DIGITAL RESOLUTION OF CIVIL DISPUTES: PROCEDURAL GUARANTEES AND JUDICIAL DECISION-MAKING[1]

Miroslav Sedláček,[*] Tomáš Střeleček,[**] Petra Kotápišová,[***] Monika Mareková,[****] Petr Navrátil,[*****] Jan Hořeňovský[******]

Abstract: *This article explores the transformation of civil dispute resolution in the context of digitalisation, with particular emphasis on its implications for due process guarantees and judicial decision-making. It analyses key stages of civil litigation affected by technological change, including the digital initiation of proceedings, electronic court files, remote hearings, automated decision-making tools, and the increasing use of artificial intelligence both in courts and in alternative dispute-resolution mechanisms. The article argues that digitalisation is not a merely technical process but a normative intervention that directly affects fundamental procedural principles, especially equality of arms, adversarial proceedings, transparency, effective participation, and the right to a reasoned decision under Article 6 of the European Convention on Human Rights. Special attention is devoted to "in extremis" situations, where digital substitution becomes operationally necessary and the outer limits of lawful procedural adaptation must be tested. The article concludes that further digitalisation and automation of civil justice are inevitable, but must be accompanied by robust legal frameworks, meaningful human judicial oversight, and procedural safeguards ensuring fairness, legitimacy, and proportionality.*

Key words: *civil proceedings, civil disputes, digitalisation of justice, digital lawsuit, electronic court file, judicial decision-making, automation in civil procedure, artificial intelligence in courts, right to a fair trial, equality of arms, online dispute resolution (ODR)*

INTRODUCTION

Digital transformation increasingly shapes the way in which civil disputes are initiated, administered, and resolved. In many European legal systems, digitalisation of civil justice is presented primarily as a response to structural pressures on courts, promising efficiency, accessibility, and procedural economy. At the same time, the growing reliance on digital tools in civil proceedings affects the very architecture of procedural law. Electronic filing systems, digital court files, remote hearings, automated decision making, and online dispute resolution mechanisms do not operate in a normative vacuum. Their design and implementation inevitably influence the operation of procedural guarantees and the practical enjoyment of the right to a fair trial.

[*] Associate Professor, JUDr. Miroslav Sedláček, Ph.D., LL.M., Department of Civil Law. Faculty of Law, Charles University, Prague, Czech Republic. ORCID: 0000-0001-5494-6457.

[**] Mgr. Ing. Tomáš Střeleček, Ph.D., LL.M., Department of Civil Law. Faculty of Law, Charles University, Prague, Czech Republic. ORCID: 0000-0002-2686-7759.

[***] Mgr. Petra Kotápišová, Department of Business Law. Faculty of Law, Charles University, Prague, Czech Republic. ORCID: 0009-0003-9538-1773.

[****] Mgr. Monika Mareková, M. Jur., Department of Constitutional Law. Faculty of Law, Charles University, Prague, Czech Republic. ORCID: 0000-0001-8062-7863.

[*****] JUDr. Mgr. Petr Navrátil, Ph.D., LL.M., LL.M., Judge of the Municipal Court in Prague., Czech Republic. ORCID: 0000-0003-4354-7113.

[******] JUDr. Jan Hořeňovský, Ph.D., Department of Politology and Sociology. Faculty of Law, Charles University, Prague, Czech Republic. ORCID: 0000-0001-5343-9736.

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This article aims to examine whether and under what conditions the digital resolution of civil disputes can remain compatible with fundamental procedural rights. It focuses on the transformation of judicial decision making and on procedural stages that are most sensitive to digital intervention. Several questions arise in this context. What constitutes a digital lawsuit from a doctrinal perspective, and to what extent may digital filing systems guide the formulation of claims without altering the scope of the dispute or undermining party autonomy. Can digitally assisted access to court enhance effectiveness while preserving equality of arms between the parties. What minimum standards must be met by electronic court files to ensure transparency, legal certainty, and effective participation, especially in hybrid procedural environments where paper documents persist and digital exclusion remains a reality.

Further questions concern the conduct and resolution of proceedings themselves. Where are the limits of permissible digital substitution when civil justice operates under constrained or exceptional conditions that make remote adjudication necessary. How can legality, publicity, and evidential integrity be safeguarded once the traditional courtroom is replaced by remote settings. Finally, how should the increasing role of automation and artificial intelligence in civil courts and in digital ADR and ODR frameworks be assessed in light of transparency, adversarial control, and the right to a reasoned decision under Article 6 of the European Convention on Human Rights. These questions define the analytical framework of the article and guide its assessment of whether digital civil justice can develop without compromising the core requirements of due process.

I. DIGITAL LAWSUIT

One of the crucial aspects of digitalisation of civil procedure is the entry point to the civil proceedings – the digital lawsuit. As the civil procedure is commenced by a lawsuit, also any civil procedure that aims to be called a digital civil procedure (or even online civil procedure) needs to start by a legal institute of civil procedural law called digital lawsuit. This notion of digital lawsuit to be used for digital (or even online) adjudication and digital civil procedure (or even online civil procedure) itself does not have currently a legal definition in the Czech Republic nor there is a consensus of what it means. To understand a digital lawsuit, first, it is necessary to define it. As various authors dealing with digitalisation and onlinisation of civil procedure and civil justice as such argue, principally *Richard Susskind,*[2] the focal point of any discussions and potential future reform is in the difference between gradual change in the approach towards civil procedure and paradigm shift in this field. This difference in magnitude within the view of the possible changes in civil procedure has a profound effect on digital lawsuit and its definition. Even though the ideal of digital lawsuits tends to enhance the access to court principle as an element of a right to a fair trial (due process of law), there may be

[2] See SUSSKIND, R. *Online courts and the future of justice.* Oxford: Oxford University Press, 2021, 400 p. See also other authors, e. g. KATSH, E., RABINOVICH-EINY, O. *Digital Justice: Technology and the Internet of Disputes.* Oxford: Oxford University Press, 2017, 242 p.; LOEBL, Z. *Designing Online Courts: The Future of Justice Is Open to All.* Alpen aan den Rijn: Kluwer Law Internation, 2019, 215 p.; LOUTOCKÝ, P. *Vymahatelnost práva pomocí online řešení sporů [Enforcement of Rights by Online Dispute Resolution].* Prague: Wolters Kluwer CZ, 2020, 232 p.

counterarguments, especially regarding the question of equality of parties (*égalité des armes*). Therefore, second, the right to a fair trial (due process of law) needs to be analysed, especially a possible collision with this vital right regarding civil procedure and *in concreto* digital lawsuit.

I.1. Definition of a digital lawsuit

To define a digital lawsuit, one has to approach the issue from procedural perspective. The digital lawsuit needs to fulfil the doctrinal view of lawsuit as a procedural act in the hands of the plaintiff by which the procedure is initiated and the scope of it is set, additionally, the elements of a digital lawsuit needs to remain, in principle, concise with the doctrinal view of a lawsuit as a procedural act that has three elements: parties to the dispute, grounds of the claim and what is requested by the claim.[3] The digital lawsuit, seen from the view of civil procedural law, remains a request for protection of private rights of the claimant against defendant, given that the self-help in private matters remains in principle no primary option. The conception of lawsuit evolved through time and now it is available to anybody who claims infringement (or threat) of his or her private rights. The digital lawsuit should not in principle deviate from the traditional definition of lawsuit, as it is an element of the state of the art of civil procedure that enables well-established mechanisms of civil justice to function.

When employing the gradual approach to a digital lawsuit, a non-genuine digital lawsuit is propagated.[4] It is the non-paradigm shift approach that is based on strengthening of digitalisation. To be more specific, in current civil law legislation and practice it is the enhancement of digital tools that is promoted: digital documents are used, also digital forms of service of documents are adopted.[5] These tools, however, only use the available technology and vary what is available for civil procedure. This approach adopts partial changes, but does not adopt a vision of a new civil justice infrastructure based on digitalisation (possibly online court).[6] Once having this vision, the notion of digital lawsuit – as a genuine digital lawsuit – poses significant questions as for the redefinition of the core elements of a lawsuit, especially the grounds of the claim and what is requested by the claim and therefore also, setting the scope of the dispute.

First, as for the core elements of a lawsuit, the genuine digital lawsuit deviates from the tradition view in the question whether the grounds of claim and request in the claim, as well as the scope of the dispute, is wholly dependent on the choice and determination by the claimant. In other words, when a genuine lawsuit is envisaged, it comprises of a lawsuit that is available not only in digital form (online), but whole infrastructure of civil

[3] See for example WINTEROVÁ, A., MACKOVÁ, A. el al. *Civilní právo procesní. Díl první: Řízení nalézací [Civil Procedural Law. First volume: Civil Procedure]*. 10th Edition. Prague: Leges, 2025, 653 p.

[4] The distinction of non-genuine digital lawsuit and genuine digital lawsuits was done by the author also in the following article STŘELEČEK, T. Úvahy o digitální žalobě [Reflections on Digital Lawsuit]. *Právní rozhledy [Legal Perspective]*. 2024, Vol. 32, Issue 17, p. 556 and following.

[5] As an example, may serve electronic forms for electronic payment order (regulated by section 174a of Act No. 99/1963 Coll., Civil Procedure Code) and also databox as a way of electronic communication between courts and the parties in the Czech Republic.

[6] See SUSSKIND, R. *Online courts and the future of justice*, promoting the opportunity for this paradigm shift.

justice and civil procedure is set in a way that it possibly enables a digital (automated) decision-making, including digital court file and digital (online) hearing. To fully implement this paradigm shift into civil procedure in case of digital lawsuit, under current foreseeable possibilities,[7] the digital lawsuit ought to be a tool that to some extend directs the claimant in preparation of his or her claim by distinguishing various scenarios for various typical claims and providing direction as for the requisites of the digital lawsuit and evidence to be submitted. The digital lawsuit, as it needs to be predictable for further digitalisation and automatization, currently, needs to be narrowed down to typical cases with typical scenarios. Obviously, still, it is up to the claimant to define his or her scope of the litigation and the grounds of the claim and the request in the claim, but the system as such, as far as it needs to be practicable, would influence (even advice) the claimant by giving directions – helping the claimant to understand what his or her claim is and what to include in the digital lawsuit. Are then the core elements of a lawsuit, especially the grounds of the claim and what is requested by the claim, still elements of a lawsuit or rather they are properties of the system? And therefore, is it the system, *prima facie*, that sets the scope of the dispute, just when a claimant chooses the right scenario from the available menu?

I.2. Right to a fair trial (due process of law) and digital lawsuit

Even thought, it seems that helping the claimant to understand his or her claim and what to include in the digital lawsuit is harmless, it poses not only question for redefinition of a lawsuit but especially poses question about the equality of parties in such digital civil procedure (online court). As use of available technology is in principle only a tool, changing civil procedure to a truly digital civil procedure (and lawsuit to a genuine digital lawsuit) may in a way be threat to the equal footing of the parties right at the beginning of the civil procedure when the claimant receives all the instructions. Despite the fact, that these instructions are needed from the construction point of view of the digital civil procedure and automatization that is sought. The genuine digital lawsuit, as it was introduced, needs various scenarios given certain substantive law claims to function – taking into account the foreseeable future. Therefore, a minimal instruction as for the chosen pathway is inevitable. However, this instruction given to the claimant had to be well tuned and cannot overly instruct the claimant about questions of substantive law in principle and in detail. Only instruction on procedural law (burdens of proof etc.), but in more general terms, are to be adopted. Otherwise, once the claimant is instructed by the system in a similar way he or she would be instructed by his or her lawyer, the defendants equal footing, as a component of the right to a fair trial, may be denied. To protect the defendant's equal footing, once the digital lawsuit is served to the defendant, instruction needs to be provided to the defendant as well how to defend himself or herself (at least in general terms). The level of generality of the instruction to the defendant's should be parallel to the level of instruction provided to the claimant.

[7] Attempts to an online court across the globe are being implemented at the moment, one of the earliest (maybe the earliest) was Civil Resolution Tribunal established in British Columbia, Canada, in 2016.

II. DIGITAL ADMINISTRATION OF THE PROCEEDINGS – DIGITAL COURT FILE

Behind every court proceeding there is an extensive administrative process that helps the court proceedings to run smoothly. With digitalisation, various processes could be simplified, and the conduct of civil court proceedings could be made more efficient. Although the noticeable influence of new technologies can already be seen in some aspects of civil proceedings (e.g., electronic payment orders, electronic delivery, the use of videoconferencing equipment, etc.), other aspects of civil proceedings are lagging in digitalisation.[8] Probably the most anticipated is the introduction of digital court files. If the court file were to be digitized, it would make it easier for example to view the file and to transfer files between different courts.

II.1. Digital court file

Section 40b(1) of the Code of Civil Procedure states that: *"A file shall be maintained in paper or electronic form for every dispute or other legal matter"*. It is evident that the legislator already anticipates digital case management.[9] However, digital court file does not yet exist in routine litigation. Digital court file should be accessible to the parties to the proceedings and their representatives at any time.[10] Permanent access to court files could significantly speed up the entire court proceedings, as there would be no need to physically send files in the event of an appeal, cassation appeal, or loan of files, which would also simplify cooperation between individual courts.[11] This would also reduce the potential risk of damage or loss of court files during transport. Other potential advantages of digital court files include the automation of internal file management processes, such as automatic assignment of delivery receipts, as well as easier counting of deadlines.[12]

As mentioned above, the Civil Procedure Code already anticipate the digital file keeping. However, specific rules for their management have not yet been adopted.[13] The legal provisions governing the maintenance of paper court files shall apply mu-

[8] See SEDLÁČEK, M. Elektronizace justice a nové technologie v civilním procesu [Digitalisation of Justice and New Technologies in Civil Procedure]. In: SEDLÁČEK, M., STŘELEČEK, T. et al. *Civilní právo a nové technologie [Civil Law and New Technologies]*. Prague: Wolters Kluwer CZ, 2022, p. 195.

[9] Section 40b was introduced by Act No. 7/2009 Coll., amending Act No. 99/1963 Coll. the Code of Civil Procedure, as amended, and other related laws. ŠEBEK, R. Komentář k § 40b [Commentary on § 40b]. In: DRÁPAL, L., BUREŠ, J. et al. *Občanský soudní řád I. § 1 až 200za. Komentář [Civil Procedure Code I. § 1 to 200za. Commentary]*. Prague: C. H. Beck, 2009, p. 252. The management of court files is further governed by the Act No. 499/2004 Coll., on archiving and record keeping and on amendments to certain acts, as amended; Ministry of Justice Instruction No. 505/2001-Org, issuing internal and office rules for district, regional, and high courts.; and Regulation No. 37/1992 Coll., on the Rules of Procedure for District and Regional Courts, as amended.

[10] Ibidem.

[11] Srov. GRYGAR, J. In: 4. kulatý stůl o online soudnictví v ČR: Jaký je stav digitalizace justice v ČR? [4th round table on online justice in the Czech Republic: What is the state of digitalisation of justice in the Czech Republic?]. In: *YouTube* [online]. 9. 5. 2022 [2026-01-27]. Available at: <https://www.youtube.com/watch?v=G1byw113Vgg&t=3542s>.

[12] KOTÁPIŠOVÁ, P. Digitalizace soudního spisu [Digitalisation of Court Files]. *Jurisprudence*. 2024, Vol. 2024, No. 1, pp. 20–24.

[13] Ibidem.

tatis mutandis to the maintenance of electronic files.[14] As part of the electronic file, all paper documents will be converted into electronic form, either as simple copies, if possible, or as electronic conversions.[15] All documents in the electronic file should also be marked with a serial number, as is the case with traditional paper files.[16] At the same time, it is difficult to imagine that files will be kept only digitally. The parties will continue to submit paper documents to the court, and some documents (e.g., certain securities) cannot even be converted into electronic form.[17] In view of this fact, it will still be necessary to keep at least a collective paper file, as is the case with electronic payment orders.[18] It is also necessary to consider older people and socially disadvantaged individuals who do not have access to the internet or who find it difficult to use electronic devices. It is not possible to switch to fully digital court files and essentially restrict these individuals' rights of access to justice.

II.2. eSpis

The Ministry of Justice has issued the eJustice 2023+ strategic framework, which addresses the so-called eSpis.[19] The main objective of eSpis is to facilitate access to court files. With eSpis, parties to proceedings should have 24/7 access and be able to work with the file at the same time.[20] However, apart from the main idea, there are no further details on how eSpis would work, for example whether it would be possible to file submissions or evidence through it, or whether it will only be possible to view digital court files. The entire project of digitizing the justice system should be completed by the end of 2028, but the project is already falling behind schedule.[21] It is also not specified how the court file will be provided to the parties to the proceedings.[22]

II.3. eSpis

The NaSpis application is operated by the Constitutional Court and allows legal representatives of parties and secondary parties to remotely view documents contained in

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[14] PŘIDAL, O. § 40b [Spis a podepisování úkonů soudu]. In: SVOBODA, K., SMOLÍK, P., LEVÝ, J., DOLEŽÍLEK, J. et al. *Občanský soudní řád [Code of Civil Procedure]*. 3rd edition (3rd update). Prague: C. H. Beck, 2024. Available at: beck-online.cz.

[15] ŠEBEK, R. *Komentář k § 40b [Commentary on § 40b]*, p. 254.

[16] See ibidem, p. 254.

[17] SEDLÁČEK, M. *Elektronizace justice a nové technologie v civilním procesu [Digitalisation of Justice and New Technologies in Civil Procedure]*, pp. 199–200.

[18] See ŠEBEK, R. *Komentář k § 40b [Commentary on § 40b]*, p. 255.

[19] Ministerstvo spravedlnosti [Ministry of Justice]. Strategický rámec eJustice 2023+ [Strategic Framework for eJustice 2023+]. In: *Databáze strategií [Strategy database]* [online]. 1. 3. 2023 [2026-1-27]. Available at: <https://www.databaze-strategie.cz/cz/ms/strategie/strategicky-ramec-ejustice-2023?typ=struktura>.

[20] Ibidem.

[21] ŘEPKA, M. Ministerstvo spravedlnosti uvádí na pravou míru informace k digitalizaci justice [Ministry of Justice clarifies information on digitalisation of justice]. In: *Ministerstvo spravedlnosti České republiky [Ministry of Justice of the Czech Republic]* [online]. 21. 11. 2024 [2026-1-27]. Available at: <https://msp.gov.cz/web/msp/rozcestnik/-/clanek/ministerstvo-spravedlnosti-uvadi-na-pravou-miru-informace-k-digitalizaci-justice-kopirovat->.

[22] KOTÁPIŠOVÁ, P. *Digitalizace soudního spisu*, pp. 20–24.

court files.[23] In the NaSpis application, the viewer will see the "My Files" section, which will list all files for which their data box ID is registered. Individual documents in the court files have visible attachments that can even be downloaded.[24] However, the viewing time is limited. Once the viewing is complete, a new request must be submitted for a new viewing.[25]

II.4. The challenges of digital court records

The implementation of digital court files is certainly a step in the right direction, but it will be a complex and time-consuming process. Probably the biggest challenge is finding the right system in which to operate the electronic files. It is essential to find a system that is reliable and that provides sufficient security for the data stored in it against cyber-attacks. Before introducing digital court records, it is also necessary to resolve the issue of socially disadvantaged people without internet access and seniors who often cannot cope with new technologies on their own. In such cases, a possible solution would be to allow them to view the paper files in person or to ensure that they can visit the court building, where a place will be set up for them to view the court files. The parties to the proceedings could also obtain specific documents at CzechPoint, but printing the entire file could be quite costly.[26]

Digital management and administration of the proceedings are eagerly awaited not only by parties to proceedings and their legal representatives, but also by the courts themselves. While civil proceedings have already been digitized quite successfully in some areas, such as videoconferencing equipment and electronic delivery, the main aspect of the digitalisation of court proceedings – digital court file – is still missing, even though the Civil Procedure Code already anticipate its use.

III. DECISION-MAKING OF CIVIL COURTS

III.1. Digitalisation and Automation in Civil Proceedings

Civil procedure has been increasingly influenced by efforts to simplify proceedings and introduce elements of automation,[27] developments that can be observed across European jurisdictions. A prerequisite for the effectiveness of civil proceedings is the proper configuration of the digitalisation of justice. This does not merely entail the possibility for the claimant to file a motion initiating proceedings through remote electronic access but also requires that subsequent judicial acts be carried out in digital form.[28] This includes, in particular, the maintenance of an electronic case file, the use of videoconferencing equipment for part or the entirety of the proceedings, the automation of judicial

[23] O aplikaci NaSpis [About the NaSpis application]. In: *NaSpis* [online]. [2026-1-27]. Available at: <https://naspis.usoud.cz/Home/About>.
[24] Ibidem.
[25] Ibidem.
[26] Ibidem.
[27] FANGFEI WANG, F. *Online Dispute Resolution: Technology, management and legal practice from an international perspective*. England: Chandos Publishing (Oxford) Limited, 2009, pp. 30–31.
[28] Ibidem.

decisions and their delivery to the litigants, including the service of the action upon the defendant by means of a digital message or following automated conversion from paper form, through a public data network.[29] The achievement of such a digitalised state may result in increased efficiency of civil proceedings, partial relief for courts, and more expeditious cooperation between courts and litigants.

The impact of new technologies on civil proceedings therefore manifests itself in various forms.[30] A more detailed analysis reveals a specific influence of modern technologies on individual procedural institutes. These include, in particular, digital service of documents, the maintenance of electronic court files, the use of videoconferencing equipment, the digital recording of hearings, developments in the taking of evidence and fact-finding more generally, as well as the possibility of automated decision-making.[31] The introduction of technology thus represents a major evolution in civil proceedings. At the same time, however, it brings not only new opportunities but also new challenges that will have to be addressed in the future, both from legal and non-legal perspectives.[32]

At present, fully automated decision-making is not encountered in civil proceedings. Apart from the possibility of issuing an electronic payment order, judicial decisions still require the involvement of a natural person, and no system currently exists that would entirely replace the judge's decision-making process. In recent years, the most notable development has been the introduction of the CTD information system, that is, Central Document Production. Although this terminology may suggest a step towards automated decision-making, the system in fact merely serves as a tool for the creation and management of document templates, with the objective of unifying document production rather than replacing judicial reasoning.

III.2. Limits and Perspectives of Automated Judicial Decision-Making

The broader introduction of automated decision-making inevitably raises the question whether machines can assume the role traditionally performed by judges.[33] Judicial work is commonly associated with creativity, craftsmanship, individuality, innovation, inspiration, intuition and common sense.[34] This perception may lead to a simplified line of reasoning: judges think when performing their work, machines cannot think, and therefore machines cannot perform the work of judges. In the context of artificial intelligence, however, the relevant inquiry is not whether machines replicate human reasoning, but whether they can deliver decisions that meet comparable standards by relying on their own specific capacities, such as processing power, access to extensive data sets and advanced algorithms.[35]

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[29] Ibidem.
[30] SEDLÁČEK, M. *Elektronizace justice a nové technologie v civilním procesu [Digitalisation of Justice and New Technologies in Civil Procedure]*, p. 195.
[31] KATSH, E., RABINOVICH-EINY, O. *Digital justice: Technology and the Internet of Disputes*, p. 1 et seq.
[32] WING, L., RAINEY, D. Online Dispute Resolution and the Development of Theory. In: WAHAB, M., KATSH, E., RAINEY, D. (eds.). *Online Dispute Resolution: Theory and Practice*. The Hague: Eleven International Publishing, 2012, pp. 19–38.
[33] SUSSKIND, R. *Online courts and the future of justice*, p. 278.
[34] Ibidem, p. 279.
[35] Ibidem, p. 280.

From this perspective, several technical questions arise. First, can a machine think, emote, create, reason and feel in the same manner as a human judge?[36] The answer remains negative, as these qualities are inseparable from human agency. Second, can the outcome of the judicial process, understood in simplified terms as a reasoned decision, be produced by machines?[37] Given the rapid development of increasingly capable systems, it is not unreasonable to expect that, at some stage, such systems may outperform human judges in generating reasoned outcomes that resemble high-quality judicial decisions, albeit produced through artificial intelligence rather than human cognition. Third, it must be considered whether systems can be developed that deliver the social and economic outcomes expected of courts while doing so in fundamentally non-human ways. In this respect, developments in machine learning and predictive analytics suggest a more affirmative answer.[38]

Historically, court decisions have been rendered exclusively by judges.[39] This historical fact does not, however, preclude alternative institutional arrangements in the future. Litigants may not necessarily seek a judicial decision in the traditional sense, but rather a binding determination issued by an institution recognised as a court.[40] In principle, it is conceivable that a machine could generate findings that are deemed authoritative by law. Procedural rules could, for example, provide that where a system predicts a decision in favour of one party with a sufficiently high degree of probability, such as 95 per cent, that prediction would constitute the official determination of the court. While such scenarios may appear undesirable or unlikely, they cannot be entirely excluded and therefore merit careful consideration.[41]

Procedural law should respond to technological developments that increasingly shape everyday life.[42] It will therefore be necessary to continue identifying those areas of civil procedure most affected by technological progress and to pursue further digitalisation and automation.[43] Contentment with electronic case files, digital service of documents, videoconferencing or electronic payment orders in summary proceedings would amount to resting on one's laurels. Where technology enables simple remote connection and transmission of audio and video, these possibilities should be fully utilised in court proceedings, subject always to the protection of the right to a fair trial and its fundamental principles, including those reflected in Article 6 of the European Convention on Human Rights.[44]

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[36] Ibidem.
[37] Ibidem, p. 281.
[38] Ibidem.
[39] SEDLÁČEK, M. National Report on Automation in Decision-Making in Civil Procedure in the Czech Republic. *Acta Universitatis Carolinae Iuridica*. 2024, Vol. LXX, No. 2, pp. 168.
[40] Cf. "No one shall be deprived of his lawful judge. Jurisdiction of the court and the judge shall be determined by law." (Article 38(1) of Constitutional Act No 2/1993 Coll., Charter of Fundamental Rights and Freedoms, as amended).
[41] SUSSKIND, R. *Online courts and the future of justice*, p. 287.
[42] SEDLÁČEK, M. Automation in Civil Court Decision-Making – Possibility or Necessity? In: BAČÁROVÁ, R., PACÁK, T., SZITTYAIOVÁ, M. (eds.). *Košice Days of Private Law V. Peer-Reviewed Collection of Scientific Papers*. Košice: Pavol Jozef Šafárik University in Košice, Faculty of Law, 2024, pp. 210–217.
[43] SEDLÁČEK, M. *National Report on Automation in Decision-Making in Civil Procedure in the Czech Republic*, p. 169.
[44] Ibidem.

From this perspective, the current regulatory framework governing automated decision-making appears insufficient in light of ongoing technological progress.[45] Excessive conservatism entails the risk of failing to respond adequately to structural changes affecting the administration of justice and may ultimately result in missed opportunities to enhance the effectiveness and proportionality of civil proceedings.

IV. ARTIFICIAL INTELLIGENCE AND CIVIL PROCEEDINGS

In the upcoming years artificial intelligence (AI) might be progressively transforming the administration of justice including the civil justice as the courts undergo progressive digitalisation. Even though the judicial system in the Czech Republic still awaits its full digitalisation, we might expect introduction of the electronic filing systems, automated case-management and algorithmic research tools which will constitute an ordinary part of civil procedure. In this environment, it seems to be clear that sooner or later AI will influence adjudication in its various forms – from informal use of the AI tools by judges in their research to formulating and issuing judgments. The question is whether the integration of AI would affect the right to fair trail and other fundamental rights and freedoms and whether the advanced use of AI in the judicial system would not mean the breach of guarantees under Articles 6 and 14 of the European Convention for Protection of Human Rights and Fundamental Freedoms (Convention). It is therefore necessary to examine possible uses of the AI in the civil justice and to explore whether the AI-driven digital civil justice could maintain fairness, transparency, and safeguarding of fundamental rights and freedoms.

IV.1. Uses of AI in Civil Proceedings

AI might be integrated into civil proceedings in various ways. Firstly, digital courts might employ language processing to classify incoming submissions, detect incomplete filings, or extract legally relevant information.[46] Such systems might serve as the first gatekeeper in judicial administrations. Secondly, AI might power online dispute-resolution mechanisms, now widely used in consumer platforms.[47] These systems might suggest solutions, evaluate the plausibility of claims, or structure settlement negotiations, thereby reducing judicial workload. Thirdly, AI might provide research support by identifying relevant jurisprudence.[48] While there are known cases of AI hallucinating the case law which when unchecked and used by lawyers might lead to their penalization by the courts,[49] a level of depth of the AI research might be unattainable for human judges. In jurisdictions with extensive databases, the analysis done by AI tools might enable courts to identify all relevant legal materials rather than relying on partial submissions or research done mostly by assistants.

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[45] SUSSKIND, R. *Online courts and the future of justice*, p. 293 et seq.
[46] CAMPBELL, R. W. Artificial Intelligence in the Courtroom: The Delivery of Justice in the Age of Machine Learning. *Colorado Technology Law Journal*. 2020, Vol. 18, Issue 2, p. 327.
[47] Ibidem, p. 332.
[48] Ibidem, p. 341.
[49] See e.g. Decision of the Constitutional Court of the Czech Republic, 1 December 2025, file no. I. ÚS 3004/25.

There have been various experiments which showed that the legal machine-learning models can outperform experienced lawyers in forecasting outcomes of the disputes. For example, in the Case Crunch's contest, AI prediction system competed against one hundred experienced British lawyers in forecasting the outcomes of financial mis-selling claims. The AI achieved an accuracy rate of 86.6 % compared with the lawyers' 62.3 % which was attributed to the system's superior ability to incorporate non-legal variables into its predictive modelling.[50] While this example is not equal to judicial decision-making, it shows that AI is capable of performing analysis necessary for adjudication with higher accuracy than experienced lawyers. Predictive systems may thus assist courts in providing accurate and highly relevant case law, estimating case trajectories and identifying legally relevant factors which might be otherwise omitted by human judge.

IV.2. Advantages: Efficiency, Neutrality, and Consistency

The potential advantages of AI in civil proceedings might be vast. Studies reveal that human judges are susceptible to cognitive biases and external influences. A well-known study showed that judges deciding parole cases issued harsher decisions before lunch than afterwards which showed the vulnerability of human judgment to fatigue and physiological needs.[51] While the experiment was done in the criminal proceedings, it is clear that these factors affect decisions in the civil proceedings too as judges could be less patient or tolerant to the pleadings of the parties. By contrast, AI is not subject to hunger, mood, or emotional fluctuation.

Further, in civil cases which involve large data volumes such as class actions or serial consumer disputes, AI is able to process patterns with a degree of neutrality and endurance that is beyond human capacity. AI-supported search tools promote consistency by mapping the full landscape of applicable case law. For European civil-law systems increasingly shaped by jurisprudential harmonisation, this comprehensive approach strengthens legal certainty.

Moreover, AI may also mitigate corruption and undue influence. As algorithms cannot be bribed, threatened, or socially pressured, they offer a safeguard in environments where structural corruption threatens judicial integrity.

IV.4. Risks: Discrimination and Threats to Right to Fair Trial

Despite many benefits of the use of AI in the civil proceedings., AI's integration raises also structural risks. Especially the advanced use of AI tools in the civil proceedings might violate guarantees of Articles 6 and 14 of the Convention.

The ECHR has repeatedly held that fairness requires equality of arms, transparency, and effective adversariality. In the case of Dombo Beheer B.V. v. the Netherlands,[52] the ECHR stressed that parties must have a reasonable opportunity to challenge and com-

[50] MARCHANT, G., COVEY, J. Robo-Lawyers. *Litigation*. Fall 2018, Vol. 45, Issue 1, p. 30.
[51] DANZINGER S., LEVAV, J., AVNAIM-PESSO, L. Extraneous factors in judicial decisions. *Proceedings of the National Academy of Sciences*. 2011, Vol. 108, Issue 17.
[52] Dombo Beheer B.V. v. the Netherlands, European Court of Human Rights, 27 October 1993, Application no. 14448/88.

ment on the evidence used against them. If AI systems contribute to judicial reasoning without being disclosable or comprehensible, these guarantees might be undermined.

Furthermore, machine-learning models trained on historical data right reproduce discriminatory patterns embedded in the dataset. This form of algorithmic bias directly conflicts with the prohibition of discrimination under Article 14 of the Convention.

Non-transparency hinders the ability of parties to contradict algorithmic findings and thereby weakening adversarial safeguards and the right to a reasoned decision.[53] The "black-box" nature of many AI models endangers the equality of arms because defendants cannot interrogate or refute inferences made by opaque systems and algorithms do not explain or justify how a particular decision has been reached.[54] A system whose reasoning cannot be explained, or whose training data might contain bias, cannot meet the foreseeability requirement and risks arbitrary interference with civil rights.

AI may also erode the human qualities essential to adjudication. Credibility assessment, evaluation of vulnerability, and contextual interpretation are central elements of civil justice. We believe that these cannot be meaningfully delegated to algorithms without losing the moral dimension of adjudication. Courts derive legitimacy not only from technical competence but also from their human capacity for empathy, conscience, and equitable judgment. The judgments must reflect understandable reasoning to the parties and be grounded in human evaluation. Replacing these functions with optimising processes might threaten the legitimacy of judicial authority itself.

Furthermore, AI may create also informational asymmetry: parties to the civil proceedings may be unable to determine how much of a decision was shaped by AI tools, or which inferential steps were involved.

AI offers tangible benefits for civil justice, particularly in enhancing efficiency, accessibility, and consistency. Yet it also presents profound risks to fairness, discrimination, and right to fair trial. Under Articles 6 and 14 of the Convention, the use of AI shall be fully transparent, and always subordinate to human judicial authority. Algorithms may support but should never replace the human judges whose role embodies the conscience and legitimacy of the legal order. AI should be integrated into civil procedure only through robust safeguards, explainability standards, and meaningful oversight. The possible advantages of the use of AI tolls should not compromise the fundamental guarantees that shape the European system of protection of fundamental rights.

V. LIMITS OF DIGITAL CIVIL PROCEEDINGS IN EXTREMIS

Digital civil proceedings denote the integration of technological tools into the administration of civil justice, encompassing electronic filing systems, remote (virtual) hearings, online dispute resolution (ODR) mechanisms, and the deployment of artificial intelli-

[53] SROKA, T. Artificial intelligence and the right to a fair trial. In: BALCERZAK, M., KAPELAŃSKA-PRĘGOWSKA, J. (eds.). *Artificial Intelligence and International Human Rights Law*. Cheltenham: Edward Elgar Publishing, 2024, pp. 251–252.

[54] PALMIOTTO, F. The black box on trial: the impact of algorithmic opacity on fair trial rights in criminal proceedings. In: EBERS, M., CANTERO GAMITO, M. (eds.). *Algorithmic Governance and Governance of Algorithms: Legal and Ethical Challenges*. Cham: Springer International Publishing, 2021, p. 61.

gence (AI) applications to support (or automate) judicial decision-making. These developments are typically justified by objectives of procedural efficiency, cost containment, and the enhancement of effective access to justice. At the same time, they raise material concerns for procedural due process, particularly with respect to the integrity of adversarial participation, equality of arms, transparency, and the effective protection of parties' fundamental procedural rights.[55]

"In extremis" conditions are those in which the ordinary delivery of civil justice is materially disrupted, and rapid substitution is required to avoid systemic denial of justice. For example, a pandemic precluding attendance, loss of buildings, severe staffing constraints, or critical infrastructure failure. The characteristic feature is not merely inconvenience, but it is rather necessity under constraint, coupled with elevated risk of unequal participation, impaired publicity, and compromised evidential reliability.

The core question is therefore not whether digital civil proceedings are possible. Rather the core question is, where the law places outer bounds on digital substitution; bounds that persist even when speed and continuity are operationally indispensable.

V.1. Legality and institutional competence

Remote justice cannot be sustained on improvisation alone.[56] A recurrent European principle is the requirement for a clear legal framework. CEPEJ explicitly calls for a legal basis allowing courts to hold remote hearings, with court discretion directed to overall fairness.[57]

In England & Wales, legality was operationalised through CPR-based practice directions and protocols (and, for public transmission/observation, specific statutory regimes).[58] The 2022 Practice Guidance on remote observation underscores that remote observation powers rest on primary legislation and implementing regulations, and it frames remote access as a judicial decision applying statutory criteria.[59]

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[55] ECHR, judgment of 21 February 1975, Golder v the United Kingdom, application no. 4451/70.ECtHR, judgment of 9 October 1979, Airey v Ireland, application no. 6289/73.CJEU (Grand Chamber), judgment of 19 November 2019, *A.K. and Others*, Joined Cases C-585/18, C-624/18 and C-625/18, EU:C:2019:982.

[56] THE BAR COUNCIL. *A lens on justice: The move to remote justice 2020 – 2024* [online]. May 2024 [2025-12-1]. Available at: <https://www.barcouncil.org.uk/static/0146c40d-2520-47b9-af0d056d3e6078ee/Remote-justice-report-May-2024.pdf>.

[57] CEPEJ. *Guidelines on videoconferencing in judicial proceedings* (Fundamental principles, lit. B-C); ECHR. *Sakhnovskiy v. Russia*. Judgement of 2 November 2010, CE:ECHR:2010:1102JUD002127203, § 98; ECHR. *Marcello Viola v. Italy*. Judgement of 5 October 2006, CE:ECHR:2006:1005JUD004510604, §§ 52–53.

[58] Practice Direction 51Y – Video or Audio Hearings During Coronavirus Pandemic. In: *Justice* [online]. 24. 3. 2022 [2025-11-26]. Available at: <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part51/practice-direction-51y-video-or-audio-hearings-during-coronavirus-pandemic>; JUDICIARY OF ENGLAND AND WALES. Civil Justice in England and Wales: Protocol Regarding Remote Hearings [online]. 26. 3. 2020 [2025-11-26]. Available at: <https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil_.GenerallyApplicableVersion.f-amend-26_03_20-1-1.pdf>.

[59] JUDICIARY OF ENGLAND AND WALES. Open Justice – Remote Observation of Hearings – New Powers: Practice Guidance [online]. Paras 3–4, 8–9, 16 [2025-11-26]. Available at: <https://www.judiciary.uk/wp-content/uploads/2022/06/Practice-Guidance-on-remote-observation-final.pdf>; Courts Act 2003. In: *legislation.gov.uk* [online]. C. 39, s. 85A [2025-12-3]. Available at: <https://www.legislation.gov.uk/ukpga/2003/39/section/85A>; The Remote Observation and Recording (Courts and Tribunals) Regulations 2022. In: *legislation.gov.uk* [online]. SI 2022/705 [2025-12-3]. Available at: <https://www.legislation.gov.uk/uksi/2022/705/made>. UNITED KINGDOM. Coronavirus Act 2020. In: *legislation.gov.uk* [online]. cC. 7, Sch. 25 [2025-12-3]. Available at: <https://www.legislation.gov.uk/ukpga/2020/7/schedule/25/enacted>.

Regarding legality and institutional competence, the constraint is as follows. If a proposed digital modality lacks a sufficient legal basis (or exceeds it), it is vulnerable to challenge as ultra vires and may undermine "established by law" guarantees.[60]

V.2. Effective participation and "equality of arms", open justice and publicity under constraint

Remote hearings magnify disparities such as bandwidth, device quality, private space, disability access, and digital literacy.[61] CEPEJ requires that participants be able to test platforms, that courts continuously monitor audio/video quality, and that technical incidents be managed so as not to impair effective participation (including suspending where necessary). It also requires the court to consider vulnerable participants expressly.[62]

Where remote format produces a material participatory disadvantage for one party (litigant-in-person, vulnerable witness, interpreter-dependent user), the court's duty to secure equality of arms may require adaptation (hybrid solutions, additional support, or adjournment). Furthermore, one should take into consideration that publicity is not an aesthetic preference. It is a structural accountability mechanism. In extremis conditions may justify modified openness, but not its erasure absent strict necessity. Mechanisms must exist to prevent remote observation from distorting evidence or endangering participants.[63]

V.3. Evidence integrity: identity, influence, and the courtroom's "controlled environment"

Civil adjudication often turns on fact-finding. Remote settings weaken the court's ability to control the evidential environment: verifying who is present, preventing coaching, safeguarding document handling, and ensuring all participants can properly view materials.[64]

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[60] CRAIG, P. *Administrative Law.* 10th edition. London: Sweet & Maxwell, 2025; DONNELLY, C., BELL, J., HARE, I. *De Smith's Judicial Review.* 9th edition. London: Sweet & Maxwell, 2024; ECHR. Guðmundur Andri Ástráðsson v. Iceland. Judgement of 1 December 2020, CE:ECHR:2020:1201JUD002637418, §§ 243-252.

[61] BANNON, A., ADELSTEIN, J. *The Impact of Video Proceedings on Fairness and Access to Justice in Court* [online]. New York: Brennan Center for Justice, 10. 9. 2020 [2025-12-4]. Available at: <https://www.brennancenter.org/our-work/research-reports/impact-video-proceedings-fairness-and-access-justice-court>; CLARK, J. *Evaluation of remote hearings during the COVID-19 pandemic: Research report* [online]. London: HM Courts & Tribunals Service, 2021 [2025-12-4]. Available at: <https://assets.publishing.service.gov.uk/media/61b71ebd8fa8f5037b09c7b1/Evaluation_of_remote_hearings_v23.pdf>; EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA). *Digitalising Justice: A Fundamental Rights-based Approach* [online]. Luxembourg: Publications Office of the European Union, 2025 [2025-12-4]. Available at: <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2025-digitalising-justice-fundamental-rights-approach_en.pdf>.

[62] CEPEJ. *Guidelines on videoconferencing in judicial proceedings (CEPEJ(2021)4)* [online]. Strasbourg: Council of Europe, 2021 [2025-12-5]. Available at: <https://rm.coe.int/cepej-2021-4-guidelines-videoconference-en/1680a2c2f4>; CEPEJ. *Guide on the use and development of remote hearings (CEPEJ(2025)3)* [online]. Strasbourg: Council of Europe, 5. 6. 2025 [2025-12-5]. Available at: <https://rm.coe.int/cepej-2025-3-en-guide-for-remote-hearings-2763-8911-6430-1/1680b6bb7b>; CCJE. *Opinion No. 26 (2023): Moving forward – The use of assistive technology in the judiciary* [online]. Strasbourg: Council of Europe, 2023 [2025-12-5]. Available at: <https://rm.coe.int/ccje-opinion-no-26-2023-final/1680adade>.

[63] OHCHR. *On-line hearings in justice systems* [online]. Geneva: United Nations, 2. 8. 2023 [2025-12-5]. Available at: <https://www.ohchr.org/sites/default/files/documents/issues/ruleoflaw/Briefer-Online-hearings-justice-systems.pdf>; CEPEJ. *Guide on the use and development of remote hearings (CEPEJ(2025)3).*

[64] OHCHR. *On-Line Hearings in Justice Systems: A Briefer on Human Rights Impacts* [online]. 2023, p. 2 (Challenges) [2025-12-5]. Available at: < https://www.ohchr.org/en/documents/tools-and-resources/line-hearings-justice-systems>.

CEPEJ requires participant identification measures that are lawful and not excessively intrusive; it mandates that arrangements for witnesses/experts should avoid pressure or undue influence, and it requires procedures ensuring all participants can see/hear evidence and that adversarial safeguards (including counter-evidence) are maintained.[65]

The 2025 CEPEJ Remote Hearings Guide similarly highlights practical difficulties in verifying identity, managing evidence, and preventing third-party influence on witnesses, especially where remote hearings were accelerated during the pandemic. If the court cannot reasonably mitigate coaching/identity risks (especially in credibility-heavy disputes), "remote by default" becomes legally fragile; the format must be justified case-specifically.[66]

V.4. Confidentiality, authenticity and formal validity of electronic acts (signatures, service, filing)

Civil proceedings routinely involve legally privileged communications, confidential settlement positions, and sensitive personal/commercial data. Remote hearings introduce new threat vectors: overhearing in domestic spaces, insecure links, platform vulnerabilities, and unauthorised recording.

CEPEJ treats confidentiality of lawyer–client communication as a fair-trial requirement in remote proceedings. Domestic procedure reinforces the point through recording controls. For example, CPR 39.9 provides that hearings are recorded officially unless the judge directs otherwise and prohibits unofficial recording equipment without court permission.[67]

Where confidentiality and privilege cannot be protected by adequate technical and procedural measures (secure breakout channels, identity controls, warnings, enforcement), remote format may become incompatible with fair administration.[68]

Furthermore, civil proceedings depend on valid execution, admissible authenticity signals, and reliable audit trails (service, filing times, integrity of bundles).[69] Civil proceedings in extremis does not relax formalities where statutes require them; it increases

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[65] CEPEJ. *Guide on the use and development of remote hearings (CEPEJ(2025)3)*, pp. 4–5 (paras 4-5); CEPEJ. *Guidelines on videoconferencing in judicial proceedings (CEPEJ(2021)4)*, guidelines 10, 15, 17-18.

[66] CEPEJ. *Guidelines on videoconferencing in judicial proceedings* [online]. June 2021, p. 7 (Fundamental principle C) and p. 10 (Guideline 2) [2025-12-5]. Available at: <https://rm.coe.int/cepej-2021-4-guidelines-videoconference-en/1680a2c2f4>; OHCHR. On-Line hearings in justice systems [online]. 2023, p. 3 [2025-12-5]. Available at: <https://www.ohchr.org/sites/default/files/documents/issues/ruleoflaw/Briefer-Online-hearings-justice-systems.pdf>. ECHR. Case of MARCELLO VIOLA v. Italy (Application no. 45106/04). § 67 [2025-12-5]. Available at: <https://hudoc.echr.coe.int/eng?i=001-77246>. Case of SAKHNOVSKIY v. Russia (Application no. 21272/03), §§ 94–98 [2025-12-5]. ICJ). Videoconferencing, Courts and COVID-19: Recommendations Based on International Standards [online]. Geneva: ICJ, November 2020 [2025-12-5]. Available at: <https://www.icj.org/wp-content/uploads/2020/11/Universal-videoconferencing-courts-and-covid-Advocacy-2020-ENG.pdf>.

[67] UNITED KINGDOM. Civil Procedure Rules, Part 39, Rule 39.9(2) (Recording and transcription of proceedings): prohibition of unofficial recording equipment without permission; breach constitutes contempt of court (by reference to Contempt of Court Act 1981, p. 9).

[68] CEPEJ. Guidelines on videoconferencing in judicial proceedings (CEPEJ(2021)4), Fundamental principle D (Confidentiality), p. 8; Guideline 13 (Recording of proceedings), p. 12; OHCHR. On-line hearings in justice systems (Briefer on human rights impacts), p. 1 (challenges: difficulty of private/confidential communication with legal counsel) a p. 3 (conditions/safeguards: secure and confidential means of communication between counsel and client; encrypted channels; protection against intrusion).

[69] *Regulation (EU) No 910/2014 of 23 July 2014 (eIDAS). Official Journal of the European Union.* L 257, 28. 8. 2014.

the burden on courts to provide clear directions, reliable timestamps, and integrity controls so that "procedural default" is not accidentally engineered.[70]

V.5. Access to court and digital exclusion: proportionality of "digital mandates"

A distinctive civil risk is that digitalisation can shift from "option" to "gatekeeping".[71] Compulsory e-filing, rigid technical specifications, or severe sanctions for non-compliance. Contemporary European analysis stresses that digital lodging requirements must be proportionate and accompanied by practical guidance and exceptions to avoid impairing access to a court.[72]

In extremis, courts may rationally require digital channels to function at scale. Nevertheless, they must preserve workable alternatives (assisted digital routes, extensions, dispensation, paper fallback) where digital compliance is unrealistic.[73]

VI. ALTERNATIVE DISPUTE RESOLUTION IN THE DIGITAL AGE (ADR)

In recent years, digital transformation has extended far beyond the electronification of civil procedure or automated decision-making; it has also had a significant impact on the field of alternative dispute resolution (ADR). ADR appears to be one of the areas where digital innovation can be implemented most rapidly–not only due to the flexibility of its procedures but also because of its relatively limited institutional inertia. In the European context, this development is accompanied by a shift toward online dispute resolution (ODR), that is, models that employ digital platforms to conduct, facilitate, or even adjudicate disputes. This trend is currently accelerating, particularly in sector-specific regulation–most notably through the Digital Services Act (DSA),[74] which introduces new obligations for platform providers and creates space for innovative mechanisms to protect platform users.

VI.1. Digitalisation of ADR and the Emergence of ODR

Digital ADR, often referred to as ODR, encompasses a wide spectrum of procedures–ranging from basic automated facilitation (e.g., intelligent forms), through online mediation, to adjudicatory processes in which the role of the human decision-maker is reduced or entirely replaced. ODR is not merely a transfer of traditional proceedings into an on-

[70] Practice Direction 5B – Communication and filing of documents by e-mail, para. 4.2. Practice Direction 5C – CE-File electronic filing and case management system, para. 3.5(5).

[71] EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS. *Digitalising Justice: A Fundamental Rights-based Approach* [online]. Luxembourg: Publications Office of the European Union, 2025 [2025-12-3]. Available at: <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2025-digitalising-justice-fundamental-rights-approach_en.pdf>.

[72] ECHR. *Zubac v Croatia*, no. 40160/12, judgment of 5. 4. 2018. ECHR. *Xavier Lucas v. France* (Application no. 15567/20), Judgment (Fifth Section), §§ 54-56, 46-47. COUNCIL OF THE EUROPEAN UNION. Council conclusions 'Access to justice – seizing the opportunities of digitalisation', points 7 and 20 [2025-12-4], Available at: <https://data.consilium.europa.eu/doc/document/ST-11599-2020-INIT/en/pdf>.

[73] EUROPEAN COMMISSION. Communication *Digitalisation of justice in the European Union – A toolbox of opportunities* COM(2020) 710 final.

[74] REGULATION (EU) 2022/2065 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC.

line environment; it often establishes a fundamentally new mode of interaction between disputing parties and the adjudicating institution and frequently entails a novel type of procedural logic.

ODR has seen substantial development especially in consumer and platform-related disputes, where traditional court proceedings tend to be financially, temporally, or organisationally inefficient for individuals.[75] Digitalised procedures can therefore make the law significantly more accessible and thereby mitigate users' sense of injustice.

The DSA introduces an additional dimension to this area by creating a hybrid model in which the responsibility for the initial resolution of disputes is placed on the providers of online platforms, while independent ODR entities function as external review mechanisms. Central to this model is Article 21 DSA, which obliges providers of very large online platforms to enable users to contest content-moderation decisions through certified bodies.[76]

This model has several consequences:

- Institutional specialisation – ODR entities focus on specific types of disputes, typically involving compliance with contractual terms.
- Standardisation of procedures – digital environments allow for the creation of unified and predictable mechanisms.
- The importance of party autonomy – participation in ODR is usually voluntary, although the DSA obliges platforms to submit to the procedure if the user requests it.

Digitalisation thus brings to ADR not only new tools but also a new institutional architecture with the potential to address shortcomings of traditional processes–particularly inefficiency, high costs, and limited accessibility.

VI.2. Internal Dispute-Resolution Mechanisms on Digital Platforms

Internal platform mechanisms play a crucial role in digital ADR. They constitute the first line of response to private-law disputes. Article 20 DSA requires platforms to establish internal complaint-handling systems that meet minimum procedural standards–transparency, reasonable time limits, an individualised statement of reasons, and user access to evidence when the platform removes content or restricts an account.

From the perspective of procedural law, this represents a unique model: the platform acts simultaneously as the "decision-making body" and as a "party to the dispute". As such, these procedures are better understood as instruments of self-regulation that are subsequently subject to correction by external mechanisms.

VI.3. External ADR Mechanisms for Disputes on Digital Platforms

External ADR in the platform context is designed primarily to provide independent review of platform decisions. The DSA requires that users must be able to challenge a plat-

[75] GOANTA, C., ORTOLANI, P. Unpacking content moderation: The rise of social media platforms as online civil courts. In: KRAMER, X. et al. (eds.). *Frontiers in Civil Justice*. Cheltenham: Edward Elgar Publishing, 2022.

[76] HOLZNAGEL, D. The Digital Services Act wants you to "sue" Facebook over content decisions in private de facto courts. In: *VerfBlog* [online]. 24. 6. 2021 [2026-1-28]. Available at: <https://verfassungsblog.de/dsa-art-21/>.

form's decision before a body that is independent, professionally competent, transparent, and certified by a competent national authority.

This mechanism offers several advantages:

- Enhanced impartiality and legitimacy – users need not rely on a platform's internal decision-making, which may be affected by conflicts of interest. Independent ADR bodies can provide a more objective review.
- Expertise – ADR entities specialise in specific types of digital disputes, particularly content moderation, personality rights, or freedom of expression. In practice, they may possess greater expertise than civil courts.
- Speed and low cost – digital procedures enable structured communication, clear workflows, and faster decision-making. User costs are minimal. DSA anticipates that a significant share of the costs will be borne by the platform.

Despite these advantages, significant limitations remain.

VI.4. Limitations of Digital ADR

Digital ADR faces several types of risks associated both with procedural design and with the technological nature of the online environment.

- Strong role of the platform – although ADR bodies operate independently, they nonetheless function within an ecosystem created by the platform itself. The platform may influence the data available to the ADR body, the wording of contractual terms forming the basis of the review, or the technical interface through which users initiate disputes.
- Information asymmetry and evidentiary challenges – users often lack access to information that is essential for assessing their case. Without a shift in the burden of proof, review proceedings may thus remain limited.
- Algorithmic moderation of disputes – platforms may in the future employ generative AI to pre-select arguments, generate recommendations, or even prepare draft decisions. This could diminish the role of human decision-makers.
- Risk of "privatisation of due process" – it is essential to avoid a situation where the notion of due process in the digital age is defined solely by private platforms rather than by public authorities. ADR cannot fully substitute the judiciary; it may only complement judicial protection.

VI.5. ADR and the Right to a Fair Trial

Although ADR operates outside the judiciary, it must respect the fundamental principles of fair process–particularly the right to be heard, the impartiality of the decision-maker, predictability, and ultimately the availability of judicial review. In the context of digital platforms, these principles acquire heightened importance because users are structurally the weaker party and decisions may significantly affect their fundamental rights or economic activity. ADR in digital disputes should therefore be assessed not merely through the lens of party autonomy but also as part of the broader regulation of the digital economy, where the protection of users' rights and the safeguarding of public interests are crucial.

VI.6. Future Developments: AI and the Need for Regulation

Technological developments point toward increasing automation of ADR, whether in dispute triage, solution proposal, or fully algorithmic mediation.[77] At the same time, one may expect the emergence of EU-wide ODR structures operating with harmonised standards and shared databases of decision-making practice. Key regulatory questions include: How can transparency of algorithmic systems used in ADR be ensured? What is the appropriate balance between automation and human oversight?

Future development of ADR in the digital space should move toward a model in which algorithmic tools serve as supportive instruments, while final decisions are confirmed by a suitably qualified human decision-maker.

Digital ADR represents one of the most dynamic segments of civil dispute resolution.[78] In the context of the DSA, it constitutes an innovative model capable of significantly strengthening the procedural protection of users of online platforms–if it is implemented with sufficient transparency and expertise. ADR cannot and should not fully replace judicial protection, but it can meaningfully complement it where traditional procedures falter due to their slowness, inefficiency, or costliness.

CONCLUSION

The analysis demonstrates that digitalisation of civil dispute resolution cannot be regarded as a purely technical development. At each procedural stage examined, from the digital lawsuit and electronic court files to remote hearings, automation, and the use of artificial intelligence, digital tools directly affect the functioning of fundamental procedural guarantees. Their impact is most apparent in relation to equality of arms, effective participation, transparency, and the right to a reasoned decision.

The article further shows that digital solutions may enhance efficiency and accessibility only where they are embedded in clear legal frameworks and accompanied by procedural safeguards that preserve party autonomy and adversarial balance. This is particularly relevant in situations where digital substitution becomes operationally necessary, as well as in contexts where algorithmic tools support or influence judicial decision making. In such settings, meaningful human judicial oversight remains indispensable.

Digital civil disputes can therefore develop in a manner compatible with due process only if technological innovation is consistently subordinated to normative requirements of procedural fairness. Absent this approach, the expansion of digital resolution risks undermining the legitimacy of civil adjudication.

[77] RABINOVICH-EINY, O. The Past, Present, and Future of Online Dispute Resolution. *Current Legal Problems*. 2021, Vol. 74, Issue 1, pp. 125–148.

[78] MANIA, K. Online dispute resolution: the future of justice. *International Comparative Jurisprudence*. 2015, Vol. 1, No. 1, pp. 76–86.