

# EUROPEAN COMMISSION FOR THE EFFICENCY OF JUSTICE

(CEPEJ)

## DEMATERIALIZATION AND THE USE OF ICT

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Since the Action Plan adopted in Warsaw in May 2005, the CEPEJ has been strengthened in its activity of evaluating the different judicial systems of the member states.

Among different points of study about the working of judicial systems, one is now essential and is concerning the use of information and communication technologies (ICT). The use of ICT is now considered as a key element to improve the administration of justice. It is not only a tool for judges, court staff or lawyers, but a real manner of reducing the length of judicial procedures and improving efficiency of the judicial system.

As in most of the countries, Portugal holds computer facilities for the direct assistance of judges and staff. Portugal is classified within the countries which have a very high level of implementation of computer technology, like Austria, Finland, Switzerland and Spain, and before France, Germany and Sweden.

The last area of use is the communication between courts, legal professionals and potential court users. Since 2005, Portugal has developed several systems that are simplifying and accelerating different procedures.

The main purpose of the mission is to evaluate progresses that Portugal has made in the field of the use of information and communication technology in the justice sector. Its objective is to see if Portugal is on the right track, compared to other European countries.

## **1. Context and judicial environment**

Portugal is a country of written law. It has different degrees of courts:

- *Judicial courts of first instance* are the courts for common law and have a general, specialized (criminal, family, juvenile, labour, commerce and maritime matters) and specific (civil or criminal) competence,
- *Courts of appeal*, which have plenary, civil, criminal and social sections,
- *The Supreme Court of Justice*, which only know about the law.

Judicial courts of first instance are generally district courts, but when the volume of cases justifies it, there can be several courts of first instance in the same district.

There are at the moment five courts of appeal, in Lisbon, Porto, Coimbra, Evora and Guimarães.

The Supreme Court of Justice seats in Lisbon. It includes civil, criminal and social sections.

The annual total budget allocated for all the courts in the country is higher than 500 million Euros. This amount is comparable to the one allowed in Switzerland for same expenses.

Portugal has 3.1 courts for 100,000 inhabitants, while France has 1.2, Spain 1.6, Belgium 3.0 and Ireland 4.2. There are 17.4 professional judges for 100,000 inhabitants, and 4.3 lay-judges, while Belgium has 14.9 and 24.3, France has 11.9 and 5.2, and Ireland has 3.1 professional judges and no lay-judges.

In 2006, Portugal had 244 lawyers for 100,000 inhabitants, while France had 76, Sweden 49 and Austria 84. As Spain, Portugal is in the top rank for the proportion of lawyers per inhabitants.

## **2. ICT applications for common steps**

The Ministry of Justice has been promoting a varied set of initiatives with the purpose to improve relations between citizens, companies and the judicial system.

### **2.1. New technologies and trade environment**

#### **a- Immediate creation of firms (Empresa na Hora)**

It is possible to incorporate and register a single-member limited liability company, a limited liability company or a public limited company in one visit to a single office, irrespective of the new company's location. The articles of association are registered and published immediately on the Ministry's web site at <http://publicacoes.mj.pt>, with free public access, and the company is automatically allocated a registered web domain « .pt » with the company's name on the Internet.

The average time to create a company this way is 34 minutes (average time calculated in February 2009).

The creation of companies with this tool is cheaper than the traditional way: between 300 and 360 Euros, while the traditional way cost at least 500 Euros.

Companies can be formed in all the districts throughout mainland Portugal and island regions, and 118 service points are now opened.

Since July 2005, more than 67,900 companies have been formed, and, at the beginning of 2009, 67 % of the companies formed in Portugal have been declared this way.

#### **b- Online Company Incorporation (Empresa on-line)**

Since the end of June 2006, it is possible to incorporate and register commercial and civil companies of various types, single-member and limited liability companies, merely by accessing the official Portuguese business website at <https://www.portaldaempresa.pt>, and using a digital certification number. When a user requests an authentic act for the first time, the information provided by the digital certificate is displayed (name, e-mail address and tax identification number). It is also possible to update contact information (address or e-mail).

Creating an online company costs between 120 Euros (pre-approval agreement) and 380 Euros (free agreement), instead of paying more than 500 Euros to form a company through the traditional way.

Up to the end of February 2009, 4,373 online companies were formed. In January 2009, around 23 online companies were created per day.

### **c- Online Registrations (Registo Comercial on-line)**

A system was implemented in December 2006 and developed in July 2007, which makes it possible to apply online for several company registry acts relating to the transfer, unification, pledge, attachment, seizure and redemption of quota-shares and shares, registration of powers of attorney and agency agreement, rectification and cancellation of registrations by deposit made online, appointment, re-appointment and departure from office of company officers and of the secretaries of companies by quota-shares and public limited liability companies, merger and de-merger proposals, conversion of provisional registrations, transformation of companies, amendments to articles of association, merger and de-merger.

In order to use this service, a digital certificate is required which is currently only available to lawyers and solicitors; other users have access to a limited digital certificate through the citizen's card. The website can send out documents which legally prove the facts stated in the registration application (except in the case of registration by deposit), as well as the documents proving the capacity and the powers of representation for the act. Opting to use this, the informant will have access to registration of facts with the company registry, notification of parties concerned by e-mail and phone text, an access code to the Permanent Companies Registry Certificate, and automatic online processing of legal publications.

Companies save with this online registry up to 50 % of the normal cost for acts. Up to the end of February 2009, about 31,261 company acts were performed by Internet.

### **d- Permanent Certificate (Certidão Permanente)**

Completing the online registration, a new service has been available since December 2006: the Permanent Certificate.

It is an online company registry certificate, constantly updated, showing current registry entries and applications for registration and filing, for companies and other organization subject to official registration. The certificate may be obtained by anyone on the web site <https://www.portaldaempresa.pt/>. When the certificate is requested, the applicant is sent a code by phone text and e-mail which may be presented to any public or private entity instead of a paper certificate. A permanent certificate is automatically generated for each registry entry. The Permanent Certificate remains available at a site managed by the Ministry of Justice and may be accessed by public and private entities at <https://www.portaldaempresa.pt/cve/services/certidaopermanente/consultacertidao.aspx>.

While the certificate is online, no public or private entity shall require a paper-form certificate from the company that paid for this service.

Up to the end of January 2009, more than 1,070,000 permanent certificates have been issued.

Since April 2008, the company registry has been bilingual, being available in Portuguese and English. The English Permanent Certificate has the same value than Portuguese Certificate, costs the same price, and is as easy to obtain as a Portuguese Permanent Certificate. Since April 2008, 624 English Permanent Certificates have been issued.

#### **e- Simplified Company Information (Informação Empresarial Simplificada – IES)**

Companies can file accounts and submit annual accounting, statistical, fiscal and financial information to the public authorities by using a single online form. The charges can be paid in ATMs or through home banking services. After payment, the act is registered and published automatically on the web site <https://www.portaldaempresa.pt/CVE/ies/ConsultaCertidao.aspx>, and the company is issued with a permanently updated commercial registration certificate.

Before IES, companies had to meet separately with four different obligations, requiring different forms. In 2007, with IES, these four obligations have been performed, electronically, in just one moment through the Internet. In 2007 and 2008, more than 792,000 Simplified Company Information have been delivered. The price of the account registration has been reduced, from 126 Euros in 2005 to 85 Euros in 2007.

#### **f- Online publication of company information (Publicação de actos da vida da empresa)**

Since January 2006, the acts of companies and cooperatives, such as articles of association and any amendments, appointment and resignation of company officers, change of registered offices and resolution to redeem or convert shares, are published online, instead of on paper in Series III of the Diário da República, the Portuguese official journal.

The publication is 50 % cheaper than the usual price before. Up to the end of January 2009, 1,454,904 online acts were published.

#### **g- Online declaration of branch office (Sucursal na Hora)**

Since April 2008, it is possible to set up, in Portugal, a foreign branch office at the companies' registry. Presenting the required documents, the branch office is immediately formed and the registration of permanent formation and the appointment of the representatives are published on the Ministry of Justice publication site. The branch office is automatically inscribed in the Internal Revenue Service and in the Social Security.

The new branch office immediately gets, free of charge, the branch identification card, an access code to the branch permanent certificate and the branch social security number.

In February 2009, 60 % of the branch offices opened in Portugal were created through this online way.

#### **h- Online industrial properties**

It is possible to obtain immediately a pre-approved trademark, pre-registered in the name of State. The trademark may be obtained online through the Portal da Empresa at <http://www.portaldaempresa.pt>, for which the user needs an internet connection and a digital certificate. A trademark can also be obtained in the same time of the online creation of the firm, directly at the Company Registries, the Company Formality Centre and at the National Registry of Corporate Persons.

It is also possible to apply online for registration of a trademark, logo or establishment name. This service allows reducing of the normal price by 30 %. Protection for inventions and designs can be applied and obtained online, with discounts of 50 % and 30 % respectively of charges.

In February 2009, about 98 % of national trademarks requests, 70 % of patents requests and 99 % of logotypes requests were performed through the Internet. This treatment of industrial property allows a sizeable gain of time: in 2002, the time limit was 15 months. In 2007, 80 % of the request were registered in 5 months.

#### **i- Simplification of the companies' life**

The procedure can be used to wind up and liquidate immediately commercial organizations, companies, cooperatives and limited liability sole traders.

A public deed is not normally required for merging or splitting companies, and it is enough to register the merger or de-merger plan at the Companies Registry. The notice of the general meeting and the notice of accessibility of merger or de-merger documents on the respective seats of the companies involved in those operations are then published on the web site <http://publicacoes.mj.pt>.

### **2.2. ICT as new services for citizens**

Portugal has developed several web services intending to make usual citizens' steps easier and faster.

#### **a- Birth registration scheme (Nascer Cidadão)**

Since March 2007, it is possible to register the birth of a child in a hospital or a maternity clinic, right after the birth, with no need to do it again at a civil registry office. Then, the child is immediately recorded at the Social Security and in the National Health Service.

46 birth units have this service available. Up to February 2009, 92,336 registrations have been performed with this system.

#### **b- Fast-track home buying scheme (Casa Pronta)**

Since July 2007, it is possible to perform immediately, and at a single point, all transactions related to real estate, transfer or assignment. The system allows to buy, sell or mortgage real estate, to pay all related taxes and duties, and sign the sale or assignment contract.

Since July 2007, around 16,200 fast-track home buying procedures have been performed.

#### **c- Online association**

Note: Is this point about «on the spot association»? ; there is no such thing as the «online association».

Since October 2007, it is possible to register online an association, and all the documents related to it. Up to February 2009, 1,409 associations have been registered this way.

#### **d- « Inheritance » service (Balcão Sucessões e Heranças)**

This service allows, in one single point, to perform all the operations and legal acts relating to succession, establishing who the beneficiaries are, dividing the estate of the deceased, paying taxes owing and submitting declarations to the tax office, requesting or completing all registrations relating to the divided estate.

#### **e- Divorce with equitable distribution of property**

It is a single service point that provides, in divorces by mutual consent which are dealt with at the civil registry office, the division of the couple's property and some other formalities.

#### **f- Civil online**

Since January 2009, the Civil Registry Online enables citizens to initiate through the internet the registry of civil acts. Among these, it is possible to initiate a civil marriage using the citizen's card.

### **2.3. New services for citizens and companies**

#### **a- Single vehicle document**

Since the end of October 2005, the Vehicle Registration Certificate has replaced the paper vehicle registration certificate and the title of vehicle ownership. Up to the end of February 2009, over 5,831,700 registration certificates were issued.

#### **b- Online Vehicle Scheme**

Since September 2007, it is possible to request the title of vehicle ownership (buy and sale) through the internet. Over 280,300 registrations have been made and over 42,200 permanent vehicle registration certificates have been issued.

#### **c- Land Registry Online**

Since January 2009, the Land Registry Online enables notaries, lawyers, solicitors and others to promote the registry of all contracts concerning land property rights. Therefore, the cost of a registration is reduced by up to 20 %.

### **3. ICT in the courts' working**

In 2005, Portugal started off a new way of dealing with judicial procedures, based on dematerialization. This major project was called CITIUS. It was first of all used by secretaries, but was soon extended to judges and lawyers during the period 2006/2007.

#### **3.1. Description of the system**

The CITIUS application has been developed by the staff of the Ministry of Justice and the courts themselves, and is at the moment available for civil law proceedings. It is expected that, within a period of two years, criminal proceedings will be managed in CITIUS too, and that all dematerialized procedures could be sent to courts of appeal.

Objectives of this application were, from the angle of dematerialization, to improve access to the courts, to ease proceedings, and to gain on celerity.

Each lawyer is able to start a court case by operating an electronic exchange of information (documents, files, ...), through the internet, after being identified by the use of a smart card. A law promulgated at the end of the 90ies allows all the electronic documents to be sent by e-mail to the court. With Portaria 114/2008 of the 6<sup>th</sup> February it is now possible to send electronically the pleadings. The size of documents is limited to 3 Mb. Court staff receive the case and examine the documents sent. If necessary, an electronic exchange can be initiated between the clerks and the lawyer to complete the procedure file.

After this first step, affairs are automatically distributed among the judges of the court. Each judge can work on the affairs affected to him, and consult all the documents attached. Then, at the end, the decision, electronically signed by the judge, is sent to the court staff.

On the lawyers' side, it is possible for them to follow their own cases by connecting with their smart card, which guarantees a secure access to the information. Besides, they have at their disposal a private diary which contains all the dates relating to their cases recorded in CITIUS. An update is made every 24 hours, so they can see, everyday, the advancement of their different cases.

A special procedure, treated without the intervention of a judge, is now nearly fully dematerialized: the injunctions. 99 % of the payment orders are sent electronically to the National Office for Injunctions. That allows the delivery, payment and handling of the injunction proceedings in a fully electronic way. The delivery of the injunction is made through the internet, by electronic form. The payment is also realized electronically, by ATM or home banking. In case of counterstatement, the injunction is sent online to the court.

#### **3.2. Implementation of the CITIUS project**

In order to dematerialize cases in the courts, it has been necessary to make available the CITIUS application adapted to the needs of the judges, the public prosecutors, the secretaries and the legal agents. An internal development of the application has been chosen by the Ministry of Justice, with the help of the lawyers, and based on the needs of the users.

The State Secretary of the Ministry of Justice estimated that the costs related to the CITIUS project are equivalent to approximately 3 million Euros. Most of the money was used to buy equipments, essentially laptops distributed to judges and public prosecutors, and tools to use smart card and digital signature.

The training costs are excluded from this amount. Now, 99 % of the judges are trained on the CITIUS application, and it is, since the beginning of 2009, mandatory for the civil proceedings. The use of CITIUS is not compulsory for criminal cases, until the future development of a specific part, though the actual application can be used in this part.

1,356 judges have the application installed; 2,283 laptop computers were distributed, and 173 training sessions were held for 1,341 judges and 113 sessions for 1,142 public prosecutors. Since April 2008, over 827,000 procedural documents have been delivered, and over 10,000 users are working simultaneously in the application. 2,419 electronic signature cards were issued (1,295 for judges and 1,124 for public prosecutors). Of course, all staff from all courts in the country have been trained.

From April 2009 onwards, the electronic notification is available and can be the only method chosen by the lawyer or the legal agent.

Besides, statistics are automatically generated, and each judge can consult his own statistics on a private connection. The Ministry of Justice can only see general statistics, but can not consult specific results, by judge within a court. Very soon, statistics should be accessible to everyone, in a public access.

### **3.3. The technical part of the CITIUS project**

The IT Institute for Justice (ITIJ), situated in Lisbon, is in charge of development, maintenance and communication of the all internet parts of CITIUS. It is also in charge of the other applications developed for companies and citizens.

Each court has its own data base, on a local server. All the servers are connected to a central data base, through a star-based network. More than 400 servers are functioning at the moment. Next year, another central data base should open, in another part of Portugal, to allow continuity of the network in case of a connection cut in one of the remote access servers.

A redundant system exists, copying all the data and saving all the applications, to allow the continuity of service. The backup is realized on 600 tapes, regularly changed and stored in another building.

Users are connected through a web connection and are using specialized links of a capacity contained by 10 to 100 mega bites.

## **4. Implementation of ICT in other European countries**

### **4.1. Situation in Spain**

Regarding the Spanish situation, in general the use of ICT is widespread in courts, all of which are connected to an internal server, have an internet connection, video-conference and recording facilities for hearings and electronic case-management systems which include information about the court, the parties and the procedure, including templates.

An important step towards dematerialization was introduced through the Royal Decree 84/2007 which established the LEX-NET system for presenting pleadings and documents, communicating copies and making notifications through electronic means, complemented with a system of electronic signature according to the Law of December, 19th 2003. LEX-NET can therefore be defined as a mean of secure data transmission that, by recognized signature, makes possible to communicate documents between courts and other judicial operators.

The implementation of the system is gradual, both from the point of view of content and of territory. In this sense, inversely to what was described to be the Portuguese case, it has first been introduced mainly as a system to notify parties, whose possibility of presenting legal documents is gradually being added. This makes a tool that is especially suitable for solicitors (« procuradores ») in civil proceedings. The specific organization of the Spanish system of justice administration (in which competences of justice administration are shared between Autonomous Communities to which those competences have been transferred, while these competences, in the rest of the country still correspond exclusively to the Ministry of Justice) explains the fact that such system doesn't automatically apply to all Spanish courts but those that fall under the competence of the Ministry. Some Autonomous Communities are also applying the same system after signing cooperation agreements with the Ministry or might use a system on their own.

Courts can also access public registers necessary to exercise their functions online (namely, criminal records, or the Register for Domestic Violence). In this sense, an essential tool is the so-called « punto neutro judicial » which allows courts to have access to services and registries provided by the Ministry and relevant to public bodies (for example data bases from Tax Authorities, Social Security, Traffic Authorities, Notaries and Bars regarding registered powers of representation, legal libraries, etc.).

Other applications developed in Portugal are not strictly comparable in the sense they do not form part of the Justice system in Spain. In any case, registered users (i.e. legal professionals like lawyers) can have online access to the Company and Land Registries and also ask online for certifications that they then receive in 24 hours. This is also possible regarding to the Civil Registries, but conversion into electronic format of the books is still on-going, so this service is only available in big cities.

### **4.2. Situation in France**

The Ministry of Justice is developing several ICT applications in different spheres, with different goals to reach.

As all the courts have an internet connection, one of the projects is to promote online exchange of documents in civil procedures. Using that way, lawyers are able to follow their affairs in the whole country, and to send different documents, as pleadings, to the court or to the other parties. The court staff can also send decisions preparing the hearing, or electronic letters to ask for some information. This online exchange is working more and more in first instance courts, and is being extended to the courts of appeal. Final decisions are still send on a paper medium, as the law is not yet adapted to authenticate electronic judgments with electronic signature.

Though, a test of electronic signature is going to be conducted within different courts, and a text about dematerialized documents is under preparation.

An online application has been developed for criminal proceedings, only available for court staff, judges and public prosecutors. This application is based on a central data base, and one central server. Data are copied on a second server to allow the continuity of justice service. This central application should be connected to other administrations such as tax services, the police and the National Prisoners File. This application is now being introduced in the first instance courts, and will be in the courts of appeal within three or four years. However, the project is facing different technical problems and implementation has been slowing down.

Another project is to dematerialize documents, and transform paper documents in electronic files. All the courts have scanner equipment, used to dematerialize criminal proceedings and copy them on electronic medium, then avoiding a lot of copies on paper, and allowing a different organization of work: staff is spending less time on copies for lawyers, judges and public prosecutors can work on electronic files, with the help of file index and search tools.

Finally, all the first instance courts, the courts of appeal and the Supreme Court have video-conference systems installed in hearing or meeting rooms. Besides, judges working on criminal proceedings are going to have personal video-conference systems, as they already have recording systems, especially for juvenile cases.

## **5. The place of Portugal in the European context**

Portugal was considered, some years ago, to be at a very high level in the development of ICT in justice. Implementation of many different applications is a proof of authorities will to continue in this way.

### **5.1. Positive aspects**

The main aim conducting all the efforts of the Ministry of Justice is to shorten the management of judicial and non-judicial procedures and to ease the access of justice for common people. Many different applications developed since 2000 have reached this first objective by giving the opportunity for everybody to realize most of the usual steps using a dematerialized way (birth registration, home buying, divorce, single vehicle document, etc.). Dematerialization, regarding to registries, gives immediate value and advantages for citizens.

Many service points and help-desks have been created allowing citizens to realize all different steps in a single point, with the help of a professional. This encourages the use of the system and permits a reduction of fees, from 20 % to sometimes 85 % (for branch registration for example). About 480,000,000 Euros per year is the total of direct and indirect costs that, potentially, are avoided by citizens and companies using ICT applications.

Most of these applications also allow a large reduce in the use of paper. CITIUS is the main example with an important exchange of electronic documents during civil proceedings.

This last application presents a very broad scope, which includes or aims at including all the legal professions as well as legal fields. CITIUS doesn't only allow to present files but also to follow the state of the proceedings both for lawyers and for judges, public prosecutors and clerks.

Regarding the implementation of ICT in justice, benefits that are gained and the increasing part of ICT in judicial and non-judicial steps, these impressive efforts and the vision towards dematerialization of justice by authorities have conducted Portugal to a very high level in the use of ICT, which places the State in the top rank of the European countries.

## **5.2. Ways forward**

A lot of work has already been done, but the background is created to go further.

One of the future improvements that may be necessary is related to the interconnectivity between the different registers. At the moment, persons or companies can be, for example, registered with different addresses. On the same idea, avoiding to re-create all the affairs, and, this way, allowing an important gain of time for clerks. With such an electronic transmission, the use of paper could decrease on an important quantity.

Further on, interconnectivity between all the registers and electronic transmission of affairs between courts are the way to reach a complete dematerialized process in Portugal.

Moreover, the actual system could be completed by additional material resources, like scanners. At the moment, a dematerialized procedure is only opened where lawyers are requested. Those where citizens can act by themselves are still on a paper form. The use of scanners could offer to people who act this way the same benefit than a dematerialized procedure, going faster, and being cheaper than a traditional one. This would be one of the first steps to give citizens and enterprises the ability to have an access to the different services of Justice at a distance. The next step would be to give an access to citizens or enterprises to follow their own proceedings, connecting to CITIUS via a login and a password created by the court. This would also be an opportunity to develop dematerialization in judicial processes, by sending documents via email for example.

Another way of increasing dematerialization in judicial procedures was already planned by the Ministry and entered into force on the 15<sup>th</sup> of April 2009 (until the 1<sup>st</sup> July still in

an experimental stage; from that day on, it will be a definitive solution for all those who gather the conditions legally defined to receive electronic notifications) and consists in an electronic notification of acts and decisions, between courts and lawyers, an electronic transmission of pleadings between different lawyers in a same affair, and an electronic notification of the final decision, authenticated by the electronic signature of the clerk and the judge. This could reduce further more the time for the treatment of a judicial case, reduce again the use of paper, and give more advantages to legal professions, who will receive the decision soon, almost in an immediate manner, after the judge has signed it..

Finally, the main improvement should be the extension of CITIUS to criminal proceedings. This would need a writing of the new part of the software, including different treatments and different links, eventually with the assistance of the police, to create, here again, a complete dematerialized process.