

Francesco Contini,
Dory Reiling[♦]

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Double normalization: When procedural law is made digital

Abstract: The comparison of three e-justice platforms (EJP) leads to the identification of a common dynamic – called double normalization – which makes EJP development an institutional and constitutional issue, not just a functional one. The case study analysis of Trial on Line in Italy, e-Curia (Court of Justice of the European Union) and Kwaliteit en Innovatie rechtspraak in the Netherlands shows how EJPs, establishing the working environment for judges, lawyers, and clerks, create more powerful constraints than those provided by the law. The normalization carried out by legal standards to make judicial procedures predictable and homogeneous and grant equal treatment is supplemented by the digital working environment. Hence technology provides an additional layer of normalization, steering the behaviour of judges in predetermined directions and inhibiting other action pathways. The process challenges the right of the judge to interpret procedural law and require appropriate judicial governance mechanisms to safeguard fair trial.

Key words: e-justice; law and technology; fair trial; judicial reform.

1. Introduction

For the last 20 years, European justice systems have been making efforts to implement large-scale e-justice platforms (EJP) (CEPEJ 2016, 2021).¹ The platforms provide the full set of functionalities required to establish digital workflows within the court, facilitate cooperation with relevant stakeholders (such as court users, citizens, and lawyers), and enable the transition of judicial processes from paper to digital. Their functions include case and workflow management, e-filing, drafting, signature exchange and archiving of procedural documents, e-summons, and e-payment of court fees, just to mention their basic components (Borsari et al. 2021). In a nutshell, they are the digital environment in which judges, clerks and lawyers work (Lanzara 2014).

While literature has mainly focused on the reasons for the mixed results achieved by these systems (Reiling 2009, Lupo and Bailey 2014, Wallace 2019), the implications of their development on fair trial and judicial independence require further investigation. So far, the analysis of the impact of dispute resolution digitisation on fair trial and due process has focused mainly on AI, due to the issue of bias and accountability (DeBrusk 2018, Pégny et al. 2019), or on advanced online dispute resolution systems (ODR) (Katsh and Rabinovich-Einy 2017, Amsler et al. 2020, Schmitz 2021).

The original contribution of this work is to focus on standard court-based dispute resolution and discuss the effects of e-justice platforms on fair trial. The concept of double normalization is

[♦] **Francesco Contini** - a senior researcher at the National Research Council of Italy, Institute of Legal Informatics and Judicial Systems (Italy). E-mail: francesco.contini@cnr.it

Hon. A.D. (Dory) Reiling - Ph.D. Mag.Iur., retired a senior judge of the Amsterdam District Court (the Netherlands). E-mail: dory.reiling@gmail.com

¹ Even if the phenomenon is global, the paper focuses on European judiciaries.

introduced to grasp the specific features of a system in which the constraints and guidance provided by procedural rules are moulded into a digital working environment. The normalization provided by legal standards, i.e. the traditional institutional arrangement designed to make judicial procedures predictable and homogeneous and grant equal treatment, is supplemented by technology. In its turn, technology provides a second layer of normalization, forcing the behaviour in given directions and inhibiting other action pathways. Establishing the working environment for judges, lawyers, and clerks, EJPs create more powerful constraints than those provided by the law. As observed in other domains, once digital working environments are in place, organisational actors are entrapped in an “iron cage” that strictly governs what can and cannot be done (Gosain 2004). These dynamics challenge the right of the judge to interpret procedural law since, with EJPs, software developers (or those who control the software) become the ultimate interpreters of procedural law. This digital transformation may put judicial discretion, independence and, ultimately, fair trial at risk and become an institutional and constitutional issue. Transforming software coding in law-making should not be allowed (Susskind 2019, 164).

The concept of double normalization, introduced in section 2, is discussed in section 3, considering how EJP guides and constraints the handling of proceedings. Section 4 analyses the three case studies. Section 5 maps out the implications of double normalization, focusing mainly on judicial discretion and fair trial.

2. The double normalization of court procedures

The legal framework is the first, ubiquitous technology of normalization employed in the judicial domain: it guides court operations and promises the predictability of procedure and equal treatment of parties to a case. The framework implies that when the same law is applied by an independent judge, uniform results are yielded, and this leads to all those involved in the proceedings being treated equally (Guarnieri and Pederzoli 2020). At the same time, the legal framework, consisting of procedural laws and regulations establishing work process,² is intended to provide an exhaustive set of information for clerks and lawyers to perform their duties during judicial proceedings. Hence, in the original model of courts and judicial procedures, formal rules are the quintessential institutional arrangement that guarantees the orderly, predictable, and just unfolding of court procedures (Shapiro 1981, 126). The administration of justice involves a pure application of procedural law coupled with the necessary interpretation of what law means in terms of actions and working practices.

Even a cursory examination of court operations reveals the limits of the institutional design. The capacity of the existing regulative frameworks to achieve orderly and consistent administration of justice is not absolute and is often considered unsatisfactory (Shapiro 1981, 156–6). The same rule, applied by different judges or by different courts, can lead to different procedures and thus result in inconsistent treatment of court users - *quot homines tot sententiae*³ - or, as written by Voltaire, “il y a autant de jurisprudences que de villes; et dans le même parlement la maxime d’une

² Procedural rules and related regulations establish how lawyers, clerks and judges, must handle judicial procedures; hence they design work processes.

³ “There are as many opinions as there are people”, Latin proverb quoted by Terentius and Cicero, translation of the authors.

chambre n'est pas celle de la chambre voisine"⁴ (Voltaire 1766/2019, Section XXIII). After more than 250 years, this picture has not changed.

Considering procedural law, the focus of this paper, the formal rules applied by independent judges on their own are not able to generate the desired uniformity of treatment that is understood as the equal application of the law. The same procedural law can result in filing procedures that vary from court to court (or even among the chambers of the same court), court fees being calculated using different criteria or differences in the legal aid granted despite the single national legal framework (Verzelloni 2009).⁵

The lack of uniformity, and the gap between the situation observed - as empirically experienced or statistically measured - and the desirable one, summarised by the equal application of the law to all parties regardless of the judge or the court involved, is entangled with external and internal judicial independence (Seibert-Fohr 2012, Guarnieri and Pederzoli 2020, 97).

If judges are not independent from external pressures, undue influences can steer the procedure in favor of one party and undermine the impartiality and equal application of the law. If judges are independent, different interpretations of the law may still occur because the law is unclear, not specific enough,⁶ or the judges have different orientations (Shapiro 1981, 146-7). In this respect, internal judicial independence protecting the individual judges in the "exercise of adjudicating functions" from interferences originated within the judiciary limits the use of hierarchy (Cappelletti 1988), the traditional arrangement adopted by bureaucracies to enforce the uniform application of the law, (March and Simon 1958, Thompson 1967). A court president or senior judge cannot give directions to a junior judge on how to handle a case. Hierarchy is limited to the courts' structure and hence to appeal processes. Appeal courts provide on-demand ex-post checks on a limited number of cases and matters. In practice, it may take a long time before a consolidated jurisprudential orientation certified by a decision of the court of last resort that effectively results in reducing the differences in interpretation of the law. In other words, in the field of procedural law, the normativity of the law (Hildebrandt 2008) is too weak to ensure its uniform interpretation and application. To sum up, the bounded normativity of formal rules (the legal framework that pre-establishes judicial procedures) and the limited room for appeals and hierarchy leads to a lack of uniformity in the application of procedural law.

In this context, information technology (IT) offers an additional way of guaranteeing the uniform application of procedural law. Technology provides a second means of normalization making judicial procedures more uniform. Hence it completes the phenomenon this article defines as double normalization. IT brings in a distinct form of agency, with a specific normativity that is more compelling and (apparently) objective than the one displayed by formal rules (Lanzara 2009, 2014).

3. E-justice platforms as carriers of double normalization

As noted in the introduction, EJPs provide the complete set of functionalities required to establish digital workflows within the court and with court users in digital format. Internal operations are executed through digital workflows, while organisations interact digitally with external users. In

⁴ "There are as many jurisprudential orientations as there are towns; and in the same parliament the maxim of one chamber is not that of the neighboring one", translation of the authors.

⁵ This lack of uniform application of procedural rules emerges more clearly in civil law judiciaries in which the uniform legal framework aims to lead to uniform procedures.

⁶ Norms have to be general to remain relevant and effective over time and adapt to societal development.

a fully digital primary process, IT is no longer a tool but a digital working environment. Since it provides the entire set of workflows, functions, and applications required to perform organisational tasks, users are required to only work within this environment. Workflows are managed digitally, and tasks are performed using the functionalities offered by the platform. This form of IT requires that work processes be predetermined and standardised. The work process only exists within the system (McAfee 2006).

Here, the rules, organisational regulations or formal laws, and the process merge. The rules are coded into the digital work process while regulations and codes are merged into one. Organisations need to take measures in advance, including decisions about who establishes digital workflows and working practices and who is authorised to make changes to the system. Hence, procedural law, as well as practice rules and internal work processes executed by judges, lawyers, and clerks, will be encoded in the digital process. To make the encoding possible, the various procedures and practices adopted by courts and individuals have to be simplified and standardised. The allocation of rights to make decisions about each of them - i.e., procedural law, practice rules, and internal work processes - need to be established beforehand. At the end of the project, the thick normative framework regulating the administration of justice will be encoded into the technological system. This process can be analysed in terms of functional simplification and closure (Luhmann 1993), or as inscription and delegation of formal rules into digital artefact (Bijker and Law 1992). In both cases, when such techno-legal assemblages (Lanzara 2009) are deployed across courts the double normalization resulting from the interaction of law and technology can be observed.

4. Case studies

4.1. Method and case studies selection

The three EJPs considered in the study present the complete set of functionalities that lawyers, clerks, and judges use to handle digital proceedings. They all provide a digital working environment within which the different actors in the proceeding can work. Furthermore, as noted, the three judiciaries also have different governance models; hence, the data set makes it possible to compare cases from this perspective and highlight how governance models affect double normalization.

The assumption is that a comparative approach is more effective in identifying and explaining emerging trends in justice administration than a single case study (Shapiro 1981, Cappelletti 1989).

The starting points require a method that makes it possible to analyse the current phenomenon (double normalization and its effects) and consider it as a consequence of technological and institutional changes that have occurred over many years. Therefore, the data collection carried out for this study used multiple sources following the tenets of cross-case analysis (Stake 2006, 40-1); updated project reports and literature were integrated with data collected in previous works. Also, data collection was guided by the theoretical framework (Yin 2003, 14) based on the consolidated findings of e-justice development (Reiling 2009, Cordella and Contini 2020), and similar systems developed in the private sector as enterprise systems (McAfee 2006). In this respect, procedural standardisation (Momoh et al. 2010), users' involvement (Ciborra et al. 2000, Nandhakumar et al. 2005), and the role of process re-engineering (Bing et al. 1999) are essential to identify and analyse the implications of double normalization.

In addition to the new data collected for this study, TOL was analysed using data gathered in four different studies (Augusto 2003, Carnevali 2006, Contini and Cordella 2010, Carnevali and Resca 2014). The new data collected for e-Curia were integrated with data collected in two previous

studies (Contini 2013, 2014) and in a workshop organised to discuss the forthcoming e-Curia development with project leaders.⁷ The studies include interviews with project leaders and innovators, observation of the systems' use, analysis of projects' documents, and validation of the data collected. Validation occurred through checks with key informants and workshops (public and closed doors).

Even though KEI had a shorter life than TOL and e-Curia, the project has been evaluated by an independent review that provides the first relevant data set (TRConsult 2018). Furthermore, KEI was analysed by other authors (Di Natale 2020, Van den Borne et al. 2021) who provided different analytical perspectives on its development.

Interviews, workshops and personal experience provided general insights, and participants' identities or individual views are neither revealed nor relevant.

4.2. Civil Trial Online

Civil Trial Online (TOL), or the Processo Civile Telematico, is the EJP for civil cases in the Italian judiciary.

4.2.1. Governance and project background

In Italy, the Ministry of Justice (MoJ) manages court services, including IT, and the Judicial Council manages the status of judges and prosecutors (i.e., their selection, appointment, careers, discipline, etc.). The 245,000 (Biancofiore 2021) lawyers are organised in local bar associations supervised by the National Bar Council. In the MoJ, the chief of the IT directorate and the project development team leaders are almost always judges or prosecutors.⁸ Hence, magistrates are involved from the start, bringing their judicial expertise to working groups (Carnevali 2011). The Judicial Council, not formally involved or interested in TOL development, got involved when the system became compulsory in 2014 (Consiglio Superiore della Magistratura 2015). Its position is limited to monitoring the EJP functioning and its impact on judges' work and courts' organisation.

4.2.2. Functionality

TOL allows users to file and exchange documents in civil cases. To do this, lawyers need different IT systems: a registered email address (REM), a digital identity (requiring a digital certificate in the form of a smart card), a digital signature (a second digital certificate), and a standard email and Internet connection. Access to TOL is granted by certified applications working as dedicated access points made available by authorised service providers. Through REM and access points, data (XML) and documents (pdf) are uploaded into the courts' case management system (CMS) and document management systems (DMS) (Ministero della Giustizia 2016).

Clerks and staff check all the data and documents uploaded in the court's systems and trigger the relevant workflow. The clerks have an interface for checking and accepting procedural documents and monitoring communication flows. The judges' interface (digital work desk) supports calendaring, case management, reading and annotating procedural documents, drafting and digitally signing decisions and other documents. Case data from the CMS are automatically inserted into the required draft documents. Documents are saved in digital case files. When specific events occur, the system sends automatic messages to keep the parties updated about the progress of their cases (Borsari 2014).

4.2.3. Development and deployment

⁷ Workshop e-Curia, e-Codex and the Italian e-Justice platform Exploring interoperability opportunities held in 2017.

⁸ The Directorate establishes the requirements in a dialogue with the legislative office of the Ministry. The national bar is involved when needed. The Minister, with a decree, approves the high-level requirements.

The project to develop Civil Trial Online (TOL) - exclusively dealing with civil cases -started in 2000 (Jacchia 2000). The IT department of the Ministry conducted a feasibility study to establish the requirements. Next, the Ministry approved the technical regulations establishing requirements similar to the paper procedures and contracted a software developer (Zan 2004). Differently from the other two cases, formal rules have established the system's features since the beginning of the project.

Most of the legal changes established technical specifications and made use of the system legal. The code of procedure was not amended to make it better aligned with IT (Fabri 2009). Even when existing rules were designed around the physical features of paper documents, the Ministry left the code of procedure unchanged. The original idea of exchanging petitions in XML format was abandoned because the use of such format would have made it impossible to count the number of pages of data required to calculate copy fees (Carnevali and Resca 2014, 167–8). Therefore, petitions are exchanged in PDF format.

The original architecture was decentralized - i.e., each one of the 165 local bars was supposed to develop its own access point to TOL. Since the architecture proved to be too complex and expensive, in 2011, the Ministry switched from a decentralised architecture to a more centralised architecture, entrusting the National Bar Council with the responsibility of developing interfaces between lawyers and courts (Carnevali and Resca 2014, 170). The shift to the centralised architecture and the involvement of the National Bar Association made possible by legal changes (the adoption of a new national e-government law) eased the adoption of the system such that, in 2014, it became mandatory for lawyers (Castelli 2014).

The project also experienced challenges in the involvement of internal users. The MoJ can mandate clerks as civil servants, but not judges, to use the systems. Consequently, the usage of the interface remained low for many years.

The first procedural document was uploaded via the platform in 2007, but after many year the use of the system is mandatory for lawyers and clerks, and regularly used by almost all judges (Ministero della Giustizia 2016). In 2019, lawyers filed 12 million procedural documents and judges issued almost 7 million decisions using the system's interface (Ministero della Giustizia 2020). However, print outs of procedural documents are still used to support the work of judges.

4.2.4. Law, technology, and standardisation

The project was developed to make a one-on-one translation of the code of civil procedure into a digital procedure, thus transforming the media from paper into digital without making any attempt to adapt the code of procedure to the features of IT. A new set of rules regulating specific features of the digital procedure was put on top of the pre-existing paper-based procedure. Rules envisaged, in advance and in detail, the technical and architectural solution to be implemented (Faro 2007, 260).

The need to reduce the multitude of law-based working practices developed by Italian courts (Verzelloni 2009) into a single system contributed to slowing down the adoption of the platform. It took seven years, from the first e-filing to the mandatory use of the system at the national level. During this period, each court adapted its different procedures to the constraints of the system, starting from simple injunctive orders, and moving towards more complex procedures such as civil execution, bankruptcy, guardianships (Aprile 2011).

From this angle, the challenges experienced when law and technology work together and achieve double normalization are clear. The procedural variety developed at the court or individual

level has to be simplified to become compatible with the requirement and constraints of the e-justice platform (Contini and Cordella 2015).

The constraints established by the EJP triggered the search for practical techno-legal solutions and a doctrinal debate discussing whether the technical constraints are compatible with the principles of access to justice and the related requirement of having sensible conditions to introduce evidence in the procedure (Marinai 2014). One of the issues is that the constraints to judicial action do not stem from the law, as established by the Italian Constitution (art. 117), but from a low-rank technical regulation issued by the executive branch (Ministry of Justice) and its technological implementations made by a private company. The Court of Cassation has made many rulings on these matters (Fedele 2019, 2020), but the issue is still debated at the professional and academic levels.

4.3. e-Curia

e-Curia is the EJP of the Court of Justice of the European Union. It was launched in 2011, and it provides court users with an e-filing facility to enable digital communication with the Court. Since its launch, e-Curia has been adopted by a growing number of users, and in 2018, its use at the General Court was made mandatory (Court of Justice of the European Union 2020, 9). The advantages of e-Curia are lower postal costs, more efficiency with digital files, and easier and safer access to the court and digital case files.

4.3.1. Governance and project background

The Court of Justice of the European Union reviews the legality of the acts of EU institutions, ensures that member states comply with the Treaties, and interprets European Union law at the request of national courts. It consists of the Court of Justice, dealing *inter alia* with requests for preliminary rulings from national courts, and the General Court, which has jurisdiction over a broad set of cases, including actions for annulment brought by individuals, companies, and, occasionally, EU governments (Von Papp 2018). Its governance is fully autonomous similar to that of Australian or US federal courts (Bunjevac 2020, 27–30). The Court has its own budget, which includes IT development and the authority to establish its own rules of procedure. The Court's budget is provided by the European Parliament, to which the Court is accountable for the spending of the budget (Krenn 2008). The organisation and functioning of the Court, the protocol on its status, and the rules of procedure are the subject of a dialogue (exchange of information and views) with the Working Party on the Court of Justice, a “preparatory body” established at the level of the Council of the EU.⁹

As in any other court, procedures are based on filing and exchanging procedural documents. The identity of each actor, as well as the authenticity of procedural documents and letters exchanged, must be verified. The procedures must be secure and, upon request, confidential (Court of Justice of the European Union 2020, 9) as in any other judicial proceeding. e-Curia was developed with the aim of building a digital workflow connecting the Court with other court users, easing access to justice, and facilitating efficient handling of case files that are particularly complex since most procedural documents must be translated into several languages (Groupes de travail du greffe de la Cour 2008).

4.3.2. Functionality

⁹ The working party is a “preparatory body” established by the Council of the European Union and that “handles work concerning the organization and functioning of (...) the Court of Justice (...). It deals with the protocol on the statute of the Court of Justice and its rules of procedure. The activities carried out by the Working Party are presented at General Secretariat of the European Council 2017.

The digital workflow is as follows. Case parties, or their representatives, enrol in e-Curia by sending a request to the Court. The Court checks the qualifications, sets up the account, and sends a username and password to access to the system.¹⁰ The party or their representative (“the user”) can log in with their username and password and lodge procedural documents and annexes in an electronic format (pdf). The user drafts the documents using a standard word processor or a tailored law firm platform. The user’s interface displays the list of documents uploaded and their status: awaiting acceptance, accepted, and acceptance presumed. All documents are time-stamped, tagged with a hash code to guarantee their authenticity and non-repudiability, and uploaded into an electronic case file (shared repository). Parties to a case can access the repository via e-Curia and, when needed, download the documents (Court of Justice of the European Union 2011).

In the Court’s back office, an assistant can open the document management system to draft a document (letter) using digital forms and data from the CMS. The system automatically generates documents in all the languages required by any specific procedural step. The assistant can work and control the workflow in her preferred language. With the workflow management system (internal e-Curia), both an assistant and an administrator (supervisor) can finalise the preparation of the “package” of documents and serve the package to parties to a case. Users receive a simple email message informing them that there are new documents and they can log in to e-Curia and download the documents. The digital files are made available to the judges’ chamber (i.e., the judge and her legal and administrative assistants). However, judges are not required to use the system; they mainly work with the printout of the electronic file, but when needed, they can access the electronic file and search across the documents via keywords (Contini 2013, 228–36).

4.3.3. Development and deployment

The IT department of the Court is in charge of software development. Accordingly, e-Curia and other systems were developed by an in-house IT team, and the development process followed the classical waterfall model (i.e., requirements, development, testing, and deployment), with one phase starting only after the previous one is completed.

The front office system (e-Curia) had to be made interoperable with the Court’s back-office applications and with the systems used by the parties. Translating paper-based practices into digital ones was probably the most demanding part of the project. Multifaceted procedures and thousands of document forms written in 23 languages had to be made digital. The court staff experienced with the intricacies of the procedures collaborated with the IT department to ensure the project was successful. Training, practice, and some minor adaptations eased the adoption. The development process focused on digitizing pre-existing procedures, without attempting to redesign procedures (Contini 2014, 237–8). e-Curia development mainly involved both the court staff and the external users, not the judges. The registry of the Court started the project and supported its deployment across the organisation. To ensure that e-Curia was accessible to users operating in different legal systems, with different e-identity and e-signature technologies, the Court developed a self-contained system with basic components (such as email, Internet access, and any system to generate a pdf file) that are easily accessible to potential users.

By June 2012, seven months after its launch, a majority of member states as well as various European institutions and agencies (i.e., the subjects variously involved in the majority of proce-

¹⁰ Due to the peculiar jurisdiction of the court, party representatives can be lawyers, but also agents of member states, law professors and other professionals as established by the Court.

dures) were already using e-Curia, with a significant impact being witnessed in the functioning of the registries (Contini 2014, 228). The Court regularly informed the stakeholders in the “Working Party of the Court of Justice” about the development. This form of accountability was enough to give a green light for the implementation of the project.

4.3.4. Law, technology, and standardisation

In 2005, an amendment to the Court’s rules of proceedings introduced a new paragraph (number 7) stating that “the Court may, by decision, determine the criteria for a procedural document sent to the registry by electronic means to be deemed to be the original of that document.” The rule provided a broad framework in which various technological options could be explored rather than pre-established technological solutions to be implemented, as in the case of TOL. Therefore, system developers worked without the constraints of implementing pre-established technical solutions as in TOL (Contini and Mohr 2014). This approach eased the identification of solutions coherent with the general legal framework and that were relatively easy to implement. The fact that the Court has both the power of regulating procedures and was responsible for software development avoided the rise of legal questions about the system’s functioning as in the other two cases. These governance features also eased the proper phase-in of techno-legal developments. For instance, in 2015, the systematic use of the system facilitated the abolishment of court practices that the growing use of e-Curia had rendered obsolete, such as fax and email (General Court of the European Union 2015). At the time, legal changes facilitated the redesigning of workflows. Finally, in 2018, the use of e-Curia became mandatory at the General Court (General Court of the European Union 2018).

The Court of Justice is a single structure rather than a network of local courts; hence, there were no diverse regional or local workflows that needed standardisation at the national level. This feature kept the system’s deployment simpler than those involving different courts, each with local practices. However, the procedures handled by the Court are complex in terms of numbers of actors and languages involved. In addition, the legal issues and procedural steps and outcomes are, more often than not, unpredictable. It took six years to transform the pre-existing paper-based procedures into digital ones (Contini 2014).

Unlike the other two cases, in which judges were among the primal users of the system, the judges were not directly involved in the new digital workflow. Indeed, the judges’ work is supported by a cabinet that takes care of the EJP, so they do not need to work personally with e-Curia or digital files. After several years, however, an increasing number of judges are now working with digital files and platforms, particularly at the General Court. Judges at the Court of Justice are also starting to use the system.¹¹

External users, mainly repeat players such as the European and National Institutions, were targeted first before the use of the system was promoted among lawyers who appear before the Court more often (Contini 2017, 335–6).

In this case, double normalization mainly affects the procedures managed by the court’s registry and the exchange of procedural documents. The level of standardisation reached by court procedures and documents are improved, as well as the reliability of the data exchanged (Court of Justice of the European Union 2021, 18).

4.4. KEI

¹¹ Interview with an administrator of the Court of Justice (2020). See Annex.

KEI is the Quality and Innovation Program of the Netherlands judiciary that was operated from 2013 to 2018. This program was intended to digitalise¹² the entire court system, including administrative, but not criminal cases. This description focuses on the development of the digital commercial claims procedure for effective comparison, because the other two projects only serve civil justice.

4.4.1. Governance and project background

Since 2002, the Dutch Judicial Council has been managing the courts, including the IT used by the courts. IT development and system management are done by the judiciary's own IT team.

In 2013, the Council set up the quality and innovation program, Kwaliteit en Innovatie (KEI). The KEI program's goal was to ensure that all court procedures were digitalised within a period of three years to facilitate faster litigation, better access, and less administrative workload. To achieve this, amendments to the Code of Civil Procedure and the General Administrative Law Act were needed. Digital litigation also had to be made possible and compulsory for professional legal representatives. Consequently, the legislative process ran in parallel with the IT development. The program had three components: supervision, administrative proceedings, and civil justice (Minister van Veiligheid en Justitie 2013).

The KEI program was governed by a program board which included two members of the Judicial Council. The development teams were all headed by judges. Lawyers were mainly part of the testing teams from the start of the project. Managing relations with all stakeholders (i.e., courts, lawyers, bailiffs, MoJ staff, the Supreme Court, and the Council of State) was done on different levels of the KEI program. The Bar Association also actively supported the project (Minister van Veiligheid en Justitie 2013, § 4.4). Despite this favorable context, the Council ended the KEI program in 2018 due to a lack of support by Court presidents and the decision of the MoJ to stop financing the program. The KEI civil claims procedure was implemented in two pilot courts. It is still in use there, processing nearly 4,000 cases that were filed using the system.

4.4.2. Functionality

Lawyers e-file cases either through the web portal or the systems interface. They can file their cases or defence using a smart submission form that will feed into the court CMS. Case substance can go into text fields in the form or in a document attached to the submission. As the filings come in, the system assigns two tasks to the administrator: checking the filing and the court fee.

Digital case management, which is the backbone of the process, balances strict process control with flexibility in case management. The system assigns tasks that are required, either by law or by the rules of practice to participants in the procedure, lawyers, clerks and judges. The system also has options for exceptional situations such as when the workflows provide pre-established actions. In addition, there is a "open option" that offers the user the possibility to undertake a different action that is not directly offered by the workflow.

The system ensures that lawyers, judges, clerks, hearing planners, and administrators are able to perform the tasks that they role must be able to perform. Since not all courts have the same team structure, each court can designate roles determining who can perform which tasks and activities. Message traffic and notifications support communication between lawyers, judges, and other parties involved in a case.

¹² The terms "digitalise" and "digitalisation" are introduced here to highlight the Dutch project, differently from the other two, is not plain digitisation, i.e. conversion of analogic data processes into digital ones, but envisage the transformation and redesign of procedures (Ritter and Pedersen 2020).

The two pilot courts for the digital commercial claims processed about 4,000 cases. Their experience shows that the digital procedure brought considerable improvements. Compliance with the right to fair procedure, as provided for under Art. 6.1 of the ECHR, increased with easier court access, equal access and increased transparency for parties, more public information in a search engine with public procedural information, and less delay and increased transparency with instant messaging. Simplified civil procedure and increased information security were also added benefits (Di Natale 2020, 20).¹³

4.4.3. Development and deployment

Judiciary teams within the KEI program's components developed new practice rules and designed new work processes and technical practice rules. The design teams were headed by judges with experience in project management and IT (Wallace 2019). Users were involved during the development, implementation, and final use phases. Increasingly rigorous testing by all user categories was done from the very beginning, and lawyers also tested the functionality from the start (Gloudemans-Voogd 2015). The digital procedure was piloted in two first instance courts; it was not implemented in the other nine first instance courts, because the KEI program was terminated (Rechtspraak 2018).

4.4.4. Law, technology, and standardisation

Legal changes and software development went hand in hand. This does not mean everything was simple, straightforward, and reached without compromises. The commercial claims procedure is considered the most complex procedure in Dutch courts. A study conducted in the early 2000s recommended abolishing the distinction between summons and request proceedings, but this was rejected by the legal profession (Asser et al. 2006). The new procedural law did reduce the number of document exchanges and set a simpler way of notifying the defending party. During the development process, various stakeholders pressured to reverse some of those simplifications. In the end, with some compromises, the new system ended up somewhere between a new system and a replacement of the old one (Reiling 2021).

The new procedural rules and new work processes brought about the question of what the law actually means in terms of system functionality. In the absence of precedents or case law, some of the issues raised were clarified by the work process design group and others were discussed in consultations with the Supreme Court (Reiling 2020). However, the final decisions about the shape of those processes in a digital form were made by the IT team. After the implementation of the commercial claims procedure in the two pilot courts, some challenges were determined by the Supreme Court as priority.¹⁴ However, these decisions did not necessarily trigger changes in the software code. Also, KEI was providing workflows to support active judicial case management (a best practice in the field), but the choice created some tension with the judges who preferred to have their court staff deal with procedural matters. The issues faced clearly capture the additional layer of complexity encountered when EJPs are not only replicating pre-existing procedures (as in e-Curia and TOL) but are also joined up with procedural re-engineering.

¹³ The "public" nature of courts is a difficult issue. It conflicts, by nature, with the right to privacy. The policy now is to anonymise court decisions if they are published (not all of them are), and procedural information was traditionally only available to lawyers. So, this search engine is an improvement. However, the Council of State (the top-level administrative court) has ruled that the simple information in the search engine that the decision was given is not enough for the decision itself to be public. This is clearly an issue in court policy that needs to be re-examined.

¹⁴ ECLI:NL:HR:2017:2629, ECLI:NL:HR:2019:1283, ECLI:NL:HR:2018:366.

Furthermore, during the project, procedural legislation was amended to reverse the reduced role of bailiffs in the procedure, triggering a redesign of the access procedure.¹⁵ The redesign consumed extra time and money and revealed the tight coupling between law and technology.

For Dutch civil courts, standardizing case handling is not uncommon. However, there is no official national standard for case handling. The KEI system dealt with this disparity by offering general functionalities, such as message traffic and activities that can deal with exceptional situations, and by allowing each court to assign roles to staff according to its team structure. In the case of digitalisation, procedural standardisation requires an official national standard for case handling. This is a clear example of double normalization that requires a governance instrument to decide what the national standard will be.

5. Double normalization and the fair trial principles

The paper introduces the concept of double normalization to capture a significant phenomenon occurring when a rule-based working environment is made digital. When this happens, formal rules are transformed into software codes, digital interfaces and back-end operations that automate and guide human action. The first normalization provided by procedural laws to ensure fair, equal, uniform procedures is enforced by the regulative properties of digital technologies – EJP in particular – which cause the second normalization. The new technological constraints force behaviours in the pre-established courses of action made available by the system inhibiting, at the same time, other procedural options. Procedural uniformity is then enforced not just by formal rules but also by software codes. EJP has become a pre-packed interpretation of procedural law, and the role of the judge as ultimate interpreter of the law – a pre-requisite of judicial independence – is challenged.

This dynamic is the key to understanding some of the problems encountered in EJP development and exploring the implications for the fair trial principle. The following sections discuss these two issues. The third identifies viable approaches to reconcile procedural digitisation with the fair trial.

5.1. Double normalization: procedural standardisation and redesign

The case studies analysis reveals some of the entanglements between EJP and the institutional features of justice systems.

Turning to the cases, the development of homogeneous internal and external digital workflows was complex and lengthy in all three instances. In e-Curia and TOL, it took 13 years from the project's inception to mandatory use of the system by all lawyers. In KEI, the system was mandatory in pilot courts but never deployed in the other first instance courts. Procedural standardisation was the core reason for the slow pace of innovation. This was less of an issue in e-Curia, which has no territorial branches, but was more acute in KEI and TOL. At the organisational level, KEI and TOL must be deployed in a plurality of courts, each one wedded to its local approach to case handling. At the individual level, the work practices adopted by a clerk or a judge may not fit with the workflow facilitated by the system. The sheer variety of established practices clashes with the standardisation required by the software (Cordella and Tempini 2011).

A mismatch between technology and organisation is also visible with the workflow re-engineering. It is often said that procedures must be re-engineered to take full advantage of digitisation, as stated in a recent communication of the European Commission (European Commission: DG

¹⁵ Law proposal, Second Chamber of Parliament, 2014-2015, 01-06-2015, doc. Nr. 34212 nr. 2.

Justice 2020, 23). What works in a paper-based environment may be redundant in the digital one and can be excised or completely repurposed. As observed, the number of pages is a meaningful counting unit for calculating copy fees in the paper environment but becomes meaningless in the digital one (see section 4.2.3). However, re-engineering injects complexity into the system and creates more mismatches between technology, law, and the organisation. Also, at the beginning of a project, it is difficult to foresee all aspects of the development process and the features of the new digital proceedings (Susskind 2019, 163). e-Curia and TOL took a conservative approach, developing EJPs that were, in the main, digital replicas of the pre-existing paper-based working environment. Only when the two EJPs were deployed was some minor re-engineering implemented. In this regard, KEI was more innovative, introducing active case management—a justice sector best practice (Steelman et al. 2004, Fabri 2005) - into its workflow from inception. As noted above, judges preferred the existing routines and did not appreciate the change. Bailiffs who served procedural documents were also antagonistic. KEI legislation introduced a more informal way to summon a counter party that did not require the mandatory service by a bailiff. When this was challenged by the bailiffs, the law was changed to re-introduce the option of the traditional summons.¹⁶

When judicial procedures are made digital, the issues of standardisation and redesign are not just a functional question that can be handled through forward-thinking leadership and effective managerial strategies (Ke and Wei 2008). Such issues must be framed and discussed in relation to the institutional particularities of the different judiciaries, taking into account the pervasive legal framework and the institutional position of the judge and the special interests of the different stakeholders (as lawyers and bailiffs). The tensions between pre-existing paper-based procedures and the more standardised approach required by the EJP relate to the legal framework's role and the judge, who remains an independent and autonomous professional (Langbroek 2010), at least in the jurisdictions considered. Before EJP implementation, the working practices resulted from judges' interpretations of the existing procedural rules in each of the three jurisdictions. As the ultimate independent arbiters of the law, judges are the ones who transform legal interpretation into procedures and procedural decisions.¹⁷ These institutional and constitutional assumptions make judiciaries prone to develop a plurality of procedures (Fabri 2006, 144). With EJPs, the interpretation of procedural law is primarily done during the design stage, which takes away direct control and discretion from the individual judge (Contini 2020). When invited to work with the EJP, the judges often discover that it does not fit their working procedures and interpretation of the law. Their interpretation of procedural law, and the working practices developed at individual or court level, may not fit the system. The three projects faced the issue in different ways. e-Curia is mainly designed to work with case parties' representatives and the registry, so judges are not pushed to use the system. Due to a prolonged intake, however, the judges of the General Court have begun working with the digital file. In TOL and KEI, ensuring that the judges became system users was highly desirable (even required) since this resulted in increased process efficiency, transparency, and timeliness. In TOL,

¹⁶ The decision, technically and economically rational, was understood as a threat by bailiffs who, being private professionals, earn money also serving documents. Differently, the Bailiffs did not take a critical position in Italy because they are civil servants, understaffed, and overwhelmed by the workload.

¹⁷ Each court - as an organisational unit - can make efforts to make the interpretation of procedural law made by the individual judges more uniform and build organisational standards. However, statewide EJP remains a one-fits-all solution and cannot support the different standards developed by individual courts. From an IT perspective, it would further increase complexity and costs, while from a legal perspective, if the procedural law is one, it is hard to accept that EJP can support different interpretations.

the data showed a slow but steady increase in the number of judges using their digital work desk to handle their workload (Ministero della Giustizia 2020). The case of KEI is different because the MoJ stopped funding at the piloting stage and, a few months later, the Council decided not to implement the system in the other nine courts.

Thus far, this analysis has discussed the main kinds of mismatches between technology, law, and organisation - the higher procedural standardisation required by the EJP, the tensions between the features and constraints of the digital workflows and the pre-existing organisational and institutional features (re-engineering), the involvement of prospective users - and introduced the role of judges and their discretion in the interpretation of the legal frameworks.

Overall, the very difficulties faced in the development and deployment process prove that digital technologies, and EJPs in particular, bring into judicial procedures a peculiar agency that acts as a new, powerful source of normalization.

5.2. Double normalization, judicial discretion, and fair trial

The second feature of digital innovation emerges once EJPs are in place. The promise of double normalization is met. In the three case studies, the increased normalization is demonstrated in the electronic exchange of procedural documents, case-related communications between the court and case parties, in summons, and in court fee payments. Digital case files are now coherent structures of procedural documents associated with metadata rather than bundles of paper. Procedural documents are exchanged through structured workflows, with data collection now more consistent and reliable. The different components of an EJP normalize data, documents, and their exchange. E-filing changes the features of procedural documents, requiring increased standardisation of their formats. Case management systems create more reliable, coherent, accessible, and reusable data, leading to improved monitoring of cases. Workflow systems provide pre-established sets of tasks and actions for clerks, lawyers and, to some extent, judges. The increased procedural standardisation may result in more equal treatment for court users. The rigid procedure resulting from double normalization can jeopardise the flexibility required to guarantee a fair trial when unexpected circumstances, such as a brief not filed due to a lawyer's sickness, arise. This will be dealt with in the concluding section.¹⁸ The effect is systematic, but not necessarily univocal:

In the three cases, double normalization occurs with a similar process. First, the use of EJP is legal and effective in judicial procedures and then, once adopted, technology shows its normalizing properties on procedures.

Software developers encode the procedural laws and bylaws that implement the technical and procedural legal framework. Once the EJP is deployed and adopted (through the dynamics discussed above), its normalizing effects pervade courts' operations, not only through automation but also by providing instructions, constraints, and affordances to the users.

Consequently, the discretion of clerks, lawyers and, in some cases, judges is diminished. At present, this is already visible with streamlined and straightforward procedures - e.g., some administrative cases in KEI, case assignment, injunctive orders, and simplified procedures in TOL. In such instances, the system provides a pre-established path of action together with all the components (letters, forms, pre-formatted decisions, etc.) required to finalise the procedure (Reiling 2009).

¹⁸ Since the paper looks primarily at the impact of EJP upon fair trial principles, we do not discuss the impact in terms of efficiency here.

Such procedures are determined by the system developers rather than individual judges. This is a radical change from the pre-existing organisational and institutional settings.

The trend is clearly toward increased normalization affecting human discretion in general, and judicial discretion in particular. It will soon be the case that each procedural action, each document, and each decision must be selected from the particular options presented by the platform. Here, the normativity of technology - and the enhancements it can provide to a fair trial - must be harmonised with the institutional and constitutional setting of the courts. The more the e-justice platform impacts judicial discretion, whether explicitly or implicitly, the more its design, deployment, and assessment becomes a judicial responsibility. This makes digital innovation, governance, and development no longer a technical, functional, or managerial issue. It has become an institutional and constitutional issue.

5.3. Judicial and project governance to reconcile digitisation and fair trial

Assuming digital procedures are, or will become, the standard approach for proceedings, understanding how the double normalization affects fundamental judicial values becomes a matter of urgency, especially in relation to a fair trial as stated in Art. 6(1) of the ECHR. According to the Convention, a fair trial requires, *inter alia*, an independent tribunal—i.e., no external pressures on the court (or the judiciary as an institution), as well as no external or internal pressures on the individual judge. The question, then, is how to reconcile judicial independence – in its external and internal dimensions (see Section 2) – with the reduction of individual discretionality.

To start with, it should be noted that double normalization and the corresponding reduction of discretion can have a positive impact on fundamental judicial values. It increases predictability of court procedures, hence enhancing equality of treatment, and it can protect judges from undue influence. For instance, Opinion 21 on “preventing corruption among judges” of the Consultative Council of European Judges (2018) notes that automatic case assignment, implemented by computer systems, is an acceptable method for reducing the discretion of a court president in the allocation of cases (§ 41), hence protect internal independence (CCJE 2018). The challenge lies in developing and maintaining such systems without hampering other fundamental values.

The three case studies, with their different judicial governance models and project management approaches, can help explore this last issue.

The Italian Ministerial model seems to be more vulnerable to an undesired or improper reduction of judicial discretion via IT than the other two, with a possible compression of external independence of the judiciary. The MoJ, which has oversight over the project, could try to exploit the system to reduce judicial discretion in favour of its own political or bureaucratic objectives. A private company recruited by the MoJ developed the platform, and the interest of the Judicial Council in the innovation process was negligible for a long period (Liccardo 2004). From a governance perspective, this is a case where external agents can influence judicial discretion. However, there were safeguards embedded in judicial governance and project management. First, the Ministry owns the software code that can be checked by experts in or outside the system.¹⁹ Second, a project team staffed by various judges established the application’s parameters. Although the final decision was made by the MoJ, the judges on the team exercised considerable influence. Third, the project was rolled out slowly and gradually. Courts and judges had a lengthy period in which they were free to

¹⁹ This does not occur when courts or judiciaries buy licenses of commercial case management system or e-justice platforms developed within the global court technology market.

adopt the system or stay in the comfort zone of the old paper-based procedures. Fourth, judges can always criticise the actual functioning of the system or resist its use without facing any consequences.²⁰ Fifth, even if the Judicial Council has remained silent, it is always ready to oppose initiatives that may hinder judicial independence. For any reform initiative, the Council's green light and support are necessary conditions. On the one hand, this is a consequence of the institutional culture but, on the other, the balance of power gives the Council a wide array of means to halt reforms imposed by the government (Di Federico 2002). Overall, these institutional, political, and cultural factors have effectively protected the Italian judges from external pressures, including potential challenges derived from the digitisation of procedures.

In the Netherlands, KEI was developed by a Program Unit within the Judicial Council. The Council appointed a judge to head the design unit. Other judges helped identify functional requirements in system development. Software coding was done internally by specialists hired by the Program. The vulnerabilities of the Italian governance model are not evident here. If the e-justice platform reduced judicial discretion in some areas, this was because of decisions taken by the judiciary. However, KEI had a different vulnerability through its dependence on the MoJ. As the Ministry made changes to the new legislation, the technology needed to be redesigned, and sometimes even rebuilt. The Ministry also mandated that the system be used from the day it was launched, which required a nationwide "big bang" rollout to facilitate the introduction of the new legislation. Such requirements have grave consequences for development and implementation, which may not have been considered. On the other, the budget provided by the MoJ partly financed the Program. For reasons that are not relevant here, the Ministry later decided to stop the financing, development and implementation. In the Dutch case, even if the institutional arrangement is well designed to grant external independence to the judiciary, a vulnerability emerges from the financial dependence of the project to the Ministry of Justice. The vulnerability does not affect judicial independence but the overall capacity of the Council to control project development.

A different story applies to e-Curia. As with KEI, the platform was developed within the Court, with the involvement of registry staff and internal IT specialists. The budget was secured by the multi-annual financial planning established at the European Union level, and the institutional setting granted complete self-governance to the court. In this context, external independence is not an issue with EJP development.

Interestingly, judges were not directly involved, because the project mainly dealt with the exchange of procedural documents rather than, as with the other two platforms, internal workflow and case management. The e-Curia software brings the case file from the lawyers to the registry and from the registry to the judges' chambers. The judges and their discretionary powers are not affected by the direct use of the system because its functions end at delivery of the procedural documents to the judges. This double Interestingly, judges were not directly involved, because the project mainly dealt with the exchange of procedural documents rather than, as with the other two platforms, internal workflow and case management. The e-Curia software brings the case file from the lawyers to the registry and from the registry to the judges' chambers. The judges and their discretionary powers are not affected by the direct use of the system because its functions end at delivery

²⁰ This is different in several other judiciaries, including EU member states, as demonstrated by the attempt to exercise control on judiciaries in Poland and Hungary.

of the procedural documents to the judges. This double normalization affected the registry and the case parties' representatives, but not the judges.

Thus, e-Curia is the model in which governance of the judiciary (the autonomous governance model) and project governance are better tailored to support digital innovation, taking advantage of the increased uniformity brought in by double normalization while protecting the judiciary's discretion (and the project) from external pressures.

As noted, the different governance models provide the basic institutional setting in which double normalization occurs. The three cases show that a governance model in which the judiciary has firm control of system development and deployment reduces the risk of improper use of the system. This state of affairs is patent with the Court of Justice and the Dutch Judiciary. However, even when the executive is in charge of system development, as in Italy, measures can be taken to limit the reduction of discretion that could affect judicial independence. In any case, even when EJP development is under the control of the judiciary and external independence is not affected, its adoption reduces judicial discretion and may affect internal independence. It is technically inconceivable to design EJPs tailored to the expectations (and judicial interpretations) of each judge. Furthermore, compression of discretion is, in some cases, desirable, as it increases the equal treatment of court users and can protect judges from undue influence. If technology has to be a constitutive component of the administration of justice and if the fair trial principle of equality in judicial independence and discretion are to remain essential elements of judicial proceedings, then tensions between the two must be resolved, and internal judicial independence considered. Reconciling both allows taking advantage of double normalization to improve equal treatment—another essential value.

Examining the issue in more detail, the cases suggest a way forward for easing reconciliation in the three governance models. Essentially, any reduction of judicial discretion should be done through proper judicial means, i.e., by judges or with judicial supervision. As observed, the phenomenon occurs in the three cases, even if different arrangements are in place. The principle of fair trial already acknowledges different degrees of discretion for judges. A single judge may have more discretion than a judge working in a panel of judges. Panels and chambers are institutions designed to facilitate discussion between different members and points of view (interpretation of facts and law) to reach an accord on decisions. When decisions are particularly relevant, potentially controversial, and a common jurisprudential perspective must be identified, grand chambers (or the plenum)²² are the proper forums (Bobek 2021, 2–4). Their working methods entail a reduction of individual judicial discretion that is entirely compatible with the principle of internal judicial independence. Encoding judicial procedure into software, along with the normalizing effects discussed above, mimics the type of cases and decisions taken by grand chambers—a body authoritatively deciding how the law should be interpreted. The idea of a Grand Chamber, once applied to EJP The idea of a Grand Chamber, once applied to EJP development, allows judicial suppression on critical decisions affecting judicial discretion.

The resulting slow pace in project deployment, however, defies another requirement: any project involving relevant financing must deliver results in a reasonably short timeframe. The financing agency, investing relevant resources in the project, needs to get results before the end of its mandate. Thus, political and financial constraints force project leaders to work with schedules that may be unrealistic for effective, careful deployment. This was the case with KEI, which was axed because of the pressure of delivering results too fast. The cases of TOL and e-Curia show that more than 10 years might be required from inception to full deployment. This timeframe does not meet

the standard mandate of the financing agency, which is a good reason to regard such projects as long-term judicial reforms.

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**Françesko Kontini,
Dori Reiling***

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İkiqat normallaşdırma: prosessual hüquq rəqəmsallaşdıqda

Xülasə: Üç elektron ədalət mühakiməsi platformasının (EJP) müqayisəsi - ikiqat normallaşdırma adlanan - ümumi dinamikanın müəyyən edilməsinə gətirib çıxarır ki, bu da EJP-nin inkişafını sadəcə funksional deyil, həm də institusional və konstitusiyaya məsələsinə çevirir. İtaliyadakı “Trial on Line”, “e-Curia” (Avropa Birliyi Ədalət Məhkəməsi) və Niderlanddakı “Kwaliteit en Innovatie rechtspraak” üzrə nümunə araşdırmalarının təhlili göstərir ki, hakimlər, vəkllər və məhkəmə katibləri üçün iş mühitini formalaşdıran EJP-lər, qanunla nəzərdə tutulmuş məhdudiyyətlərdən daha güclü məhdudiyyətlər yaradır. Məhkəmə prosedurlarını proqnozlaşdırıla bilən və vahid etmək, habelə bərabər rəftarı təmin etmək üçün hüquqi standartlar tərəfindən həyata keçirilən normallaşdırma rəqəmsal iş mühiti ilə tamamlanır. Beləliklə, texnologiya hakimlərin davranışını əvvəlcədən müəyyən edilmiş istiqamətlərə yönəltməklə və digər hərəkət yollarını məhdudlaşdırmaqla əlavə bir normallaşdırma qatı təmin edir. Bu proses hakimin prosessual hüququ şərh etmək hüququnu şübhə altına alır və ədalətli məhkəmə araşdırmasını qorumaq üçün müvafiq məhkəmə idarəçiliyi mexanizmlərini tələb edir.

Açar sözlər: elektron ədalət mühakiməsi, hüquq və texnologiya, ədalətli məhkəmə araşdırması, məhkəmə islahatı.

* **Françesko Kontini** - İtaliya Milli Tədqiqat Şurasının Hüquqi İnformatika və Məhkəmə Sistemləri İnstitutunun (İtaliya) baş tədqiqatçısı. E-mail: francesco.contini@cnr.it

Hon. A.D. (Dori) Reiling – Hüquq üzrə Magistr, PhD, Amsterdam Rayon Məhkəməsinin təqaüdə çıxmış baş hakimi (Niderland). E-mail: dory.reiling@gmail.com

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**Франческо Контини,
Дори Рейлинг***

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Двойная нормализация: когда процессуальное право становится цифровым

Аннотация: Сравнение трех платформ электронного правосудия (ПЭП) приводит к выявлению общей динамики – так называемой двойной нормализации – которая делает разработку ПЭП институциональной и конституционной проблемой, а не просто функциональной. Анализ конкретных примеров Trial on Line в Италии, e-Curia (Суд Европейского союза) и Kwaliteit en Innovatie rechtspraak в Нидерландах показывает, как ПЭП, устанавливающие рабочую среду для судей, адвокатов и секретарей, создают более жесткие ограничения, чем те, которые предусмотрены законом. Нормализация, осуществляемая правовыми стандартами для обеспечения предсказуемости и однородности судебных процедур и равного обращения, дополняется цифровой рабочей средой. Таким образом, технологии обеспечивают дополнительный уровень нормализации, направляя поведение судей в заранее определенные русла и препятствуя другим путям действий. Этот процесс ставит под сомнение право судьи толковать процессуальное право и требует наличия соответствующих механизмов управления судебной системой для обеспечения справедливого судебного разбирательства.

Ключевые слова: электронное правосудие; право и технологии; справедливое судебное разбирательство; судебная реформа.

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* Франческо Контини - старший научный сотрудник Национального исследовательского совета Италии, Института правовой информатики и судебных систем (Италия). E-mail: francesco.contini@cnr.it

Дори Рейлинг - Доктор философии, магистр права, судья в отставке, окружной суд Амстердама (Нидерланды). E-mail: dory.reiling@gmail.com