

MODERNIZING THE EUROPEAN JUDICIAL COOPERATION BY DIGITIZING CROSS-BORDER PROCEEDINGS

I. NICOLAE¹ G.B. SPÎRCHEZ²

Abstract: *The evolution of the digitization process has naturally been reflected in the field of justice, as well, with a legislative approach at European level aimed at coordinating efforts in this direction. The proposed article focuses on the European regulatory framework adopted in this area, the objective of which is to improve the efficiency of the justice system by reducing and simplifying administrative burdens, reducing the time and cost of settling cases, ensuring better and fairer access to justice.*

Key words: *judicial cooperation, digitization of justice, European electronic access point*

1. Introduction

Digitization can be understood (Paraschiv, 2019, p.119) as the process that ensures the transition (conversion) from analogue to digital representation, with the aim of automating processes or workflows.

The judicial system must also adapt to the challenges of the digital era, in order to increase the efficiency and quality of judicial procedures or, as shown in the specialized literature (Rizoiu, 2024, p.826), technology will force the legal system to adapt to new digital realities, especially as far as cross-border judicial cooperation is concerned.

The health emergency generated by the Covid-19 pandemic was what accelerated the digitalization of court activities, highlighting the fact that such force majeure events can affect the proper functioning of justice systems, as stated in the Opinion of the European Economic and Social Committee on Proposal for a regulation of the European Parliament and of the Council on the digitalization of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation.

Thus, from among the digitalization solutions implemented in that pandemic context in Romania, there are the communication of procedural documents through IT means, the online record of court hearings and even the videoconferencing system (Cioclei,

¹ Faculty of Law, *Transilvania* University of Braşov, ioana.nicolae@unitbv.ro,

² Faculty of Law, *Transilvania* University of Braşov, georgeta-bianca.spirchez@unitbv.ro

2020, p.2). These were just a few of the steps that led to integrated technical solutions designed to ensure communication with litigants remotely, although justice had established itself as a rather conservative field (Țurțurica, 2023).

The modernization of justice, initially driven by the pandemic and the restrictions imposed by it, continued through a broad restructuring process (Bănică, 2020) that targets other essential aspects related to the implementation of technology in justice, such as those related to the electronic file or the use of electronic signatures in trials.

From among the advantages of digitalization in justice, those that were retained (Bănică, 2020) were, in particular, those regarding the optimization of resource use, an easy access to information, and even the increase of the speed of the execution of the act of justice.

2. Reform of the Legislative Package on Judicial Cooperation

As it is evident from the lines preceding this section, the impact of technology on the legal system is beginning to emerge more and more clearly, thus leading to important changes in civil procedure.

As early as December 2020, the European Commission, in its communication entitled "Digitalisation of Justice in the European Union - A toolbox of opportunities", identified the need to modernise the legislative framework of the Union's cross-border procedures, in civil, commercial and criminal matters, underlining the need to adopt the necessary protective measures to avoid social exclusion, which would ensure mutual trust, interoperability and security among Member States.

Thus, actions regarding the digitalization of justice should be implemented in full compliance with the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union: the right to the protection of personal data, the right to a fair trial and to an effective recourse, as well as the principles of proportionality and subsidiarity (Ciurea, 2023, p.80).

An important action in this direction is the adoption by the European Commission for the Efficiency of Justice of the Council of Europe, of the European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems, which includes the basic principles that should be respected, thus:

- *The principle of observance of fundamental rights*: the design and implementation of artificial intelligence tools and related services must be compatible with fundamental rights;
- *The principle of non-discrimination*: specifically preventing the development or intensification of any discrimination among individuals or groups of individuals;
- *The principle of quality and security*: regarding the processing of court decisions and data, certified sources and intangible data will be used, with models developed in a multidisciplinary manner, in a secure technological environment;
- *The principle of transparency, impartiality and fairness*: data processing methods must be transformed into accessible and easy-to-understand aspects, external audits will be authorized;

- *The “ser-controlled” principle*: excluding imperative approaches and ensuring that users are informed actors and make informed decisions.

In fact, as noted (Păncescu, 2023, p.823), the digitalization of judicial cooperation began with the reform of the judicial cooperation regulations, namely with:

- 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), Regulation which aims to improve the effectiveness of cross-border judicial proceedings in civil and commercial cases by simplifying the procedures for obtaining evidence;

- 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);

- Regulation (EU) 2022/850 of the European Parliament and of the Council of 30 May 2022 on a computerised system for the cross-border electronic exchange of data in the area of judicial cooperation in civil and criminal matters (e-CODEX system), and amending Regulation (EU) 2018/1726.

This latter Regulation marks a significant stage in the process of digital transformation of European justice, highlighting the interoperability of the digital procedural systems of the Member States (Vicario Pérez, 2024, p.116-117).

Thus, this Regulation created the e-CODEX system (Communication in e-Justice through online data exchange), a system specifically designed to facilitate cross-border electronic data exchange in the field of judicial cooperation.

As regards the use of this instrument, it has been highlighted (Vicario Pérez, 2024, p.118) in the European process for payment procedure and in the European small claims procedure. In both procedures, the e-CODEX system can be used as an electronic platform that allows the electronic submission of applications to the competent authorities of the defendant's residence Member State, by filling in the forms accessible through the European e-Justice portal.

e-CODEX is therefore the main communication channel between the national authorities of the Member States and the European Union authorities involved in international judicial cooperation, being considered (Gascón Inchausti, 2024, p.543) to be the Union's major technical contribution in this field.

The objective of the effectiveness of judicial procedures, by digitalising existing communication channels, can also be achieved through the entry into force of the Regulation (EU) 2023/2844 of the European Parliament and of the Council as of 13 December 2023 on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation, which is intended to lead to cost and time savings, to a reduction in the administrative burden and to greater resilience in situations of force majeure for all participants in cross-border judicial proceedings (according to recital 4).

In the following, we will refer to the content of this Regulation.

3. The Current Uniform Legal Framework on Cross-border Judicial Cooperation

The subject matter and scope of the Regulation (EU) 2023/2844 is indicated in art.1, namely being the rules on:

- *the use of videoconferencing or other distance communication technology* for purposes other than the taking of evidence. In civil or commercial matters, the competent authority shall decide, in accordance with Article 5 of the Regulation, on the participation of the parties and their representatives in a hearing through videoconferencing or other means of distance communication technology, on the basis of the following elements: the availability of such technology; the opinion of the parties to the proceedings on the use of such technology; the appropriateness of the use of such technology in the specific circumstances of the case.

- *the application of electronic signatures and electronic seals*, as defined in Regulation (EU) 910/2014 of the European Parliament and of the Council of July 23, 2014 on electronic identification and trust services for electronic transactions in the internal market;

- *the legal effects of electronic documents*;

- *the electronic payment of fees*, the Member States being those which ensure the possibility of electronic payment of fees, including from Member States other than that in which the competent authority is situated. In this respect, Article 9(2) of the Regulation provides that "the technical means for the electronic payment of fees shall comply with applicable rules on accessibility. Where the available means of electronic payment of fees so allow, they shall be accessible through the European electronic access point."

Essentially, the objective is to use a secure, efficient and reliable decentralised IT system for procedural communication, as set out in Article 3 of the aforementioned Regulation.

The important contribution of this Regulation is the creation of the European electronic access point, defined in Article 2(4) as "a portal which is accessible to natural and legal persons or their representatives throughout the Union and is connected to an interoperable access point in the context of the decentralised IT system".

The European Electronic Access Point is provided on the European e-Justice portal and can be used for electronic communication between natural or legal persons and competent authorities in procedures such as:

- the European order for payment procedure;
- the European Small Claims Procedure;
- the procedure for a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters;
- the procedure for a European Enforcement Order for uncontested claims;
- the procedures regarding the recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations;
- the procedures relating to the issue, rectification and withdrawal of the European certificates of inheritance.

4. Concluding Remarks

As has already been shown (Țurțurica, 2023), modernization through technology can be a form of improving any work, including in the field of justice, and can also contribute to improving the level of satisfaction of the litigant with the services provided.

In this regard, following the adoption of the most recent Regulations on cross-border judicial cooperation, it is noted (Gascón Inchausti, 2024, p.536) that digitization is emerging as the gravitational axis of the Union's legislative policy in the field of justice.

However, as it was highlighted in the Opinion of the European Economic and Social Committee on Proposal for a Regulation of the European Parliament and of the Council on the digitization of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation, appropriate safeguards related to the security of technological systems, data integrity and confidentiality, respectively related to bridging the digital divide, must be considered, in order to ensure access to justice for all.

References

- Bănică, R.A. (2020). Digitalizarea justiției în contextul pandemiei Covid-19 și implicațiile digitalizării asupra drepturilor constituționale [Digitization of justice in the context of the Covid-19 pandemic and the implications of digitization on constitutional rights]. *Revista de drept constituțional nr.2*. Retrieved from the Digital Library www.sintax.ro
- Ciolei, V. (2020). Despre viitorul profesiilor juridice, în contextul principalelor provocări ale următoarelor două decenii [On the future of the legal professions in the context of the main challenges of the next two decades]. *AUBD Forum Juridic nr.3*, 1-11, DOI: <https://www.doi.org/10.31178/AUBD-FJ.2020.3.03>
- Ciurea, A.C. (2023). Viziunea europeană asupra digitalizării Justiției, pentru perioada 2020-2025 [European vision on digitization of Justice, for 2020-2025]. *Revista Română de Drept al Afacerilor nr.5*.
- Gascón Inchausti, F. (2024). The new regulation on the digitalisation of judicial cooperation in the European Union: something old, something new, something borrowed and something blue. *ERA FORUM, Journal of the Academy of European Law*, volume 24, <https://doi.org/10.1007/s12027-024-00782-z>
- Paraschiv, C.S. (2019). Digitalizarea și dreptul [Digitization and the law]. *Dreptul nr.9*.
- Păncescu, Fl.G. (2023). Unele considerații privind utilizarea Inteligenței Artificiale (IA) în justiție [Some considerations on the use of Artificial Intelligence (AI) in justice]. In D.N.Theohari, B.Dumitrache (Eds.), *In honorem Gabriel Boroii. Tomul II* [In honor of Gabriel Boroii. Volume II] (pp.809-825). București: Hamangiu.
- Rizoiu, R. (2024). Dreptul urmează tehnologia [The law follows technology]. In D.N.Theohari, B.Dumitrache (Eds.), *In honorem Gabriel Boroii. Tomul II* [In honor of Gabriel Boroii. Volume II] (pp.826-841). București: Hamangiu.
- Țurțurica, M.C. (2023). Evoluții experiențiale în fundamentarea cadrului de prestare a serviciilor judiciare digitale [Experiential developments in substantiation the framework for digital justice service delivery]. *Pandectele Române nr.4*. Retrieved from

the Digital Library www.sintact.ro

Vicario Pérez, A.M. (2024). Digitisation in civil judicial cooperation in the European Union: an analysis of its evolution. *Revista Eletrônica de Direito Processual*, vol.25, nr.3.

Communication from the Commission to the European Parliament, the Council, the European Economic and social Committee and the Committee of the regions *Digitalisation of justice in the European Union A toolbox of opportunities*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52020DC0710>

Opinion of the European Economic and Social Committee on Proposal for a regulation of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation, OJ C 323, 26.8.2022, p. 77–82

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), *OJ L 405, 02/12/2020, p. 1–39*.

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), *OJ L 405, 02/12/2020, p. 40–78*.

Regulation (EU) 2022/850 of the European Parliament and of the Council of 30 May 2022 on a computerised system for the cross-border electronic exchange of data in the area of judicial cooperation in civil and criminal matters (e-CODEX system), and amending Regulation (EU) 2018/1726, *OJ L 150, 01/06/2022, p. 1–19*.

Regulation (EU) 2023/2844 of the European Parliament and of the Council of 13 December 2023 on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation, *JO L, 2023/2844, 27.12.2023*.

Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, *OJ L 257, 28.8.2014, p. 73–114*.