Implementing E-Justice on a National Scale: Coping with Balkanization and Socio-Economical Divergence

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EXECUTIVE SUMMARY

The world of justice is undergoing drastic changes that commenced about a decade ago. Trends in an effort for enterprise like management, along with the advent of information and communication technologies, have culminated in a strong imperative for technological and organizational reforms. However, justice is not simply another sector for e-government implementations. Justice is an autonomous function of democratic regimes that not only interprets laws but also poses restrictions and preconditions on how electronic systems are implemented with concern for the protection of constitutional and civil rights. Multiple types of relationships have been developed between politicians, administrators, technological infrastructure providers, and businesses, converting the roadmap for e-justice implementation from a mere quantified investment on content and organization to a complex strategy involving broader social and economical modeling techniques. Using case studies in three Balkan countries this research illustrates the problems in applying e-justice on a national scale.

Keywords: court computerization; information society; enterprise justice; transparency

ORGANIZATIONAL BACKGROUND

As realized in most democratic regimes, there are three government functions: legislative, executive, and judicial. This ancient doctrine, which can be traced back to Aristotle, the Greek philosopher (Leyden, 1985), was perhaps most thoroughly explained by the French jurist Charles
de Montesquieu, who based his analysis on the British constitution of the early 18th century (Montesquieu, 1748).

According to the doctrine in its basic form, these three functions should be vested in distinct bodies so that excessive power is not concentrated in the hands of one body.

This concept of the doctrine has, however, been re-interpreted to mean that it is not necessary for distinct bodies to hold each power, but what it is required is a “check and balance” system operating between them. Generally, we can say that violation of this principle (among the three mentioned powers) includes serious dangers for devaluing democracy (Kymlicka, 2001).

In practice, *justice* refers to the system used by governments to maintain social control, prevent crime, enforce laws, and administer justice itself. The judicial system encapsulates (Janosik, 1987):

- The mechanisms that regulate individual and group behavior, leading to law enforcement according to the legislative framework
- Associations, like the judiciary, the bar, and the involved general public, that are the active actors initiating transactions with the system
- Procedures, like corrections and probation, that are directly involved in the apprehension, prosecution, defense, sentencing, incarceration, and supervision of those suspected of or charged with administrative, civil, or criminal offenses.

The introduction of information technology (IT) in the judicial sector in the mid-80s did not lead only to extensive court computerization, but also generated hopes for reforms that could reshape a very conservative part of democratic regimes. It even raised expectations for an enterprise-like conception of justice, relieving economically a sector where heavy government spending is recorded (Schneider, 2002).

At the turn of the millennium the term IT was broadened to include electronic communication yielding the abbreviation ICT (information and communication technology). Although the term IT is still preferred in industry, the term ICT more adequately describes what is going on with e-justice, accentuating the hidden e-business dimension of justice.

E-justice is the space where the most advanced information technologies in the world make the administration of justice better, faster, and less expensive for citizens and institutions. Its aim is to strengthen the legal system and law enforcement (Politis & Papasteriadou, 2003).

E-justice perceived as the electronic delivery of government services is a subset of e-government; in simple terms it means that the justice sector is using ICT for communication between judicial organs and those seeking justice as well as for the exchange of information among the judicial organs themselves.

Governments are increasingly using wide area networks, the Internet, and mobile computing in their daily interactions with citizens and businesses. E-government applications are improving interactions with businesses by centralizing information sources into topical gateways. For citizens, they are attempting to make transactions, such as renewing licenses and certifications, paying taxes, and applying for benefits, less time consuming and easier to carry out. The benefits of e-government include less corruption, increased transparency, greater convenience, and cost reductions (Weerakody et al., 2007).

However, more and more decision makers are considering e-justice as something more than another e-government application. Within this framework, the Council Working Party on Legal Data Processing discussed the possibility of starting work at European level in the field of e-justice. Nevertheless, it is to be noted that ICT platforms in use have not been designed to function in other member states, whereas national or international law allows such cooperation.
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