

# Fair On-Line Civil Trial: An Important Aspect of E-Government

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**Abstract—** *Incorporation of Information and Communication Technologies (ICTs) into eGovernment and eAdministration is designed to be a method for reducing time and costs of services for both citizens and Public Administration and to realize at the same time an efficient system. An important aspect of eGovernment is the on-line civil trial, in other words, the insertion of ICTs into justice administration to realize a judicial trial in which the different subjects involved in a process can create documents and communicate through information and communication technologies. This phenomenon calls for increasing attention and poses a pressing need, especially with regard to the legal effects arising from the use of advanced technologies in judicial process. However, most existing work is devoted only to technical aspects; no current work deals specifically with the issue under discussion. At the moment there are only various European projects with the aim of publishing the results of their research. The purpose of this work is to underline the advantages and problems of developing ICT use in justice administration. Finally, this paper proposes some suggestions to update ICT use in the judiciary system towards a fair on-line civil trial.*

## 1. THE ON-LINE CIVIL TRIAL

THE experience of on-line civil trial in front of courts has been extended to judiciary claims - not only small claims - through the use of advanced technologies. In practice, this judiciary procedure is designed to bring suits electronically, to transfer and to send procedural acts and documents, to deliver documents, to record case files digitally and, in general, to support file management and case management [Rußmann, 1999].

The aims of technological proceedings are several: a reduction in justice time, promotion of ease of transport and facilitation of drafting subsequent judgements. Electronic and on-line judicial proceedings, in addition to the aforementioned advantages, can assume different roles. On the one hand, this new technology can be merely a support to the court organization. On the other, this technology could take over primary and leading functions of

a process such as judicial decision-making.

All over the world there are many different approaches in the use of advanced technology in judicial proceedings.

At the moment, in the USA electronic procedure is devoted merely to small claims, like a sort of automatic dispute resolution.

In Europe, many countries' projects on the integration of advanced technologies into the legal system with the intent of creating a digital public administration and a new information technology for courts and justice administration [Zuckerman, 1999], which may be considered the maximum examples of eGovernment, have been experimented [Fabri and Woolfson, 2001; Oskamp, Lodder and Apistola, 2004]. In particular, in Italy<sup>1</sup> the Ministry of Justice has invested many resources in ICT projects for the judiciary to improve the effectiveness of a justice system in constant crisis [Di Federico, 1998; Guarnieri and Zannotti, 2006].

A very encouraging experience of e-justice has been experimented with in Singapore<sup>2</sup>, where the judiciary system has been digitalized since 1990 with excellent results [Tin, 1999].

The depth of ICT employment in judiciary administration depends on the legal validity of the on-line civil trial and is related to the validity of electronic documents and signatures not only for assuring a high level of security, but also for respecting the handwritten form when it is necessary.

At the moment, the legal validity and effectiveness of electronic documents are ruled in many European countries in compliance with European law.<sup>3</sup>

On an international level there are other law acts, especially the US regulation the UTAH [UTAH] and SEAL [SEAL] acts and the Digital Signature Guidelines from the American Bar Association, Section of Science and Technology.

<sup>1</sup> In Italy the law d.p.r. 13 febbraio 2001, n. 123. An on-line summary judgement is in function at the Court of Milano. It came about through a strict collaboration with the Bar Association of Milano and the Court to allow all lawyers involved in the on-line summary judgements to access digital signature and technical devices for the on-line judicial proceedings. This summary judgement concerns the claims accrued which are not only small claims but also those with a noticeable economic value and it is characterized by a preliminary instruction based upon only documentary evidence.

<sup>2</sup> [www.ecitizen.gov.sg](http://www.ecitizen.gov.sg), [www.psi.gov.sg](http://www.psi.gov.sg), [www.gebiz.gov.sg](http://www.gebiz.gov.sg).

<sup>3</sup> Directive 1999/93/CE of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures.

In addition to these aforementioned legal acts the electronic signature's legal rules are also addressed by both the Organization for Economic Co-operation and Development and United Nations Commission on International Trade Law (UNCITRAL) through their Model laws on Electronic Commerce in 1996 and on Electronic signatures (2001).

The on-line trial has the following requirements: security, confidentiality, integrity, and authentication of transmission documents also within the provisions of privacy law.

The mechanism of the digital signature based upon a cryptography system (e.g., RSA or DSS signatures) and is able to guarantee the aforementioned on-line trial requirements. The same technology with a different role may also be used in a system of certified e-mail to assure the identification of the author of the e-mail, because the e-mail is also signed and sealed, and to certify the moment of sending and delivering a message and its attachments [Abadi, Glew, Horne, and Pinkas, 2002; Blundo, Cimato and Prisco].

## 2. THE FACTORS BEHIND THE ON-LINE TRIAL

In Europe, the variety of solutions adopted by individual countries, both technically and managerially, offers a unique insight into judicial applications of information and communication technology (ICT). It also demonstrates the size of the challenge facing Europe if it is to harmonize systems across national boundaries (Fabri and Langbroek, 2000) and now the gap is now deep between what has been projected and what has been so far realized.

In fact, this phenomenon unites lawyers and technicians all over the world and it is also important the role of the most important organisms of justice administration that has to be assessed in addition to the representative organism of Bar Associations is also important.

As mentioned above, one of the strong points of this phenomenon is based upon the legal relevance of electronic document and technical requirements such as the digital signature, which is able to guarantee the identification of the signer, and the integrity and security of the documents and transmissions<sup>4</sup>. The use of these electronic means is not accepted by all citizens, and this creates "categories of exclusion"<sup>5</sup>, the phenomenon called "digital divide"<sup>6</sup>.

More important than inserting the new technologies into judicial proceedings is to make it (ICT) acceptable to all citizens (Heeks, 2000;

Korac-Kakabadse, N., Kozumin, 2000, Noiret 2005).

The digital divide of professional categories related to the judiciary system has been one of the cause for failure of the initial trial of on-line civil trial.

Indeed, on-line civil trial works directly with the judiciary organization and with the style of work of lawyers, judges, clerks and process servers for achieving efficiency and fast judicial proceedings.

In exercising these purposes it is necessary to create the basis so that on-line judicial proceedings are able to assure an adequate knowledge in civil society.

## 3. THE ON-LINE CIVIL TRIAL HAS TO BE A FAIR ON-LINE TRIAL

The efficiency of justice is based upon two elements: reducing costs for both the State and citizens, and reducing procedural time.

The principles of a fair trial can be assessed in the following aspects: the equal position of the parties involved in a judicial proceeding, the same opportunities of controverting, a due process of law, and, finally, the reduction of procedural time.

To achieve the purpose of this last element in compliance with par. 6 of the European Convention on Human Rights, it is appropriate to organize justice administration with the new advanced technology.

The ambitious project of on-line civil trial is based upon documents and data interchange, web access, a court management system, and network infrastructure for connecting all courts, as well as interoperability with other Public Administrations, such as the Tax Agency and the State Attorney, which have the same infrastructure and the same standards for increasing data and information transfer amongst themselves.

Attention is also focused on the problem of reducing the complexity and formalism of ordinary procedure and on the introduction of simplified summary procedures or the rationalization of those already existing.

The technical needs arising from the digitized reform have relevant effects on legal rules for civil procedural law: in particular, the rules of on-line civil trials in compliance with civil procedural law with regard to the time taken for issuing judicial acts and orders and the delivery of documents.

Aside from the indisputable advantages of ICT in judicial activity, we have here to deal with the legal issues arising outside of this application. In some European countries the project on on-line trial excludes any given party representing themselves in on-line legal proceedings without an attorney.

A fair trial cannot allow limiting justice to those lawsuits that require the presence of a defence

<sup>4</sup> The digital signature is a signature based upon an asymmetric cryptography system created by a secure device, which assures the provenance and the integrity of the document on which it is put.

<sup>5</sup> Par. 8 d.lgs. 7 March 2007, n. 82, Code of Digital Administration.

<sup>6</sup> Declaration E/2000/L9 of Economic and Social Council of United Nations

attorney, generating a disparity of treatment with reference to the all citizens. A judicial procedure based upon information technology should be faster and cheaper than traditional judgement and all citizens must have the right to take part in an on-line trial.

#### 4. POSSIBLE SOLUTION

Judicial proceedings must assure an equal and balanced position between parties. This guarantee is mainly obtained by correctness and compliance with the right to a fair trial rules and by access to the technical form by all citizens.

Only in this way is it possible to achieve the purpose of a due process of law as a canon of interpretation of those principles in a lawful, fair and impartial trial. Currently, it is possible to put the hypothesis forward of allowing the citizen to participate personally in on-line trial without the assistance of the technical defence of an attorney: this implies the use of a system of certified e-mail. Through this system it would be possible to identify with certainty the plaintiff or the opposing party, because the e-mail is signed and sealed and certifies the moment of sending and delivering message and its attachments. Indeed, these certificates are evidence not rebuttable with another evidence, but only with a special action for fraud. Every message created by the e-mail system is digitally signed in an automated way.

Owing to all these consideration, it is possible to state that advanced technology is able to solve some legal aspects that do not need particular or further procedural requirement to achieve the aims of judicial proceedings.

#### 5. GENERAL CONCLUSIONS

There is no doubt that the on-line civil trial project is ambitious. Many attempts have been made to create suitable conditions for it.

The broad diffusion of highly secure and complex technological methods such as digital signatures, for this project has been considered unnecessary. I disagree with these views. This is mainly because the digital signatures and secure technology are mandatory in the judiciary system to avoid any kind of infringement. I think that at the beginning the problems were viewed as cultural and organizational matters in addition to a social context of digital divide.

Lawyers and judges must accept a new concept of the justice system with electronic devices and innovative methods of working without altering the principles of procedural law, in particular the respect of a fair trial.

The citizen who wants to bring lawsuit electronically can use the existing certified e-mail system as a method for participating in an on-line trial in compliance with the principle of a fair trial and a due process of law.

The rising volume of litigations has caused a

substantial increase in costs and protracted delays. ICT measures could be a way to simplify the rules and the structure of civil proceedings as the summary judgements have proved in Italy, with a noticeable reduction of time and costs of the procedure.

Dissatisfaction with the administration of justice has stimulated the use of various remedies for solving the problems of the judiciary system. However, this encouraging fact, some problems result, such as the access to justice by the parties personally without technical assistance. By this aspect could be easily resolved introducing some corrections to the civil procedural law that would allow all citizens plain and accessible on-line civil justice, including for small claims.

#### REFERENCES

- [1] Abadi, M., Glew, N., Horne, B, and Pinkas, B., (2002), "Certified Email with a Light On-line Trusted Third Party: Design and Implementation," in proceedings of the 11<sup>th</sup> Internationale World Wide Web Conference, May 2002.
- [2] Blundo, C., Cimato, S., and Prisco, R.D., (2003), "Certified Email: Design and Implementation of a New Optimistic Protocol", in proceedings of the Eighth IEEE International Symposium on Computers and Communication, June 30 – July 03, Turkey, 2003.
- [3] Borsari, G., (2004), "Il processo civile telematico: linee strategiche e regole," in Il processo telematico, Diritto e Giustizia.
- [4] Brescia, S., (2001), "La new economy del processo civile," in Diritto e Giustizia, n. 14, 38.
- [5] Carnevali, D., Contini, F., Fabri, M., (2006), "Tecnologie per la giustizia I successi e le false promesse dell'e-justice," Bologna.
- [6] Ciborra, C.U., (2000), "From Control to Drift," Oxford University Press, Oxford.
- [7] Comoglio, L.P., (2000), "Le garanzie fondamentali del "giusto processo", in "Jus".
- [8] Costantino, G., (1999), "Il processo civile fra riforme ordinali, organizzazione e prassi degli uffici (una questione di metodo)," in Riv. trim. dir. proc. civ., 77.
- [9] Di Federico, G., (1966), "L'uso degli strumenti elettronici nell'amministrazione della giustizia," in Rivista trimestrale di diritto e procedura civile, v. XX.
- [10] Di Federico, G., (1998), "Prosecutorial Independence and the Democratic Requirement of Accountability in Italy. Analysis of a Deviant Case in Comparative Perspective," in "The British Journal of Criminology", 38.
- [11] Durante, L., (2005), "The Inter Pares Project, "The Long-term Preservation of Authentic Electronic Records. The Finding of the Interpares Project," San Miniato, Archilab.
- [12] Fabri, M. e Contini, F., (2001), "Justice and Technology in Europe: How ICT is Changing the Judicial Business," Kluwer Law International, The Hague.
- [13] Fabri, M. e Contini, F., Carnevali D., (2006), "Tecnologie per la giustizia," Giuffrè, Milano.
- [14] Fabri, M., Jean, J., Langbroeck H., Pauliat H., (directed by) (2005), "L'administration de la justice et l'évaluation de sa qualité: Europe, Quebec," Montchrétien, Edition juridiques associées, Paris.
- [15] Fabri, M. and Langbroeck, P., (2004), "Case Assignment to Courts and within Courts: a Comparative Study in Seven Countries," Shaker Publishing, Maastricht.
- [16] Gangemi, A., Sagri, M.-T., Tiscornia, D., (2005), "A Constructive Framework for Legal Ontologies," In: Law and Semantic Web (Benjamins, Casanovas, Breuker and Gangemi eds.), Springer Verlag.
- [17] Hagedal, M., (2004), "Assignment of cases to the courts and within courts," in Norway, in Fabri M. and Langbroeck, "Case Assignment to Courts and within Courts: a Comparative Study in Seven Countries", Shaker Publishing, Maastricht.

- [18] Heeks, R.B., (2000), "Government Data: Understanding the Barriers to Citizen Access and Use," Working paper n. 10, University of Manchester, Institute for Development Policy and Management, ([www.man.ac.uk/idpm/idpm/\\_dp.htm#ig](http://www.man.ac.uk/idpm/idpm/_dp.htm#ig)).
- [19] Knapp, K., (1963), „Ueber die Möglichkeit der Anwendung cyberntischer Methoden im Recht, in Staat und Recht,“ XII, 613.
- [20] Korac-Kakabadse, N., Kozumin, A., (2000), "Information Technology and Development: creating "IT Harems, fostering New Colonialism or solving "wicked"Policy problems?" in Public Administration and Development,
- [21] Liccardo, P., (2000), "Introduzione al processo civile telematico," in M. Jacchia, Il processo telematico: Nuovi ruoli e nuove tecnologie per un moderno processo civile, Il Mulino, Bologna.
- [22] Matthijssen, L., (1999), "Interfacing between Lawyers and Computers: An Architecture for Knowledge-based Interface to Legal Database," The Hauge et al., Kluwer Law International.
- [23] Melica, M., (2006), "L'alfabetizzazione informatica dei cittadini e la formazione informatica dei dipendenti pubblici," in Il Codice dell'Amministrazione Digitale, Commento ragionato al Decreto Legislativo 7 marzo 2005, n. 82 e successive modifiche, Liguori Editore, 263-283.
- [24] Monteiro, E. and Hanseth (1996), "Social Shaping of Information Infrastructure: on Being Specific about Technology," in W. J. Orlikowski, Information Technology and Changes in Organisational Work, Chapman & Hall, London.
- [25] Noiret, S., (2005), "La nuova storiografia digitale negli Stati Uniti (1999-2004)," in Memoria e ricerca, 18.
- [26] Quaresima, P., Rodrigues, I., (2005), "A Question-Answering System for Legal Information Retrieval," in Proceedings of JURIX'05, Brussels, Belgium.
- [27] Rußmann, H. (1999), „Herausforderung Informationsgesellschaft: die Anwendung Moderner Technologien im Zivilprozeß und Anderen Verfahren,“ Proceedings – XI World Congress "Procedural Law on the Threshold of a New Millennium", Vienna, 97-102.
- [28] Sartor, G., (1998), "Introduction: Judicial Application of Artificial Intelligence," edited by Sartor-Branting, Norway,
- [29] Taruffo, M., (1988), "La fisionomia della sentenza in Italia, in La sentenza in Europa. Metodo, tecnica e stile," Padua.
- [30] Tin, E., "Overcoming Herculean's Tasks with Pygmalion's Will: Enhancing Access to Justice in the Singapore Context," [www.ejustice.org.sg/resourceframe.html](http://www.ejustice.org.sg/resourceframe.html).
- [31] Tin, E., "Four Justice Models: Organised Creativity in Judicial Administration," 11 S.A.c.L.J. Part II, [www.ejustice.org.sg/resourceframe.html](http://www.ejustice.org.sg/resourceframe.html).
- [32] Tommaseo, F., (2005), "Sulle notificazioni internazionali nello spazio giuridico europeo," in Riv. dir. proc., 2.
- [33] Tommaseo, F., (2002), "Giustizia civile e principi del «giusto processo».", in Studium Juris, 5.
- [34] [SEAL] Digital signature and Electronic Authentication Law 1998 is available from <http://thomas.loc.gov/cgi-bin/query/z?c105:S.1594.IS>:
- [35] [UTAH] Digital Signature Act is available from <http://www.jmls.edu/cyber/statutes/udsa.html>
- [36] Velicogna, M., (2005), "Courts' websites in Italy," in Proceedings EGPA Conference, Bern.
- [37] Vilecco, A., (2007), "Le notificazioni e le comunicazioni telematiche nel processo civile," Bologna.
- [38] Vilecco, A., (2005). "The Employment of XML Standards, in Electronic Judicial Proceedings," Institute of Mining of Technology, Socorro-New York.
- [39] Vilecco, A., (2003). S.v., "Processo Telematico, Dig. it., disc. priv. sez. civ.," Torino.
- [40] Xilo, G., (2004), L'esperienza dei laboratory sperimentali del Processo Civile Telematico, in Zan S., Tecnologia, organizzazione e giustizia. L'evoluzione del processo civile telematico, Il Mulino, Bologna.