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POLICY BRIEF

Sustainable development through access to justice

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SUSTAINABLE DEVELOPMENT THROUGH ACCESS TO JUSTICE



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Disputes resolution is a part of social context with economic dimension. Access to legal instruments is part of conducting social relations with a significant protection of a broad spectrum of rights. The [UN Sustainable development goals](#) includes 17 working directions, counting also objective n. 16: [Peace, Justice and Strong institutions](#).

The context is extremely heterogeneous and is totalling various levels of protection. The target 16.3. from the cited document sets as an objective the promotion of the rule of law at the national and international levels and the insurance of equal access to justice for all.

In a generic analysis, we can identify two levels of action: a national and an international one. In the European Union framework, an intermediary level of action is generated by the European strategies to consolidate the rule of law and access to justice.

In a horizontal approach, we can filter these levels of action through the object of the legal protection such as the core fundamental rights (the right to identity for example), socio-economic rights (the right to fair retribution of the work) and the right to a good administration.

At a tertiary level, we can classify the legal disputes by the criteria of actors involved in the social relation generating rights and obligations, such as people vs. administration, people vs. business and people vs. people. In this context, the theory of the weaker part of a social relation, more obvious in administrative disputes, labour law disputes, consumer law disputes etc., underlines the need for an equality of weapons.

In this context, an evaluation of the threats and of the state of art allows us to identify and promote further actions in order to attain the indicated objectives.

THE 17 GOALS



1. Legal content threats to sustainable development

1.1. Weak institutions and legal remedies

One of the major identified threat to sustainable development in legal terms is given by weak institutions. This threat manifests itself especially at local, regional or national level. The international instruments are the last recourse in context, such as petitioning the European Ombudsman or the European Court of Human rights. Weak institutions (Kessing et al., 2009) are analysed traditionally in the context of economic stability, protection of the investors (Bonaccorsi di Patti, 2009), protection of natural resources (Bonilla-Mejía, L., & Higuera-Mendieta).

This context is the general landscape of socio-economic stability and development and assures an over-all framework for market emulation. In relation to these socio-economic phenomena law is an external instrument, a mean of intervention in order to regulate the activity of the institutions. Law will primarily indicate the general standard of functioning of these institutions; legislation establishes standards of accessibility and of transparent working procedures, for all institutions including judiciary ones.

The judiciary is a secondary resort in the function of a society; the judiciary plays a role of guarantor and last intervention. The generalized model of regulation between institutions and petitioners is given by the judiciary control over the administrative procedures. So, legal standards are directly applicable in any given interaction with an institution; if the petitioner is unsatisfied with the answer or does not receive an answer, the petitioner will exercise an administrative appeal. Furthermore, if the administrative appeal is rejected, the petitioner can address the Court.



For example, in the public tax audit activities, in the first semester of 2021, the indicators have variable dimensions: supplementary debts are 1.323,2 million lei ([ANAF statistics](#)); the amount in administrative appeal resolution was 3.200 million lei; the amount in court procedures was 1040,7 million lei ([ANAF statistics](#)) with a rate of admission of 25,9%. The amounts are not comparable within the time framework as procedures have different time duration, but illustrate the main idea that litigation is a last resort for establishing rights and obligations.

Another example of dynamics between administrative and judiciary procedures is given by the divorce mechanism. Since 2011, divorce has been dejudicialized as alternative procedures of ending a marriage have been set into force. This led to a distribution of procedural actions between judicial and non-judicial actors, as in 2019, in Iași County out of 805 divorces ([DLEP statistics](#)), 58 (0,07%) were administrative; 336 were judiciary (41%); 376 were solved by notary procedure (0,46%) and 35 occurred abroad (0,04%). This is a fair example of strengthening institutions and reducing the number of judiciary intervention in day to day matters.

1.2. Access to justice and its limitation

Access to justice is a fundamental human right and a pillar of sustainable development. Access to justice (FRA, 2016) encompasses the right to a fair trial and the right to an effective remedy. „Core elements of these rights include effective access to a dispute resolution body, the right to fair proceedings and the timely resolution of disputes, the right to adequate redress, as well as the general application of the principles of efficiency and effectiveness to the delivery of justice” (FRA, 2016, p,17).

The construct of access to justice assures protection of all fundamental rights; protection of the right to beneficiate from public services; protection of the right to defense in criminal procedures and protection of individual rights in all matters including dispute resolution. In its unfolding, access to justice includes the availableness of tribunals and other bodies including geographically, the accessibility to all groups, with adapted means for vulnerable groups, even for those financially challenged, deliverance of viable and [meaningful solutions](#). Each of these dimensions has a subset of internal standards.

For example, accessibility can be challenged were translation is needed, were a set of legal skills are necessary in order to address a petition or economical barriers are applicable. The Romanian Constitutional Court held that the obligation of natural persons to be assisted and, as the case may be, represented, under the sanction of nullity, only by a lawyer when drafting the request and the reasons for appeal, as well as in its exercise and support are contrary to the free access to justice and the right to defense.

2. Consolidating access to justice – working direction in digitalized era

The context of Covid pandemic (George et al., 2020) has submitted to a test of ability and resilience all organizations, private and public. In the public framework, the administrative institution and the judiciary system have been also affected by the limitations of physical contact and of limitation of movement.

At an administrative level, national institutions developed in a rather fast-forward manner (due to the short time of adaptation) instruments to assure action flow at a distance. Some measures are time limited, such as the prorogation of deadlines and expiration dates for identity cards. Some are integrated in a long term strategy of digitalization such as the implementation of a generalized tax administration on-line system.

At the judiciary level, the national instruments of intervention have also addressed the introduction of digital technology, as part of the availableness



of justice. The e-justice agenda has been drafted prior to the Covid pandemic, but has been hurried in the pandemic context.

As mentioned above, availableness of a tribunal is a part of the general standard of access to justice. In the European Union framework, a general [Agenda for e-justice has been drafted for the time frame 2019-2023](#). The context is given by the Pan-European litigation and assured an instrument of increasing availableness of a tribunal in legal disputes with cross-border elements, such as family law, patrimonial claims, access to case-law and public registries. These instruments have a generic use and are a part of a general strategy of facilitating access to judicial procedures in day to day basis, regardless of the pandemic context.

In the judiciary context, we can identify four levels of digitalization:

- 1** a preliminary level part of the general principle of access to information, particularly about procedures, prior case-law. It is a tradition that judiciary information both for national and European Courts is available on-line on the web-pages, such as legislatie.just.ro, portal.just.ro or curia.europa.eu and <http://hudoc.echr.coe.int/>. At national level, in Romania, case-law is partially available on different web-sites such as <http://rolii.ro/>, <https://rejust.ro/>.
- 2** an addressability level part of the access to justice right were Courts can be referred by on-line means. This facility is requiring a transposal of the general formalism of referring the Court (for example, the requirement that all claims were signed by the petitioner of that all documents were marked as „according to the original”) to the digitalized medium. A number of pilot programs for an electronic justice file have been developing in the latter period; some occurrence of case-law on formal conditions of the claim have been raised, discussing the legal classification of documents in digital form and on digital support (such is the difference between a claim signed through a digital certificate and a scanned copy of an on-paper claim). In the EU agenda, some procedures have been synthetized under on-line forms, but [their domain of action is limited](#).

- 3** a case management level, where digital instruments are used in order to fulfil procedural acts such as communication (Ursuța, 2021) between the Court and the parties; summoning parties to terms; administration of evidence such as video-conference for hearing witnesses or even on-line judicial debates. This digitalization process is in fact a transfer or a mirroring process of the classic on-paper file to an electronic file. Romanian legislation is not adapted to a full transfer; traditional judiciary institutions such as the classification of documents or the proof of summoning a party are not easily transferable to an on-line environment. Moreover, a supplement of formalism is applicable even to the digitalized procedure as part of the procedural guarantees specific to a predictable procedure before the Court. This formalism is also implying some costs for the parties such as acquiring a digital certificate for signing a claim or even the general cost of having access to on-line means of communication. Statistically over 80% of the population of Romania has [access on-line from home](#), but only 50% of rural population has [access to a computer](#). This data indicates a high risk of lack of access to judicial on-line instruments, hence the temporary normative decision for an optional on-line administration of justice. Thirdly, the technical solutions are developed at regional level, each [Appeal Court has its own web instruments](#). A list of the information for every Appeal Court is available on the [portal.just.ro page](#). The access to the application is personalized and available for all petitioners and legal workers (lawyers, councilors etc.)
- 4** a full on-line court procedure level, implemented in some states in e-justice programs pilot models (Kovtun et al., 2020) that incorporate artificial intelligence, algorithms, and machine learning technologies into their decision-making. To the intent of this paper this type of programs is only a possible destination and will be analysed in the next section under the predictable opportunities and threats. Implementing such instruments will lead to a complete reconfiguration of the access to justice concept.

3. Policy development directions

For each of these levels, some development directions can be formulated, in terms of opportunities and even threats.

As regards access to legislation and case law, digital instruments must be set up in such a way as to enable the user to search effectively, in accordance with the legal issue or legal provision applicable for a current case. Plain access to legislation, as published in official publications (The Official Gazette, collections of legislation), may sometimes prove insufficient, especially in the context of legal institutions involving a solid expertise background (tax law, energy law, procurement law, special procedures) or an integrated and interdisciplinary approach.

Therefore, artificial intelligence ought to be used in the scope of providing the user with relevant links between both the law and the binding case-law of national or international courts or case law that is pertinent to the matter under consideration. The user should also be able to select various issues and perform associated research or connections related therein.

In most cases, creation of an effective tool that allows searches in the parameters presented above involves significant costs, so that litigants or even the courts may prove to have limited access to them. Therefore, the funding provider of the judiciary system must provide the necessary funds in order for the courts to be able to ensure access to an effective legislative and case law tools and train staff (judges, clerks, documentary archivists) to use them. Also, the forms of providing public legal aid must be extended so that interested litigants be guaranteed, through regional courts, access to the use of such tool, by creating archive-libraries equipped with computers, printers, scans.

Professional associations of lawyers, bailiffs, insolvency practitioners, legal advisers can also contribute to this effort by creating hubs where access to digital resources can be achieved by both members of the respective professions and

litigants. As we will further describe, the creation of digitized hubs, with the contribution of the state (Ministry of Justice or the judiciary system's representative) and professional associations of liberal professions can compensate for the problems related to the lack of access to digital resources of a large percentage of the citizens of a state such as Romania.

Another point of action at this level is creating the digital lawyer, respectively developing an online application that allows litigants to receive information, based on previous legislation and courts' case-law, on legal situations of minimal complexity (for example, in case of administrative offences, consumer protection disputes arising from certain breaches of consumer rights, such as faulty, delayed or deficient delivery of products). However, developing such a tool could create strong opposition from professional associations of lawyers, as it could be seen as contrary to the law on practicing such profession in many states (which states that legal services can be provided for actual cases solely by lawyers or legal advisers). A possible solution to this problem would be to access the digital lawyer only throughout the forms of practicing lawyering, possibly within the digitalized hubs mentioned above.

Investing the courts through digital means is an important goal of digitalizing justice. The advantages of such a mechanism are obvious, starting with ensuring the speed of judicial proceedings, continuing with their delocalization (at least for the pre-trial stage itself) and ending with reduced costs, both for litigants and for the judiciary system's representatives.

To be effective, such a system must be implemented in an integrated manner, through a single national operator, administered by the Ministry of Justice and adapted to the specific procedure in the respective State. Thus, an interface including the specific fields to complete an application or complaint can be created, which would be accessed by the user based on previously communicated login data. The system is accessed exclusively by persons previously authorized for this purpose, in possession of the user and password necessary in this respect (lawyers, legal advisers or specialized staff of the court), which are under the obligation to identify the party intending to formulate the

application or complaint by concluding a contract or by a pre-established identification procedure.

The system consisting in sending requests and documents to the court by e-mail is unsatisfactory, as the identity of the sender cannot be guaranteed, and thus requires the electronic signature for sent applications. Creating an interface for completing applications directly throughout a portal ensures their immediate registration, payment of stamp duties through an online payment application, uploading scanned documents directly to the server, automatic creation of the electronic file. Such an interface may also be interconnected with the tools described in point I, so that the information obtained by accessing the legislative and case law portal or the digital lawyer would be transposed directly into the electronic file created as a result of the bringing an action before the court by filling in the corresponding fields within the interface.

Accessing the portal and the interface in order to notify the courts will be based on a unique ID, granted to professionals (lawyers, legal advisers, insolvency practitioners, bailiffs), based on the license of free practice, at the time of their entry into such practice, depending on their professional skills. For litigants, the ID will be granted only on the basis of a prior identification; this ID will only be available for accessing the interface in the limited purpose of bringing an action before the court, in respect to the action thereof.

In the case of litigants without access to digital resources, access to the portal and to the interface for bringing actions before a court will be done through hubs created with the contribution of the Ministry of Justice and the professional associations of liberal professions. Ideally, these hubs should operate within or in the vicinity of the courts. In these hubs, litigants can access digital resources through lawyers or paralegals who work in law firms and have the login IDs needed to access the interface. As a first step, these hubs can be created on a regional level (for example, in each county), and over time, they could work near each court.

In addition, as a first step, the interface can be created for simpler requests (such as small value claims, misdemeanour complaints or non-contentious claims) and applications for authorization that courts handle at the request of bailiffs and insolvency practitioners. For enforcement and insolvency proceedings, a complete digitalization of communications and procedural documents can be

used by creating a direct access to the portal of the professionals who manage these proceedings. This would also facilitate the creation of the electronic file and lead to a complete digitization of the procedure, with a major impact on its speed and cost reduction.



The conduct of court proceedings through digital means will ensure a greater efficiency of judicial services, by shortening the length of proceedings and reducing costs.

The communication of subpoenas and procedural documents through a single system applicable on a national level is likely to lead to a significant reduction in the costs currently incurred by the administration of justice. The resulting amounts could be invested in improving online platforms, ensuring access to specialized legal assistance for a larger part of the population, creating digital hubs through which implementation of the online system would be managed.

The communication of procedural documents and access to the electronic file must be done throughout a single portal on national level, administered by the Ministry of Justice, which should offer specific security and accessibility guarantees, emphasizing the speed of accessing information, personal data protection, possibilities to upload documents, to hold online conferences with video and audio access.

Through digital hubs created within/in the vicinity of the courts, with the involvement of the liberal legal professions, litigants will have the opportunity not only to bring an action before the court and be registered in the system, but to have direct access to the resources needed to participate in on-line appearances, to submit and consult the documents uploaded in the electronic file, to obtain (if necessary) printed copies of certificates, decisions, documents, contained in the electronic file.

The prerequisites for procedures that can be carried out exclusively online, without appearances, are possible only by completing the actions and greetings through specially created interfaces and uploading thereof the necessary documents. Procedures related to small value claims, requests for distraint upon

property, requests for execution, submission of reports in insolvency proceedings, etc. are suitable for a complete digitization.

The lack of access to digital resources for a part of the population and the reluctance to access them can be compensated by creating a professional body of specialists in the field of digital justice (which can function both within the courts, with the status of clerk or assistant magistrate, and in the forms of exercising the liberal professions, with the status of paralegal). Public information campaigns on the benefits of using digital resources in the field of justice can also be organized. Training seminars should be organized with judges, lawyers, legal advisers, bailiffs, insolvency practitioners, clerks, paralegals, during which they should receive the necessary training and know-how of all details, both technical and content wise, on the use of the unique portal.

In the case of citizens who own the necessary means and knowledge to use digital resources, access to the unique portal, ID based, can be ensured upon request and after their prior identification, in order to access the electronic file, communicate subpoenas, procedural documents and decisions. However, participation in audio/video conferences in court appearances should only be done solely through the existing resources in the hubs, under the supervision of paralegals working therein.

IV

Creating tools such as the *digital lawyer*, the *digital prosecutor* or even the *digital judge* is most likely a challenge for both legal and IT professionals. Such tools can be extremely useful in the preparation of legal documentation, as well as

in the creation of draft documents or draft procedural documents or even court decisions.

As concerns judicial documents, artificial intelligence can solve problems related to overcrowding of judicial systems, in the case of certain non-contentious procedures, such as court authorizations, which do not involve an analysis on the merits of the case, but only



the verification of pre-established requirements and allocable to an algorithm. Automatically verifying information and analysing it by a computer program can have good results in this category of procedures, streamlining procedures such as enforcement and insolvency and ensuring their speed.

In the case of contentious proceedings, the presence of the judge is absolutely necessary in order to carry out the specific reasoning on the merits of the case (establishing the factual situation based on the evidence administered and applying the relevant legal provisions to rule on a dispute between the parties). In these proceedings, however, artificial intelligence can greatly streamline the preparation of procedural documents and judgments, with judges and clerks being able to access system functions that allow the integration of complex information generated by various sources (parties' requests, previous case law, specialized doctrine).

Last but not least, artificial intelligence can prove to be effective in performing statistical calculations to make legal diagnoses that lawyers and legal advisers can use in providing legal advice to clients. The identification of relevant cases, in conjunction with legislative and doctrinal documentation, can largely replace the effort made by a legal professional in dealing with a specific case. Artificial intelligence can be much more effective provided search algorithms are created by experienced law enforcement experts who can generate efficient search and analysis items.

CONCLUSIONS

The four dimensions on digitalization of the judiciary system converge towards creating the following tools or facilities:

- A portal-type tool for managing court actions by electronic means (interface for completing applications and uploading documents, including integrated

online payment of stamp duties), communication of procedural documents and participation through video / audio conferencing at hearings;

- A complex instrument of legislative, jurisprudential and doctrinal documentation that can be used by judges or lawyers in resolving cases, which allows the identification, depending on search parameters, of legal diagnoses;
- The creation of digital hubs, by the Ministry of Justice, together with the professional associations of the liberal professions, within or in the vicinity of the courts, by means of which to ensure citizen's access to the digital resources mentioned above;
- The full digitization of certain procedures, such as non-litigation claims, small value claims, insolvency claims;
- The possibility of granting public legal aid for access to the digital resources within the hubs, through a professional (clerk, paralegal).

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ABOUT

Jean Monnet Module on EU Interdisciplinary Studies:
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All activities proposed in the project have an interdisciplinary and multidisciplinary character: the events are aimed at specialists in various EU issues (regional development, health, European funding opportunities, methodological aspects); the target audience consists of students, teachers, researchers, broad public – having different profiles and professional backgrounds; the topics of the events organised (seminars, workshops, round tables) cover many perspectives: economic, social, political, medicine, engineering etc.

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