rights (hereinafter the 'Charter')) and the rights of the child (Art. 24 of the Charter) are concerned.

According to Article 52(1) of the Charter 'any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others. This provision echoes the same principles that were established by the Court of First Instance (Third Chamber), which stated that 'fundamental rights, however, do not constitute unfettered prerogatives but may be restricted.'¹⁹ The requirements for limiting the fundamental rights generally follow the requirements for limiting fundamental rights in national legislation and international human rights conventions.²⁰ According to Article 4(3) of the Treaty on European Union (hereinafter the 'TEU') 'the Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.' As such, national legislators may restrict fundamental rights with a careful balancing, which should conform with the TEU's provisions and secondary EU legislation.

¹⁶ European Union Agency for Fundamental Rights, *Coronavirus pandemic in the EU – Fundamental Rights Implications – Bulletin 1*, (2020), available at https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-coronavirus-pandemic-eu-bulletin_en.pdf

¹⁷ L. Dorneanu, J. Malka and L. Coeckelberghs, Impact of COVID-19 on access to justice and documents - On the application of EU law, the Charter of Fundamental Rights and the possibility of non-jurisdictional remedies, (2021), available at [Impact of COVID-19 on access to justice and documents | SpringerLink](#)

¹⁸ Fair Trials, *Safeguarding the right to a fair trial during the coronavirus pandemic: remote criminal justice proceedings*, (2020), available at <https://www.fairtrials.org/news/safeguarding-right-fair-trial-during-coronavirus-pandemic-remote-criminal-justice-proceedings>

¹⁹ Case T-176/94, *K v Commission of the European Communities* (ECLI:EU:T:1995:13), at para. 33.

²⁰ M. Mika and T. Ojanen, *EU-oikeuden perusteita*, (2016), at 3.

2. The applicability of online litigations in civil proceedings with an international dimension

At first glance, one might think that both our national and EU legislation are based on the assumption that our rights can only be enforced through physical judicial channels, making the idea of online courts inapplicable in reality. However, if we look more closely at our available legislation to see to what extent its procedural rules allow for the implementation of online courts, we are surprised to come to the conclusion that there is little need for change: the legislation even now more or less contains the basic conditions for the implementation of the concept of online courts.

In our view, with ever-deepening economic integration, legal courts are increasingly confronted with cross-border cases. The swift and efficient solution of these cases requires the application of uniform rules at European level, in addition to national legislation. The European Union has already adopted a number of rules²¹ at the level of regulations in civil proceedings which have greatly facilitated the opportunities for citizens seeking legal remedy and have standardised and formalised the rules governing the conduct of proceedings.

In the following subsections, some of the EU procedural regulations will be briefly presented, mainly from the perspective of how and in what way they could be applied in the online court concept, whether they are fit for this purpose in their current state or whether changes are needed, and what technical background would allow the court hearings rules to be held online.

A. Taking of evidence

One of the most prominent, but not always necessary, elements of civil procedure is the taking of evidence, the conditions for which must be fully met in the online court concept as well. The main requirements relating to the taking of evidence can be summarised under the following headings: freedom of proof, freedom to choose the means of proof, freedom to choose the procedural order and freedom to freely consider the evidence (and other procedural documents).²²

²¹ e.g. in the field of jurisdiction, recognition of judgements, taking of evidence, service of documents, rules of small claims procedure, rules of order for payment procedure, rules of insolvency proceedings, etc.

²² DÖME Attila: „Bizonyítás” in JAKAB András – KÖNCZÖL Miklós – MENYHÁRD Attila – SULYOK Gábor (szerk.): Internetes Jogtudományi Enciklopédia (Polgári eljárásjog rovat, rovatszerkesztő: HARSÁGI Viktória) <http://ijoten.hu/szocikk/bizonyitas> (2019) [10]-[15]

The currently effective EU Regulation²³ on the taking of evidence will soon be replaced by a new, recast Regulation²⁴ entering into force on 1 July 2022. The Regulation is recast in the interests of clarity and sets itself the objective of improving and expediting cooperation between the courts of the Member States by means of electronic communication based on the newly introduced decentralised IT system.²⁵ Member States were given extended deadlines to develop this system,²⁶ that must meet specific requirements.

A fundamental guarantee for the application of the Regulation is the principle that certain acts of evidence carried out by the requested court have the same legal effect as if they had been carried out by the requesting court and that documents should not be denied legal effect and should not be considered inadmissible as evidence in the proceedings solely on the grounds that they are in electronic form.²⁷

The Regulation states that the requesting court should be left the choice of the most appropriate method of proof,²⁸ thus ensuring the requirement of freedom to choose the means of proof.

The Regulation underlines the fact that modern communications technologies, for example videoconferencing, which is an important means of simplifying and accelerating the taking of evidence, is currently not used to its full potential in the European Union.²⁹ As a consequence, it can be confirmed that there are also efforts within the Union itself to make the technical and technological background for online courts available to the judicial system, however, to date these opportunities have not been fully exploited.

The taking of evidence procedure under the Regulation is highly formalised. This is borne out by the 14 forms in the Annex which show more or less all possible options for response, thus considerably shortening and simplifying the procedure for those applying the Regulation.

The Regulation takes into consideration - and thus the application of these provisions in the online court concept would take into consideration as well - the fundamental rights of the litigants: the procedures for taking, preserving and presenting evidence should ensure that

²³ Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters

²⁴ Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (recast)

²⁵ *ibid.* Rec. [1]-[3]

²⁶ *ibid.* Art. 35. Paragraph 3

²⁷ *ibid.* Rec. [13] and Article 8

²⁸ *ibid.* Rec. [14]

²⁹ *ibid.* Rec. [21]

procedural rights, as well as privacy and the integrity and confidentiality of personal data, are protected in accordance with Union and national law.³⁰

B. Service of documents

One of the essential elements of judicial proceedings is the proper service of court documents, including the service of the parties' summons. The question arises as to whether, if the court conducts the hearing online, it is necessary to regulate the summoning of the parties at all, given that in this case the parties would not be obliged to appear in person and the hearing of the parties would not technically be different from the hearing of witnesses.

The Regulation on the service of documents³¹ has been recast in the same way as the Regulation on the taking of evidence and the new Regulation³² will also enter into force on 1 July 2022.

The reasons and objectives for the recast of the Regulation are the same as those set out in the Evidence Regulation. Accordingly, there is no difference in the need to increase efficiency and simplicity, in the content of the provisions regarding electronic documents, in the creation of a decentralised IT system and in the promotion of the development and use of modern communication technology.

The Regulation defines 6 types³³ of service. What is new compared to the Regulation currently in force is that electronic service will also be accepted in the future, further enhancing the role of digitalisation in judicial proceedings.

It would be reasonable that the principle established by the Court of Justice of the European Union that there is no hierarchy among the different methods of service³⁴ will be maintained in the application of the new Regulation.

³⁰ Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (recast) Rec. [29]-[30]

³¹ Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000

³² Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast)

³³ Service between the transmitting and receiving agencies; Transmission by diplomatic or consular channels; Service by diplomatic agents or consular officers; Service by postal services; Electronic service; Direct service

³⁴ CJEU judgement of 9 February 2006 in case C-473/04, paragraph 22

The Regulation does not apply where the address of the person to be served with a document is not known³⁵ which means that the Regulation does not regulate the admissibility of service by public notice. However, it would mean an obstacle in both the physical and in the online proceedings as well if the parties could not be served adequately with the relevant documents. That is the reason that in this context, the practice established by the CJEU is also likely to be maintained in the future as follows: EU law does not preclude the issue of judgment by default against a defendant on whom, given that it is impossible to locate him, the document instituting proceedings has been served by public notice under national law, provided that the court seized of the matter has first satisfied itself that all investigations required by the principles of diligence and good faith have been undertaken to trace the defendant.³⁶ Consequently, the application of service by public notice does not preclude the holding of online court hearings.

C. Small claims procedure

The European Small Claims Procedure³⁷ explicitly states that the Member States should encourage the use of modern communication technology in the context of oral hearings and the taking of evidence,³⁸ which can be interpreted as the EU once again intends to create the background for the application of the concept of online court hearings.

The procedure is in principle a written procedure, with the court holding an oral hearing only if it considers it necessary or if a party so requests. However, the court is not obliged to hold an oral hearing even at the request of a party if it considers that, in the circumstances, an oral hearing is obviously not necessary for the fair conduct of the proceedings.³⁹ The court has the option of conducting the hearing not in person but by videoconference or other communication technology if the conditions are met.⁴⁰

³⁵ Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast) Article 1 Point 2

³⁶ CJEU judgement of 15 March 2012 in case C-292/10, paragraph 59

³⁷ Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure

³⁸ *ibid.* Rec. [20]

³⁹ *ibid.* Article 5 Paragraph 1

⁴⁰ *ibid.* Article 8

In relation to the taking of evidence, the Regulation emphasises that the court should use the simplest and least burdensome method of taking evidence,⁴¹ which can be achieved by using the decentralised information system and communication technology as already mentioned in the Evidence Regulation.

D. Summary on the applicability of online litigations

Overall, it can be concluded that, based on the above, the conduct of online court hearings would not require any substantive or structural changes in EU civil proceedings law under the regulations examined. The EU encourages the exploitation of the opportunities offered by digital and technical-technological developments to expedite and simplify procedures.

3. Current implementation of online courts (ODR)

After reviewing the concept of online courts and the framework EU-legislation, one of the most exciting questions is how the online court systems (ODR) is currently being implemented in Europe.

The wide-spreading of ODRs is facilitated mainly by individual commercial companies, precisely because of its non-stationary nature, as customers from all over the world will turn to the company's platform from which they can resolve their dispute as quickly and cheaply as possible. In this sense, online dispute resolution platforms operated by commercial companies can also be considered as competition between courts.

So let's see what we are dealing with exactly. Both eBay, Alibaba and Amazon are already offering their customers online dispute resolution.⁴² It is important to emphasise that the goal of these companies - contrary to the purpose of the court proceedings - not to settle as many disputes as possible, but to make as many successful sales as possible, which is facilitated by the dispute resolution they offer. So for companies, dispute resolution is not a goal, it is just a tool.

Modelled through eBay's ODR platform, we can see that these platforms work with extremely large case-arrival - this could be a reason of the steady and tendentious decline in

⁴¹ ibid. Article 9 Paragraph 3

⁴² School of Law University of Missouri, Online Dispute Resolution: Companies Implementing ODR (2020), available at <https://libraryguides.missouri.edu/c.php?g=557240&p=3832247>

court-related cases mentioned above. The eBay system handles about 60 million disputes a year, with the most common disputes being labelled as “product not received”, “product not as described”, “unpaid product”.

So how does eBay's ODR work precisely? The steps are the following: dispute resolution shall be directed to the Resolution Center, which will ask a series of questions to identify the problem and verify that the complaint reported by the customer meets the terms of the dispute resolution (the customer has paid for the product and received the complaint within 30 days of shipping the product). be). This is followed by a “conciliation” phase, where the site provides a platform for the Buyer and the Seller to settle their dispute through mutual message exchange, basically through a chat. If the conciliation is unsuccessful within 3 working days, the complainant will be given the opportunity to re-apply to the Resolution Center. The Resolution Center will then contact the complainant within 48 hours to indicate if they are entitled to a refund.

It can be observed that the process consists of simple, predefined steps, for which the system sets a precise deadline, so that customers can settle their dispute in a predictable way and from the comfort of their home.

Of course, it should not be overlooked that the ODR systems of eBay and other commercial companies specialise in settling small-amount sales-related cases, while civil litigation in the courts is generally much more complex and complicated. However, the main principles of simplification, predictability, speed and convenience should be borne in mind when designing and implementing a general ODR system.

There are two main general preconditions of ODR. One of them is digitised courts, with e-filing or other online filing system, and leaving the paper-based mechanisms behind. The other precondition is the core of ODR: video conferencing facilities, including data privacy and other sufficient security.

Examining the European courts, we get a very diversified picture of online courts: some countries have been using online court-based techniques for decades, while others have just begun to become familiar with them - mainly because of the COVID-19 epidemic, when a significant number of courts were made to switch online mode.

Most of the European courts initially suspended all court activities – except essential or high-priority matters – when the epidemic struck, then ‘e-trial measures’ were implemented for some type of cases. and online hearings were held by videoconferencing technology. Nowadays this is the most wide-spread technology in Europe which we can call ODR.

There are some countries which use ODR on a regular basis, for example in Austria there's a system called the Austrian Internet Ombudsman. This ODR service is available to consumers residing in Austria for complaints related to a transaction conducted on the internet with a seller registered in the EU.^{43 44}

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Volksanwaltschaft's website

In Netherlands there's a service called Rechtwijzer,⁴⁵ which can be considered as ODR and a legal-aid service also. This Dutch service is particularly broad: it covers not only consumer issues, but also other types of disputes, such as family, tenancy, and employment cases. It provides legal advice to the parties by adopting an integrative approach: the website asks the users a series of questions, aimed at identifying areas of agreement between the parties and triggering constructive dialogue. Rather than offering a fully informed solution, the website works as a source of support and information for the parties, improving communication, and encouraging the formation of an agreement.⁴⁶

⁴³ Volksanwaltschaft official website available at [Hilfestellung bei Problemen mit Behörden - Volksanwaltschaft](#)

⁴⁴ School of Law University of Missouri, Online Dispute Resolution: ODR In Foreign Countries (2020), available at [ODR In Foreign Countries - Online Dispute Resolution - Library Guides at University of Missouri Libraries](#)

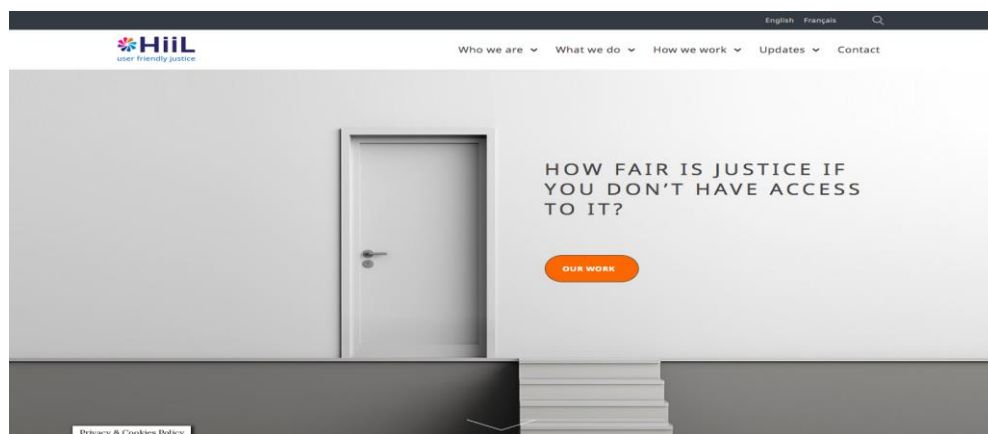
⁴⁵ Rechtwijzer's official website available at [Home - Rechtwijzer](#)

⁴⁶ School of Law University of Missouri, Online Dispute Resolution: ODR In Foreign Countries (2020), available at [ODR In Foreign Countries - Online Dispute Resolution - Library Guides at University of Missouri Libraries](#)



Rechtwijzer's website

HiiL (The Hague Institute for Innovation of Law)⁴⁷ is also based in Hague and the main goal of the enterprise is making the justice system more 'user-friendly', or in other words: to contribute to broadening the access of justice in the society. ODR plays a key role in executing this plan.



HiiL's website

The Estonian judicial system is the most ambitious of the European courts: it has a plan that would transfer the judgement to artificial intelligence in cases not exceeding € 7,000.⁴⁸ Other

⁴⁷ HiiL's official website available at [HiiL - User Friendly Justice](https://www.hiil.nl/)

⁴⁸ Pat Rabbitte, 150 Sec, Estonia to Empower AI-based Judge in Small Claims Court (2019), available at <https://150sec.com/estonia-to-empower-ai-based-judge-in-small-claims-court/10985/>

Estonian initiatives aim to replace human judges in automated expedited order for payment procedures.⁴⁹ But these projects are still in the preparatory phase or in a so called „pilot mode”.

It is not Europe – not anymore at least – but speaking of continental countries using ODR it is worth mentioning Traffic Penalty Tribunal (TPT) which allows users to appeal tickets, upload evidence, and follow cases and hearings under one account. Police and prosecutors have a dashboard to show current cases, enabling them to submit evidence, comment, and follow progress of hearings and decisions. Those charged can then comment on evidence, request their preferred hearing type, and follow progress of the case through to the decision.⁵⁰

4. Development opportunities

When discussing development it is important to focus on reforming structures and processes that exist within the justice system, not just replicate existing systems.⁵¹

With this proclaim in mind we would make the following suggestions regarding the development opportunities:

A. Jurisdiction and forum shopping

One of the most important issues in relation to ODR rests on the issue of jurisdiction. One of the biggest benefits of ODR is – as we mentioned before – that it is non-stationary, easily accessible to anyone and from anywhere with the applicable IT tools.

However, current EU legislation does not clearly address the issue of the jurisdiction of ODRs used by Member States. In order for the concept of ODR to be fully implemented, reconsideration of the rules of jurisdiction would also be necessary given that physical location is irrelevant in the case of online negotiations.

Another raising question is the allocation of cases. In the legal systems of most Member States, it has not been a question that the jurisdiction of a court is being determined by its location, or the place of residence of the plaintiff or defendant, and so on.

⁴⁹ Pat Rabbitte, 150 Sec, Estonia to Empower AI-based Judge in Small Claims Court (2019), available at <https://150sec.com/estonia-to-empower-ai-based-judge-in-small-claims-court/10985/>

⁵⁰ School of Law University of Missouri, Online Dispute Resolution: ODR In Foreign Countries (2020), available at [ODR In Foreign Countries - Online Dispute Resolution - Library Guides at University of Missouri Libraries](#)

⁵¹ T. Sourdin, B. Li and D.M. McNamara, ‘Court innovations and access to justice in times of crisis’, Volume 9 Issue 4, Health Policy and Technology (2020), at pages 447-453

With the use of the ODR, the application of the present inflexible jurisdiction rules are also becoming more meaningless. With ODR it would be possible to allocate cases with a new approach: the court dealing with fewer cases will receive the new cases, while the more loaded court will not receive new cases. With this, an even allocation of the cases would be possible.

B. Development of digital competencies

Of course, the use of ODR systems requires the applicable IT tools and the knowledge of how to use them - for both the courts and the clients.

The development of clients' digital competence is a social science issue that we are not currently addressing, but the training of judges in this area is certainly a matter for the development of the judiciary. All the more so because the recent rapid technical developments and unprecedented changes in legislation have already required judges and judicial staff to quickly adapt and learn, so presumably all Member States already have the necessary training methodology. The only missing detail is the will to put ODR at the heart of training.

Current experience shows that Member States do not yet place enough emphasis on the matter of training. Where there is training, justice professionals are mainly educated on the technical details, although there is a need to improve attitudes and to promote the system also, for example by emphasising the benefits of ODR (court staff could do their work in more flexible hours or even in home office).

C. Specification

Although Ferndando Esteban de La Rosa's suggestion⁵² is referred to transforming alternative dispute resolution into online dispute resolution, his suggestion is valid from our point of view also: it is much easier for clients to sue if they can identify exactly what they want with simple and understandable keywords. In our current legal system, clients often already need legal assistance to even decide what lawsuit they want to make - this could be facilitated by being able to choose what lawsuit they want to make from simple and straightforward keywords, similar to the eBay system above, e.g.: "objection to enforcement", "divorce", "enforcement of a pecuniary claim", etc. All this would, of course, require a single EU regulation.

⁵² Ferndando Esteban de la Rosa: 'ADR-Rooted ODR Design in Europe: A Bet for The Future Part II: Private Justice', (5) 1-2 International Journal of Online Dispute Resolution (IJODR) (2018) at page 154

D. Evidence recorded by using blockchain technology

A well-established technology in Chinese Internet Courts can be used in European ODR systems without further ado also: documentary evidence typed or scanned by the parties could be recorded using blockchain technology, which precludes the possibility of subsequent misuse⁵³.

E. Face recognition technology

It would also mean the wider-spread use of artificial intelligence in judicial systems if the parties were identified at the online trial through face recognition system, which almost any smartphone today is capable of, yet provide adequate security for identification also.

F. Speech recognition technology

Similarly as mentioned above speech recognition is also available - and there are countries, such as Hungary, where it is already used in courts.⁵⁴ Speech recognition system is able to turn speech into written by using artificial intelligence and this way it is able to keeping record of online negotiations in real time.

G. A complex court platform

It would be beneficial and would be the most spectacular, but certainly significant, change compared to the current enforcement if the parties would receive answers and information on all their relevant questions on a well-structured, easy-to-use and transparent platform, which would also allow the parties to contact each other through it.⁵⁵ It would also be a significant attraction, especially for young people, if this platform were easily accessible, even from a mobile phone.

⁵³ Guodong Du 'How the Beijing Internet Court Develops and Runs its IT System Inside China's Internet Courts' Series 04 China Justice Observer (2019) available at <https://www.chinajusticeobserver.com/a/how-the-beijing-internet-court-develops-and-runs-its-it-system>

⁵⁴ Courts of Hungary's official site 'Speech recognition and transcription software' available at <https://birosag.hu/en/speech-recognition-and-transcription-software>

⁵⁵ Osztoivits András 'A technológia hálójában – a magánjogi jogérvényesítés jelene és lehetséges jövője' Digitális Jogalkalmazás project's workshop (2021)

5. Conclusion

It can be concluded that the potential widespread adoption of ODR would put justice on a new basis, which, in addition to its numerous advantages, could also give rise to a number of concerns.

The spread of global digitalisation and the COVID-19 epidemic have challenged the hegemony of the traditional judicial system. Statistics show a gradual decline in the number of cases being brought to court across Europe, while more and more parties turn to alternative dispute resolution methods in order to resolve their legal problems. In our view, the court system and its procedures must keep up with the needs of a changing world to ensure its leading role in the system of justice. ODR may provide a feasible solution to this problem.

Several Member States even these days have some level of ODR systems, and several Member States also have good practices regarding this matter, but the regulation of these varies from one Member State to another. A more effective sharing of good practice could be crucial for the successful implementation of ODR.

We believe that the general introduction of ODR would also be supported by the European Union, as it would encourage the widest possible exploitation of the potential of digitalisation. A thorough impact assessment would be needed to explore the exact implications of the possible introduction of ODR, which is beyond the scope of this paper. However, what is clear and cannot be debated is that any procedural system must guarantee fundamental procedural rights and must not result in hindering people's accessibility to justice.