

## **DIGITAL ACCESS TO JUSTICE: A STEP TOWARDS REFORMING THE MACEDONIAN JUDICIAL SYSTEM ON THE PATH TO THE EUROPEAN UNION**

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### **-abstract-**

Digital technologies have a significant positive impact on the efficiency and accessibility of justice. At the same time, the justice sector must actively promote digital skills if it hopes to equip judges, prosecutors, court personnel, and other justice practitioners to use digital tools efficiently and with respect for those who are seeking justice. The changes taking place in the digital age, including the creation and application of technological solutions that are complementary and replacements, with varying degrees of legal support and social consideration, are unavoidably impacting the justice system. The overt risks and threats that must be considered include intrusions on confidentiality, egregious security flaws, and structural erosion of privacy, to name just a few. The manipulation of the legal system and particular procedures, as well as the covert undermining of the rule of law and human rights, including their authority and values, constitute a sizeable portion of the threats that are also concealed and implicit. The concept of digital access to justice will be covered in more detail in the following section, along with the question of whether the digitization of justice necessarily leads to improved access to justice. In the following, we will also state the need to implement certain reform steps for the modernization of the Macedonian judicial system. We should adhere to a plan that guarantees the rule of law and observance of the fundamental values upon which the EU is based by establishing an effective, high-quality, and independent judicial system as a prerequisite for applying EU law as we move toward full membership in the EU.

***Keywords:*** *digitization, reforms, judiciary, Macedonia, European Union.*

## **I. INTRODUCTION**

In numerous nations throughout and outside of Europe, COVID-19 has interfered with the operation of justice systems. It is now abundantly clear how important it is to talk about digitalization concerning the rule of law and how to approach justice in light of the challenges caused by the COVID-19 pandemic. Despite the diverse national responses to the COVID-19 crisis, the pandemic's emergence has highlighted the crucial role that technology plays in enabling justice systems to resume or continue operations while satisfying the requirements of social distance.

The COVID-19 pandemic has demonstrated the critical role that technologies play in enabling justice systems to resume or continue operations while meeting social distancing criteria, notwithstanding the variability of national responses to the crisis.

Regardless of the diversity in national responses, emergency measures adopted with a view to protecting public health during the continued COVID-19 crisis have brought about important

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derogations on fundamental rights and rule of law safeguards, the protection of which typically depends upon the continued functioning of judicial systems and institutions. These include the right to a fair trial by an independent and impartial court, the right to judicial control of deprivation of liberty and the right to an effective remedy, as well as to ensuring that all branches of government act lawfully.<sup>1</sup>

The ability of judicial authorities (including both judges and prosecutors) and legal practitioners (including lawyers, but also probation organizations and bailiffs) to telework and carry out their duties remotely has been critical to the organizational and operational resilience of justice systems. To ensure the continuation of judicial proceedings, the rapid implementation of digital communication technologies such as videoconferencing platforms and systems for accessing and exchanging information (including case files) electronically has also been essential.

The virus outbreak had a significant impact on the course of legal proceedings. To reduce the risk of COVID-19 transmission at in-person court hearings, some governments imposed closure orders on courts and suspended or postponed hearings. In courtrooms, police stations, and prisons, it was also very challenging for defendants to communicate with their attorneys and/or use interpretation services. Court closures and access restrictions to police stations in nations where case files were not digitally digitized also prolonged the process of getting access to them.

Additionally, the pandemic has prompted judicial authorities to look into using remote videoconferencing as an alternative to EAWs or other extradition tools. Given the significant impact of the COVID-19 crisis on the final stages of surrender procedures, the issuance of EIOs to hear the requested person via videoconference during both the trial and pre-trial phases of criminal proceedings is increasingly seen as a practical alternative to adjourning trials, transferring criminal proceedings, or taking over the enforcement of a custodial sentence.

Hearings via video or telephone conference for the execution of EIOs have become preferable options, not only in the early phases of the pandemic but also in light of the recently reinstated restrictions in response to the recrudescence of the COVID-19 situation. In its initiative report on the EAW's implementation adopted on 20 January 2021, the European Parliament (EP) made a recommendation for the member states to ensure that an EAW is only issued if less intrusive measures would not lead to the same result, e.g., hearings by videoconference or related tools.<sup>2</sup> As to the means of transmission of EIOs and MLA requests, the majority of states recommended electronic transmission (i.e., email) as the most effective means in the current situation.<sup>3</sup>

Due to the disruption caused by COVID-19, the EU's policy priorities now include the digital transformation of national judicial institutions, judicial cooperation systems, and related processes.

Despite the diversity of (practical and normative) approaches that traditionally feature the use of technologies in criminal justice systems, the outbreak of the pandemic has suddenly led to an increase in the use of remote communication tools, both in judicial proceedings (for example for the purpose of hearing or interviewing defendants and witnesses), and in order to enable

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<sup>1</sup> See: Human Rights Council, Presidential Statement 43/1 (29 May 2020), "Human rights implications of the COVID-19 pandemic", Preamble; and Resolution 44/9 (16 July 2020), "Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers", Preamble.

<sup>2</sup> European Parliament, *Resolution of 20 January 2021 on the implementation of the European arrest warrant and the surrender procedures between Member States* (2019/2207(INI)), Brussels, 20 January 2021, pg. 7.

<sup>3</sup> *Ibid.*, pg. 9.

communications (including the exchange and review of evidence) between judges, prosecutors, lawyers and other actors contributing to the functioning of justice and court systems.<sup>4</sup>

The digital transformation of society and the widespread introduction of artificial intelligence technologies are significantly ahead of legal regulation and judicial practice on these issues. Moreover, in many areas, the legal response is slowed down to a great extent not only due to the lack of knowledge and experience of those who carry out law-making and law enforcement activities but also due to the real unpredictability of threats from technological solutions. These threats can range from direct breaches of security and privacy to nearly invisible undermining of the rule of law, fairness, and human rights.<sup>5</sup>

The European Union's criminal justice system is significantly impacted by the world's rapid shift toward digitalization. On the one hand, it encourages transnational crime, such as terrorism and cybercrime, but on the other hand, it offers brand-new opportunities to effectively combat criminal activity. Europe must define and adopt solutions for both judicial and law enforcement authorities to ensure that justice can be done and that a security system is effective. In other words, even though digital technology already has a lot going for it in terms of development and human rights, we cannot ignore the fact that it also poses serious threats to those rights on a global scale.

## II. CONCEPT OF DIGITAL ACCESS TO JUSTICE

Without a doubt, technology plays a significant role in both the work and personal lives of judges today, both on and off the bench. It brings about a lot of advantages, but it also brings about a lot of new difficulties that have an increasing effect on courts, litigants, and witnesses. The topic of how technology will impact courts has received little attention from academic research despite its growing importance. They are therefore forced to try and integrate new technologies into antiquated systems and practices.

Issues like the privacy of electronic court records, *ex parte* electronic communication, accidentally emailed draft decisions, and the danger that government-owned and operated court servers pose to judicial independence are all becoming more prevalent. These issues have forced courts to reconsider how fundamental ideas like disclosure, accountability, and the delicate balance between values like transparency and privacy are traditionally constructed.

Access to justice is a fundamental right and a core element of the rule of law, which is one of the essential values on which the European Union is founded under Article 2 of the Treaty on European Union<sup>6</sup> and which is common to the Member States. Article 19 of the Treaty on European Union states that the Member States are to provide remedies sufficient to ensure effective legal protection in the fields covered by EU law, and entrusts shared responsibility for ensuring judicial review within the EU legal order to national courts/tribunals.

In line with the political priority of a Europe fit for the digital age and as part of a new push for European democracy, the digitalization of justice systems is a crucial goal to pursue. The majority of legal proceedings currently take place on paper and rely on conventional transmission channels, especially in cross-border situations. In a world that is becoming more and more digitalized, this situation does not offer modern access to justice and is bad for both citizens and businesses.

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<sup>4</sup> Commission (2020c), 2020 Rule of Law Report: The rule of law situation in the European Union, Brussels, 30 September 2020, COM(2020) 580 final, p. 7.

<sup>5</sup> Y. Razmetaeva, S. Razmetaev. 'Justice in the Digital Age: Technological Solutions, Hidden Threats and Enticing Opportunities' 2021 2(10) Access to Justice in Eastern Europe 104–117. DOI: 10.33327/AJEE-18-4.2-a000061

<sup>6</sup> Treaty on European Union (Official Journal of the European Communities No. C 191/1, 29.7.1992, pp. 1-112). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A11992M%2FTXT> [Accessed 03/08/2023].

Electronic justice, decision-making software, online dispute resolution platforms, and even an automated workflow and case allocation system in courts are all examples of technological solutions for justice. Such solutions can be extremely helpful and promote equality in opportunities and access.<sup>7</sup>

The foundation of e-justice lies in several technological advancements that greatly increase efficiency, including adherence to a reasonable timeline, and make the entire administration of justice more transparent and accountable. Additionally, it contributes to the realization of the right to a fair trial through improved access, made possible by new technological opportunities and the open, unrestricted access of citizens to all information regarding the judicial system, the nature of the proceedings, and the legal requirements for submitted documents and evidence, which can be filed in simple and visual forms of information.

In the digital age, there are two types of technological solutions for justice: replacement solutions and complementary solutions. The strategies that seek to completely replace the established procedures, processes, and components of justice are included in replacement strategies. One class of self-improving artificial intelligence that is a part of the online dispute resolution community, "robojudges" is an example of such judgments. Online dispute resolution is, at the very least, replacing technological solutions in the sense that it aims to relieve the judicial system of conflicts that can be resolved in other ways.

The organizational and operational resilience of justice systems has, to a large extent, depended on the possibility for judicial authorities (including both judges and prosecutors) and legal practitioners (including lawyers, but also probation organizations and bailiffs) to telework and carry out their duties remotely. The sudden deployment of digital communication technologies such as videoconferencing platforms and systems for accessing and exchanging information (including case files) electronically has also been required to guarantee the continuation of judicial proceedings.<sup>8</sup>

### **III. DOES DIGITALIZATION OF JUSTICE NECESSARILY LEAD TO IMPROVED ACCESS TO JUSTICE?**

Fairness is a very complex concept that serves as the foundation of both justice and law in general. So, it is common practice to assess the fairness of formal, substantive, and procedural aspects of law when discussing legal theory. Making fair decisions also requires objectivity and impartiality.

Despite the justified doubts that the law can be accessible for interpretation and used not only by people but also by digital tools, even if they are high-level artificial intelligence, technological solutions for justice continue to multiply. In the digital era in which we find ourselves, the degree of application of (1) digital tools, (2) online interactions, and (3) data, including the accumulation, transmission, processing, and forecasting based on them, is significantly increasing. The involvement of all subjects of law in activities carried out in whole or in part in cyberspace is also significantly increasing.<sup>9</sup>

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<sup>7</sup> Yulia Razmetaeva and Sergiy Razmetaev. *Justice in the Digital Age: Technological Solutions, Hidden Threats and Enticing Opportunities* 2021 2(10) Access to Justice in Eastern Europe 104–117. DOI: 10.33327/AJEE-18-4.2-a000061

<sup>8</sup> Sergio Carrera, Valsamis Mitsilegas, Marco Stefan, *Criminal Justice, Fundamental Rights and the Rule of law in the Digital Age* (Report of a CEPS and QMUL Task Force). (2021). Brussels: Centre for European Policy Studies, pg. 18.

<sup>9</sup> Yulia Razmetaeva and Sergiy Razmetaev. *Justice in the Digital Age: Technological Solutions, Hidden Threats and Enticing Opportunities* 2021 2(10) Access to Justice in Eastern Europe 104–117. DOI: 10.33327/AJEE-18-4.2-a000061

The effectiveness and accessibility of justice can be greatly enhanced by digital technologies. Since 2008, the European Commission and the Council of the EU have been collaborating closely to develop several transnational digital initiatives in the justice sector.

The adoption of the first Multiannual e-Justice Action Plan 2009-2013 was one of the first outcomes of the political commitment to facilitating easier and more accessible access to national and European e-Justice. This initial tool identified several priority tasks for collaborative work. When it was finished, an e-justice Strategy and Action Plan for the years 2014 to 2018 was adopted. These came to an end in 2018, and the 2019–2023 e-Justice Strategy and Action Plan has replaced them. The European e-Justice Portal is one of the most noticeable developments toward the digitalization of justice so far. It is a one-stop shop for all issues relating to justice, contains insightful data on a range of subjects, and offers several online tools.

The COVID-19 crisis posed significant obstacles to the justice system's ability to operate normally. It was confirmed that the use of digital technologies is necessary to provide citizens and businesses with continuous and prompt access to justice, thereby fostering the development of robust national systems.

The European Commission released a communication in response to the COVID-19 pandemic challenges that aimed to take advantage of the possibilities provided by digital technologies to enhance both the functioning and accessibility of justice systems. Along with the Communication, the Commission also created a mapping to create a clear baseline for the degree of digitalization of justice across EU Member States.

The green transition and digital transformation are acknowledged as playing a crucial and priority role in reviving and modernizing the EU economy in the Joint Roadmap for Recovery<sup>10</sup>, which was approved by the European Council on 23 April 2020.

The Proposal for a Regulation on a Computerized System for Communication in Cross-Border Civil and Criminal Proceedings (*e-CODEX System*), also known as the e-CODEX Regulation, is a significant component supporting the digitalization of cross-border judicial cooperation. The Commission envisages to entrust the further development and maintenance of e-CODEX to the EU Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA). In order for eu-LISA to be able to manage e-CODEX, the proposal includes amendments to the Regulation establishing eu-LISA<sup>11</sup> that would extend the mandate of this agency to include the operational management of e-CODEX among its operational competences.

To increase access to justice, the Council adopted conclusions on digitization<sup>12</sup> The conclusions state that there is a great opportunity to continue to improve and facilitate citizens' access to justice across the EU by further digitizing the judicial systems of the Member States. Digital tools can be used to streamline processes, automate repetitive tasks, and handle data more quickly. They can make court proceedings more effective and efficient. Also noted is the fact that the COVID-19 crisis has demonstrated the necessity of investing in and utilizing digital tools in legal proceedings.

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<sup>10</sup> *A roadmap for recovery - Towards a more resilient, sustainable and fair Europe*. Available at: <https://www.consilium.europa.eu/media/43384/roadmap-for-recovery-final-21-04-2020.pdf> [Accessed on 07/08/2023].

<sup>11</sup> Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 (OJ L 295, 21.11.2018, p. 99).

<sup>12</sup> The Council of The European Union, *Council Conclusions "Access to Justice – Seizing the Opportunities of Digitalisation"*. (2020). Brussels: The Council of The European Union. Available at: <https://data.consilium.europa.eu/doc/document/ST-11599-2020-INIT/en/pdf> [Accessed 07/08/2023].

Member States are urged to use digital tools more frequently throughout legal proceedings, e.g., electronic identification and trust services using a secure method. The Council emphasizes, however, that the use of digital technologies should not jeopardize the fundamental tenets of judicial systems, such as the independence and impartiality of the courts, the assurance of adequate legal protection, and the right to a fair and public trial. The conclusions emphasize the importance of digital skills. To enable judges, prosecutors, judicial employees, and other justice practitioners to use digital tools effectively and with due respect for those seeking justice, the justice sector must promote digital skills.

#### IV. DIGITALIZATION OF JUSTICE AND CRIMINAL PROCEEDINGS

Throughout 2020, several initiatives were adopted to foster the use of technologies and electronic data in all sectors and at all levels of EU and national public administration, including in the criminal justice domain.<sup>13</sup>

In the early phases of the pandemic outbreak, the urgent need to secure the day-to-day operations of justice and court systems required countries that had not yet introduced dedicated remote justice (videoconferencing) tools to deploy tools such as *Teams*, *Skype*, *Zoom*, *Google Hangouts* or *WebEx* to cope with the emergency, and to use email communication systems for the exchange of files and documents.<sup>14</sup>

Experts in the group noted that this kind of digital tool does not necessarily meet the privacy, data protection and information security standards required for the sensitive and confidential nature of the information and communications shared in the context of judicial proceedings.<sup>15</sup> Furthermore, the deployment of communication and data-exchange platforms that have not been designed specifically to reflect the specificities of the criminal justice process can generate due process challenges, since it is not clear to what extent they allow applicable procedural laws and constitutional protections to be observed, including for instance the right to effective legal assistance,<sup>16</sup> the right to legal aid,<sup>17</sup> the right to be present at trial<sup>18</sup> and the right to translation and interpretation.<sup>19</sup>

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<sup>13</sup> European Commission (2020c), “2020 Strategic Foresight Report, Charting the Course Towards a More Resilient Europe”.

<sup>14</sup> The Council of Bars and Law Societies of Europe (CCBE) prepared a number of individual research papers examining the terms and conditions of a number of frequently used platforms, in order to compare them. CCBE (2020), “Annex to the CCBE Guidance on the use of remote working tools by lawyers and remote court proceedings: Analyses of videoconferencing tools”.

<sup>15</sup> In Italy, for instance, privacy issues were immediately raised by a proactive association of Italian criminal lawyers (*the Unione camere penali*), since no videoconferencing tools specifically designed for court proceedings had been adopted by the legislator. See: Gori, P. and Pahladsingh, A., *Fundamental rights under Covid-19: an European perspective on videoconferencing in court*. (2021). ERA Forum Journal of the Academy of European Law, 21, pp. 561–577.

<sup>16</sup> Directive (EU) 2013/48 of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European Arrest Warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

<sup>17</sup> Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European Arrest Warrant proceedings.

<sup>18</sup> Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings.

<sup>19</sup> Directive (EU) 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings.

Research shows that there is limited to no possibility for confidential interaction between lawyers and their clients during remote hearings.<sup>20</sup> This lack of confidentiality raises issues in all cases (such as criminal proceedings) where there is a need to secure professional secrecy and legal professional privilege. Also, during proceedings held via videoconference it may not be possible for judicial authorities and lawyers to identify whether certain individuals (including suspects and accused persons) are vulnerable or have special requirements (e.g., learning disabilities). Not taking these elements into account when promoting digitalisation would not only affect the right to a fair trial, and in particular to effective participation in judicial proceedings,<sup>21</sup> but also translate into the unequal and discriminatory deployment of technology in the field of justice.<sup>22</sup>

Making use of increasingly available data, particularly by ensuring that existing and new IT tools are interoperable by default, is another goal outlined in the European data strategy. Such strategy stresses that “seamless access to and easy reuse of EU and Member State legislation, jurisprudence as well as information on e-justice services is critical not only for the effective application of EU law but also enables innovative ‘legal tech’ applications supporting practitioners (judges, public officials, corporate counsel and lawyers in private practice).”<sup>23</sup>

The *legality* of a justice system depends primarily on the extent to which the organisation and administration of justice complies with (and ensures respect of) the set of legally binding fundamental rights and rule of law standards provided for under the national, supranational and international laws applicable in a certain jurisdiction. Judicial independence, impartiality and fairness are key determinants of legality within the EU member states’ criminal justice systems.<sup>24</sup>

The *accessibility* of justice, on the other hand, refers to the absence of barriers obstructing access to judicial processes, services and remedies.<sup>25</sup> Access to justice has been defined as a “cornerstone of any democratic State based on the rule of law, and a prerequisite for citizens’ effective enjoyment of their human rights”.<sup>26</sup> Access to justice is a notion frequently used to justify the use of digital tools, which, depending on the context, are intended not only to increase the amount of information or level of services available to courts and justice professionals, but also to lower the barriers (taken to mean the material and financial costs) for individuals trying to access existing justice services.<sup>27</sup>

In a context where policy priorities at EU and national level are – yet again – to deploy technologies to foster efficiency, cost reductions and speed of justice systems (and in particular of criminal investigation and prosecution), structural asymmetries appear to the detriment of the prerogatives of judges, defence lawyers, suspects and accused persons in criminal proceedings. To address the so-called human rights deficit that might derive from prioritising

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<sup>20</sup> Fair Trials (2020b), “*Beyond the Emergency of the COVID-19 Pandemic: Lessons for Defence Rights in Europe*”.

<sup>21</sup> See: Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings.

<sup>22</sup> See: Stefan, M., *Criminal Justice, Fundamental Rights and the Rule of law in the Digital Age - Report of CEPS and QMUL Task Force*. (2021). Center for European Policy Studies. Belgium. Retrieved from <https://policycommons.net/artifacts/2281873/criminal-justice-fundamental-rights-and-the-rule-of-law-in-the-digital-age/3041945/> on 17 Nov 2023. CID: 20.500.12592/7xd384.

<sup>23</sup> European Commission (2020d), “*A European strategy for data*”, COM(2020)66 final.

<sup>24</sup> Craig, P., S. Adam, N.D. Abad and L. Salazar, “*Rule of Law in Europe: Perspectives from Practitioners and Academics*”. (2019). European Judicial Training Network Manual.

<sup>25</sup> Cordella, A. and F. Contini, “*Digital Technologies or Better Justice: A Toolkit for Action*”. (2020). Institutions for Development Sector Innovation in Citizen Services Division Discussion Paper No. IDB-DP- 76, pp. 9-10.

<sup>26</sup> Resolution 2081 (2015) of the Parliamentary Assembly of the Council of Europe, Committee on Legal Affairs and Human Rights, entitled “*Access to justice and the internet: potential and challenges*”, paras 1 and 2.

<sup>27</sup> In 2008, the CEPEJ developed a “*Checklist for promoting the quality of justice and the courts*” which underlined the important link between IT and access to justice, see CEPEJ(2008)2E).

safety and security, or efficient cooperation between investigating and prosecuting authorities, the EU has progressively adopted legislation on procedural rights in criminal proceedings and developed legal standards in the field of privacy and data protection.<sup>28</sup>

The right to confidential legal assistance prior to questioning and the right to privacy of detainees have also been impacted because telephones or other remote communication devices are not necessarily located in a private space. Worrying reports have also been made of episodes in which video calls and Skype interviews of detainees have taken place in the absence of the necessary minimum conditions of confidentiality and, in particular, in violation of the prohibition of auditory control by prison officers.<sup>29</sup>

Another domain where the effect of COVID-19 has resulted in a greater utilization of technology includes the digitization of case files and the ability to receive and exchange information and documents digitally. The epidemic forced an urgent requirement on many national justice and court systems to adopt a variety of technologies, emphasizing pre-existing and well-known infrastructural inadequacies. It also revealed considerable differences in policy (and related progress) among EU member states regarding the process of modernizing or innovating their justice infrastructures and processes.

## V. FUTURE REFORM STEPS FOR MODERNIZATION OF THE MACEDONIAN JUDICIAL SYSTEM

The judiciary in our country continues to be the target of serious criticism due to certain of its scandalous decisions, which rightfully create a perception among citizens that in this country only those who are powerless and unprotected are answerable before the law. Citizens' trust in the justice system has been decreasing over the years due to the policy of impunity for crime and high-level corruption. At the same time, there is a general perception that the fight against corruption does not produce the desired results, and because of that, the international community rightly criticizes the Macedonian authorities. It seems that, above all, young people are collateral damage of these processes, because they live in search of a state where the law is applied equally to all its citizens.

In light of the extremely low level of public confidence in the judiciary, this is precisely why it is difficult to write about the modernization of the legal system. But one of science's jobs is to provide answers to problems that arise in the present. We will attempt to present some viewpoints on the continued development of the justice system in our country in this section of the paper.

First of all, it is important to underline that the independence of the judiciary is neither an end in itself nor a personal privilege of the judges. The main function of independence is to guarantee the right of an individual to have his/her rights and freedoms determined, protected, and implemented by an independent and impartial judge. We could say that the independence of the judiciary as a whole is the essential condition of judicial independence, which enables judges to fulfill their role as guardians of the rights and freedoms of the people. From this point of view, the independence of judges is an indispensable premise of the rule of law.<sup>30</sup>

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<sup>28</sup> Stefan, M., *Criminal Justice, Fundamental Rights and the Rule of law in the Digital Age - Report of CEPS and QMUL Task Force*. (2021). Center for European Policy Studies. Belgium. Retrieved from <https://policycommons.net/artifacts/2281873/criminal-justice-fundamental-rights-and-the-rule-of-law-in-the-digital-age/3041945/> on 17 Nov 2023. CID: 20.500.12592/7xd384.

<sup>29</sup> See: Garante Privacy and Garante Deprivation of Liberty, Joint Press Release, “*Garante privacy e Garante privazione libertà: necessaria maggiore riservatezza per i colloqui dei detenuti*”, 9 April 2021.

<sup>30</sup> Guido Neppi-Modona, *The Various Aspects of the External and Internal Independence of the Judiciary*. (2012). Strasbourg: European Commission for Democracy Through Law (Venice Commission) in cooperation with the Division for Independence and Efficiency of Justice of the Council of Europe, pg. 2.

In the context of EU law, judicial independence is an integral part of the judicial decision-making process and is a requirement arising from Article 19 TEU<sup>31</sup> and from the right to an effective remedy before a court or tribunal provided for in Article 47 of the EU Charter of Fundamental Rights.<sup>32</sup>

A successful judicial system must meet the criteria of independence, excellence, and efficiency. To ensure that justice functions for the benefit of citizens and businesses, just systems must be fully independent and operate effectively. We frequently forget the importance of strong judicial systems for fostering trust among parties, enhancing the environment for investment, and ensuring the sustainability of long-term economic growth.

In light of the close connection between the judiciary's independence and the rule of law, it is important to note that the fundamental principles ensuring the independence of the judges should be established in the Constitution or comparable texts, that is, at the highest level of the national legislative system. Because of this, fundamental principles play a role in guiding ordinary laws in a way that cannot be overridden by them and serve as a binding guide for them.

The political structures that rule the country are usually critical of the work of the institutions before they come to power, and then exploit their weaknesses instead of correcting them. Also, part of the low percentage of citizens' trust in the institutions of the system is due to the intensive campaigns by various party-political centers, which in this way try to create public opinion that nothing in the state works and that radical changes are needed. Among the main reasons for citizens' mistrust of the justice system are the perception of corruption, political influences in decision-making, and the long duration of court proceedings themselves. The biggest problem is certainly the absence of responsibility and impunity, as well as the implementation of a party personnel policy that does not take into account the retention and promotion of the best and most dedicated people, but rewards servile party henchmen. These things cannot be hidden from the public eye. Trust, on the other hand, is something that is built over the long term and requires the commitment of all key stakeholders.

To improve the situation in the judicial systems, including the improvement of the independence of the judiciary, the European Commission in its latest Rule of Law Report<sup>33</sup> provides an overview of the work done and recommendations for improving the situation in the member states, above all, concerning five areas: Judicial councils and procedures for the selection/promotion of judges as key protective measures for the independence of the judiciary; autonomy and independence of prosecutors' offices as essential elements for the good functioning of the penal-legal system; disciplinary frameworks and accountability for judges and prosecutors; investing in the quality and efficiency of justice and lawyers as key actors for judicial systems based on the rule of law.

In the upcoming period, it will be necessary to monitor the acts for judge selection, judge selection in higher courts, and the implementation of evaluation methodologies, both by the civil sector. The very implementation of these acts should be subject to monitoring and following the future strategy for the reform of the judicial sector, because these data will be crucial in the process of accession to the EU. However, it is also inevitable that more state intervention is required to increase the judicial system's financial independence.

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<sup>31</sup> *Treaty on European Union* (Official Journal of the European Communities No. C 191/1, 29.7.1992). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A11992M%2FTXT> [Accessed 07/08/2023].

<sup>32</sup> *Charter of Fundamental Rights of the European Union* (Official Journal of the European Union No. C 326/02, 26.10.2012). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> [Accessed 07/08/2023].

<sup>33</sup> *The 2022 Rule of Law Report*, p. 1. Available at: [https://ec.europa.eu/info/sites/default/files/1\\_1\\_194062\\_communication\\_rol\\_en\\_0.pdf](https://ec.europa.eu/info/sites/default/files/1_1_194062_communication_rol_en_0.pdf) [Accessed 07/08/2023].

To expedite the process of carrying out legal proceedings, make it simpler to send documents electronically between courts, prosecutors' offices, and other institutions that handle criminal prosecution, and enhance interoperability between these institutions, more digitalization of the judiciary and public prosecutor's office is required. The abuse of the participants' legal rights, such as making the proceedings last longer, will be stopped by digitizing the documents. As the judiciary becomes more transparent, digitalization will improve citizens' access to justice. Regardless of digitization, we believe that it is also necessary to improve the standards for the quality of court decisions, with a special emphasis on the way of writing, the comprehensibility, and the quality of the reasoning of the judgments.

## **VI. CONCLUSION**

The COVID-19 pandemic has accelerated the transformation of our working and living environments brought about by digital innovations in business, education, and healthcare. Similar to this, technology has a significant impact on the practice of law. To advance the delivery of state services, there is a chance to extend the use of digital technology to other important sectors, such as justice.

To address issues with access, legitimacy, and efficiency, the justice sector can benefit from digital development. Legal technology can be very advantageous to the courts and the bar, giving them more time to concentrate on their primary tasks - judicial deliberation and legal analysis, which technology cannot replace. The casework processes must be digitalized if the justice system is to continue functioning effectively in the contemporary world. What is significant to note is that a human being must always decide a case; artificial intelligence cannot make legal decisions. It must be avoided that the use of artificial intelligence (AI) tools or data sets results in discriminatory outcomes; transparency must be guaranteed if machine-learning tools are used in decision-making processes.

The justice system is unavoidably being affected by the changes taking place in the digital age, including the development and use of technological solutions that are both complementary and replacements, with varying degrees of legal backing and social consideration. Invasions of confidentiality, flagrant security lapses, and structural erosion of privacy are just a few examples of the overt risks and threats that need to be taken into consideration. A significant portion of the threats that are also concealed and implicit involve the manipulation of the judicial system and specific processes, as well as the covert undermining of the rule of law and human rights, including their authority and values.

Because we are currently developing a new strategy for the reform of the justice sector and, as a result, a new action plan, it is necessary to provide an overview of what has been accomplished and what needs to be done going forward in the area of judicial independence. The new strategy needs to consider this information.

Ensuring the rule of law and respect for the basic values on which the EU is based, through the establishment of an effective, quality, and independent judicial system as a prerequisite for the implementation of EU law, are the roadmap that we should follow on the way to becoming a full member of EU.

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