



Seminar

Electronic access to the courts

In his introductory speech, the President of the Italian Council of State, Alessandro Pajno, recalled the need to dematerialize the jurisdictional procedures in order to improve the efficiency of the work of the courts, but also in a perspective of democratization of the access to judges for litigants.

As of September 26, 2017, 24 members of the International Association of High Administrative Jurisdictions (A.I.H.J.A.) responded to the questionnaire on "electronic access to the courts". The replies to this questionnaire show that the various responding members have varied situations with regard to the dematerialized appeal procedures before the administrative courts.

The progress of different jurisdictions in the development of dematerialized procedures is very heterogeneous. Some of them, such as the Council of State of France or the Supreme Court of the Republic of Korea, have already implement such procedures and have drawn up a critical assessment of this experience. Others, like the Council of State of Italy or the Supreme Administrative Court of Finland, finished implementing their electronic procedures more recently and are more cautious in describing the actual impact of these procedures. However, a significant number of member jurisdictions did not implement an electronic access system to the judge yet and some are not able to begin this process yet.

I. The mandatory or non-compulsory nature of electronic procedure

Electronic procedures, when they exist, are not necessarily mandatory. In 11 of the 20 jurisdictions benefiting from such procedures or having a defined project, it is not or will not be mandatory to use a dematerialized procedure.

For the other 9 jurisdictions, the dematerialized procedure is only mandatory for certain parties to a dispute. For instance:

- Before the Supreme Administrative Court of Austria as before the Supreme Court of Spain, only the lawyers must resort to it.
- In front of the Supreme Administrative Court of the Czech Republic, it is the administrations which are obliged to use it.
- In France, before the Council of State, tribunals and administrative courts of appeal, lawyers and administrations are obliged to use electronic procedures, but individuals are not.

- Before the Supreme Court of Chile and the Council of State of Italy all parties to the dispute are obliged to use the electronic procedures.
- Lastly, the litigants who appeal to the Federal Tribunal of Tax and Administrative Justice of Mexico or the Supreme Court of the Republic of Korea, the litigants have the choice to use or not the dematerialized procedure, but if they choose to do so, they must stick to it.

II. Quantitative data

The level of use of dematerialized procedures is directly related to their mandatory nature or not. In Austria, 100% of lawyers use it. In Italy and Chile, although the obligation to use electronic procedure is recent, 100% of applicants should use it by the end of 2017.

Among the countries in which the use of dematerialized procedure is not entirely mandatory not mandatory at all, the situations are heterogeneous. 85% of the cases follow the electronic procedure in Finland, 65.9% in South Korea, 70% in France or China, 35% in Belgium, 33% in the Czech Republic, 20% in Austria, 1.07% in Mexico or 0.38% in Turkey. These disparities can not be explained by the partly compulsory nature of the procedure. For example, in France where it is partly mandatory to use the electronic procedure, the level of use of the procedure is as high as in the Republic of Korea, where the use of the electronic procedure is not mandatory at all. On the other hand, the time spent since the implantation of the electronic procedure seems to improve its use. It should also be noted that some jurisdictions encourage the use of the electronic procedure through financial advantages, such as the Supreme Administrative Court of Portugal, which provides a reduction of the court fees for applicants who make this choice.

Finally, there are countries that have only a very limited number of electronic appeals because the system provided for this purpose is not fully operational yet. As a result, many jurisdictions that responded to the questionnaire could not produce statistics on this point. This is for example the case of the Federal Supreme Court of Switzerland, the Supreme Administrative Court of Ukraine, the Administrative Court of Thailand, the Supreme Administrative Court of Poland, the Supreme Administrative Court of Portugal, the Council of State of Egypt or the Supreme Court of Ivory Cost.

III. The impact of the dematerialization of the procedure on the time taken to judge cases.

Overall, the finding of shorter trial periods in jurisdictions with an electronic procedure is unanimous.

Nevertheless, some jurisdictions, such as the supreme administrative jurisdictions of Austria and Greece, underline the difficulty of measuring the improvement of delays due to the dematerialization of procedures only because of the legislative and regulatory changes that had a concomitant impact on judgment. Some jurisdictions have established specific measures for this improvement. Before the Supreme Court of the Republic of Korea, cases that benefit from the electronic procedure are judged in 152 days instead of 163 days. Before the Federal Court of Tax and Administrative Justice of Mexico, they are processed in less than 230 days, a reduction of 20% of the delays compared to the standard procedure.

Some jurisdictions note that they could not see any improvement in the time taken to judge cases. The Council of State of Belgium emphasizes that after a period of acclimatization, the registry has experienced an improvement in its effectiveness, without this being translated into a shortening of the trial periods. The Supreme Court of Spain does not find any impact on the time limits for judgment as well, but stresses that the procedure is simplified and that the consumption of paper is reduced.

Jurisdictions in which dematerialized procedures are not yet fully functional have not been able to provide a precise answer.

IV. Features of the electronic access to the courts

4.1. The scope of the dematerialized system.

The scope of the dematerialized procedure differs from one jurisdiction to another. It differs territorially: some states only have such system in the supreme administrative jurisdiction, others in all their administrative jurisdictions.

Depending on the jurisdiction, the computer system may allow:

- to file and transmit the application and the documents of the case;
- to consult the progress of the case;
- to transcribe the hearings;
- to notify the court decision.

It should be noted that in the majority of cases, the system provides for at least the electronic exchange of the documents of the case and the consultation of its progress. Applications that notify parties of status changes in their records are less common, as are applications that allow transcribing audiences.

All jurisdictions that have implemented a dematerialized procedure do not only require the production of digital format documents. In some, such as the Supreme Court of Canada, exhibits may be submitted in both electronic and paper versions. It should be noted, however, that this state of affairs is only a transitional system towards the digital whole and can be explained by the technical difficulty of implementing such a system.

4.2. The access to the electronic system.

The access to the dematerialized procedure by the parties also differs according to the jurisdictions:

- the system can be open to the litigant;
- it can also offer more features to lawyers than individuals, as in Turkey;
- on the other hand, it can constitute a simple internal tool to the jurisdiction that facilitates exchanges between magistrates, as in Finland.

The combinations between the different possible fields and the different parties having access to the

electronic system vary according to the country: for example the electronic system in the administrative jurisdictions in France concerns the Council of State, tribunals and administrative courts of appeal, ensure all functions listed in point 4.1, but only allow individual litigants to consult the status of their case with a code. From 2018, however, the extension to individual litigants on the basis of volunteering, as a first step, is planned.

V. The influence of dematerialization on the functioning of the courts.

5.1. Costs.

In their replies, the majority of the Courts considered that dematerialisation has reduced costs, in particular by reducing paper consumption and lowering postal costs.

However, the Supreme Administrative Court of the Czech Republic stresses that the introduction of such a system also has a financial cost due to the training of personnel, the acquisition of computer equipment, which must be taken into account.

5.2. Working modalities of court registry.

Unanimously, the answers to the questionnaire show an improvement in the efficiency and speed of court registries work. The response of the Council of State of Belgium underlines that a time of adaptation is necessary before the saving of time is effective for the registry. This is mainly due to the need to train the agents.

5.3. Jurisdictional work.

For all jurisdictions with such a system, it is above all a new tool that only has an impact on the practicalities of the work of magistrates and registries, without having an impact on the role of the administrative judge.

The Supreme Court of the Republic of Korea and the Council of State of France highlight the positive impact of the dematerialization of procedures on the collegial work of magistrates, which has become more efficient by simplifying the exchange of information and making the documents more interactive. For example, the Council of State of France believes in its response that the deliberation is enriched because each magistrate of the formation of judgment can access and work at the same time on a case. They can easily access the case and all its documents, including the draft judgment, before and during the session. The discussion of the issues raised by the case is thus more enlightened. Corrections can be made immediately if necessary.

On the other hand, it emerges from the discussions that followed the speakers' presentations during the seminar that the use of videoconferencing during deliberative sessions between judges had certain disadvantages. In addition to the additional technical difficulty of ensuring the secrecy of the deliberations, the physical absence of the judge among the other judges of the court does not allow to feel the atmosphere of the debates. This last point was raised by several participants in the seminar¹.

¹ For instance by Justice Côté, judge at the Supreme Court of Canada, by Mr President Jacques Jaumotte, President of the Council of State of Belgium, and by Mr Franco Frattini, President of the section III of the Council of State of Italy.

Moreover, the wider publicity offered to court decisions could lead to more frequent liability of judges involved in the judgment. This risk is particularly high for judgments rendered by a magistrate ruling alone, which know sometimes important jurisprudential differences. However, the rules of liability of judges differ from one State to another, and in some countries, like Italy, these rules are relatively protective of the judges, and is only possible for the most serious mistakes.

VI. Conclusion.

Despite the great diversity of systems, the dematerialization of court proceedings has a positive impact on the functioning of the courts in terms of deadlines, workload, and cost, which should not however not be idealized. Moreover, as the reports of the Supreme Administrative Court of Austria and the Council of State of France note², the changes in work habits sometimes raise resistances to change of certain magistrates. The introduction of dematerialized procedures then requires the support of magistrates and registry officers.

² According to a study of the Council of State of France, only 6% of judges say that digital is the most suitable medium for handling a case.