



Book Review

Miklós Kengyel / Zoltán Nemessányi (Eds.): *Electronic Technology and Civil Procedure. New Paths to Justice from Around the World*¹

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I. In the past few decades, innovation in information and communication technologies had significant impacts both on society and business and is still causing wide-ranging effects on today's life. The scope and scale of all these impacts can not be accurately identified, but two of them are clearly recognizable. On one side it has revolutionized commerce and increased businesses' efficiency, on the other side it has considerably modified private life. Human relations have changed and the person's role in society has been redefined. There is now a generation who has grown up in this era and lives two lives, one in the "real world" and one online. To them, modern information and communication technologies are no longer only tools to communicate, but something different, a part of their life. They read online newspapers, manage their personal and business relations on social networks, have entertainment on the internet and maybe, in the not-so-distant future, they will litigate on the web too.

These technological developments have irreversibly changed our world and, as *Peter Gottwald* states in the introduction, they "now are increasingly affecting courts and civil proceedings. E-commerce inevitably entails e-justice."(p. ix.) But what impacts can and should these developments have on the civil justice? Legislators, practitioners and scholars are trying to find the place and role of information and communication technologies (hereinafter: ICT) in civil procedure. *Gottwald* states that "the IAPL realized the consequences of electronic communication for court proceedings early on" (p. ix.) and

¹ *Ius Gentium: Comparative Perspectives on Law and Justice* 15 [Springer, Dordrecht, Heidelberg, New York and London, 2012, XV, 329 p, ISBN 978-94-007-4071-6 (hardcover), ISBN 978-94-007-d072-3 (eBook)]



refers to *Helmut Rümman's* and *Wouter de Vos's* report on the “Challenge of Information Society” to civil litigation which was presented in 1999, at the Vienna World Congress on procedural law. He refers also to the XIII World Congress of the International Association of Procedural Law (IAPL), which took place in 2007 in Salvador de Bahia (Brasil), where *Janet Walker*, *Garry Watson*, *Emmanuel Jeuland* and *Angel Landoni Sosa* reported on new information technologies in civil procedure. (p. ix.) Until now, the reforms were intended to increase efficiency by using ICT in the traditional civil proceedings. The basic idea was, if it worked in the business world, why shouldn't it be used also in civil procedure to accelerate procedures and reduce procedural costs? However many – both theoretical and practical – questions arise, which have to be answered before further reforms. How traditional principles of civil procedure are to be affected? Where and how can ICT be used effectively in civil procedure? Has it so far accelerated the procedures at all and noticeably reduced costs? And finally, are the current reforms enough to respond to the above mentioned social changes, or is it necessary to redefine the civil procedure itself and give new foundations to it? The authors of this volume asked and tried to answer these questions, scrutinized the current developments in the field of e-justice, and dealt with the depths of these subjects from a theoretical point of view.

II. This volume is the 15th of the “Ius Gentium: Comparative Perspectives on Law and Justice” series and contains the papers of the IAPL colloquium on “Electronic Justice – Present and Future”, which took place during September 23rd – 25th 2010 in Pécs, Hungary. But the papers for this volume have been extended and reconsidered in content, and rearranged, so it has a more systematic structure and more detailed reports. The seventeen papers of the volume have been ordered in three parts.

1. The first part under the title “Adapting Systems of Civil Procedure to Electronic Technology” deals with the general questions of the application of ICT in civil procedure, such as the framework of the use of them, or their impacts on the traditional principles and structure of civil procedure. The papers in this section are mostly theoretical and are dealing with the future utilizations and role of ICT in civil procedure.

Masanori Kawano examined the possible application of ICT from a comparative aspect. He distinguishes between civil procedures, one where the judge has an active role and exercises managerial powers, and one where mainly the parties and their representatives arrange and prepare the case, and the judge has only restrictive powers to manage it. In his paper, *Kawano* proceeded from the first steps



to the completion of the procedure and examined the applicability of ICT in the different stages of the procedure. He dealt with the commencement of the civil claim, the preparation for plenary hearings, the presentation of evidence before the court, the service of judgment, the appeals and finally with the summary proceedings. *Nikolaj Fisher* examined and criticized the current developments of German civil procedure in the field of e-justice. He stated that the existing regulation was created without reforms of justice organization and this leads to the copy of the traditional system. He finally argued for a more general view in this field and stated that “before planning and executing the next (national) law reforms in the field of e-justice we should debate on the general question if and how the e-justice is consistent with the traditional basic principles of procedural law”. (p. 96) *Viktória Harsági* did exactly this, and examined whether the traditional principles of civil procedure are keeping their original content in an electronic environment, or are they transforming due to the use of electronic devices. She also dealt with the questions of “access to e-justice” and argued against the compulsory use of electronic forms in general, but she also mentioned exceptions, where obligatory use of ICT does not hinder access to justice. She stated too that “the rationalizing and acceleration potential resulting from the application of modern IT in court proceeding is dependent on the structure of the given proceeding to some extent.” (p. 129) Its potential is much greater in simple proceedings, like order for payment proceedings, than in more complex procedures. While *Harsági* examined the problem mainly from a continental European perspective, in his paper, *Richard L. Marcus* dealt with the effects of ICT to the evidence-gathering process and trials in the American civil procedure from a general perspective. He examined the problems of admissibility (e.g. hearsay) in an electronic environment. He also referred to a report in his paper, which shows the negative effects of e-discovery to delays and costs due to the traditional adversarial approach. (p. 47) In this context, ICT did not made the procedure more efficient but fostered delay and increased costs. *Paul D. Carrington* and *José Eduardo de Resende Chaves Júnior* both described their visions of the virtual civil procedure. Both of them have visualized a procedure where the information is much easier accessible for court, and the judge can decide much effectively in the contentious questions. *Chaves Júnior* showed a procedure which is not mere computerization of traditional civil procedure, but a substantially different, new one. *Carrington* presented a procedure where counsels could not delay the procedure, and would have to cooperate with each other because “the communications between the counsels would be part of the record in the case” so the judge can effectively exercise his managerial powers. (p. 63)



2. The second and third part of the volume deals with the specific applications of electronic technology in different aspects of civil procedure, the service of documents, the taking of evidence and the enforcement procedure in particular. *Fernando Gascón Inchausti* showed and compared the e-filing and e-service of documents from around the world. In his comprehensive analysis, he dealt with the regulatory techniques of eight countries in greater detail and introduced the solutions of twenty other European countries. In the end of his paper he wrote about the positive effects of a properly functioning electronic communication mechanism in the civil procedure and pointed out their potentials in cross-border situations. However he drew the attention to the access to justice and argued for the right of the litigants to ask protections in traditional way beside the electronic one. According to the reforms of civil procedure and the application of ICT he stated, that “the tools should never dictate the development of the purpose they serve.” (p. 179) *Michele Angelo Lupoi* dealt with the possible utilization of ICT in the enforcement procedure. He describes Internet applications which help the creditors to find debtors and their assets, homepages which contains relevant information about the enforcement procedures and finally online auction solutions from Italy. Although he has doubts about the efficiency of electronic devices in civil justice in general, he argued for the use of electronic devices in the enforcement procedure, which is “a very good operating ground for the implementation of digitized procedural mechanisms.” (p. 207) He stated that “the examples mentioned [in his paper] show that IT may indeed support enforcement proceedings as a concerns access to justice, reduction of delays, fight corruption, grant transparency and efficiency to the proceedings.” (p.207) In his paper, *Georg Kodek* examined the possible applications of electronic devices for the demonstration of proof and the evaluation of such evidences. In the end of his paper he evaluated the developments and their possible impacts on trials. In his opinion, the impacts of these information technologies on trial are much limited than their impacts on our daily lives. He also wrote about the efficiency of electronic devices and stated that “compared to the dimensions of e-commerce court proceedings are much less frequent. Thus, any reduction in costs (and, therefore, also the pressure for such reduction in costs) which can be gained by employment of modern technology is arguably much smaller.” (p. 277)

III. In my opinion the subject of the volume is current and the processed issues were deeply thought-provoking. To mention one of these questions, the impacts of information and communication technologies in civil procedure on the time and costs of the procedure is a problematic issue, and the papers of this volume raise doubts on its efficiency. Because the application of electronic devices in civil



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procedure is very costly, it is important to analyze their impacts properly and use them wisely. As *Harsági* pointed out, the efficiency of the use of ICT in simple procedures is much greater than in complex litigations. *Inhausti* and *Lupoi* both agreed that the application of electronic methods in specific matters can be very effective, such as in the service of documents, or in the enforcement procedures. But *Kodek* and *Marcus* drew our attention to the fact that positive impacts of application of electronic devices in the gathering and presentation of evidence are doubtful, and in an adversarial environment it can cause more problems than benefits.

In my opinion, the questions raised in this volume deserve comprehensive discussion and research, and this volume can add much to these.