Theme: Judicial Systems, Courts, and ICT

Will E-Justice still be Justice? Principles of a fair electronic trial

By Ronald van den Hoogen[1]

1. Introduction

In the years to come, our Judiciary will change drastically as a result of the possibilities of information technology. Current legal procedure, which is still dominated by paper documents, human activities and written communication, will become increasingly digitized or supported by technical applications. As a result, the administration of justice will become faster, more efficient and more effective. As electronic litigation or E-Justice becomes a reality, there will be many changes. Citizens, companies, lawyers and other legal professionals involved in the judicial process will be able to bring their cases to the court via an Internet portal. Video conferencing, which is already available, will increasingly make it possible to hear witnesses, suspects and legal experts without having to bring them to the courtroom. Courts rulings will be signed, sent and published through the use of electronic signatures, XML and web services. [2] These changes in judicial practice are beginning to occur, not only in the Netherlands, but in the whole of Europe.

Every member state of the European Union is working, to a greater or lesser extent, to digitize their courts systems. These efforts are supported by the European Ministers of Justice. At the informal meeting of the Justice and Home Affairs (JHA) Council in June 2007, a decision was made to promote E-Justice[3], which it defined as the practice of using information technology to improve international legal data communication. The goal is to make it easier to lodge applications and submit documents relevant to a case in another European country.[4]

The introduction of E-Justice will have a huge impact on the European Judiciary. This article examines a number of legal issues related to the E-Justice movement. First, it discusses how the digitization effort will affect the quality of justice in the European Union. Second, it analyzes how the process of digitization will influence and affect the rights of participants in the judicial process. Finally, the article examines how Europe will formulate 'principles of a fair electronic trial' that will serve as the basis for discussing the advantages and disadvantages of IT to the judicial process. The ultimate question is whether *E-Justice* will still be *Justice*.[5]

2. A Fair trial

To be able to assess the impact of digitization on the judicial process and the quality of justice, we must first define the concept of "quality of Justice." While the concept of Quality of Justice can be defined in many different ways, we define the concept by reference to the European Convention on Human Rights (ECHR). That document provides clear quality guidelines and requirements for the Judiciary, and includes a number of different elements.

One element of quality of justice is defined in Article 6 of the ECHR which prescribes that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. In addition, the jurisprudence of the European Court for Human Rights has decreed that the right to access to justice is a fundamental element of the right to a fair trial. [6]

A second element of quality is provided by the principles of access to justice. This principle, which means justice should be accessible and affordable for everyone, is subject to restriction. Courts and states may impose limitations, provided that the limitations do not affect the nature of the access and that they serve a legitimate purpose, and provided that a proper balance is maintained between the legitimate purpose and the restrictions imposed.[7]

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[2] http://en.wikipedia.org/wiki/Web_service

[3] http://www.e-justice2007.de/index.php?lang=en

[4] See U. Berlit, *E-Justice – Chancen und Herausforderungen in der freiheitlichen demokratischen Gesellschaft*, JurPC Web-Dok. 171/2007, Abs. 1-146.

[5] R.H. van den Hoogen, E-Justice, beginselen van behoorlijke elektronische rechtspraak, The Hague: SDU 2007.

[6] ECHR, 21 February 1975, case 4451/70, Series A, 18 (Golder/ United Kingdom)

[7] ECHR, 28 May 1985, zaak 8225/78, Series A, 93 (Ashingdane/ United Kingdom).

A third element of quality is the right to a public hearing which means that the public has a right to visit and observe courts and hearings. Of course, this right extends to the parties to the proceedings themselves.[8] It also means that court verdicts, as a rule, must be delivered in open court. However, some hearings can be held behind closed doors for reasons of public health, public order or national security, or to protect the interest of minors or the privacy of litigants. The right to a public hearing generally includes the right to a publicly pronounced judgment. However, the European Court for Human Rights has decided that it may be sufficient to render the judgment in a courtroom that is accessible to the public[9] or to send it to the parties directly.[10]

A fourth element of quality is a right to the independent and impartial administration of justice. Independence and impartiality, at a minimum, means that the judge may not be influenced in taking his decision. In addition, it requires consideration the procedures for appointing judges, their term of office, any outside pressure and the impression that is created concerning their independence[11].

The right to have justice administered within a reasonable period of time means that the legal proceedings should not take too long. In assessing reasonableness, the duration of proceedings preceding the legal action must be taken into account. [12] The European Court of Human Rights imposes on the member states the obligation to set up their legal systems in such a way that courts can handle their cases expeditiously. The Court has developed four criteria for assessing reasonableness: (a) the complexity of the case, (b) the conduct of the parties involved, (c) the interest of the parties involved and (d) the administrative and judicial activity. [13] The complexity of a case may delay the handling of the case, whereas a special interest of one of the parties may require faster handling. [14]

The right to a fair trial has three characteristics: the right to defence, the right to equal arms and the right to a sound reasoning. The right to defence means that the parties to the proceedings must be able to defend themselves against or to respond to an accusation or allegation of the other party. It also includes the right to sufficient time and facilities to prepare a case. Some other elements of the right to defence are described in article 6, paragraph 3: The right to summon witnesses for the prosecution and the defence and experts[15], the right to question witnesses and experts and the right to defend oneself and to be present at the hearing. [16] The right to equal arms implies that both parties must have the same means at their disposal to defend their interests. [17] The right to a sound reasoning involves the requirement that the judgement includes the reasons for the decision.

These rights and the way in which they should be interpreted, will be influenced by developments in information technology, and will need to be the subject of further studies in the years to come. A preliminary analysis is given below. That includes an initial formulation of the principles underlying digital administration of justice and proper *electronic* administration of justice.

3. Accessible Electronic Administration of Justice

The administration of electronic justice must be accessible. This means, among other things, that it must be easy for litigants to take matters to court. The use of Information and Communication Technology (ICT) creates the potential for reducing legal costs by enabling clients to better access legal information, and do more of their own legal work, thereby reducing the cost of engaging lawyers. Publishing legal information on the Internet can improve public knowledge of the court system, thus making courts more accessible. I will not describe these aspects of access to justice, but will instead focus on other matters more closely related to the quality of the administration of Justice.[18]

Judicial electronic data interchange is closely related to quality. Under the current system, documents must first be filed at the court registry or brought before the court by mail, so that the parties must be well aware of the procedure to be followed. Electronic access may simplify this process by allowing cases to be brought before the court via an Internet portal, for example by using standard forms or by logging in on a shielded website of the judiciary, after which documents

[8] ECHR, 8 December 1983, zaak 7984/77, Series A, 71 (Pretto e.a./ Italy).
[9] ECHR, 8 december 1983, zaak 7984/77, Series A, 71 (Pretto e.a./ Italy).
[10] ECHR, 8 december 1983, zaak 8273/78, Series A, 72 (Axen/ Germany).
[11] ECHR 28 June, 1984, case 7819/77, 7878/77, Series A, 80 (Campbell & Fell/ United Kingdom).
[12] ECHR, 9 December, 1994, case 19005/91, 19006/91, Series A, 304 (Schouten & Meldrum/ the Netherlands).
[13] ECHR, 28 June 1978, Series A, 27 (König/ Germany).
[14] ECHR, 8 December 1983, case 7984/77, Series A, 71 (Pretto e.a./ Italy).
[15] ECHR, 28 August 1991, case 11170/84, Series A, 211 (Brandstetter/ Austria).
[16] ECHR, 12 February 1985, case 9024/80, Series A, 89 (Colozza/ Italy).
[17] ECHR, 10 February, 1983, case 7299/75, 7496/76, Series A, 59 (Albert & Le Compte/ Belgium).
[18] For a discussion on Access to Justice Technology Principles, see: http://atjweb.org.

may be uploaded. With a limited number of mouse clicks, a lawyer or a litigant may institute an action and send all relevant documents to the court. Thus, access to the courts is greatly improved as courts are open 24 hours a day, 7 days a week. Documents can be submitted free of charge from any location.

The advent of electronic filing processes raises a host of issues. In particular, do litigants have the *right* to file documents electronically? If so, *must* litigants institute proceedings electronically, or may they still file paper documents? Of course, a requirement of e-filing can create access problems because not all people are computer literate. In addition, if a court is capable of receiving electronic documents, how does it convey this information to the public? And, for electronic filers, must they provide a street address or will an e-mail or website address suffice?

The Wet elektronisch bestuurlijk verkeer (Administrative Law Electronic Data Traffic Act (ALEDT)) has effect since 1 July 2004. [19] This Act provides rules for electronic data traffic with administrative bodies. A legislative proposal is now being prepared in the Netherlands to apply this Act to electronic data traffic with administrative law courts. Both the ALEDT and new Act are based on the assumption that electronic data traffic will take place on a voluntary basis. In other words, electronic data traffic can only take place if both the court and the litigants are willing and able to communicate electronically. Because of the principle of equality of resources, citizens retain the right to submit documents non-electronically in hard copy form. [20] They will not be forced to work digitally.

But what about professional litigants, such as lawyers, bailiffs and other government bodies like the Public Prosecutions Department or administrative bodies? Can they be expected, or required, to deliver their documents electronically now or in a few years time? Can professional participants in the judicial process - including judges - be obliged to work digitally? In several judgments the Supreme Court of the Netherlands has held that the government, or at least the Public Prosecutions Department, may have an obligation to work digitally. In 1995, the Court held that a suspect cannot be summoned to court 'without providing notice to a permanent or temporary address', provided that the street address is known or can reasonably be known to the Public Prosecutions Department.[21] In determining if the address is known or can be known, the Supreme Court has taken into consideration the fact that the Public Prosecutions Department has a data system which contains the names and addresses of all persons detained in penal institutions. With this system, it is easy for the Department to find out if a suspect is being detained, and if so, in which institution. The Public Prosecutions Department failed to check the data base do this in the two cases mentioned and the Supreme Court attached legal consequences to that the failure; invalidation of the summons. There are good reasons why this should not only be an obligation of the Public Prosecutor's office, but also a general obligation of other government bodies such as the Judiciary. [22]

There is a trend in the Netherlands to require professionals to work digitally. In the Netherlands, entrepreneurs are already required to file their tax returns electronically. [23] Recent legislative proposals seek to force certain categories of litigants to submit applications and notices, as well as to file and send papers and documents electronically.[24] It will not be long before this obligation is extended to the legal profession. Our legal system will inevitably develop towards a more professional use of ICT.

Principle 1. *Equal access:* For non-professional parties to proceedings,the non-electronic way must be maintained. Professionals should be obliged to work digitally.

If the court is digitally accessible, should it remain digitally accessible? This seems to be a logical step resulting from the general notion that the government must be a confidence inspiring and reliable partner to litigants. This requirement has been included in the previously mentioned Administrative Law Electronic Data Traffic Act and the legislative proposal Office of Local Counsel (Abolition) Act.

Under the Act, the Judiciary may not unilaterally terminate an information relation, including information on the Judiciary's website. That website – rechtspraak.nl – is becoming an increasingly important source of information for lawyers and other professionals. Therefore, it is of paramount importance that attention be given to the quality of the systems used to

[19] Bulletin of Acts and Decrees 2004, 214.
[20] Parliamentary Papers II 2001/2002, 28483, no.3, p.9.
[21] SC 7 February 1995, case law 1995, 618; SC 14 February 1995, case law 1995, 536.
[22] Cf.. Vgl. R.H. van den Hoogen, 'Technologie verplicht', NJB 1997, p.1677-1678.
[23] http://www.belastingdienst.nl/download/687.htm
[24] See art.33, paragraph 2 legislative proposal Abolition of obligatory function of local counsel in civil proceedings.

store and retrieve this information.[25] Inadequate website information will eventually lead the European Court to conclude that the judicial system is insufficiently accessible. The requirement that 'information relationships' entered into by members of the judiciary must be maintained can be regarded as a principle of sound electronic administration of justice.

Principle 2. *Continuity:* Information relationships entered into by members of the judiciary must be maintained, unless it was made clear beforehand that the relationship will be of a temporary or experimental nature.

If information is published on a website, or if courts are digitally accessible, this does not always improve accessibility. Problems of accessibility can remain for certain categories of litigants who are not computer literate and therefore need paper. A website may also reduce accessibility if the disclosure of information is unclear. There is an information paradox whereby more data does not necessarily provide more information. [26]

In an effort to address these problems, the Ministry of the Interior and Kingdom Relations, recently published so-called *web guidelines* governing the accessibility of government websites. [27] These guidelines prescribe that government websites must be permanently accessible. In addition, the Guidelines require that websites be "sustainable" in the sense that their content must be based as much as possible on – possibly open – standards for their structure, meaning, representation, storage and access. The applications and systems used must be in line with generally accepted applications. The Guidelines also require "accessibility" relating to the traceability, availability and currency of data and the user-friendliness of applications. The web guidelines indicate that the traceability of information is also important as a principle of sound electronic administration of justice.

Principle 3. *Quality of information:* electronic information to facilitate the access to the court must be accessible, traceable, clear and up-to-date. Generally accepted technology must be used as much as possible.

The electronic administration of justice must be confidence inspiring in order for the public to assume that accessibility is guaranteed. If digital documents are not completely received, or if there is a risk that outsiders are able to read or change the information, the public will not use the system, accessibility will decrease. The obvious solution for the Judiciary is to link its requirements to the requirements for electronic data exchange between administrative bodies as set in the Administrative Law Electronic Data Traffic Act. That Act emphasizes reliability and confidentiality[28], as well as authenticity (the idea that the data must actually originate from the sender) — and integrity – (the data must be complete and not changed by unauthorized persons). The information should also be inaccessible to unauthorized parties. The act prescribes that electronic data traffic must comply with the same requirements as conventional data traffic. Often there are no good reasons for placing demands on electronic data traffic that are out of all proportion to the demands put on conventional traffic. The criteria for securing networks and data sometimes form a barrier to the progress of electronic data traffic, whereas many messages are still sent by mail virtually unhampered by any safety regulations.

Principle 4. *Reliability:* electronic data traffic must be reliable and confidential. In determining the level of reliability the standards for conventional traffic must serve as a guideline.

4. Public electronic administration of justice

Proper administration of justice is visible administration of justice. The use of ICT can improve the implementation of the right to public access. Court sessions can be followed by 'webcams' and broadcast via the Internet, thereby allowing the general public to follow court sessions. From a practical point of view, it will not be possible to equip all courtrooms with webcams. In the case of court cases that draw a lot of public attention, broadcasting the court session via the Internet provides a much better way of implementing the right to public administration of justice. It is true that courtrooms are presently accessible to the general public, but in the Netherlands journalists are usually not allowed to record sessions

[25] See: C.N.J. de Vey Mestdagh, J.J. Dijkstra en A. Oskamp, 'Kwaliteitsbewaking van juridische informatie- en kennistechnologie', in: A. Oskamp en A.R. Lodder (red.), *Informatietechnologie voor juristen*, Deventer: Kluwer 2002, p.137-163.
[26] H. Franken, Maat en regel (Measure and Measurement) (inaugural lecture Rotterdam), Arnhem: Gouda Quint 1975.
[27] Advies.overheid.nl, web guidelines 2005.
[28] Parliamentary Papers II 2001/2002, 28483, no.3, p.2.

and judges can prohibit journalists from doing their jobs.[29] The basis for this judicial authority is a matter of some debate. While the law itself simply provides for open court sessions, judges have sometimes limited reporters based on their authority to maintain 'order in court'. [30] It was feared that large cameras and strong lights might disturb the judicial process. However, today, journalists can make quality recordings using small, mobile cameras. In other words, judges can no longer rely on the need to maintain "court order" as a justification for cameras in the courtroom. However, judges might rely on another justification, the need to protect privacy, especially in criminal cases. Pursuant to article 6 ECHR, the right to public access to trials must be reconciled with the privacy interests of litigants. Technically it is easy to protect the privacy of suspects and broadcast the session at the same time, for example by incorporating a slight delay and 'erasing' personal data digitally. The Yugoslavia Tribunal has been working in this way for years. [31] Nevertheless, it is safe to assume that the right to public access will eventually be interpreted to require that court sessions actually be public and visible to everyone.

Principle 5. *Freedom of the Press:* journalists must be free to do their job in court, if the privacy of litigants is sufficiently protected. They should also be permitted to use ICT.

The use of ICT may obstruct implementation of the right to public access. The use of digital files or video conferencing might make it more difficult for the public to be present in the courtroom, and actually observe, court proceedings. If judges and lawyers conduct proceedings through computer screens, or through cameras invisible to the public, the principle of public access is not served. But the reverse could also be argued. If the contents of a file are projected on a large screen, or if films can be shown during the court session, court sessions are more accessible and understandable than presently is the case. In that case the right to public access may be served even better. The right to an understandable court session, through the use of also if ICT, may come to be regarded as a right in the public administration of justice.

An important aspect of the right to fair administration of justice is the right to attend one's own trial. In the Netherlands, courts have held that this requirement is met if video conferencing is used. Video conferencing does not deny suspects access to the judge because suspects and their counsel can exercise al the rights available to them in court and can actively take part in the hearing. Therefore, videoconferencing satisfies the requirement of principle 6 that parties to the proceedings must be able to follow the hearing.

Principle 6. *Public accessibility*: Even if court sessions are partly held digitally, the press, the public at large and the litigants must be able to follow the proceedings closely.

Public access to the administration of justice also requires that court decisions will be pronounced publicly. Although publishing court decisions on the Internet is the best way of informing the public, court decisions are presently only published online in the Netherlands to a limited extent. The Judiciary's websites publishes only interesting decisions online, and these decisions are selected based on selection criteria created by the Council for the Judiciary. These selection criteria leave room for different interpretation by courts on what must be considered to be interesting for the public. Van Opijnen demonstrated that there are considerable differences between the decisions that courts publish on the Internet portal Rechtspraak.nl.[32] One could argue that publishing judgments on the Internet is required by the public nature of judicial decisions, and is the modern way of implementing the right of public access to judgments. Practical implementation of the right to access suggests that it may not be desirable to publish large quantities of identical court decisions in standard cases. In addition, in order to protect the privacy of litigants, it will be necessary in some cases to remove certain personal data. This removal could make it more difficult to search for, and locate, and judgments. Nevertheless, in my view the principle that all court decisions must be published online remains a principle of sound electronic administration of justice.

Principle 7. *Online publishing*. All court decisions must be published on the Internet.

5. Independent and impartial electronic administration of justice

[29] This is outlined in a so-called press guideline formulated by the judiciary itself. See http://www.rechtspraak.nl/Actualiteiten/Informatie+voor+de+pers/Persrichtlijn.htm

[30] G.A.I. Schuijt, *Vrijheid van nieuwsgaring*, Den Haag: Boom Juridische Uitgevers, 2006, p.274.

[31] http://www.un.org/icty/

[32] M. van Opijnen, 'Uitspraken op Rechtspraak.nl – een representatief beeld?', *Trema 2006-1*, p.14-22.

The administration of justice must be independent and impartial. As a result, the judge should be able to form his opinion independently and should not let himself be influenced unlawfully. The appearance of partiality must also be prevented. Judges are assisted in achieving these tasks by numerous digital information sources. 'Porta Iuris' is a judicial information management system that allows judges to consult several judicial databases, as well as the sentencing system 'Databank Consistente Straftoemeting' (CST; Database Consistent Determination of Punishment). [33] CST is a system that compares the sentencing in cases relating to similar offences.[34] It may be used by judges as an advisory system when making a judgement. The database includes judgments since 1999 that imposed non-suspended prison sentences of four years or more. CST is the result of experiments and research into computer-aided sentencing at the end of the nineties. Despite these possibilities, the extent to which judges are actually influenced in their judgments is limited. There is no obligation to use any ICT application whatsoever.

The literature suggests that these uses of ICT applications can actually influence judges and judicial decisions.[35] Information systems – like CST - contain numerous standards, interpretations and assumptions[36], and there is a risk that judges will base their decisions on the assumptions. Of course, it is permissible for judges to rely on systems like CST provided that judges are free to deviate from the system and to provide their own interpretations of facts and rules. At the same time, it is important that the data bases on which judges rely be made public via the Internet. [37] The public has the right to access and analyze the facts and rules on which a judge bases his decision.

Principle 8. *Transparency*: Decision programs used by the judge to support his decision must be actively made public by publishing them on the Internet.

The question whether computers should be allowed to administer justice, has been a frequent topic of discussion.[38] Or, to put it differently: should it be possible to render a judgment without the participation of a judge? Although the notion of computer-rendered decisions is both inconceivable and undesirable to many, the question remains whether principles can be formulated that guarantee the sound administration of justice in this context.

Before answering this question, it should be noted that the notion of computerized judgments is not as futurist as it may seem. In many simple cases, decisions are taken within the present judicature without a judge actually passing judgment.[39] Many decisions are taken by support staff and are only marginally considered by the judge (if at all) who simply provides a signature. Sometimes, support staff uses stamps to affix the judge's signature. From a practical point of view, computerized administration of justice is only a small step away. Nevertheless, further study will be needed to determine which cases might be handled in a fully computerized manner. Nevertheless, from a judicial point of view, there are no fundamental obstacles to computer-rendered justice.

Principle 9. *Computerized administration of justice:* in simple cases there is no fundamental objection to computerized administration of justice.

6. Electronic administration of justice within a reasonable period of time

Proper administration of justice includes the notion of "effective" administration of justice. Litigants are entitled to an expeditious proceeding, considering the time elapsed in previous proceedings, and ICT can help expedite the resolution of judicial proceedings. If cases can be brought before the court electronically, and documents can be sent and processed digitally, the process of justice will be expedited. Although it is difficult and time consuming to search large files at present, digital files could be consulted with one mouse click, and could be consulted by several people at the same time. As a result, judicial use of ICT permit courts to resolve cases more quickly than is presently possible with paper files. It may take some time, but in a number of years the right to administration of justice within a reasonable period of time will be

[33] G.K. Schoep, P.M. Schuyt, *Instrumenten ter ondersteuning van de rechter bij de straftoemeting, een onderzoek naar de (potentiële) effectiviteit van de Databank Consistente Straftoemeting en de oriëntatiepunten voor de straftoemeting*, Leiden: E.M. Meijers Instituut 2005.

[34] E.W. Oskamp, *Computerondersteuning bij straftoemeting, de ontwikkeling van een databank*, Arnhem: Gouda Quint 1998.

[35] E.g.: M.M. Groothuis, *Beschikken en digitaliseren, over normering van de elektronische overheid*, Den Haag: SDU 2004.

[36] E.H.M. Hirsch Ballin, 'Democratie en informatiesamenleving', in: P.H.A. Frissen, A.W. Koers & I.Th.M. Snellen (red,), *Orwell of Athene? Democratie en informatiesamenleving*, Den Haag: SDU 1992, p. 77-86.

[37] Also see M.A.P. Bovens & S. Zouridis, 'Van street-level bureaucratie naar systeem-level bureaucratie. Over ICT, ambtelijke discretie en democratische rechtstaat', in: *NJB 2002*, p.65-74.

[38] H.J. van den Herik, *Kunnen computers* recht*spreken?* Arnhem: Gouda Quint 1991.

[39] See for discussions about 'hard' and 'clear' cases: M. van der Linden-Smith, *Een duidelijk geval: geautomatiseerde afhandeling*, Den Haag: SDU 2001.

based on the periods of time that can be realized by making optimum use of the possibilities offered by ICT. If a court does not wish to use the possibilities of ICT, this could be a reason to assume that the reasonable period of time is violated, if it is plausible that the judgment would have been pronounced sooner if ICT had been used.

Principle 10. *Expeditious handling:* cases must be tried expeditiously, taking the possibilities offered by ICT into account.

The reasonableness of time periods is judged on the basis of the duration of the entire proceedings, including preliminary proceedings. The use of ICT can expedite proceedings substantially by sending documents to the court digitally and by processing them directly into court systems. Of course, the ICT system will require that courts to make arrangements with legal partners of the judiciary like lawyers and bailiffs as to how documents are submitted digitally. This could be referred to as chain-computerisation[40] and impact our notions regarding the right to the administration of justice within a reasonable period of time, and will discourage judges from taking postal delivery times into account in determining reasonableness. In due course the judge and his legal partners, especially those in the public sector, will be obliged to communicate and exchange information electronically, and the use of ICT will come to be regarded as a general principle of proper electronic administration of justice. In some five years' time, citizens involved in legal proceedings will be able to rely on its presence.

Principle 11. *Chain-computerisation:* where possible, the information exchange between the judiciary and other legal organizations must take place electronically.

7. The right to fair electronic treatment

Litigants have the right to fair treatment meaning that both have the right to equal opportunities to defend their interests and to clarify their legal positions. They must also be able to comment on documents in their file, to call witnesses and experts, to react to the opposing party's arguments, and the time and the facilities to prepare their case and to attend court sessions. Fair treatment also includes the right to sound reasoning. The right to fair treatment especially manifests itself during the trial when it becomes clear whether the parties are treated equally. Fair treatment and equality must also be reflected in the judgment and the grounds stated in support of the judgment. The arguments of both parties must be carefully weighed in the court's decision and its grounds.

Courts must prevent one party from gaining an advantage over another through the use of ICT, especially when one of the parties is less capable of defending his interests using ICT applications. [41] This subject was discussed in connection with the use of the CST database mentioned above. The system was made available only to the Public Prosecutions Department for some time, and was not generally accessibly by the legal profession. Therefore, it was decided in 2005 to give the legal profession access to the database as well. [42] A. Wallace even posed the question whether the right to a fair treatment might even require a judge to limit the use of ICT by one of the parties: "At the end of the day, there may be situations where the court will have to limit the use of technology, in order to ensure that its use does not give one party an advantage over the other."[43]

The judicial obligation, however, extends beyond the principle of fair treatment. The judge cannot be expected to foster perfect equality between the parties. If one of the parties is not capable of working with ICT applications, the judge or the other party cannot be blamed for this lack of capacity. Situations can arise, however, when the judge or the judiciary has a responsibility to act. If, for example, the Public Prosecutor is given the opportunity to hear witnesses abroad by means of video conferencing, and is capable of managing such a hearing properly, the judge should enable the suspect to participate in the video conferencing process. In some cases, the court may be required to offer the parties support in operating videoconferencing equipment or in establishing videoconferencing setting up the connections.[44]

[40] J.H.A.M. Grijpink, *Onze informatiesamenleving in wording, de uitdagingen van grootschalige informatie-uitwisseling in de rechtsstaat*, Den Haag: Universiteit Utrecht 2005.

[41] Cf. A. Oskamp, A.R. Lodder & M. Apistola (eds.), IT support of the Judiciary, Australia, Singapore, Venezuela, Norway, the Netherlands and Italy, The Hague: T.M. Asser Press 2004, p.12.

[42] M.J.A. Duker, 'De Databank CST nu ook voor advocaten beschikbaar', *Trema 2005-1*, p.6-11.

[43] A. Wallace, 'Australia', in: A. Oskamp, A.R. Lodder & M. Apistola (eds.), IT support of the Judiciary, Australia, Singapore, Venezuela, Norway, the Netherlands and Italy, The Hague: T.M. Asser Press 2004, p. 17-43.

[44] At the same time it could be argued that certain ICT applications for consulting Internet pages or using e-mail have become so customary nowadays that support offered by the judiciary would be a little far-fetched.

Principle 12. *Equality:* both parties to the proceedings must have equal access to and equal opportunities to use ICT applications.

An opinion often expressed in the literature is that the use of ICT may enable the judge to improve his reasoning for a decision.[45] This is based on the assumption that the judge would in fact do this. The relevant question is, however, if the judge *should* improve his reasoning for the decision. This would be in line with the principle formulated above that professionals may be obliged to work digitally. A judge using a decision supporting system is usually able to specify precisely on which rules he or she has based his or her decision. The next question is: how far should the obligation to provide reasons stretch? Do judges have to consider the hundreds of judgments they may find in a database such as CST? Such questions should be the subject of further investigations.

Principle 13. *Right to attend:* if the use of ICT can improve the justification of decisions, decisions must be better justified.

8. Conclusion

Digitization has changed, and will continue to change, the judicial system and judicial processes. It is of paramount importance that courts and commentators begin to understand the possible consequences of electronic processes on judicial quality and the administration of justice. In the present article, thirteen principles of proper electronic administration of justice have been formulated that can be seen as a framework for the electronic administration of justice. If we want to ensure that the electronic administration of justice remains fair, courts and court administrators must adhere to ‑recognize and adhere to the following thirteen principles and requirements: continuity, equal access, traceability, reliability, freedom of the press, public accessibility, online publication, transparency, computerized administration of justice, expeditious handling, chain management, equality and the right to attend.

Adhere to these principles will have consequences for the judge, who will be required to take them into account in actual court cases, as well as for the parties to‑proceedings whose rights and obligations may be affected by the possibilities of ICT. Judges will be expected to understand and anticipate these 'new' rights, and improve their use technical facilities in preparing and handling cases. In the not-too-distant future, judges will be required to have the capacity to work digitally, and the possibilities of ICT will place higher demands on the administration of justice which will be forced to become better, faster, more careful and safer than is presently the case. These changes and possibilities will affect judges and the quality of judgments and proceedings they can offer.

In the past one sometimes wondered if computers would ever administer justice, but in some years’ time the question will be justified if the judges themselves are still capable of administering justice. I predict that the answer will be: yes, but not without the computer.

[45] L. Mommers, ‘Computers kunnen argumenteren’, in: *Automatiseringsgids* 2002-36, p.17.

Principle 13. *Right to attend:* if the use of ICT can improve the justification of decisions, decisions must be better justified.

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