Chapter 7
Open Judiciary in High Courts:
Securing a Networked Constitution, Challenges of E-Justice, Transparency, and Citizen Participation

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ABSTRACT

With this work, it is hoped to offer an insight into open judiciary applied to the specific context of constitutional courts in the Civil Law system from both a legal and technological point of view. The advances in IT are now becoming the drivers of social change and new ways for citizens and public administrations to interrelate. Information technology has enabled a different way for citizens to access public services under an e-Government umbrella to a greater or lesser degree of success. In the area of e-Justice it would appear that advances are perceived in different ways, particularly in the higher courts. This chapter will set out how constitutional justice is integrated into the world of electronic justice as an example of a genuine challenge that is full of paradoxes.

INTRODUCTION

This chapter presents the electronic justice domain under the prism of the reasons behind scientific research into smart technologies that are open and close to citizens, and which, moreover, are security sensitive regarding information. From a technology perspective this involves new architectural approaches that equally effect the front-end and the back-end of public organisations, lower courts of justice and supreme courts.

The advances in IT are currently presented as the drivers of social change and new citizen-public administration relations. Information technologies have opened up new ways for citizens to access public services under an electronic Government umbrella within the different activity sectors. In the e-Justice area it would seem that the advances are perceived in a different way and particularly by the justice in higher courts, a proof of which is the different regulations adopted by the legislative powers of some countries.

In this chapter we will explain how constitutional justice is integrated into the world of electronic justice in the context of European law as a representation of a real challenge full of paradoxes, paradoxes that are a challenge to the design of effective and efficient technology architectures that are properly distributed and aligned with the special nature of the jurisdictional domain.

BACKGROUND

With regard to electronic justice, this shares the concepts that are applied to electronic government, although in a specific judicial context. In the case of open justice (or open judiciary as an extension of philosophy and principles of Open Government (especially transparency, participation and collaboration) applied to the justice field, innovation and currently ICTs are key items for these initiatives (Jiménez-Gómez, 2014, p. 18). The emerging applications are currently going along the lines of using transparent strategies such as citizen participation and collaboration and include the responsibility to be accountable. Finally all it rests on the classic principles of public administration such as effectiveness and efficiency.

Open Judiciary may be understood as a paradigm of legal principles that attempt to characterise the workings of justice into parameters of transparency and openness. These concepts are in line with citizens' movements in the defence of democratic regeneration since they let the application of law to specific cases and persons be seen. It also makes it easier to evaluate how the rules that those in power decide to pass are applied. To a certain extent it is a question of gaining citizens' trust in judicial institutions as well, issues that are dealt with in the chapter.

This section strives to analyse the contradictory assertions of the critical domain studied in this chapter with the intention of setting out the difficulties that this research topic means for the advance of electronic government in this sector. This is particularly so with regard to the working reality that can apparently clash with the technological approach to problem-solving and which to a certain extent requires change management to be dealt with in a special way.

CHALLENGES OF OPEN JUDICIARY

Presented herein is a perspective on the controversies or problems in relation to the constitutional position around the openness of thought of information technologies. To support the arguments we set out four challenges introducing some key aspects.

The Challenge of Legitimacy

At odds with the legitimacy of judicial review, constitutional justice has had to confront criticism of its premises: the absence of any democratic legitimacy of the members of a court to control the decisions

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