

The Impact of Covid-19 on the Digitalisation of Justice in the European Union

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ABSTRACT

The digitalization of justice and digitalization, in general, is a priority of the European Union (EU) for the digital age. When the pandemic of coronavirus started, the cross-border court procedures were in paper format and hearings were held in person. COVID-19 brought changes faster because it wasn't possible to continue the cross-border court procedures that way, during the strong waves of the pandemic, because of the health protection measures. So, the procedures started digitally in some European Union (EU) countries. Every government in the EU and worldwide had to act quickly and bring new court procedures and regulations. Then, courts and the Member States (MS) Bars had/have to implement these regulations in their rules. As it is known, attorneys at law represent clients in court. So many things had to be set to have a cross-border digital hearing.

Introduction

COVID-19 brought so many changes in the lives of citizens all around the world in their private and business lives. The changes were so dramatic in the way that people were and still are, put in their homes and had to live with the movement restrictions, even somewhere counted in the meters around their homes. That mainly happened in the first year of the pandemic when a vaccine still didn't exist. The disease was unknown and new even for the doctors of medicine and the pharmaceutical industry experts, who needed a fast response. The disease had a fatal outcome in many cases, which meant many dead people. According to the latest information from the World Health Organisation, by 27 May 2022, there have been 525,467,084 confirmed cases globally, including 6,285,171 deaths.¹ As of 24 May

2022, a total of 11,811,627,599 vaccine doses have been administered.²

So, because of health protection, many people started to work at home, and a lot of businesses needed changes in that direction, where it was possible for businesses and procedures to be held online. And the Court procedures need a change in that direction too. But the problem inside the EU Member States (MS) was to move procedures online, cross-border, which means between the different MS. So, that process needs a lot of changes in the applicable Regulations in that domain. So, that work is very hard and complicated, and it is still going on.

¹ World Health Organization 2022 „WHO Coronavirus (COVID-19) Dashboard“ Overview <<https://covid19.who.int/>> (accessed 22 April 2022)

² *ibid*

1. A Digitalisation of Justice – Legislation

In 2020 the European Parliament adopted two proposals that will make access to justice faster, using mandatory decentralized IT systems for the digital exchange of documents cross-border and taking of evidence; in criminal, civil and commercial matters.³ For that purpose, two Regulations have been amended: Directive 2014/41/EU regarding the European Investigation Order in criminal matters and Regulation (EC) No 1393/2007 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. "The updated rules promote the use of videoconferencing (or other distance communication technology) to allow a party or witness to be heard online when they are based in another country (which means cross-border)".⁴ One of the proposals which are put in 2020 is a proposal for a Regulation of the European Parliament and the Council on a computerized system for Communication in cross-border civil and criminal proceedings (e-CODEX system) and amending Regulation (EU) 2018/1726 (EU-LISA). This text emphasizes a European Electronic Access (EEA) point relevance, which will be discussed more in the following text of this article.

The legal basis for the 'e-CODEX' system 'of the proposed Regulation' is a combination of Articles 81 and 82 of the Treaty on the Functioning of the European Union ('TFEU').⁵ In June 2021 Council of the EU approved a

³ European Parliament 2020 "Digital Justice: Parliament endorses rules on service of documents and taking of evidence" Press Room <<https://www.europarl.europa.eu/news/en/press-room/20201120IPR92137/digital-justice-ep-endorses-rules-on-service-of-documents-and-taking-of-evidence>> (accessed 23 July 2021)

⁴ *ibid*

⁵ Consolidated version of the Treaty on the Functioning of the European Union (OJ C 326, 26.10.2012, p. 47–390)

⁶ Eur-Lex 2020 „Proposal for a Regulation on a computerised system for communication in cross-border civil and criminal proceedings (e-CODEX system) and amending Regulation (EU) 2018/1726 (EU-LISA) Explanatory Memorandum 2. Legal Basis, Subsidiarity and Proportionality <[https://eur-](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52020PC0712)

general approach to the Regulation of the e-CODEX system. Recently, on 24 March 2022. the European Parliament adopted a legislative Resolution on this Regulation.⁷ Maybe, all these phases in adopting the Regulations are difficult to follow at first sight because the titles are similar. Still, when looking more precise, the differences exist, of course, what needs an explanation for the wider public.

The purpose of the conference "The Digitalisation of Legal Discourse: Digital Genres, Media and Analytical Tools" which took place in December 2021 in Bergamo, Italy, where the package of the regulations which need a change were presented and the purpose of this article too, is to explain to the public the differences between them, and how to find the important data for the exact cause and case, where these regulations are applicable. The purpose was/is to prepare professionals, not just lawyers, for the proposed Regulations, which are prepared for adoption, and one of them is already adopted recently, as it is noted in the previous text of this article. What citizens of the EU Member States can expect from this process, and where to find the information? These changes need preparation for them. Not just because of a lot of significant changes, but because of the very difficult period for all who are affected by the pandemic.

On 1 December 2021 European Commission adopted two proposals for a Regulation 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 and a proposal for a Directive aligning the existing rules on Communication with the rules of the proposed Regulation".⁸ "It is a follow-up to the Communication on Digitalisation of justice in the EU (2020) adopted on 2 December 2020, from the Commission to the European

[lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52020PC0712](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52020PC0712)> (accessed 20 November 2021)

⁷ European Parliament

<https://www.europarl.europa.eu/doceo/document/TA-9-2022-0091_EN.html> (accessed 15 April 2022)

⁸ European Commission 2021 „Digitalisation of cross border judicial cooperation“ Policies, Justice and Fundamental Rights, Digitalisation of Justice

<https://ec.europa.eu/info/policies/justice-and-fundamental-rights/digitalisation-justice/digitalisation-cross-border-judicial-cooperation_en> (accessed 5 December 2021)

Parliament, the Council, the European Economic and Social Committee, and the Committee of the regions".⁹ The Article 1. says: "This Regulation establishes a legal framework for electronic Communication between competent authorities in judicial cooperation procedures in civil, commercial and criminal matters and electronic Communication between natural or legal persons and competent authorities in judicial procedures in the mentioned matters".¹⁰ It also regulates the use of videoconferencing or other distance communication technology for purposes other than taking of evidence under Regulation (EU) 2020/1783, on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence).

Article 7. of the adopted proposal for a Regulation on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters says, besides other that: "upon request of a party to proceedings falling under the scope of these legal acts or in other civil and commercial matters where one of the parties is present in another Member State, or upon request of their legal or authorised representative, competent authorities shall allow their participation to a hearing by videoconferencing or other distance communication technology, provided that: such technology is available 'and' the other party/ies shall be given the possibility to submit an opinion on the use of the distance communication technology."¹¹ And according to the Article 8. of the same Proposal, in criminal proceedings:

⁹ *ibid*

¹⁰ Eur-Lex 2021 „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“ <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0759>> (accessed 5 December 2021)

¹¹ Eur-Lex 2021 „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“ <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0759>> (accessed 5 December 2021)

"such a technology is available; the particular circumstances of the case justify the use of such technology; the suspect, accused or convicted person expressed the consent on the use of videoconferencing or other distance communication technology. Before expressing consent on the use of videoconferencing or other distance communication technology, the suspect or the accused person shall have the possibility to seek the advice of a lawyer under Directive 2013/48/EU."¹² All of the mentioned procedures "shall be regulated by the national law of the Member State conducting the videoconference."¹³ This is very important for the parties because during a trial maybe will need a consultation with a lawyer, for example, when the other party, in fact, his/her lawyer, cross-examine another witness, which wouldn't be possible to do through a distance hearing if the party and his/her lawyer wouldn't approach the hearing from the same device, or with more difficulties. Especially in criminal procedures is important to have a fast consultation with a lawyer in deciding on the way of performance of the hearing. So, this is good that the parties shall be offered the choice of the way of the performance of the proceeding in a way as the proposed regulation says.

According to Article 4 "A European Electronic Access point shall be established on the European e-Justice Portal; for electronic Communication between natural or legal persons and competent authorities".¹⁴ A EEA point "will be established by modifying the already developed e-CODEX solution for filing small claims,"¹⁵ and according to Article 6 "competent authorities shall accept electronic communication."¹⁶ This means EEA point for the

¹² *ibid*

¹³ *ibid*

¹⁴ *ibid*

¹⁵ Eur-Lex 2021 „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“ Explanatory Memorandum, 5. Other elements <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0759>> (accessed 5 December 2021)

¹⁶ Eur-Lex 2021 „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

competent authorities of the MS. This is very important for electronic Communication and will be discussed more later, in the further text. This proposal "shall ensure that electronic identities/signatures/seals can be used in the context of digital exchange of judicial documents and the possibility for electronic payment of fees, in the context of cross-border civil and commercial cases".¹⁷

2. The importance of the E-CODEX system and EU-LISA Agency and the principles of subsidiarity and proportionality

The already mentioned principles of subsidiarity and proportionality are the main principles of the functioning of the EU. Why? And why are these principles extremely important for the digitalization of Justice in the EU, among the EU Member States? What would happen in the absence of the EU action regarding a common system for digital cross-border exchange of documents and other matters subject to this regulation? In case each Member State decides by herself on that subject? Here, an explanation for subsidiarity is necessary. The Explanatory Memorandum of the proposed Regulation on a computerized system for Communication in cross-border civil and criminal proceedings (e-CODEX system) and amending Regulation (EU) 2018/1726 (EU-LISA) gives a very good description of the importance of the principle of subsidiarity in the EU says:

In the absence of EU action, there is a high probability that the Member States may develop national systems without considering whether interoperability can be ensured among them. While operational management at the EU level entails costs, it is the best way to achieve an interoperable system for cross-border Communication between competent authorities and, therefore, the best way to achieve the general objective: a common area of security and justice that works even more efficiently. "Establishing a common system for digital cross-border exchange at the EU level will provide a solution that can be used for different legal procedures while ensuring

the field of judicial cooperation" <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0759>> (accessed 5 December 2021)

¹⁷ *ibid*

interoperability between national systems. Such a system is more effective than having diverging systems at a national level, which would not necessarily ensure that cross-border Communication between the Member States is possible.¹⁸

This explanation and meaning of the principle of subsidiarity in the EU is a good example for any Regulation which is applying to the EU Member States because it is one of the main principles of the functioning of the EU. So, it needs to be written and transmitted at all.

What would happen in the absence of proportionality in the governing bodies, which are important for the functioning of the judiciary in a digital way? The absence of proportionality would raise the question of the independence of the judiciary. Without proportionality, the judiciary wouldn't be independent, which leads to legal insecurity for the EU citizens and doubt about it. As it is known independence of the judiciary is one of the main postulates in any country for its democratic functioning. If the judiciary is not independent, that will breach the European Convention on Human Rights. For example, the right to a fair trial is one of the fundamental rights according to the United Nations' Universal Declaration on Human Rights. So, "ensuring permanent operational management of the e-CODEX system at the EU level is a proportionate way of promoting cross-border communication in the justice area".¹⁹ The Explanatory Memorandum of the other adopted Proposal of a Regulation regarding proportionality explains as follows: "Adoption of uniform measures for electronic Communication in cross-border judicial cooperation and access to justice at the EU level is a proportionate way of establishing a coherent framework for the existing EU rules. Overall compliance with the principle of proportionality would be guaranteed as the proposal will propose only measures that are necessary to ensure the use

¹⁸ Eur-Lex 2020 „Proposal for a Regulation on a computerised system for communication in cross-border civil and criminal proceedings (e-CODEX system) and amending Regulation (EU) 2018/1726 (EU-LISA) Explanatory Memorandum 2. Legal Basis, Subsidiarity and Proportionality <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52020PC0712>> (accessed 20 November 2021)

¹⁹ *ibid*

of digital technology in the context of judicial cooperation and access to justice in cross-border cases".²⁰ More about this matter will be discussed in the further text.

Another adopted proposal for a Regulation which is adopted in 2020, which means a year earlier in the Explanatory memorandum explains as follows: "There are several reasons why transferring the e-CODEX-related tasks specifically to EU-LISA is the most suitable option. An agency specializing in managing IT systems would possess the know-how needed to operate e-CODEX. Since the Member States are represented on the management board of agencies, their interests and the interests of national judiciaries can be considered".²¹ So, the Explanatory memorandums of these proposed Regulations emphasized the importance of the principles of subsidiarity and proportionality in a way that is more appropriate to the purpose and sense of each of the proposals.

Why has the EU-LISA been established? Definition of the EU-LISA is given on its official website: "The European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (EU-LISA), an EU Agency established to provide a long-term solution for the operational management of large-scale IT systems, which are essential instruments in the implementation of the asylum, border management and migration policies of the EU".²² "EU-Lisa contains the six large scales of IT systems that are working 24/7 are: European Asylum

Dactyloscopy database ([Eurodac](#)), Schengen Information System ([SIS](#)), Visa Information System ([VIS](#)), Entry/Exit System ([EES](#)), European Travel Information Authorisation System ([ETIAS](#)), European Criminal Records Information System – Third Country Nationals ([ECRIS-TCN](#))".²³

"EU-LISA's governance structure allows the involvement of Member States in the management of the system through participation in the Agency's Management Board, Advisory Groups and Programme Management Boards. Complementing Member States' supervision, this body should ensure that all measures taken by EU-LISA regarding the e-CODEX system, either technical or organizational, guarantee, in particular, the independence of the judiciary",²⁴ as it is written previously. So, the principle of proportionality is used here too. In these insecure times where borders are not secure, especially now during the war in Ukraine, this Agency has the main role in controlling the security of the borders. But despite that fact, the EU and other European countries which supported Ukraine in this war, are not secure at this moment. Recently in Zagreb, Croatia, an EU Member State, felt a Russian drone in the city center, which was armed, which showed that no one can't ensure security for the EU citizens during this war, despite the very good system which the eu-LISA has. This accident means that the sky is not secure because no one before the drone felt, didn't notice it, even NATO forces or the EU Member States through its sky a drone came. All EU Member States were exposed to Russian aggression from the moment when the EU gave support to Ukraine. The EU respects the International Law which Russia broke when it started the attack, which they called a special military operation. So, according to the opinion of the author of this article, that is the main reason why the EU gave support to Ukraine meant on the breaching of International Law. According to the opinion of a lot of countries that supported Ukraine, it was not a special military operation; it was a war which has started by Russia.

²⁰ Eur-Lex 2021 „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“ Explanatory Memorandum, 2. Legal Basis, Subsidiarity and Proportionality <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0759>> (accessed 5 December 2021)

²¹ Eur-Lex 2020 „Proposal for a Regulation on a computerised system for communication in cross-border civil and criminal proceedings (e-CODEX system) and amending Regulation (EU) 2018/1726 (EU-LISA) Explanatory Memorandum 2. Legal Basis, Subsidiarity and Proportionality <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52020PC0712>> (accessed 20 November 2021)

²² eu LISA, About Us, Who We Are <<https://www.eulisa.europa.eu/About-Us/Who-We-Are>> (accessed 23 July 2021)

²³ eu LISA, About Us, Who We Are <<https://www.eulisa.europa.eu/About-Us/Who-We-Are>> (accessed 23 July 2021)

²⁴ eu LISA, About Us, Organisation, Management Board <<https://www.eulisa.europa.eu/About-Us/Organisation/Eu-Lisa-Management-Board>> (accessed 23 July 2021)

2.1. The transfer of the E-CODEX to EU-LISA

The proposed Regulation sets out the process of transferring the e-CODEX system from a consortium of Member States to EU-LISA, which is currently managing the e-CODEX system with funding from Union programs. "The transfer of e-CODEX to EU-LISA should not take place before July 2023", with a transition period of six months. Before the transfer, a Regulation should be adopted at all – of course! And Regulation should be in accordance with the acts of the EU and the case law of the Court of Justice of the EU – of course!

Section 5. of this article will give more information on the importance of this investment and the financial sources for it. But, is the planning deadline for this transfer real now when the EU is facing the war in Ukraine and helping Ukraine financially in the military and humanitarian way as well as by receiving refugees? What is a priority now? At any time, this war can spread to another European country, so that affects the EU Member States too in a lot of ways. Especially to the Member States which share a border with Ukraine. Besides a pandemic that has already made a loss to the EU economy and still is not finished. A pandemic has made a lot of costs for the nursery equipment, vaccine and all other costs related to the pandemic. And the worse is the loss of lives, a lot of died people by the coronavirus. So, the plan sometimes is difficult to realize until the planned deadline, which means that the planned period for the transfer of the e-CODEX to EU-LISA, maybe will not be possible to achieve because of the mentioned disruptions.

3. Distance hearings

3.1. Bad sides

As every system has some bad sides, this one has bad sides too, as the following example; in the situation when the link for the hearing doesn't work, so the parties can't approach the hearing. It is possible to say that, in the mentioned situation, access to the court procedure, which means, access to justice, is limited or not possible, by unexpected technical problems. For example, in Croatia the court procedures are rather slow, it is facing an

unnecessary length of the procedures, so the next hearing could be held for 6-12 months after this one which has been canceled because of technical problems, in connection with the distance hearing. So access to justice has been limited and the parties have to wait for a longer time to get the Court decision. It is a Human Rights violation too. According to Article 6. of the European Convention on Human Rights, (the right to a fair trial), everyone is entitled to a fair and public hearing within a reasonable time (in the case of a criminal charge). So, if the link for the approach to the hearing doesn't work, it wouldn't be possible to know if the trial was fair (in case that is not recorded, for the partie/es and public), in case that has been held, not postponed. Very often, it is a matter of very important issues such as property issues, financial issues, indemnity, family matters, etc., which means some existential or/end essential issues. Besides the civil procedures matters, the criminal procedures matters are the subject of the change, and the procedures are also affected by the mentioned possible problems. It is important to emphasize that every procedure is very important for the parties because one of them started a court procedure because of a very important matter. After all, it wasn't possible to resolve a dispute in any other way, which means that the parties couldn't reach an agreement earlier before the Court.

Another problem exists, in case it is recognized and called a problem: the different judicial systems in the Member States. For example, in Croatia, a new proposal of the Litigation Procedure Act and a proposal of the Criminal Procedure Act propose audio recordings of the hearings. Now, the court procedures are still recorded by written documents on the computer by the clerk during the hearing. As it is emphasized previously all EU regulations, have to be implemented in the Member States' legislation. But the time that MS needs for the implementation sometimes could be a problem. Every Act must be proceeded in a regulated way by the mandatory Law adoption procedure. Usually, that procedure is not fast. As it is a problem now to adopt all proposed Regulations which are noted in this article in a reasonable time; the time which is running sometimes is difficult to catch up. And the Court procedures have to be continued. It is a very difficult time for necessary changes.

A problem will arise for the online hearing in case of the absence of electricity. For example, in hospitals, factories, hotels and similar, in the moment of a power outage, the generator activates. It would be great if eu-LISA could ensure continuing of the procedure in case the link for the approach to the hearing doesn't work by the activation of it from their side, in a way as a generator function in the absence of the electricity caused by the unexpected event. But it is an impossible option for the distance Court procedures, unfortunately – so going back to the Courtroom after the pandemic is a possible option.

Distance hearing is good for claims of small value because it could make fewer costs for the parties. After all, a hearing will be held online without costs for travel and accommodation for the parties. But when the value of a claim is high, then the risk to which the parties are exposed in case of technical problems during a distance hearing, which can postpone a hearing or cancel it, is also high. Or the risk of misunderstanding between a party and a lawyer who represents him/her through the distance hearing in case they don't participate together at the hearing from the same device when consultation would be possible to make. So, it would be cheaper for the parties and their lawyers to pay the travel and accommodation costs and go to the Court personally than to lose a case because of the possibility of mentioned disruptions. Fortunately, the proposed Regulation gives the option to the parties to accept online performance of the hearing, which is noted previously in this text. So, it shall not be mandatory to attend the hearing from a distance way. A proposed regulation predicts this possibility primarily for the vulnerable and disadvantaged groups. On the other side, the mentioned example showed that the parties of high-value claims would consider the courtroom hearing as a more secure option.

The other problem is that the email through which the link for the online hearing has been sent could be hacked. The hacking of emails or stealing data through the internet

is a big problem. We are facing now, in fact, from time to time, the stealing of data from the social networks where are saved email addresses of the users. So, for example, emails are stolen and available to criminals who have an interest in stopping the court procedure in some matters. So, besides the fact that the cross-border distance hearing is cheaper for the parties, which means without travel and accommodation costs, the risk of technical problems which are caused accidentally or on purpose is high. The damage could be worse, meaning the costs and financial loss in the case when the procedure, in some cases of a high value, is cancelled and/or postponed for six or more months, which leads to the unreasonable length of the procedure.

The role of the lawyer in representing a client is very important. He/she is the main person who leads the case in the interest of his client. Anyway, some rare cases exist when a lawyer doesn't do his job in the interest of the client. For example, a lawyer doesn't want that his/her client attend the hearing and doesn't send a link for the hearing or send a link that disables the approach to the online hearing. The client didn't know that the lawyer had made that disturbance for some reason, usually because a client wanted to say something in court and didn't think that was a good idea. In one confirmed case, the fact was that the lawyer didn't prepare the client well on the questions, which are very important for the case. That is the second reason for that action. This part of the text is based on a real experience in this question, which happened in Croatia. Another problem is that it is very difficult to prove the statement of the client because the client is the weaker side of the relationship between the lawyer and the client. In this example, a lawyer abused his function, which is illegal, immoral, and unethical. And still, a lawyer from this example is not processed and punished and will never be because this is difficult to prove.

4. A digitalization of justice requires investments

A Digitalisation of justice requires investments in infrastructure, design, implementation, maintenance and training; it is a strategic investment. According to the Communication on Digitalisation of justice in the

European Union, to achieve any of the aforementioned improvements, it is necessary to have "financial support for the Member States to start the true digital transformation of their justice systems and support for implementing EU-wide initiatives ".²⁵ 'Each approach' "should be used to support the transition to digital justice, including the new cohesion policy instruments, the new 'justice' and 'digital Europe' programs, as well as the Recovery and Resilience Facility ".²⁶ European Union gives financial support to its Member States because, without it, most of them couldn't make these changes.

The aforementioned Communications noted as follows: "The Commission's 2021-2027 cohesion policy proposals recognize the broad need for digitalization and strengthen the link with the country-specific recommendations under the European Semester, which have identified the digitalization of justice as a priority for some Member States since 2016. "²⁷ Very important are sources for financing these changes, so mentioned Communication emphasized Funds which are essential for the digitalization of justice in the EU: "Therefore, Member States should make the most of the opportunities in the new programming period, in particular under the European Regional Development Fund and the European Social Fund Plus ".²⁸

The Recovery and Resilience Facility aims in fact, at supporting the national investments and reforms

that are essential for a sustainable recovery".²⁹ These reforms were necessary to adopt because of the damage which has been made and still is causing a pandemic in all parts of the citizens' lives around the world, including the EU citizens, which means in the justice systems too. "When setting out guidance to help the Member States to prepare and present their recovery and resilience plans for the implementation of the Recovery and Resilience Facility, the Commission stressed that the digital transformation of the justice sector is one of the domains in which the Member States are strongly encouraged to focus reforms and investments. " ³⁰ Without adequate investments in this sector, it is not possible to make reforms. The financial part is of the main importance. "National initiatives in this regard can be counted towards the 20% digital expenditure target under the Recovery and Resilience Facility to realize a "Europe fit for the digital age."³¹

All the above-mentioned programs are included in the EU multiannual financial framework (MFF) for 2021-2027. A regulation on MFF 2021-2027 was adopted in December 2020. MFF provides the framework for funding almost 40 EU spending programs. "The EU's 2021-2027 long-term budget, together with the NextGenerationEU recovery instrument, amounts to €2.018 trillion in current prices (€1.8 trillion in 2018 prices). "³² This framework supports recovery from the COVID-19 pandemic as one of the EU's long-term priorities across different policy areas. As it is

²⁵ 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, p. 6

<https://ec.europa.eu/info/sites/default/files/communication_digitalisation_en.pdf> (accessed 23 July 2021)

²⁶ *ibid*

²⁷ 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, p. 7

<https://ec.europa.eu/info/sites/default/files/communication_digitalisation_en.pdf> (accessed 23 July 2021)

²⁸ *ibid*

²⁹ *Ibid*, See also: Poorhashemi, A. "Reforming the United Nations for the Post Covid-19 World", *Apolitical*, 2020/9/25, <https://apolitical.co/solution-articles/en/reforming-united-nations-post-covid-19>, (accessed 23 July 2021)

³⁰ 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, p. 7

<https://ec.europa.eu/info/sites/default/files/communication_digitalisation_en.pdf> (accessed 23 July 2021)

³¹ *ibid*

³² European Commission, Strategy, EU Budget, The long-term EU budget, 2021-2027 <https://ec.europa.eu/info/strategy/eu-budget/long-term-eu-budget/2021-2027/whats-new_en> (accessed 4 December 2021)

known pandemic affects all parts of the lives of the EU's citizens which is already emphasized in the previous text.

5. A digitalization of Justice – example of Croatia

In Croatia the digitalization of Justice started in 2010; e.g. e-Consulting, a digital tool that is in use for consulting with the public on the drafts of laws proposals which is a very useful tool. Later were established other IT tools as e-subject, e-citizens, e-communication, and e-distrain. When the pandemic started, the distance court procedures started soon; before were in paper format. Distance hearing is better in the economic sense. It is cheaper, which means without travel/accommodation costs for the parties. In this paper, the bad sides of online hearings were already discussed in chapter 4.1.

E-subject tool is connected with the Court Register, the Criminal Records, the Ministry of Internal Affairs system, the E-bulletin board Courts, the Register of the personal identification numbers, a Common information system of land registers and cadastre, a Financial Agency system, etc. E-communication is established at the Courts for faster and more effective Communication, which includes sending documents to the courts, receiving the court's documents, and a better distance view of the case for the lawyers, the notaries, the bankruptcy trustees, the Court interpreters, the court's experts, natural and legal persons, the Court appraisers.

The Croatian Ministry of Justice and Administration has an independent sector for the Digitalisation of Justice and Public Administration. A pandemic accelerates the development of digitalization in general; means of justice too, which has been discussed in this paper previously too.

In July 2021 Croatia adopted "the National recovery and resilience Plan 2021-2026, according to which digitalization of the public administration including justice, has an important role".³³ It is in fact improvement

of the existing digital system in public administration. However, as it is noted previously the pandemic spreads a digitalization in Justice in all EU Member States which means Croatia too. It is good that Croatia has previous experience regarding digitalization and it was easier to accept changes, despite the actions having to be performed very fast and needing a fast response to the pandemic.

Conclusion

The subject of this article raised many questions, and it seems that the most important questions are: How will look court procedures in the future? Which way of its performance will remain after a pandemic; distance hearing or in person? Having in mind that this article deals with other digital issues and actions, which are very important too, of course, not only the court hearings, it is evident that only this performance needs to be discussed and analyzed more. Why? Because the damage which could be made for the parties maybe wouldn't be possible to solve, in case the disruptions of the distance hearing on which is already discussed in this article. In that case, the parties need to get the correct information. As this issue is very new, it is essential to educate lawyers as competent people who give legal advice to the parties. They are usually the first step when a party wants to file a claim or the opposite party gets the lawsuit. Then, all other participants in this process have to be educated about this matter, very well educated.

The actual circumstances say that the world, which means the EU MS too, must live with COVID-19 until a still unknown time. So, it is good to set up a digital Justice system for the cross-border distance hearings despite bad sides because it is better to have the hearing online in some cases, maybe not all of them, than to not have it at all during the strong waves of the pandemic which holds citizens more at home country, and sometimes at home at all.

³³ Government of the Republic of Croatia, The National Recovery and Resilience Plan 2021-2026
<[https://vlada.gov.hr/UserDocsImages/Vijesti/2021/srpanj/29%](https://vlada.gov.hr/UserDocsImages/Vijesti/2021/srpanj/29%20srpnja/Plan%20oporavka%20i%20otpornosti%2C%20srpanj%202021..pdf)

[20srpnja/Plan%20oporavka%20i%20otpornosti%2C%20srpanj%202021..pdf](https://vlada.gov.hr/UserDocsImages/Vijesti/2021/srpanj/29%20srpnja/Plan%20oporavka%20i%20otpornosti%2C%20srpanj%202021..pdf)> accessed 20 November 2021

References:

1. Consolidated version of the Treaty on the Functioning of the European Union (2002) OJ C 326
2. 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, p. 6
<https://ec.europa.eu/info/sites/default/files/communication_digitalisation_en.pdf> (accessed 23 July 2021)
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, p. 7
<https://ec.europa.eu/info/sites/default/files/communication_digitalisation_en.pdf> (accessed 23 July 2021)
4. European Parliament 2020 "Digital Justice: Parliament endorses rules on service of documents and taking of evidence" Press Room
<<https://www.europarl.europa.eu/news/en/press-room/20201120IPR92137/digital-justice-ep-endorses-rules-on-service-of-documents-and-taking-of-evidence>> (accessed 23 July 2021)
5. Eur-Lex 2020 "Proposal for a Regulation on a computerised system for Communication in cross-border civil and criminal proceedings (e-CODEX system) and amending Regulation (EU) 2018/1726 (EU-LISA) Explanatory Memorandum 2. Legal Basis, Subsidiarity and Proportionality
<<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52020PC0712>> (accessed 20 November 2021)
6. European Parliament
<https://www.europarl.europa.eu/doceo/docu-ment/TA-9-2022-0091_EN.html> (accessed 15 April 2022)
7. European Commission 2021 "Digitalisation of cross border judicial cooperation "Policies, Justice and Fundamental Rights, Digitalisation of Justice
<https://ec.europa.eu/info/policies/justice-and-fundamental-rights/digitalisation-justice/digitalisation-cross-border-judicial-cooperation_en> (accessed 5 December 2021)
8. Eur-Lex 2021 "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 " <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0759>> (accessed 5 December 2021)
9. Eur-Lex 2021 "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 "Explanatory Memorandum, 5. Other elements <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0759>> (accessed 5 December 2021)
10. Eur-Lex 2020 "Proposal for a Regulation on a computerised system for Communication in cross-border civil and criminal proceedings (e-CODEX system) and amending Regulation (EU) 2018/1726 (EU-LISA) Explanatory Memorandum 2. Legal Basis, Subsidiarity and Proportionality <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52020PC0712>> (accessed 20 November 2021)

- <content/EN/ALL/?uri=CELEX:52020PC0712>
> (accessed 20 November 2021)
11. Eur-Lex 2021 "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 "Explanatory Memorandum, 2. Legal Basis, Subsidiarity and Proportionality <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0759>> (accessed 5 December 2021)
12. Eu LISA, About Us, Who We Are <<https://www.eulisa.europa.eu/About-Us/Who-We-Are>> (accessed 23 July 2021)
13. Eu LISA, About Us, Organisation, Management Board <<https://www.eulisa.europa.eu/About-Us/Organisation/Eu-Lisa-Management-Board>> (accessed 23 July 2021)
14. European Commission, Strategy, EU Budget, The long-term EU budget, 2021-2027 <https://ec.europa.eu/info/strategy/eu-budget/long-term-eu-budget/2021-2027/whats-new_en> (accessed 4 December 2021)
15. Poorhashemi, A. "Reforming the United Nations for the Post Covid-19 World", Apolitical, 2020/9/25, <<https://apolitical.co/solution-articles/en/reforming-united-nations-post-covid-19>>, (accessed 23 July 2021)
16. The European Convention of Human Rights 1950, <https://www.coe.int/en/web/human-rights-convention/the-convention-in-1950#:~:text=The%20Convention%20for%20the%20Protection,force%20on%203%20September%201953>. (accessed 22 April 2022)
17. Universal Declaration on Human Rights 1948, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> , (accessed 22 April 2022)
18. World Health Organization 2022 "WHO Coronavirus (COVID-19) Dashboard "Overview <<https://covid19.who.int/>> (accessed 22 April 2022)
- 1.