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AKADÉMIAI KIADÓ

Right to a modern trial: A new principle on the horizon of the digital age

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ABSTRACT

The study presents the most important common features of current judicial systems and argues that the courts are finding it more difficult to fulfil their role in the 21st century in a changing social and economic context. The development of information technology is also challenging the courts, which can only respond adequately by bringing modern technology into the courts themselves, allowing clients to access the courts online, outside office hours, and to receive meaningful, fast and efficient assistance in resolving their disputes. The study proposes that, in addition to the right to a fair trial, the right to a modern trial should be a requirement for the state to ensure that these requirements are met. These two principles, complementing each other, would help to ensure access to justice for clients in the 21st century. The adoption and implementation of this new principle will require a number of legal and technological changes. Yet it is not their implementation that seems the most difficult, but a change in the general legal thinking about the functioning of the courts, according to which the court is primarily a physical place where disputes are settled, and its role is not to provide a wide range of services, but only to deliver judgments.

KEYWORDS

right to fair trial, court delay, court platform, remote hearing, assisted argument

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1. INTRODUCTION

If we want to metaphorically describe the current state of justice in modern societies, it is similar to a group of tourists who, year after year, travel along the same route, and suddenly notice that a huge building has been built in a place they know well, blocking the road. The members of the tourist group react differently to the unfamiliar situation: some are indignant as to why they cannot go further, as they have always been passing along this route, some are indifferent to the obstacle, while some start to think about where to go and how to continue. This is also where the justice system is now: the organisational and procedural solutions and paths that have evolved over the centuries are becoming increasingly difficult to follow. As with this tourist group, there is a divergence of opinion on this phenomenon both among those contributing to the legal literature and among practising lawyers. There are those who still argue for the importance of the old ways and solutions, but more and more are looking for innovations that can respond to the changed social and economic circumstances and needs of the 21st century.[1]

Our study starts from the premise that one of the common causes of the aforementioned social and economic changes is the explosive development of information technology over the last 20 years. It is generally accepted that this development of information technology has fundamentally changed the everyday lives of citizens, their communication, contact and administrative habits and expectations.[2] The trend is that, as more and more people use smart devices, their sense of time is becoming increasingly limited and they want to get more and more done in less and less time. The judiciary, as one of the most complex subsystems of the state, with the most guarantees, and which protects social peace and the functioning of the economy, must also respond to these phenomena. If it does not do so, the trend in the number of cases brought before the courts may well continue to decline, with parties seeking alternative solutions to their disputes. We are convinced that it is precisely for the stated purposes of justice that the state must ensure access to justice that responds to changed circumstances and expectations.

In our study, we attempt to briefly bring together the social and societal expectations of the courts. We then present the main features of current judicial systems. We will then describe the main components of the current right to a fair trial and finally propose a new 'coordinate system' to respond to changed circumstances and expectations, one which is no longer primarily, and not exclusively, defined by the fundamental principle of the right to a fair trial, but by a new principle of the right to a *modern* trial that better reflects current circumstances and expectations.

2. SOCIAL AND ECONOMIC EXPECTATIONS OF STATE COURTS

The question of the independence of the judiciary is still at the centre of legislative and academic debates on the judiciary and the functioning of the courts. International and European institutions, organisations and researchers primarily or almost exclusively measure and examine the functioning of a country's judiciary by the institutional and regulatory guarantees that protect

[1] Pollicino and De Gregorio (2022) 3–26, Strong (2020) 267–72.

[2] Werbach (2020) 13–32.

the independence of judges.[3] We are convinced that the question of judicial independence and its regulation is of fundamental importance, and without independence there can be no talk of judicial activity. At the same time, it would be at least as important to talk about the nature of the service of justice, to explore what makes the work of the courts more efficient, easier and more transparent for the client. It is easy for lawyers to make the mistake of concentrating on procedural issues in the operation of the courts, trying to provide guarantees for parts of it. This thinking and practice is reflected in the development of the right to a fair trial: if the judicial process meets this requirement, the judicial service has achieved its purpose. In comparison, those who wish to use the judicial procedure as a specific *service* do not wish to use the procedure itself, but to obtain a judgment that settles their dispute. They see the procedure as a necessary evil without which they cannot obtain a judgment. Clients therefore approach court services from the point of view of the outcome, the decision being more important to them than the procedure. We can illustrate this with the example of a customer who, when choosing from the different products on display in a shop, looks to see which is the most suitable for her in terms of price and value and is much less interested in the processes and logistical operations that have led to it being placed on the shelves. If we think about the search for justice and possible innovative solutions, it is worth approaching it from the point of view of the target audience, the end user.

If we concentrate on the nature of justice as a service, we must allow it to be as close as possible to the characteristics of other services, to the needs of users. As a result of the technological changes already mentioned, most services are now available 24 h a day, 7 days a week, via smart devices. This change of approach will certainly be most difficult in the area of justice, as in most countries court hearings are only available in court premises, with a personal presence. While the period during the Covid-19 pandemic, when several countries allowed online trials, mainly through temporary rules, has brought some change, it does not yet seem to have been a breakthrough: with the end of the pandemic, court hearings have returned to courtrooms.[4]

The nature of the service also implies that courts should place more emphasis, in addition to their adjudicative activities, on ensuring that clients who cannot afford legal representation can effectively navigate the courts: they should be able to know their procedural options, the main rules of evidence, and be able to formulate their claims well and accurately. Closely linked to this there should be the possibility of mediation in private disputes, because it is true that, even in changed social and economic circumstances, the interests of the parties are better served by a court-approved settlement reached in good time than by a court judgment handed down years later.

For most public justice systems, the length of proceedings is a constant challenge. It is said to be the weakest point in judicial procedure, which is surrounded by international and national guarantees and detailed procedural rules. If a procedure cannot be concluded with a decision on the merits within a reasonable time, the effectiveness of the judgment, however well-founded, in resolving the parties' dispute becomes questionable. This is particularly true for companies who,

[3]Gárdos-Orosz (2021) 1327–43, Kosar and Vincze (2022) 491–501.

[4]Ződi (2020) 339–55, Magraw (2020) 61–75.

given the dynamics of business, need a quick and efficient solution to resolve their dispute. For them, the ideal duration of litigation is measured in weeks or months. Their specific needs are illustrated by the emergence of arbitration tribunals, with their special rules of procedure, which offer fewer guarantees but more flexibility than state courts.[5] The enforcement of arbitration judgments is in most countries guaranteed by the state in the same way as in ordinary courts, and it is therefore suggested that the more favourable experience of arbitration could be applied by the state courts as well.

The courts are expected to provide predictability in their jurisprudence. Consistent judicial practice is one of the pillars of legal certainty, which in turn is a component of the rule of law. There are different models for ensuring consistency of jurisprudence in different countries, but what they generally have in common is that they all make it an exclusive right (monopoly) for the state supreme courts.[6] As the volume of applicable substantive law and the number of previous court judgments increase, it becomes increasingly difficult to ensure unity of jurisprudence. It seems almost impossible to keep track of thousands of court judgments, to search for and find previous judgments on the legal issue at hand. At the same time, the need for the courts to maintain a predictable and consistent jurisprudence has not changed. But it is not only the unity of interpretation of the applicable law that is decisive, but certain discretionary questions, such as, for example the dilemma of determining the level of punishment in criminal proceedings, or the dilemma of ordering certain coercive measures, like detention. According to the relevant criminal procedure laws, the judge deciding on this issue must take into account and weigh up a number of aspects in order to ensure that the level of the sentence achieves its general and specific preventive effect. The legal requirement that the sentencing judge should take account of local and national crime statistics in making his or her decision on these matters is a stretching of the limits of human capacity and capability. It is no coincidence that in the field of criminal procedure law, modern technological tools have emerged which, not substituting the criminal judge, but in support of his work, use data sets to provide probability results expressed in concrete percentages in relation to the recidivism of the accused.[7] The best known of these is the COMPAS system used in some US Member States, which after initial enthusiasm soon became the focus of controversy.[8] It should be remembered, however, that this solution was a reaction to the inconsistency in human judicial decisions. Debates such as these are increasingly likely to arise: what is more convincing and more acceptable to clients using judicial services - human judicial decision-making, which is more capable of making mistakes and errors, or decision-making based on technology, which is capable of processing unlimited amounts of data, and less likely to make mistakes, but is highly impersonal?

We are convinced that justice must be a much broader and more remote service, not only focused on dispute resolution. In the next section we examine the extent to which today's justice systems meet these requirements.

[5]Magraw (2020) 62–64.

[6]Varga Zs. (2020) 83.

[7]Simmons (2018) 1067–118.

[8]Liu et al. (2019) 122–41.

3. CHARACTERISTICS OF TODAY'S JUSTICE SYSTEMS

In this section, we cannot attempt to describe all the procedural organisation models known in the 21st century, but we will highlight – without claiming completeness – the common features that can be found in the judicial systems of almost all developed countries. We concentrate primarily on the difficulties and problems that the developments in information technology described in the next chapter may provide solutions to.

3.1. Judicial and procedural principles have become dogma

Principles in judicial procedure have great importance for both legislation and practice: they set the framework for the enforcement of claims (organisational issues of courts), and serve as a guideline for the specific procedural rules and the case law of the courts interpreting them. The principles are essentially the foundation, the skeleton and the roof of the judicial building: the detailed rules must fit into the building thus constructed.

Principles are contained and safeguarded by norms at the highest level of the legal hierarchy: international conventions, constitutions and procedural laws all outline and protect them.[9] Thanks to the practice of regional courts and national constitutional courts, respect for these principles is so deeply rooted in legal thinking that the first question to be asked in the event of any change of organisation or procedural model, or even of any amendment to legislation, is whether the new provision is compatible with and can be integrated into this system and framework of principles.[10] But there is no analysis of the systemic functioning of the judiciary that approaches possible new procedural and organisational changes from the 'user's side', looking at how they serve the interests of legal entities and how much more 'attractive' it will be for them to use the judicial route.[11]

3.2. The courts are cumbersome and time-consuming

The unconditional respect for the principles mentioned in the previous section necessarily results in the cumbersome and time-consuming nature of litigation and non-litigation proceedings before the courts: if each and every rule of the guarantee must be respected in each and every procedure, the specific dispute can only be decided on its merits in a protracted procedure, regardless of the substantive legal issue.

Another specific feature of court proceedings is the fact that the service is linked to a place or building. The main purpose of the strict rules on jurisdiction and competence (territorial scope), is to make it possible to determine which court has the power and the duty to hear a particular

[9]Tóth J. (2021) 15–44.

[10]A good example of this is Act CXXX of 2016 on the Hungarian Code of Civil Procedure, the ministerial explanatory memorandum of which states that the aim of the new Civil Procedure Code is to comply with international and national constitutional requirements. In the German-language legal literature in particular, the title of some sources already indicates whether certain changes related to information technology can be integrated into the current principle environment, see e.g. Paschke (2018).

[11]Methodologically, legal economics could provide a solution. Some excellent analyses of substantive law have already been published in Hungarian, e.g. Szalai (2013), but in the field of procedural law, the literature is mainly in English. Kobayashi (2007) is one such excellent summary.

dispute. If we add to all this the constitutional requirement for each judge to deal with each case independently and impartially, we find a contradiction in the meaning of the right to a tribunal established by law: does it matter whether one court or another is involved in the case, are the judges in one court or another more independent, can a different decision be expected here than there? From the parties' point of view, the question of which court to use is primarily reduced to the geographical distance, i.e. as close as possible to them, so that it becomes less and less of a problem to be physically present in the courthouse on time. This aspect becomes less important if the proceedings are conducted partly or entirely online, in which case the rules on jurisdiction and territorial scope are also partly irrelevant.[12]

At this point, it is worth noting the question of the organisational structure of the judiciary, which in most countries is based almost exclusively on certain historical traditions.[13]

3.3. New competitors in the dispute resolution market

There is a clear tendency for large service providers and e-commerce companies to seek to provide efficient and quick solutions to disputes related to their services, primarily through dispute resolution procedures on their own platforms. These include E-bay and Alibaba. These providers have quickly recognised that offering a quick and efficient solution to disputes over contracts on their websites can increase the number of visitors to their websites and the number of users of their services.[14] This is all the easier since they have all the data on a given contract available on the platform: when the contract was concluded, with what content, and between whom, so that the parties do not have to spend time gathering evidence. One of the lessons learned from the development of the E-bay platform was that the first version was simplified years later in a new release of the software which reduced the number of questions and data that parties have to answer in order to start the procedure. This simplification has led to a surge in the number of claims, suggesting that the simpler the means of accessing a dispute resolution procedure, the more attractive and accessible it becomes to more parties.[15]

The data and successes of these platforms lead to a number of conclusions, one of which is that the parties need a solution to their private dispute, which is not necessarily a court judgment. The second is that the design of dispute resolution (software) models and rules should aim at simplicity and transparency, making them understandable to non-legally trained clients. The benchmark is not the well-qualified lawyer, but the average informed client.

3.4. Diverging roles and interests between the legal professions and between the various actors in the process

The current model of civil litigation can be described, in a very simplified way, as follows: the judge's task is to decide the dispute, the legal representative's (lawyer's) task is everything else:

[12]This is supported by the success of the 2009 reform of the Hungarian payment order procedure. See in detail, Molnár (2014) 239–47; Molnár (2016) 151–64.

[13]Pribula (2020) 21–34.

[14]Katsh and Rabinovich-Einy (2017) 155–57.

[15]Katsh and Rabinovich-Einy (2017) 160.

to fill in the party's lack of legal knowledge, to think through the possible outcome of the case, to consider the tactics, to collect and submit evidence, etc. In the litigation process, the judge also has different tasks in relation to the representation, which in the models of different countries varies from passive to active. The different European models have one thing in common: the judge has a duty and a legal obligation to decide the case within a reasonable time.

It is interesting to note that there is no such requirement for a legal representative, but at most a similar obligation can be derived from the requirement of good faith. The inadequate regulation of lawyers' fees also works against a speedy conclusion, a connection which also has a rich legal literature.[16]

One of the characteristic features of civil litigation is its adversarial form, with at least two opposing parties (plaintiff, defendant) in dispute. The plaintiff is the 'master of the case' and it is up to him to decide whether to sue, against whom and for what claim. He or she is always interested in reaching a final decision as quickly as possible and with as few constraints as possible. The defendant, by comparison, is in a constrained position: he is forced to participate in the litigation, the only interest in its speedy and efficient conclusion being that the claim of the plaintiff against him is unfounded. In view of his special position in the proceedings, the defendant must be given the opportunity to 'defend himself', to put forward his own arguments and evidence.

3.5. Difficult to plan the duration, difficult to predict the substantive decision

It is generally accepted in the field of criminal literature that the greatest deterrent to committing/repeating a crime is exposure - the greater the proportion of offenders who fear being convicted, the more they will consider whether it is worth the risk. The same applies to temporality: the closer in time the offence and the punishment are, the greater the deterrent effect of the latter.

The situation is similar in civil disputes, especially in property disputes, where the debtor knowingly and willingly does not pay, but is only interested in stalling for time and in the disappearance of his assets on which the enforcement is based. If the civil proceedings are concluded as close as possible to the date of the debt's expiry, in a predictable manner and with a predictable outcome, this will at least force the debtor to reach an agreement. The timeliness and duration of civil proceedings is also of paramount importance, and is directly proportional to the effectiveness of enforcement.[17]

There is a correlation between the length of litigation and the caseload of a court: the busier a court is, the more the time taken to complete a case increases. Resolving this divergence in case load by changes in jurisdiction, competence and court organisation almost always brings only temporary success and creates countless new difficulties.[18]

The lack of uniform, predictable case law on a particular legal issue may also act as a deterrent to resorting to the courts. The development and implementation of uniform case-law, which is a cornerstone of legal certainty, is the task of the national supreme courts, which have different

[16]Czoboly (2016) 758–76.

[17]For a scientific analysis of the context of the timeliness of civil litigation, see Gáspárdy (1989).

[18]See Osztovits (2022) 195–207 for a comma-seeking account of one such experiment.

means and methods of achieving this.[19] What they have in common is that, as time goes by, more and more previous decisions and guidelines have to be kept in mind, and their coherence maintained or revised because of changes in the law. In countries where a case-law or quasi-case-law system exists, it is a task beyond human capacity to cull the relevant judgments from tens of thousands of decisions, without precise methodology and technical assistance.

3.6. Paper based procedures

In civil litigation, everything is done on paper, and the fact that communication (service) between the parties and the court is now largely done electronically has not changed this. Judges still have to read through meter-high towers of papers before preparing for a hearing or passing judgment. Since, with the exception of a few countries, a judge almost always has to hear several cases in parallel, the paper-based administration of justice is a major limitation on the efficiency of judicial work. At present, therefore, what and how the judge has noted from the information in the case file depends solely on his or her individual capacity to absorb and remember, which in itself makes the outcome of the case a matter of chance.

4. THE RIGHT TO A FAIR TRIAL

Of all the fundamental principles of justice, the right to a fair trial has certainly been interpreted and analysed the most, both in legal literature and in the practice of international and national courts. The guaranteeing nature of this principle and its role as a mainstay of judicial enforcement are now self-evident. Although a systematic presentation of the right to a fair trial is beyond the scope of this study, we still consider it necessary, also in the context of this study, to briefly recall the main characteristics of the most important components of the right to a fair trial.

The concept itself and its content is a matter of debate in the legal literature. As a starting point, we will now use the definition contained in the Hungarian Constitutional Court's Decision 6/1998 (III.11.) AB, according to which:

The requirement of a fair trial is not simply one of the qualities of the court and the proceedings, but, in addition to the requirements of the relevant provision of the Constitution, it also encompasses the fulfilment of the other guarantees. Therefore, a trial may be unfair, or unjust, or inequitable, or not fair, in the absence of certain details as well as in spite of compliance with all the detailed rules.

The cited decision of the Constitutional Court also refers to the fact that the right to a fair trial guaranteed by Article XXVIII of the Fundamental Law and Article 6 of the European Convention on Human Rights encompasses several sub-rights. Among the various positions, we will now use the grouping according to which the justifications of the right to a fair trial are: access to justice, the right to a tribunal established by law, the right to an independent court, the requirement of impartiality, the requirement of a fair trial, the concept of a true and fair view of the facts, the requirement of a public trial, the right to a reasoned decision by a judge and the requirement of a decision within a reasonable time.[20]

[19]For a summary, see Varga Zs. (2020) 81–87, Wellmann (2020) 648–55.

[20]Czine (2020) 160–90.

There is a wealth of constitutional and ECtHR practice on each of these requirements, which, without going into more detail, *prima facie* suggest that the online courts are more likely to fulfil each requirement than traditional court proceedings with a physical presence. Only the requirement of a public trial raises the question of how this can be guaranteed in the online space. As the Constitutional Court pointed out in its decision 58/1995 (IX.15) AB, 'publicity is above all intended to ensure the control of the operation of justice by society. In practice, it means both the possibility for litigants to participate in their own case, to appear in person in the courtroom, and it means the wider public, including the press.' However, the publicity of a trial is not an unlimited fundamental right. There are several exceptions to the requirement of an oral hearing in the case law of both the ECtHR and the Constitutional Court.

In its case law on Article 6 of the European Convention on Human Rights, the ECtHR has repeatedly examined the principle of verbality (often confused with the principle of immediacy). In its judgment of 23 November 2006 in Jussila v Finland,[21] it held that oral hearings in criminal cases are not an absolute obligation and may be dispensed with in types of cases which do not fall within the 'hard core' of criminal law, such as administrative fines, surcharges and penalties in customs and tax matters.

Judgment of the Grand Chamber in Ramos Nunes de Carvalho e Sá v Portugal of 6 November 2018 summarizes the relevant ECtHR case law.[22] Here, the ECtHR has set out three exceptions to the mandatory nature of the spoken word. The first is where the facts of the case can be established clearly and beyond doubt on the basis of the written material in the case. The second is where there is a dispute between the parties solely on a point of law (not a complex one). The third category is disputes of a technical nature, where the need for a rapid decision is of paramount importance, e.g. certain social security disputes (paragraph 190). On the other hand, the ECtHR considers an oral hearing to be necessary in all cases where it is necessary to ascertain whether the facts have been correctly established by the authorities before the court, where the circumstances require the court to ascertain the position of the party in person, and where the court considers it necessary to hear the party in person in order to clarify certain issues (paragraph 191). The ECtHR has also taken a position on the question of how the absence of a hearing in the first instance procedure can be remedied by an appeal. According to the Strasbourg panel, if the court of appeal can order evidence, review the assessment of the evidence, and change the facts, then the trial at second instance remedies the lack of a trial at first instance. Without such jurisdiction, however, a violation of Article 6 of the Convention may be established (paragraph 192).

In its decision 3021/2018 (I.26.) AB, the Constitutional Court interpreted the publicity of the trial as a fundamental principle of the right to a fair trial, as meaning, above all, the publicity of the courtroom, the ability to follow the court proceedings and the decision. The basic reason for this, according to the Constitutional Court, is not the general information interest of public debate, but the protection of the parties involved in the proceedings by having the court decide on their rights publicly. The courtroom is not in itself a forum for public debate, but a place where justice is dispensed, deciding on the accusation or the rights of the litigants. In the light of the general interests of the judiciary and the specific interests and rights of the parties to the

[21]no. 73053/01.

[22]no. 55391/13, 57728/13 and 74041/13.

proceedings, the press coverage of the courtroom must therefore be assessed differently and the restrictions on press freedom in this case may be justified on a wider scale than in the case of ordinary reporting on current events in the public domain.

IT applications make it technically possible to mediate and record negotiations in the online space without any problems. It is enough to think of streaming, which is not yet regulated, and thanks to which several Hungarian court hearings have been broadcast on the Internet or can still be found on certain channels. With the help of these techniques, and if the relevant legislation is drafted, the publicity of court proceedings could be much more widespread. The question is rather whether the proceedings should always be recorded and, if so, for whom and for how long they should be retrievable and viewable.

Susskind examined whether the alternative dispute resolution methods available through online platforms complied with the right to a fair trial under Article 6 of the Convention. He concludes that if they can be followed by a procedure where the principles are fully respected, any shortcomings of the ADR forum are not contrary to the Convention. Susskind also asked whether the principles of openness and immediacy prevail over the other principles of justice and preclude a change that would move dispute resolution outside the courtroom and into the online space. Susskind argues that in such a case, the advantages that an online dispute resolution could bring and the disadvantages that would be caused by the violation of the hitherto known content of the principles should be weighed. He also recommends that the adjudicator should be given the opportunity to decide which disputes do not require a decision on the basis of written preparatory material and statements, but should be able to decide on the merits by referring them to the ordinary courts in the traditional way.[23]

5. INTRODUCTION OF A NEW PRINCIPLE FOR THE DIGITAL AGE – THE RIGHT TO MODERN TRIAL

The brief overview proved that the main purpose of the right to a fair trial was to provide litigants with a framework for enforcing their rights. However, the requirements for the administration of justice listed in section I of this study impose additional responsibilities on the state. It is our conviction that it is precisely in the light of these requirements that a new principle of justice needs to be formulated and established which responds to the changed circumstances of the 21st century and which can ensure the service character of justice. We propose to call this principle, which has not yet been named in the legal literature, the right to a *modern* trial.

If we want to distinguish between the right to a fair trial and the right to a modern trial, we can best summarise it by saying that while the former defines the framework for the conduct of proceedings, the latter primarily promotes access to justice in the digital age. It follows that these two principles are not contradictory, but rather complementary and help to ensure that in the 21st century more and more people have access to judicial services, where they can still receive meaningful help or a meaningful decision in a fair and just process.

The right to modern trial must certainly include, in our view, the following 'ingredients'.

[23] Susskind (2019) 201–205.

5.1. Right to a remote hearing

As a matter of principle, it should be enshrined that courts should be able to hold hearings online, if the parties so choose. In general terms, this seemed almost unthinkable in the period before the COVID-19 pandemic, but the experience of the temporary solutions introduced at that time clearly prove that in most cases and in most types of litigation, online hearings without physical presence were easier and more efficient for the parties, legal representatives and judges than in-person hearings. Allowing this would in itself significantly reduce the procedural costs for the parties, as they would not have to travel to each hearing and the time spent on each hearing would be reduced. This does not preclude or automatically eliminate face-to-face hearings, but the state should ensure that tele-hearing is available.

5.2. Right to e-filing

In most countries, the first step in the digitisation of courts was the establishment of electronic communication between courts and legal representatives, followed by the development of e-filing systems.[24] It is necessary and justified to provide this possibility also for parties without legal representation who wish to communicate with the court electronically. Given that the vast majority of citizens (and businesses) can already communicate with their national authorities and public administrations in this way, the need to be able to deal with the courts in a similar way does not seem utopian. The state must therefore guarantee this right, which would not, as in the case of remote hearings, remove or completely replace the possibility of contacting the courts in person or on paper, as before.

5.3. Right to assisted argument

The service character of the courts is underlined by the need for clients to be able to seek not only a decision on the merits of the case from the court, but also a pre-assisted argument. A competent court administrator or clerk, trained for this purpose, would have the task of helping opposing parties to understand their rights and procedural position before the application is filed. During the dispute resolution process, the court administrator could also propose concrete settlement solutions to the parties. If this is not successful, the same administrator would provide specific assistance in filling in the claim form. Even if it does not lead to a settlement, a dispute prepared and conducted in this way will lead to a more efficient and quicker decision by the court, as the client will not be confronted at the hearing with the issues that he or she would have had to take care of, and the legal framework within which he or she would have had to prove his or her alleged or real claims.

5.4. Right to a decision without delay

The right to a fair trial guarantees the right to a decision within a reasonable time, which is difficult to quantify, and only the specific circumstances of a case can determine whether the duration of a particular case meets this requirement or whether it constitutes a violation of the fundamental right. As mentioned in Section 1, one of the characteristics of the 21st century –

[24] Ződi (2020) 340–46.

due to the emergence and spread of modern technologies – is that clients are becoming increasingly impatient with services and facilities, and want to get their matters solved in less and less time. The judiciary must also respond to this, and the requirement for a decision within a reasonable time must be replaced by the requirement for a decision *without delay*. It is generally accepted in the literature that modern technological tools can play a key role in this respect, as they can significantly assist in the communication with the court and in judicial decision-making, thus significantly reducing the time taken to resolve cases.[25]

6. STEPS TO DEVELOP THE RIGHT TO A MODERN TRIAL

The right to a modern trial requires new tasks for the state. In order to allow the parties to opt for online trials, to enable electronic communication and to make proper use of the data available in judicial decision-making through modern technology, it is necessary to transform the current paper-based procedures into data-based procedures. This is not only a technological issue, but also requires judges to adopt a new approach and acquire and apply new technological skills. In countries where such experiments have already started, experience shows that ultimately judges need to be able to mark the parts of a pleading or decision, and the words that software can learn and use later.[26] Lawyers, and judges in particular, therefore need to have technological skills in addition to their current legal knowledge.

The right to a modern trial can only be fully realised if online court platforms are created, where citizens can find and use all court services in one place. This platform must also be able to provide them with the possibility to contact court administrators, who will provide them with assistance and information, either orally or in writing.[27]

Finally, the use of artificial intelligence cannot be avoided in the context of building and ensuring the right to a modern trial. It is important to note that not all of the modern technological tools currently in use in some administrative systems use artificial intelligence, but the potential for doing so is great.[28] The COMPAS system in the USA, already referred to in the study, uses it, generating countless debates in the course of its operation. It seems almost certain that the use of AI will be inevitable in the development of court services; the question is primarily what services it is already appropriate and necessary to use it for.

7. SUMMARY

It is important and justified to rethink the place and role of justice systems in modern societies in the 21st century. This is primarily due to the social and economic changes brought about by the explosion of modern technology, to which all service providers and services must respond. What makes it difficult to find the right response is the fact that the development of modern technology is far from over, and that the technological solutions that are the most advanced

[25]Carlson (2020) 17–31, Schmitz (2019) 89–163.

[26]Shu Shang and Guo (2020) 119–48 provides a detailed analysis of China's judicial reform and its experience with digitisation.

[27]Susskind (2019) 165–76 presents such platforms already in operation.

[28]Reiling (2020) 3–10, Morrison (2020) 76–100.

today may not be so in 10 or even 5 years' time. We are shooting at a moving target when we try to map the impact of this process on justice. It is almost certain that the organisational and procedural framework of the courts will have to be rethought, and that the models that have developed over the last hundred years in democratic states are now only able to fulfil their social function to a limited extent, with some difficulty. The only way for courts to respond adequately to the development of technology is to allow information technology into the court building itself, enabling clients to access the courts online, outside office hours, and to obtain meaningful, fast and efficient assistance in resolving their disputes.

In our study, we have proposed that, in addition to the right to a fair trial, the right to a modern trial should be a requirement for the state to ensure that the aforementioned requirements are met. These two principles, complementing each other, would help to ensure the access to justice for clients in the 21st century. The adoption and implementation of this principle will require a number of legal and technological changes. However, it is not the implementation of these that seems the most difficult, but the change in the attitude, and the legal thinking about the functioning of the courts, according to which the court is primarily a physical place - a building - and its task is not to provide a wide range of services, but only to deliver judgments. Concerning legal knowledge, lawyers, and judges in particular, need to acquire a range of new technological skills in order to realise the right to a modern trial and thus to become winners in the digital age.

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