Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2081 (2015)[1]

Access to justice and the Internet: potential and challenges

Parliamentary Assembly

1. The Parliamentary Assembly reiterates that access to justice is a cornerstone of any democratic State based on the rule of law, and a prerequisite for citizens' effective enjoyment of their human rights. It notes, however, that access to the justice system often entails high costs in terms of time and money and may be impeded by courts' limited resources.

2. Efforts are being made in a number of States to reform court processes in order to accelerate procedures and make them more affordable, in particular through the use of modern forms of information and communications technology (ICT).

3. The Assembly welcomes the increased use of ICT tools, such as electronic case files, Intranet portals, videoconferencing, case-management systems and databases facilitating information sharing, which not only have the potential to simplify and expedite procedures, but also to enhance the consistency and predictability of outcomes.

4. The Assembly further observes that ICTs have paved the way for pursuing alternative dispute resolution (ADR) via the Internet, by means of so-called online dispute resolution (ODR) procedures. The use of the Internet to resolve disputes appears likely to grow, given the notable rise of e-commerce and e-governance, which are simplifying interaction between individuals, businesses and governments.

5. The Assembly encourages member States to promote and further develop ODR mechanisms, acknowledging the potential of ODR procedures for settling disputes more speedily, cheaply and in a less conflictual manner than through litigation. ODR mechanisms can provide more flexibility in terms of procedures employed and remedies prescribed.

6. While considering that ODR procedures and ICTs can contribute to facilitating access to the justice system, the Assembly recognises the various challenges involved in ODR procedures and the use of ICT in dispute settlement, including technical issues, inequalities in individuals' access to online resources, privacy issues and problems regarding the enforcement of decisions. It therefore stresses the need to safeguard the rights enshrined in the European Convention on Human Rights (ETS No. 5, "the Convention"), and in particular the right to a fair trial (Article 6) and the right to an effective remedy (Article 13).

7. In light of the above, the Assembly calls on the Council of Europe member States to:

7.1. make voluntary ODR procedures available to citizens in appropriate cases; raise public awareness of the availability of such procedures and create incentives for choosing them, including by promoting the extrajudicial enforcement of ODR decisions and by enhancing the knowledge of legal professionals about ODR;

7.2. ensure that existing and future ODR procedures contain safeguards compliant with Articles 6 and 13 of the Convention, which may include access to legal advice;

7.3. ensure that parties engaging in ODR procedures retain the right to access a judicial appeal procedure satisfying the requirements of a fair trial pursuant to Article 6 of the Convention;

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1. *Text adopted by the Standing Committee*, acting on behalf of the Assembly, on 27 November 2015 (see Doc. 13918, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Jordi Xuclà).

7.4. undertake to develop common minimum standards that ODR providers will have to comply with, in order to ensure, *inter alia,* that their procedures do not unfairly favour regular users over one-time users; and to strive to establish a common system of accrediting ODR providers satisfying these standards;

7.5. continue to monitor technological developments in order to promote the use of ICTs within courts to improve judicial efficiency, while guaranteeing fair and transparent proceedings, data security, privacy and the adequate and continuous training of court staff and lawyers on the lawful and effective use of ICT in judicial proceedings.