

eAccess to Justice – Brief Observations

Guy Canivet

Good morning,

I must first of all ask you to accept my apologies. Having agreed, many months ago, to participate in your conference on “eAccess to Justice,” I am today prevented from doing so by the schedule of the Conseil Constitutionnel, or Constitutional Council.¹

I am truly very sorry. Therefore, I have proposed that I deliver a brief presentation by way of an audiovisual recording.²

The manner in which I address you is not without relevance to the subject of your conference. It demonstrates, in any case, the advantages of this mode of communication, which you know well. It also reveals its limits. While an audiovisual communication avoids the time and cost of travel, which are not negligible for a trip between Paris and Montreal, it deprives me of the pleasure of meeting you in person and of reconnecting with friends, which is always a delight in Quebec; it thwarts my interest in hearing you speak and participating in your discussion. On balance, I have much to lose [through this mode of communication]; in addition to being deprived of the pleasure of reconnecting with you or of getting to know you, I would have learned a great deal from you, much more than what I have to share to you.

The setting of this recording, in the courtroom of the Constitutional Council—even though the quality may not be optimal—allows me to tell you that the French constitutional jurisdiction does not lag too far behind in terms of cyberjustice.

As you can see, it benefits from a courtroom with recording capability. In certain disputes, notably relating to elections, it holds hearings by videoconference, which is particularly useful given that the territory of the Republic includes many remote overseas communities. These hearings are recorded and can be viewed live on the internet; they are thus accessible to all citizens. All the procedures are paperless. Communication with lawyers is electronic. Applications are filed online, and the hearing of cases is online as well. Documents between the Council and the government, parliament, public administrations, and jurisdictions is carried out by electronic messages. Decisions, translated into many languages, are classified and made available to the public in a database accessible on the Council's website. If you consult it, you will note that this site is quite well-designed. For example, visitors to the site are able to consult the schedule of cases. We have access to all the legal and case-law databases of *Légifrance*, which is the service providing public access to the law in France, and we can consult all of the electronic legal publications available in France.

Our experience regarding e-access to law and to justice is certainly very standard. But it seems to me worthy of being shared. This leads me to a few brief reflections.

As your conference demonstrates, around the world, experiences of cyberjustice are numerous and varied; be it access to internet services of courts, tele-procedures, paperless records, remote consultation of records, access to case-law databases, online decision support, or even e-justice, all these technical advances not only call into question the access of individuals to courts but, much more than that, they radically change judicial methods, professional practices, the mode of making decisions, the public character of hearings, and finally the perception of justice by the public.

In many countries, these initiatives are developing at an accelerating pace. All this brings about enormous transformations in juridical institutions. However, these changes are more or less well-prepared and sometimes poorly mastered; this, it seems to me, requires analysis, which I propose to carry out in four stages.

The First Stage Is that of Sharing Experiences

This is one of the goals of your conference. The court systems of states have much to gain from studying and comparing electronic initiatives in place elsewhere, whether experimental or operational.

While I was serving on the Court of Cassation, where diverse information and communication systems were developed, I benefited greatly from visits to Singapore, Brazil, the United States, Canada, and elsewhere... Particularly special were the Cyberjustice Laboratory at the University of Montreal, which I have visited many times, and my deeply engaging dialogues with those overseeing it. The pooling of knowledge and shared experiences are central. It is thus necessary to create and foster spaces of sharing.

Second Stage: Standardization

All these initiatives modify the essential aspects of legal techniques in significant ways: access to court systems, modes of expression, the adversarial process, the rights of the defence, and the protection of litigants and of personal information.

They affect, in consequence, fundamental legal guarantees. The quality of justice rendered depends simultaneously on the technical reliability of systems and the ability of citizens to use them, their equal ability to gain access to these techniques, the training that is offered to them, their mastery of and familiarity with this new way of appearing before the courts.

All this poses problems of an ethical, technical, psychological, juridical, social nature... These must be taken into account when determining, on an international scale, the criteria that these modes of administering justice must respect. This supposes a standardization of practices, a sort of quality label for e-justice.

Therefore, within the Council of Europe, the European Commission for the Efficiency of Justice (CEPEJ) has the mission of further reflection on the potential of new technologies to improve the functioning of the justice system. It has published a report on “L’utilisation des technologies de l’information et de la communication (TIC) dans les systèmes judiciaires européens” (the use of information and communication technologies [ICT]) in European judicial systems), which undertakes a critical analysis of diverse European experiences and offers a variety of recommendations.

The Third Stage Is that of Evaluation

Cyberjustice is not an end in itself; it is not a question of surrendering without reserve to the allure of technology. These technical developments are only of interest if they result in better allocation of judicial

resources, reduced costs for the state and the user, improved services for litigants, improved professional tools, increased security of decisions, and favour their enforcement and recognition.

Beforehand, the implementation of these initiatives must thus be preceded by a serious study of their impact, an evaluation in terms of cost and benefit that measures their effect on stakeholders. And afterward, when they are in place, these initiatives must be evaluated periodically in a neutral, independent, and rigorous manner, in order to correct and update them.

In this respect, the report of the CEPEJ that I have already cited identifies many imperfections in the programs implemented in the different European judicial systems: mediocre performance due to the poor design of systems; inappropriate strategies for innovation; numerous malfunctions; the absence of maintenance; poor public awareness; insufficient training of professionals; and, finally, the failure to update practices. Clearly, all these shortcomings must be analyzed in order to detect their causes and put in place the means to avoid them in the future. With a bit of methodical rigour in these matters, every failure carries with it the hope of a future success.

The Fourth Stage Is that of Anticipation ...

Anticipation based first on new technologies in order to imagine its possible applications in the judicial sphere. I will give but one example: What would be the effect of “big data” on case-law databases, decision support systems, the standardization of decisions relating to indemnities and pensions? Are we moving toward the use of artificial intelligence in judgments?

But it is also necessary to anticipate reforms of structure, organization, and practices that the introduction of these technical innovations will require. In France, the Institut des Hautes Études de la Justice has put in place a program for the study of the justice of the future. By way of example, a debate recently occurred regarding the construction of new courthouse in Paris. After long hesitations due to opposition by professionals, the decision was finally made, three years ago, to construct a new courthouse, since the historic location on the Île de la Cité had become totally inadequate. The project, significant in both scale and cost, was, it has been alleged, designed based on the current state of operations, without accounting for future developments—cybercourts, e-justice, and paperless

records. Whether or not this is true I do not know, but it is this argument of insufficient adaption of structures and methods that opponents to the project used to call it into question.

In any case, whatever their effect, the modes of e-access are only instruments aiming to increase the efficiency of communications within justice systems, of communications toward the outside, and to rationalize “judicial production.” They must leave intact the essential function and spirit of justice. These values must be protected. They require that we take a moment to reflect before yielding to the technological dynamic. But you already know this well!

Finally, the immense potential of digital technology obliges us to discern and preserve the essence of justice and perhaps to raise questions that have otherwise remained unexplored; for example, that which our Spanish colleagues call “the principle of presence,” which requires in certain cases that the judges and the parties be physically present.

These are the few, very modest observations that I propose for your discussion on the preparation of the justice of the future, for which you have gathered today. I wish you much success in your work.

Notes

- 1 The Council’s website defines the Council as follow: “The Constitutional Council was established by the by the Constitution of the Fifth Republic adopted on 4 October 1958. It is a court vested with various powers, including in particular the review of the constitutionality of legislation.” Online: <<http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/presentation/general-presentation/general-presentation.25739.html>>.
- 2 This postscript is a transcript of Guy Canivet’s recording. Thank you to Emily Grant for the translation of the original French.

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