

E-justice in the European Union & Impact of COVID-19 crisis **Ritsumekan University/Kyoto**

1) E-justice at the service of the Single Market

The European Commission is running a dedicated portal ([The European e-Justice Portal](#)) as a service to enhance the usefulness of the Single Market for its key players, in particular the business community and the legal professions. Therefore, a lot of information is provided in 23 languages of the EU which is a challenge in itself.

The areas covered include legal aid, judicial training, European small claims and videoconferencing as well as links to legal databases, online insolvency, business and land registers. The portal also includes user-friendly forms for various judicial proceedings in 27 jurisdictions.

While this endeavour predates the COVID-19 crises, the Portal also deals with specific problems created by the crisis in various areas of law.

2) E-justice and the COVID-19 pandemic

Of a generic nature are the problems encountered because of the de jure or de facto closure of borders, of courts, difficulties to provide evidence, cross-border provision of legal services including legal documents, acceptance of e-mail communication, use of video-links... This may impact on time limits, expiry, the interpretation of exceptional circumstances having in mind the need to guarantee effective access to justice for EU-citizens.

Commercial and insolvency law should take into account the shocks the pandemic crisis has delivered to some businesses because of lock-downs motivated by public health considerations, in particular tourism, hoteliers, artists and culture industry...

While these delays will have economic consequences and impact on tax collection, they could also lead

- i) requests to change insolvency laws to take into consideration pandemics
- ii) free criminal energy for fraud.

Judicial cooperation in **criminal matters** is impacted and the application of EU instruments such as the European Arrest Warrant. COVID-19 regulations also impact on the contact between suspects and their legal counsels (need to guarantee confidentiality), access to files especially when in custody. The wearing of masks as well as video interviews don't allow judges to evaluate facial expressions which are important. Penal proceedings might differ in this respect from civil or administrative ones. (Parallelism with diplomatic intercourse where confidentiality and direct informal contacts in the margins of official meetings are crucial.)

The situation in **prisons** creates pandemic related problems because of the difficulty of social distancing and suspension of outside visitors, family or legal support.

This also includes the access of **victims** to support and redress.

COVID saw a sharp increase in domestic **violence**, in particular against women with the difficulty of getting support because of social distancing or quarantine regulations. While on-line services can be of help, not all victims have access or the possibility to contact/call.

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Due to the heavy concentration on internet services and social media, **cybercrime** increased exploiting in particular vulnerable (children, girls) persons, those engaged in teleworking and teleshopping. **Hate crime**, whether based on gender, racism, radicalisation ..., increased too.

The role of **tech-companies** and their autonomous control of the content in their services or access to them (Trump cut off from Twitter) also needs evaluation and solutions which disentangle communication services which have become essential not only for private but also official use from the sole control of the management of these companies. Can they autonomously decide whom to exclude from their service (based on which criteria) or eliminate content (based on which criteria)? Have these services become so important that they have to contract with everybody comparable to public transport?

The **use of digital tools** by the judiciary has become more important but needs to take into account the basic rights and the legal culture of Member States of the EU. For an overview click [here](#).

Human rights are under duress because of pandemic induced measures: right to assembly, demonstration, free speech, travel, education... which potentially impacts negatively on the democratic system in general as authoritarian tendencies are re-enforced which makes legal review and control particularly important. As these issues pertain often to constitutional courts whose seizure as courts of last resort often takes time, accelerated procedures might become necessary should they not exist to prevent infringement of human rights.

Access to legal procedure for **persons with disabilities**, either physical or mental, needs special care as the handling of technical tools necessary might not be possible which also applies to many senior citizens.

Data protection is a special case: contact tracing needs regulation and control as data from iPhones, credit cards and surveillance cameras could be issued. The transfer of data is regulated by GDPR standards which will force authorities to decline data transfers in some countries. There is an inherent link with cyber-security as essential infrastructure e.g. in this case especially those used for data transfers, need to be save to prevent data theft and misuse.

AI: ethical consideration are of particular importance: in the context of i) international law and the law of war: AI takes decisions on missile attacks on predetermined targets (and is not able to distinguish whether an assembly of persons in the target area are soldiers or a wedding party which raises the question of responsibility if decisions are taken without human involvement; ii) in the context of decision making (rendering a sentence in a civil or criminal or administrative case) based on algorithms which in turn are based on past decisions which may not be appropriate any longer because of a change in societal values or changes in law.

In addition to the European Union, the **Council of Europe** is also involved in providing legal guidance, click [here](#).

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