

GLOBAL INFORMATION SOCIETY WATCH 2020

*Technology, the environment and
a sustainable world: Responses from
the global South*



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)
AND SWEDISH INTERNATIONAL DEVELOPMENT COOPERATION AGENCY (SIDA)

Global Information Society Watch 2020

Technology, the environment and a sustainable world: Responses from the global South

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EUROPE

THE NEW KID IN TOWN: E-JUSTICE AS A PROMISE FOR ENVIRONMENTAL DEMOCRACY IN THE EUROPEAN UNION



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Introduction

This report explores the increasing importance of e-justice as a tool for achieving more effective access to justice on environmental matters. E-justice has the potential to influence the whole spectrum of environmental rights enshrined in national and international legal frameworks like the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention). We endeavour to compare the pros and cons of the digitalisation of court practices and interaction of citizens and companies with the courts to defend their environmental rights – an alternative avenue for promoting the participatory democracy and inclusive decision making that these rights entail and, in a broader sense, defending human rights.

The report draws an overall comparative analysis of the state and the trend towards e-justice (also referred to as digital justice) in selected EU countries, showcasing the advancements, setbacks and challenges along the way. The analysis of e-justice practices is important from the point of view of environmental justice. All examples in the seven reviewed EU countries have been collected by environmental lawyers who are facing both the opportunities and challenges of promoting and defending environmental rights in a justice system that is only partially digital. This report also briefly looks into the international processes that drive the progress in this area, like the work of the Task Force on Access to Justice under the Aarhus Convention, which encouraged the parties to the Convention, stakeholders and partner organisations to promote public participation in the design, testing and implementation of digital initiatives linked to access to justice.

Environmental e-justice at a glance

In the last years, there has been a growing momentum of policy initiatives and practices on the ground, in Europe and beyond, towards the introduction of

digital alternatives and support tools for the traditional justice system and court proceedings. These have emerged under different names – digital justice, e-justice and cyberjustice. One example is the Guidelines of the Council of Europe on how to drive change towards cyberjustice, where it is stated:

Access to justice is a notion frequently advanced by judicial systems to justify the use of digital tools, which, depending on the context, are intended to increase the amount of information or level of services available to court users or to lower the barriers (taken to mean the material and financial costs) to accessing existing services.¹

However, we approach the e-justice concept from the perspective of an instrument that supports the promotion and defence of environmental rights in the context of the Aarhus Convention. Since 1998, the Convention has been a cornerstone of environmental democracy with its three pillars of access rights: access to environmental information, public participation in decision making, and access to justice on environmental matters. Article 1 of the Convention declares:

In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.²

Being rooted in the sustainable development framework and in the advancement of environmental rights as human rights, the Aarhus Convention's bodies and events have been continuously supporting the use of electronic tools in access to information and justice (e.g. within the Task Force on Access to Justice).

Within these international policy processes, a network of environmental lawyers, Justice and

1 European Commission for the Efficiency of Justice. (2016). *Guidelines on how to drive change towards Cyberjustice: Stock-taking of tools deployed and summary of good practices*. https://rm.coe.int/16807482de#_Toc462148793

2 <https://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

Environment,³ has been very active in analysing and promoting access to justice, with a special focus on civil society. Part of these efforts has been a comparative analysis of the current status and tendencies of e-justice conducted in 2019, in Austria, Bulgaria, the Czech Republic, Estonia, Hungary, Romania and Slovenia. This analysis showcased the advancements, setbacks and challenges along the way. In our view, such a review of the e-justice practices in the EU countries could also encourage civil society action for advancing effective environmental e-justice in the global South.

E-justice in seven countries

In the Czech Republic, all kinds of submissions, including evidence, can be made both in “old style” paper version or in electronic form. There are three electronic forms: simple email, email with certified electronic signature, and via a “data box”. The first one is not considered an “official” way of submitting a legal submission. Therefore, it must be, within five days, supplemented by an official means of submission – either a “paper” version with a handwritten signature (normally a verification is not required, except in environmental cases), or the other above-mentioned electronic forms.

The “data boxes” are a compulsory way of communication between public bodies. Any individual can ask for a data box to be set up, free of charge. For legal entities such as companies and NGOs, as well as for a number of professions, including attorneys, it is compulsory to have a data box, and the system creates it automatically for them. Once a subject has a data box, the public bodies deliver all documents (judgements, decisions, and other official communication) into the data box. The subject is free to choose if they will also send the submissions to the public bodies via the data box, or using the other forms of communication. Although it is free of charge, it is more comfortable to use for those who use a computer and internet on a daily basis.

In Hungary, for a number of years now, e-communication has been made mandatory when attorneys (and clients with attorneys) communicate with the court in all cases, using a platform called Client Gate. However, there have been problems with how the system works. Judges still print out all documents that they receive via the platform, and copies must be printed to show that they were sent and received electronically. All this results in more paper being used than normally would be. At the same time, the system includes online forms which one presumes

one could download, complete offline, and then submit online later. But sending the document to the court directly in this way is not a valid way of submitting a motion against an administrative decision. The form needs to be sent to an administrative agency first, and via this agency, it will get to the court. This means that normally there is no direct way to communicate with the court. This system is not necessarily a problem with big state agencies, but sometimes it is simply impossible to submit electronic documents to small municipal authorities in this way, given that the agency has not developed the IT system to do this, and direct electronic communication with the municipal authorities is not lawfully valid.⁴

When filling in the online form for challenging administrative decisions, one needs to fill in the data of the defendant (i.e. of the administrative authority). However, there is no such thing as a central database of contact data (registration number, etc.) of these authorities. And sometimes these fields are left blank, risking the rejection of the application because of incomplete information.

The e-communication system does not mean that there is e-access to court files. There is no server at the court where one can access or check a case file online. As a result, the whole system is used mostly for sending and receiving documents online, but without having access to an archive of the documents. Moreover, once a case is electronic, the parties to the proceeding cannot submit any document at the hearing in paper form. Even if a party has a paper document and a sufficient number of copies of the document, they can share the document with the court and the other parties, but the document then needs to be scanned and submitted electronically, and the parties need to wait for another hearing to evaluate the evidence.

In Austria, written submissions can be sent to authorities or courts in electronic form. Email submissions are only admissible if there are no special forms of transmission for electronic communication between the authority and the parties involved. The technical requirements or organisational restrictions of electronic communication between the authority and the parties involved are published on the internet. In the case of administrative complaints against administrative decisions, they must be submitted to the authority which made the decision. Therefore, when filing a complaint, it must be checked whether this authority allows electronic

⁴ The situation was remedied in an amendment on 1 January 2020 in the Administrative Judicial Procedure, stating that if the administrative agency does not provide the option of electronic filing (temporarily or permanently), then the motion to start a case can be directly submitted to the court.

³ <http://www.justiceandenvironment.org/home>

submissions, for example, by email. In a case reported by environmental lawyers, the electronic transmission did not work but the applicant did not realise this. Without acknowledgement of receipt, however, he was unable to prove that he had made his application on that date.

In Estonia, there is an electronic database for communications related to court proceedings.⁵ Although one can also submit materials to the court via email, it is expected that professional lawyers use this database to directly enter their documents/submissions to the court. The parties can use the system to access the “history” of the case and have access to all documents submitted. The system has a calendar function with email notification to the parties, so that they will be reminded of deadlines. The system is accessible for anyone with an Estonian ID card, but the use of the system is not limited to Estonian residents or citizens, since the Estonian e-residency programme allows basically anyone from anywhere to get a digital ID card.

In Romania, emails are used for communication concerning court cases. There are online formats for submission of documents. Some courts have implemented software solutions and digitalised the cases, but still there is no national digital platform for the handling of cases. Also, the courts still require that all the documents with original signatures on paper are submitted. For communication with the public administration, emails and scanned documents are sufficient, but there are also cases when submission of certified documents with original signatures on paper is required.

In Slovenia, communication with courts is widely and freely available online, especially for the second and third tier courts, including the Constitutional Court. The information regarding legal procedures in administrative courts or the basic information for potential applicants is also freely available online on the official websites of the state administration. There is an online portal called “e-judiciary”. It enables a person to get a basic online personal identification and grants the user access to certain procedures, like authentication of public documents and registering digital certificates of the authors of public documents, access to the “land register”, or initiating a procedure of compulsory execution.

On the other hand, when it comes to actually filing a case or starting a legal procedure online, the system is very limited regarding online identification. In the majority of cases it is impossible to verify an individual’s identity online, which is necessary in

fulfilling legal requirements. It is possible to start a procedure online for compulsory execution on the basis of an “executable document”. In the Slovenian legal system this is a document which is, if undisputed, an automatic cause for an enforcement of a decision.

In Bulgaria there is an electronic justice portal⁶ through which the copies of documents from a case file can be accessed. The e-portal only offers access to court cases connected to the portal – however, this applies to practically all courts, with few exceptions. The access to the portal is through a user profile, protected with a user name and password. The profile can be used for all court cases, no matter the competent court. The system allows for automatic notification for procedural actions, e.g. for e-summoning the parties to the court hearing. For e-summoning, the parties need to agree in writing to this process at the premises of the competent court.

Conclusion

The overall assessment of e-justice practices across Europe, which are also relevant to environmental justice in the reviewed countries, is that the introduction of the e-justice processes to replace the traditional paper-based justice system has been making considerable progress over the last few years. However, this progress has been uneven, and the developments have been disproportional. Some elements of the system are more advanced than the others, including, for example, the form of e-communications related to court proceedings, and e-forms available online to be filled in electronically. The new e-justice systems are faster than paper-based communication and the traditional way of handling cases, and in the context of the need for social distancing it is safer, minimising the physical presence of the parties in the courts.

However, the digital alternatives can also be in practice difficult to use, with possible mistakes leading to undesired results, because the participants really need to have basic online skills to be able to navigate the system. For example, a simple mistake of sending an incorrect document, or sending a document to a wrong address and believing that a case has been filed, could result in a delay or missing a deadline for submission. In addition, there is often resistance by the administrative authorities to allow online access to documents and files, forcing environmental organisations sometimes to drive across the country to get access to the files. Even in countries like Estonia, where the system is very developed and easy to operate, there

⁵ <https://etoimik.rik.ee>

⁶ <https://ecase.justice.bg>

are problems, for example, with the search function to find case documents, making the system unnecessarily clumsy.

Access to justice is linked to access to information and public participation; similarly, e-justice is related to better online access to decision-making processes. If environmental organisations, activists and local communities have easy and timely online access to all the administrative procedures and decisions (e.g. permits, consent for development), they could express their opinions and concerns in due time, contributing to inclusive environmental governance, and they could challenge decisions more successfully in court, improving the rule of environmental law in the countries.

Action steps

The following action steps are necessary in the EU:

- Capacity building for environmental activists and organisations on e-justice issues, including the existing digital justice platforms and tools.
- Collecting examples of good and not-so-successful e-justice practices from other countries, in particular, how they facilitate environmental justice.
- Building networks of expertise and support beyond existing silos, for example, connecting human rights and environmental defenders, so that they can influence the implementation of digital justice and open governance. In doing this, both bureaucracy and corruption in the environmental sector will be reduced.
- Raising awareness of inspiring leaders and stories in environmental activism and e-justice to encourage new practices and initiatives.
- Involving more young people who are more knowledgeable about ICT tools in digital justice and the potential positive impact of this on the environment.

Technology, the environment and a sustainable world: Responses from the global South

The world is facing an unprecedented climate and environmental emergency. Scientists have identified human activity as primarily responsible for the climate crisis, which together with rampant environmental pollution, and the unbridled activities of the extractive and agricultural industries, pose a direct threat to the sustainability of life on this planet.

This edition of Global Information Society Watch (GISWatch) seeks to understand the constructive role that technology can play in confronting the crises. It disrupts the normative understanding of technology being an easy panacea to the planet's environmental challenges and suggests that a nuanced and contextual use of technology is necessary for real sustainability to be achieved. A series of thematic reports frame different aspects of the relationship between digital technology and environmental sustainability from a human rights and social justice perspective, while 46 country and regional reports explore the diverse frontiers where technology meets the needs of both the environment and communities, and where technology itself becomes a challenge to a sustainable future.

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2020 Report

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