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New Technologies
— New Justice

Estonia

NEW TECHNOLOGIES = NEW LAW

National regulations





HELŚIŃSKA FUNDACJA
PRAW CZŁOWIEKA

A QUESTIONNAIRE FOR LAWYERS FROM

DIFFERENT JURISDICTIONS

The Helsinki Foundation for Human Rights and the Clifford Chance Foundation are implementing the project *New technologies = new law. The rules of procedure of our time or a threat to human rights?*. The project aims to identify the main opportunities and threats associated with the increasing impact of new technologies and Artificial Intelligence on the justice system. This questionnaire is designed to explore the solutions existing in different countries and will provide a foundation for further research within the project.

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| Country | Estonia |
| Date | 07.05.2021 |
| Submitted by (name of the contact person) | Carri Ginter Jelizaveta Lazonen |

| PRE-TRIAL PHASE | | |
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| 1. | Is it required to use any alternative forms of dispute resolution in the country where the Office operates, before a case is brought to court? Can such alternative forms (e.g. mediation, negotiations) be conducted online? | <p>In general, alternative dispute resolution is a voluntary process in Estonia¹, however, the court may order the parties to participate in the conciliation proceedings as a part of pre-trial process if it is necessary in the interests of resolution of the matter.²</p> <p>Parties may choose a place of proceeding in case of arbitration, while it is for a conciliation body to choose a place in case of conciliation.</p> <p>There is no prohibition on online proceeding. However, special online platform exists only for consumer disputes.</p> |
| ACCESS TO COURTS AND NEW TECHNOLOGIES | | |
| 2. | Is it possible to remotely participate in a court hearing in the country where the Office operates? If so, please indicate in what types of cases remote participation is possible, or what requirements entities must meet to be able to do so. Please also indicate which participants in the trial (parties, witnesses, experts, etc.) have the opportunity to participate remotely in a court hearing. Please specify if remote participation is mandatory or optional (at the request of the parties). | <p>The court may organize a session in the form of a procedural conference such that a party to the proceedings, his or her representative or adviser, witness or expert has the opportunity to stay at another place at the time of the court session and perform the procedural operations in real time at such place.³ This opportunity is available mainly for civil cases.</p> <p>During COVID period, remote hearings became the usual form of sessions, and presumably hybrid and remote sessions will continue in the coming years. The state has provided the necessary environment and equipment for virtual sessions and these are currently usual. Moreover, real-life sessions have become rare.</p> <p>However, remote participation is not mandatory.</p> |
| 3. | If you have answered question 2 in the affirmative, please indicate whether the location of a person | Location of a person is not legally regulated. |

¹ § 1 (2), Estonia, Conciliation Act (Lepitusseadus), 01.01.2010.

² § 4 (4), Estonia, Code of Civil Procedure(Tsiviilkohtumenetluse seadustik), 19.04.2021.

³ § 350 (1-2), Estonia, Code of Civil Procedure(Tsiviilkohtumenetluse seadustik), 19.04.2021

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| | remotely attending a court hearing is legally regulated. If so, please indicate specific requirements. | |
| 4. | If you have answered question 2 in the affirmative, please indicate whether the remote participation takes the form of a video conference. | Yes. |
| 5. | If you have answered question 4 in the affirmative, please indicate what video conferencing platform is used. Is it a commonly available platform (such as Skype, Zoom, MS Teams), or is it a platform specifically developed for the courts? | The Cisco Meeting App is used in Estonian courts. |
| 6. | If it is possible to participate remotely in a court hearing in a form other than a video conference (e.g. via an audio link or a telephone call), please indicate the form(s) available. | Party or witness may be heard by telephone in a procedural conference in procedure for actions by petition with the consent of the parties and the witness. ⁴ |
| 7. | When remote participation is possible, please indicate if all remote participants can be watched during the entire duration of a court hearing. | There is no direct law that would oblige the parties to use cameras all the time, but usually it is required by courts. |
| 8. | When remote participation is possible, please indicate how confidential discussions between the attorneys and the parties can be carried out. | It is not regulated by law. In practice, lawyers use parallel chat solutions such as Teams, Messenger or WhatsApp. |
| 9. | Is it possible to submit pleadings electronically in the country where the Office operates? If so, please | Yes, it is possible and mandatory to communicate digitally with court in all types of procedures in Estonia. Moreover, there should be special reason to allow communication on paper. |

⁴ § 477 (4), Estonia, Code of Civil Procedure(Tsiviilkohtumenetluse seadustik), 19.04.2021

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| | indicate in what types of cases pleadings can be submitted electronically. | |
| 10. | If you have answered question 9 in the affirmative, please indicate how the pleadings are submitted (e.g. by e-mail or via a special platform), what additional formal requirements are imposed on the pleadings and how the identity of the person submitting a pleading is verified to prevent impersonation of a party to the proceedings. | It is mandatory to submit documents electronically via <u>e-File</u> (E-toimik) environment. Two systems are used to support e-File: software Digital File (Digitoimik) ⁵ , where documents can be stored and accessed, and <u>Court Information System</u> (Kohtute Infosüsteem), which allows courts to process data and communicate with parties. The same service is used to deliver pleadings and judgments. Documents shall bear the digital signature of the party or representative. The identity of a person is verified by access with ID card or Mobil ID. |
| 11. | Please indicate if the parties (or their attorneys) have remote access to the case files in the country where the Office operates? If so, please indicate the type of remote access. | Files can be accessed remotely via <u>e-File</u> (E-toimik). |
| ARTIFICIAL INTELLIGENCE AND COURTS | | |
| 12. | Do the courts in the country where the Office operates use any tools that incorporate Artificial Intelligence? If so, please indicate whether such tools are used exclusively for back-office purposes or (also) in external contacts (e.g. chatbots)? | Currently Estonia does not use AI on any stage of the court system. |
| 13. | Has the justice system in the country where the Office operates automated a certain range of its functions (e.g. certain administrative activities)? If | In general, tasks division is automated, because it is organized randomly in court without human interruption. Information on the documents in e-File, e.g. time and submitting party, is saved automatically. |

⁵ More information on Digital File can be found here: <https://www.coe.int/en/web/cepej/country-profiles/estonia>.

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| | so, please indicate what technologies are used for automation purposes? | Order for payment or another order under expedited procedure for orders for payment may also be made in an automated manner through the information system. ⁶ |
| ONLINE COURTS | | |
| 14. | Are there any court proceedings in the country where the Office operates that are entirely conducted online? If so, please indicate which types of proceedings are conducted online (e.g. small claims cases, family cases, etc.) and specify if the online mode of such proceedings is mandatory or optional (at the request of the parties). | Written procedure is fully conducted online, because documents are presented electronically through the e-File. With the consent of the parties, the court may deal with the civil matter without hearing it in a court session. ⁷ The court also may direct that a matter in which the court claim can be appraised in monetary terms be dealt with by written procedure, but the claim shall not exceed EUR 6400. ⁸ In some cases, simplified procedure can also be applicable for criminal cases. |
| PROCEDURAL GUARANTEES AND NEW TECHNOLOGIES | | |
| 15. | If you have answered question 14 in the affirmative, please indicate whether the country where the Office operates has implemented any mechanisms aimed to grant legally required levels of the access to court to digitally excluded persons. Please indicate specified mechanisms (e.g. possibility of conducting the proceedings, otherwise held online, in traditional form due to justified request of the party). | Usually a person marks in the application whether he or she agrees to have a written proceeding. Due to justified request of the party the court may held a hearing or allow presentation of documents on paper. |

⁶ Estonia, Code of Civil Procedure(Tsiviilkohtumenetluse seadustik), 19.04.2021.

⁷ § 403 (1), Estonia, Code of Civil Procedure(Tsiviilkohtumenetluse seadustik), 19.04.2021

⁸ § 404 (1), Estonia, Code of Civil Procedure(Tsiviilkohtumenetluse seadustik), 19.04.2021

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| 16. | If you have answered question 14 in the affirmative, please indicate how the principle of open proceedings is ensured. | The public can access digital hearings by requesting a link to a hearing from the court. Orders which are to be disseminated to the public are published on the website of the court and in the computer network at the place prescribed for such purpose. ⁹ |
| 17. | Has the Court of the highest instance in the country where the Office operates produced any rulings on the standards of procedural fairness of the online proceedings? | The Court of the highest instance only made a decision that personal hearings are preferred in some cases, because the judge can still obtain additional information about the person concerned face-to-face. ¹⁰ |
| 18. | Is the AI based software being used during the evidence proceedings in the country where the Office operates? | No |
| 19. | Are there any trainings dedicated to technical aspects of the participation in online proceedings being organized for judges, prosecutors and other legal professionals in the country where the Office operates? | As several changes have been made to e-File, Estonian Bar Association offers a legal training for users of the software. ¹¹ Moreover, Estonian Centre of Registers and Information Systems organizes regular trainings for court staff. |
| 20. | Please indicate if any solutions are used in the country where the Office operates to adjust the digital tools for accessing courts to the needs of persons with disabilities, the elderly or those with difficulties in operating a computer. If yes, please specify these solutions. | The information system that allows to participate in the proceedings remotely has the following options for the convenience of people with disabilities: text enlargement, change of colour, use of a screen reader. The court still leaves the opportunity to bring documents physically to a courthouse, as well as to receive court decision in paper form. |
| ADDITIONAL INFORMATION | | |
| 21. | If in the country in which the Office operates, the judiciary uses new technologies in a form that has | Courts provide an opportunity to watch hearings via video screens that are located in other rooms of the court, when a hall cannot accommodate every |

⁹ § 479 (1), Code of Civil Procedure(Tsiviilkohtumenetluse seadustik), 19.04.2021

¹⁰ RKTkm, 2-20-11920, 21.04.2021, p 12.2.

¹¹ Estonian Bar Association, Trainings (Koolitused), <https://advokatuur.ee/est/advokaadile/koolitused>.

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| | not yet been included in any of the above questions or answers, please indicate it. | person who want to watch an open proceeding. The rooms has been placed by a video screen in almost all courts. ¹² |
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¹² Ots M., Courts take hearings to larger halls, but not to the public web (Kohtud viivad istungid suurematesse saalidesse, aga mitte avalikkuse jaoks veebi), ERR, 15.03.2021, <https://www.err.ee/1608142906/kohtud-viivad-istungid-suurematesse-saalidesse-aga-mitte-avalikkuse-jaoks-veebi>.

New Technologies — New Justice is a joint project of the Helsinki Foundation for Human Rights and Clifford Chance.

In today's world, new technologies are present in virtually all spheres of life – and they are also becoming increasingly important for the modern justice system. The project seeks to examine the actual presence of new technologies in the justice system of Poland and around the world, as well as to identify the main risks associated with modern legal technologies and the most promising solutions to these risks. The advancing digitalisation of the justice system and the digital modernisation of the legal system is an inevitable consequence of the need to ensure that the legal system keeps up with the times. That is why the Helsinki Foundation for Human Rights and Clifford Chance work to identify solutions for improving the justice system to ensure that the rights and freedoms of individuals are not only respected but also exercised more easily.

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