

# DIGITALIZATION OF JUSTICE AS AN INDICATOR OF COMPETITIVENESS IN INTERNATIONAL MONITORING MECHANISMS

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## ABSTRACT

*“The digitalisation of the justice system aims to facilitate and improve access to justice, make the justice system more effective and efficient (...) thus offering better justice services to all.” This statement from the European e-Justice Strategy 2024-2028 summarizes in a very concise manner the role played by digitalization in the context of justice systems. Furthermore, international developments show that, through the concepts of effectiveness and efficiency, digitalization of justice systems is directly linked to economic processes. The current paper focuses on the question, how international and EU-level monitoring mechanisms evaluate the digitalization of justice systems, with special regard to the relationship of digital solutions, judicial safeguards and economic competitiveness. Thus, the findings might support the development of synergies between harmonized European and international legal standards, economic policy and the dynamics of international cooperation.*

**KEYWORDS:** *digitalization, justice system, competitiveness, monitoring, international standards, EU law*

## INTRODUCTION

*“The digitalisation of the justice system aims to facilitate and improve access to justice, make the justice system more effective and efficient, while facilitating the work of justice professionals, and bring it closer to citizens, thus offering better justice services to all.”* (Council of the European Union, 2023, 4). This statement from the European e-Justice Strategy 2024-2028 summarizes in a very concise manner the role played by digitalization in the overall assessment of justice systems. The fact that *“effective justice systems are also essential for mutual trust and for improving the investment climate and the sustainability of long-term growth”* (European Commission, 2024a, 1), shows that through the concepts of effectiveness and efficiency, digitalization of justice systems is directly linked to competitiveness. At the same time, however, it has been recognized that digital solutions shall be integrated in the justice system in a comprehensive way, so that they can substantially increase the level of competitiveness through the means of justice: *“The nature and purpose of the justice system, as set out in human rights standards, and its relationship with technology involves much more than IT know-how and available budgetary resources. It is pointless to mechanically introduce certain technological tools that were not necessarily designed for judicial proceedings and to*

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*assume that they will in and of themselves boost the efficiency of the justice system”* (United Nations, Human Rights Council, 2021a, para 81.).

Thus, when examining digital solutions in justice systems, a holistic approach seems to be necessary, which is best provided by international and EU-level monitoring mechanisms. The current paper focuses on the question, how international and EU-level monitoring mechanisms evaluate the digitalization of justice systems, with special regard to the relationship of digital solutions, judicial safeguards and economic competitiveness. This way, the paper aims to support a uniform understanding of the digitalization of justice systems, to contribute to the elaboration of comprehensive standards and requirements and to promote digital solutions in line with basic principles of equal access to justice.

## LITERATURE REVIEW AND RESEARCH METHODOLOGY

The approach provided in this paper is a specific one. The relevant literature carries out primarily a structured comparison of national justice systems from the perspective of compliance with international standards (e.g. van Dijk, 2021; Steponenaite & Valcke, 2020; Crawford & Maldonado, 2020; Lee, 2011). Measuring the economic impact of the independent and efficient functioning of justice systems is also a key research topic (Ramos Maqueda & Chen, 2021; Tsintzos & Plakandaras, 2020; Marciano, Melcarne & Ramello, 2019; Bove & Leandro, 2017; Feld & Voigt, 2003). As regards the digitalization of justice, the efficient use of ICT tools and other innovations are in centre of attention (Miró-Llinares, 2023; Fabri, 2021; Kramer et al., 2021; Velicogna et al., 2020; Lupo & Bailey, 2014; Fabri & Contini, 2001). The examination of the interconnection between access to justice and the digital divide is getting more and more into the focus as well (Engstrom, 2023; Prom Tep et al., 2023; Zannou, 2021; Vilalta Nicuesa, 2021; Toohey et al, 2019).

However, the analysis of the interconnection between digitalization, efficiency of justice systems and the question of competitiveness can offer a rather new perspective. This is the aim of the current paper through the examination of studies and reports prepared within the framework of different monitoring mechanisms at global and regional level. [The Justice Scoreboard of the European Union and the studies of the Council of Europe’s European Commission for the Efficiency of Justice (hereinafter referred to as CEPEJ) offer regularly comparative data about several elements of digitalization, but the current paper does not intend to put these into the focus. It rather intends to assess, how the digitalization appears in complex monitoring exercises in the context of human rights, rule of law and economic efficiency.]

Due to the wide range and highly different focus of these mechanisms<sup>2</sup> a basic methodological question is the choice of the reports to be analyzed. In order to cover the broadest circle, the assessment should include general assessments of the legal systems (e.g. Universal Periodic Review; hereinafter referred to as UPR), thematic evaluations (e.g. the Rule of Law Report of the European Commission or the reports prepared in the framework of the European Semester) and mechanisms, where individual measures are examined (e.g. reports adopted by the European Commission for Democracy through Law; hereinafter referred to as Venice Commission).

The comparative and synthesizing description intends to deepen the understanding about the role of digitalization of justice systems in the international and European context, while

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<sup>2</sup> The current paper does not intend to provide a comprehensive description of these monitoring mechanisms; the main specificities will be presented based on publicly available general descriptions.

supporting the development of synergies between harmonized legal standards, economic policy and the dynamics of international cooperation.

## DISCUSSION AND RESULTS

Analyzing the interpretation of the digitalization of justice in international monitoring mechanisms, the human rights related approach should be the starting point. The UPR,<sup>3</sup> which covers the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States [United Nations, 2006, para 5, point e)] is the most overarching point of reference. At the level of generalities, we can state that digitalization of justice systems is not a prominent issue in this mechanism; more precisely, it is generally missing from the outcome. Neither the summarizing reports on countries, where rule of law related concerns have emerged lately, like Hungary or Poland (Rosas et al. 2023), nor the reports about so-called “old democracies”,<sup>4</sup> like Germany, France, Belgium or Spain (United Nations, Human Rights Council 2023a; 2023b; 2023c; 2021b; 2021c; 2020) deal with this topic. The conclusion is the same in the context of the reporting exercise under the International Covenant on Civil and Political Rights<sup>5</sup> (United Nations, Human Rights Committee, 2021; 2019; 2018; 2016; 2015a; 2015b).

When examining the digitalization of justice from the perspective of rule of law mechanisms, the most important point of reference, the Rule of Law Checklist of the Venice Commission, does not contain relevant elements (Venice Commission, 2016). However, the Rule of Law Report of the European Commission,<sup>6</sup> which relies to a considerable extent on the Rule of Law Checklist of the Venice Commission (European Commission, 2022), integrated the topic of the digitalization of justice systems, primarily based on the findings of the European

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<sup>3</sup> “The Universal Periodic Review (UPR) is a unique mechanism of the Human Rights Council that calls for each UN Member State to undergo a peer review of its human rights records every 4.5 years. The UPR provides each State the opportunity to regularly report on the actions it has taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights; and receive recommendations – informed by multi-stakeholder input and pre-session reports – from UN Member States for continuous improvement.” Retrieved from: <https://www.ohchr.org/en/hr-bodies/upr/upr-home>

<sup>4</sup> Basis of the distinction between “new” and “old” democracies is a terminology used among others by the Venice Commission: “[i]n some older democracies, systems exist in which the executive power has a strong influence on judicial appointments. Such systems may work well in practice and allow for an independent judiciary because the executive is restrained by legal culture and traditions, which have grown over a long time. 6. New democracies, however, did not yet have a chance to develop these traditions, which can prevent abuse. Therefore, at least in new democracies explicit constitutional provisions are needed as a safeguard to prevent political abuse by other state powers in the appointment of judges.” Venice Commission, 2007, paras 5-6. Similarly: Venice Commission, 2010, para 31.

<sup>5</sup> “The Human Rights Committee is the body of 18 independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its State parties. All States parties are obliged to submit regular reports to the Committee on how civil and political rights are being implemented. States must report initially one year after acceding to the Covenant and then whenever the Committee requests. In accordance with the Predictable Review Cycle, the Committee requests the submission of the report based on an eight-year calendar. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of ‘concluding observations’.” <https://www.ohchr.org/en/treaty-bodies/ccpr/introduction-committee>

<sup>6</sup> “The Annual Rule of Law Cycle provides a process for an annual dialogue between the Commission, the Council and the European Parliament together with Member States as well as national parliaments, civil society and other stakeholders on the rule of law. The Rule of Law Report is the foundation of this new process.” [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en)

Justice Scoreboard and CEPEJ studies. The 2024 general communication of the Rule of Law Report by the European Commission states that “[i]nvesting in the digitalisation can strengthen justice systems and make them more accessible, resilient and ready to face current and future challenges” (European Commission, 2024h, 16); but more precise criteria of evaluating the topic of digitalization of justice systems cannot be derived from the report. The country chapters of the Member States examined above assess questions, like the electronic submission of documents, the digital case management system, publication of judgments online, virtual hearings in judicial proceedings and the use of digital solutions to conduct and follow court proceedings, but the chapters usually do not establish a connection to judicial safeguards, legitimate interests of business actors or integrity of legal professionals (European Commission 2024i; 2024j; 2024k; 2024l; 2024m; 2024n). The guidance issued by the European Commission for the Member States listing the main topics of the Rule of Law Report refers to the “*factual information presented in Commission Staff Working Document of 2 December 2020, SWD(2020) 540 final, accompanying the Communication on Digitalisation of justice in the European Union, COM(2020) 710 final and Figures 41 to 49 of the 2022 EU Justice Scoreboard*” (European Commission, 2023, 3.) in the context of digitalization of justice. The first document mentioned, a toolbox, summarizes the role of digitalization as “*as a mean to increase efficiency and access to justice systems, as the length and complexity of current procedures create different challenges.*” (European Commission, 2020, 65). The Justice Scoreboard contains a similar summary description (European Commission, 2024a, 7, 49).

Thus, neither the human rights monitoring mechanisms, nor the rule of law assessments contain detailed criteria to evaluate the digitalization of justice systems in its complexity. It is not evident how these exercises assess basic questions concerning the application of digital technologies in judicial processes with due regard to the basic interests related to efficiency (including economic ones), other human rights implications and rule of law standards.

The analysis of the economic assessments does not lead to substantially different results either. The OECD’s Economic Surveys<sup>7</sup> show that digitalization in general is a central issue at economic level, however, the more specific question of digitalization in the justice system is mentioned only sporadically (OECD, 2024b; 2024c; 2023b; 2023c; 2023d; 2022). Even though the OECD’s comparative analysis stresses that “*digitalisation can enhance the rule of law by promoting efficiency, accessibility, fairness and transparency in the legal system*” (OECD, 2023a, 27), a detailed list of factors to be assessed and a description of opportunities and threats/concerns is rather missing. The appearance of the topic of digitalization of justice systems is highly similar in case of the European Semester<sup>8</sup> country reviews (European Commission, 2024b; 2024c; 2024d; 2024e; 2024f; 2024g), although the relationship to the digital and

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<sup>7</sup> “The Surveys have evolved since the EDRC’s creation in 1961, when they were mostly focused on macroeconomic developments and policies. Now there is a heavy emphasis on structural policies and their interaction with macroeconomic policies. The workings of labour, product and financial markets are regularly examined, together with the role of the public sector. So are policies to address inequalities, including gender inequality, as well as environmental challenges, and particularly climate change” (OECD, 2024a).

<sup>8</sup> “The European Semester ensures that Member States discuss their economic, social and budgetary plans with their EU partners at specific times in the first half of the year – hence the term Semester – so that national action can be accordingly taken in the second part of the year, notably with the adoption of the budgets for the subsequent year. This early interaction allows them to comment on each other’s plans and monitor progress collectively. It also allows them to take better account of common challenges.” [https://commission.europa.eu/business-economy-euro/economic-and-fiscal-policy-coordination/european-semester/framework/european-semester-explained\\_en](https://commission.europa.eu/business-economy-euro/economic-and-fiscal-policy-coordination/european-semester/framework/european-semester-explained_en)

procedural efficiency of the justice system, the reduction of economic distortions and the improvement of the business environment are more evident (European Commission, 2024e, 10).

The lack of a well-defined methodology, clear criteria and list of problems linked to the application of digital technologies in all these mechanisms is especially remarkable since the COVID-19 pandemic has proved that digital technologies and e-justice solutions play a crucial role in maintaining the functioning of the justice systems in emergency situations. (For detailed comments on this issue by the author, see: Váradi, 2022.)

The relevant literature and the practical experience of the application of digital solutions in justice systems have demonstrated that in the short term, e-justice solutions can contribute to the reduction of costs and enhancement of resilience of justice systems, however the long-term effects shall be evaluated carefully as well. International monitoring mechanisms play a crucial role in this regard. In this spirit, their future assessments shall integrate a broader scope of factors into the analysis of digitalization:

- a.) the problem of the digital divide: when introducing and applying digital solutions, it shall be analyzed as a separate factor, how they are interrelated to the requirement that an equally efficient access to justice for all shall be safeguarded. The procedural laws regulating the use of digital technologies must include the assessment of the needs of the most vulnerable, as the inherent inequalities with internet and technology access are a crucial problem for them. Particular attention should be paid to the phenomenon of the digital divide, which is defined as “*the gap between individuals, households, businesses and geographic areas at different socio-economic levels with regard both to their opportunities to access information and communication technologies (ICTs) and to their use of the Internet for a wide variety of activities*” (OECD, 2001, 5).
- b.) examining efficient access to justice in its complexity: acknowledging that access to justice is far more than the possibility of initiation of judicial processes. Existing procedural concepts shall be adjusted to ensure simplified protection of the rights and interests of the most vulnerable groups to ensure that if the possibility of judicial remedy is given, the access to it cannot remain illusory. (For further comments by the author, see: Váradi, 2016).
- c.) ensuring efficiency and fairness at the same time; avoiding “algorithmic injustice”: Procedural laws should include flexible measures to support the citizens in seeking legal remedy, advice and support with due consideration of their individual situations and needs, while enhancing the efficiency of the justice system through the implementation of technological innovation. These solutions should be designed to eliminate potential concerns arising from the fact that because of the lack of qualified legal representation or based on their interest to choose the most cost-efficient procedural tools, in case of the most vulnerable groups automatized decision-making might take place, which might be less transparent (and more difficult to be scrutinized by the public) due to the specificities of the online world (Oltra Gras, 2021; Toohey et al, 2019).
- d.) addressing the diversity of national legal systems: it shall be recognized that striving for interoperability of digitalized systems shall not overrule the specificities of court administration and the traditions of national procedural rules; the diversity of the national legal systems shall be respected and safeguarded (Council of Europe, Committee of Ministers, 2019, 5).

In sum, digital technologies shall be integrated into national legal and justice systems in a comprehensive way; general legal principles, the specificities of the state or region concerned (in legal, social and financial terms), the needs of the most vulnerable groups, as well as the awareness of the digital divide shall guide this process.

International and EU level monitoring mechanisms should elaborate milestones and criteria, along which the pure statistical data of digitalization can be evaluated in a substantive way, in the context of efficient access to justice. Such an overarching assessment of digitalization could not only foster the efficient access to justice of all (as a basic element of human rights and rule of law), but also contribute to economic efficiency. If, namely, economic actors can rely on the fact that their legal disputes will be adjudicated in a cost- and time efficient manner, complying with the general principles of fairness and independence, the level of trust in the justice system will be enhanced. This, in turn, positively affects the investment climate, possibilities of economic expansion grow and thus has a favorable effect on the overall functioning of the economy. The cooperation within the international community, as well as the sharing of best practices and common standards enshrined in the monitoring mechanisms play a primordial role in this process.

## SUMMARY

This first cautious analysis has demonstrated that as regards the digitalization of justice systems, far more work is needed to elaborate a framework for comparative assessment of national systems. The existing international reporting and monitoring mechanisms provide currently little guidance; but digital solutions can only contribute to the efficiency of justice systems and thus to competitiveness, if they are integrated into the complex system of court procedures. Digitalization shall be addressed in a systemic way in the most different monitoring mechanisms to provide streamlined and uniform analysis.

It shall be recognized that from the point of view of economic policies, the key aspect of a well-functioning justice system is that business actors have meaningful access to efficient, independent and reliable dispute resolution mechanisms. At the same time the safeguards of efficient access to independent, impartial and fair judicial procedures for all shall prevail in the digital environment as well.

Therefore, a change – or at least a modification – of the existing approach is needed at the level of international and European monitoring mechanisms. Digitalization shall be evaluated together with its effects on access to justice (in broad sense), protection of the most vulnerable and specificities of national court systems. This way, through the consistent identification and evaluation of all these cornerstones, international and EU-level monitoring mechanisms can support a more systematic approach towards the synergies between economic interests, social tendencies and legal standards in the analysis of digitalization of justice systems.

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