

POSSIBLE APPROACHES TOWARDS THE ARCHITECTURE OF ONLINE COURTS AND THEIR POTENTIAL IN THE DECISION-MAKING PROCESS

Pavel Loutocký

Pavel Loutocký, Ph.D., postdoc researcher, lecturer; Masaryk University, Faculty of Law, Institute of Law and Technology and Faculty of Informatics, CERIT; Žerotínovo nám. 617/9, 601 77 Brno, CZ; e-mail: loutocky@muni.cz

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Abstract: *Although many private systems have demonstrated the effectiveness of online dispute resolution tools, eJustice still mostly fails to implement them to a greater extent. The possibilities of introducing online courts provide the opportunity to use the potential of modern technologies and in addition optimization of processes, which lead to a new perception of the construction of dispute resolution. The article will not only deal with the grasp of the concept of online courts, but it will present the approaches based on specifically selected courts, evaluate them, and propose an optimal solution (focusing also on the preparatory steps taken within the framework of this initiative in the Czech Republic).*

1. Online Courts and Access to Justice

The rejection of modern technologies within traditional adjudication mechanisms is still evident today, and although many private systems using online dispute resolution tools have already demonstrated the effectiveness of such interconnection, they are still mostly not implemented to a greater extent in court systems.¹ Many states are not only struggling with the appropriate use and implementation of modern technologies, but also continuously encounter non-conceptual approaches, conservatism and uncertainty in grasping the issue.² The use of modern technologies within the court system should be primarily perceived as a way to streamline existing processes, increase access to the solutions offered to dispute settlement and to simplify and optimise them. Therefore, it is advisable to use the tools already explored (especially in the context of Online Dispute Resolution – ODR), implement them in existing processes and further modify them. Susskind notes that the terms “online courts” and “ODR” are now used interchangeably. However, while online courts are exclusively associated with the public sector, ODR is used in both a broad and narrow sense. In the broad sense, ODR generally refers to any dispute resolution process that is largely conducted over the internet,³ and tends more towards an understanding of ODR as a set of tools and methods for dispute resolution.⁴ It can be said that online courts use ODR techniques. In contrast to the concept of eJustice, the online court implements a wide range of modern technology tools into the decision-making process, which can be substantially reshaped.⁵

¹ KATSH/RABINOVICH-EINY, *Digital Justice: Technology and the Internet of Disputes*, Oxford University Press, New York, 2017, p. 154.

² The lack of a concept is quite fundamental and does not lead to a coherent system; technical obstacles can often be easily overcome. POLČÁK, *Internet a proměny práva [Internet and metamorphosis of law]*, Auditorium, Prague, 2012, p. 254.

³ SUSSKIND, *Online Courts and the Future of Justice*, Oxford University Press, Oxford, 2019, p. 62.

⁴ Cf. LOUČEK, *Vymahatelnost práva pomocí online řešení sporů [Enforcement of the law through online dispute resolution]*, Wolters Kluwer, Prague, 2020, p. 19 et seq.

⁵ KATSH/RABINOVICH-EINY, *Digital Justice: Technology and the Internet of Disputes*, Oxford University Press, New York, 2017, p. 154.

Katsh and Rabinovich-Einy highlight three phases of the use of modern technology in justice: (i) electronic case management, including online information exchange, (ii) public access to information in the context of binding dispute resolution, and (iii) a comprehensive change in which legal processes are being conducted online and traditional understandings of access to justice are being rethought in the meaning of different architecture of and approach to decision-making processes.⁶ It is only the third phase that sufficiently characterizes the concept of access in the context of online justice, which is discussed further. However, the main idea in the construction of the online court is not to try to replace human judges with technology (rather, it is to be seen as a preparation for automation), but to incorporate modern technologies into the decision-making process and to digitally transform the court system to better serve the public.⁷ It is evident, then, that the judiciary cannot reliably resolve low-value but high-volume disputes.⁸ Moreover, with the use of modern technology, it is now possible to decide disputes that were not decided at all (or minimally) in the past.⁹ This does not mean, however, that the courts should resign on resolving such disputes and leave them entirely in the hands of the private sector. This would fail to fulfil one of the fundamental roles of a functioning rule of law.¹⁰ Improving access to the courts should be seen as the main goal towards which online courts should work.¹¹ Furthermore, the author sees potential for such a solution to increase access to justice, particularly in the context of the ongoing COVID-19 pandemic.

In this article, the author further discusses possible steps, approaches and considerations on how online justice can be approached, concluding by evaluating the findings and outlining a proposal for an appropriate architecture and approach that he considers suitable for designing online court in the Czech Republic – which may however also provide relevant experience abroad.

2. Chosen Approaches to the Construction of Online Courts¹²

The use of information technology in the justice system is diverse.¹³ Some countries have achieved relatively significant success (e.g., Canada or Singapore)¹⁴; others have lagged in the introduction of new tools and in more fundamental reform of justice using modern technologies.¹⁵

The first layer of the implementation of online courts is the use of modern technologies, both communication tools and tools for processing, collecting and presenting relevant data. The second layer is the change of the current understanding of the structure of decision-making process, the architecture of the court and the very focus of its activities. The setting up of appropriate processes for the progressive resolution of the dispute, and in particular the interconnection of so far rather isolated schemes, is proving to be essential. One possibility is to provide a binding online decision-making scheme for selected disputes (or for all disputes).¹⁶ Another option is to make a link between binding and non-binding processes, which overall lead to sufficient moti-

⁶ KATSH/RABINOVICH-EINY, *Digital Justice: Technology and the Internet of Disputes*, Oxford University Press, New York, 2017, p. 166.

⁷ SUSSKIND, *Online Courts and the Future of Justice*, Oxford University Press, Oxford, 2019, p. 95.

⁸ RULE, *Online Dispute Resolution for Business: B2B, E-Commerce, Consumer, Employment, Insurance, and other Commercial Conflicts*, Jossey-Bass, San Francisco, 2002, p. 61 et seq.

⁹ This also confirms PRINCE, *Access to Court? 'Encouraging' Consumers to Use Court-Connected Mediation in Small Claims and Other Cases*. Stated in: CORTÉS, *The New Regulatory Framework for Consumer Dispute Resolution*, Oxford University Press, Oxford, 2017, p. 79 et seq.

¹⁰ LOUTOCKÝ, *Vymahatelnost práva pomocí online řešení sporů [Enforcement of the law through online dispute resolution]*, Wolters Kluwer, Prague, 2020, p. 159.

¹¹ Cf. LOEBL, *Designing Online Courts: The Future of Justice Is Open to All*, Wolters Kluwer, Alphen aan den Rijn, 2019, p. 16.

¹² This chapter is follows on findings based in Chapter 7 of LOEBL/LOUTOCKÝ/MAISNER/MATĚJKA/POLČÁK/URBANIKOVÁ, *Online soudnictví v České republice (Online Justice in the Czech Republic)*, Wolters Kluwer, Prague, 2021, p. 55 et seq.

¹³ Cf. *eGovernment Benchmark 2020: eGovernment that works for the people*. <https://digital-strategy.ec.europa.eu/en/library/egovernment-benchmark-2020-egovernment-works-people> (accessed on 25 October 2021), 2020.

¹⁴ Specific examples of the implementation and deployment of online justice will be given below.

¹⁵ Due to the focus of the article, as one of these states we present the Czech Republic and discuss this further.

¹⁶ They are discussed in more detail in Chapters 2.1 and 2.2 below.

vation for the parties to settle their disputes at some of the individual stages and, in the author's view, more appropriately optimises the whole process. The gradual elimination of simpler disputes in the non-binding phases leads to a reduction of load¹⁷ and, in the author's opinion, to a better quality of decision-making in the binding phase, where more complex disputes are primarily resolved.¹⁸

In the following section, the author discusses specific (different) approaches how to grasp the issue of online justice and future potential, ranging from the most comprehensive change in the functioning of justice to the introduction of specific institutions and processes.

2.1. Full (Total) Approach to Online Justice

The first and most comprehensive example chosen is the (almost total¹⁹) approach taken by the city-state of Singapore. The approach and the specific procedural set-up have changed over time, but the unifying idea has always been to provide easy accessibility to decision-making processes, given that Singapore is a major business centre with significant (cross-border) movement of subjects. Thus, in this example, there is no implementation of a specialised institution (online court) but a complete simplification of the justice system using modern technologies at the level of communication and information processing.²⁰ This radical step could be afforded by this city-state due to its specific character of state structure (authoritarian regime)²¹ and status.²² However, due to this type of position, it may not be realistic to implement such a system in democratic states (other, more realistic possibilities in given context will be discussed later in the article), but rather it can serve as an inspiration on how technologies are being used and how the processes are set-up.

The initial step for the total computerization of justice was the e@dr project implementing mediation procedures into binding processes with comprehensive use of modern technologies. The judge was put in the role of a mediator and conducted the entire proceedings online.²³ However, electronization gradually progressed to other phases and the Electronic Filing System²⁴ – a system for filing, managing, disposing and exchanging electronic documents and information – became the centre of the whole eJustice.²⁵ Two thirds of the stakeholders now use this system, which has become the primary central point for managing information.²⁶ The Electronic Filing System has gradually grown and has been implemented not only in the deciding of the civil/commercial disputes but also, for example, in criminal proceedings.²⁷ At present, it is being split into two

¹⁷ RABINOVICH-EINY/KATSH. A New Relationship between Public and Private Dispute Resolution: Lessons from Online Dispute Resolution, *Ohio State Journal on Dispute Resolution*, 2017, 32(4), p. 719.

¹⁸ See in particular chapter 2.3. and the conclusion of this article.

¹⁹ As referred by POLČÁK, *Internet a proměny práva [Internet and metamorphosis of law]*, Auditorium, Prague, 2012, p. 254.

²⁰ The Malaysian justice system, for example, is also close to this idea: KOYA. A fully digitalised judiciary is our aim in 2021, says Chief Justice. <https://www.thestar.com.my/news/nation/2020/12/31/a-fully-digitalised-judiciary-is-our-aim-in-2021-says-chief-justice> (accessed on 25 October 2021), 2020.

²¹ SINGH. Critics call Singapore an autocracy. <https://www.washingtonpost.com/posteverything/wp/2015/03/25/critics-call-singapore-an-autocracy-but-i-never-felt-more-free-than-when-i-lived-there/> (accessed on 25 October 2021), 2015.

²² LO/KWAN. Singapore's Lee Kuan Yew showed how autocratic government can be good government. <https://www.scmp.com/comment/letters/article/3099216/singapores-lee-kuan-yew-showed-how-autocratic-government-can-be> (accessed on 25 October 2021), 2020.

²³ KAUFMANN-KOHLER/SCHULTZ. *Online Dispute Resolution: Challenges for Contemporary Justice*. Kluwer Law International, Hague, 2004, p. 40.

²⁴ The Electronic Filing System in Singapore – Tackling the “Human” Elements. <https://web.archive.org/web/20120312062745/http://unpan1.un.org/intradoc/groups/public/documents/UNPAN/UNPAN031797.pdf> (accessed on 25 October 2021), 2019.

²⁵ eLitigation. <https://www.supremecourt.gov.sg/services/services-for-the-legal-profession/elitigation> (accessed on 25 October 2021), 2021.

²⁶ eLitigation. <https://www.supremecourt.gov.sg/services/services-for-the-legal-profession/elitigation> (accessed on 25 October 2021), 2021.

²⁷ For the gradual development, see *Electronic Litigation in Singapore: A Roadmap for the Implementation of Technology in the Litigation Process*. <https://1library.net/document/y87vk55z-electronic-litigation-singapore-roadmap-implementation-technology-litigation-process.html> (accessed on 25 October 2021), 2021.

branches (or systems that are interconnected) – civil disputes are handled within the Integrated Electronic Litigation System (eLitigation),²⁸ and criminal disputes within the Integrated Criminal Case Filing and Management System²⁹.

This example is thus particularly interesting because of the overall interconnection of binding decision-making process using online tools and the pervasiveness of modern technology throughout the justice system using the respective platform (different for each area of litigation, as mentioned above). It is centrally based on the management and exchange of information, through an electronic information management platform. What is particularly admirable, therefore, is the organisational, technical, and procedural set-up of the entire system, which provides the management and resolution of the entire process primarily in an online environment (thus eliminating the obstacles associated with physical attendance at court proceedings).³⁰

2.2. Specialized Online Courts to Offer Binding Decision

Within this approach, the author introduces the implementation of specialised online institutions (so-called internet courts) that decide selected cases in a binding judicial procedure. These are the internet courts operating in the People's Republic of China.

China's Supreme Court unveiled its plan to set up internet courts in 2015 to reduce court congestion and optimize decision-making processes using modern technologies including online information exchange, big data processing, automatization, or cloud computing.³¹ The first, Hangzhou Internet Court, was established in June 2017,³² the other two, Beijing Internet Court and Guangzhou Internet Court, in 2018.³³

These courts are responsible for deciding certain disputes that emerge in the online environment.³⁴ These include e-commerce disputes, disputes arising out of copyright infringement on the internet, disputes concerning infringement of personality rights or disputes concerning domain names (the value of the dispute is not capped).³⁵

In the context of online proceedings, it is possible to choose online mediation over binding decision – but there is not much emphasis on this (or rather, the options within mediation are limited). In court proceedings, the parties communicate mainly synchronously and the entire proceedings are recorded;³⁶ there is also given possibility to participate at the proceedings online to the public.³⁷ However, any part of the proceedings can also be conducted offline at the request of the parties or according to the needs of the court.³⁸ If the parties do

²⁸ About eLitigation. Integrated Electronic Litigation System (eLitigation). https://www.elitigation.sg/_layouts/IELS/HomePage/Pages/AboutElit.aspx (accessed on 25 October 2021), 2021.

²⁹ Integrated Case Management System (ICMS). <http://bds-icms.com/overview.html> (accessed on 25 October 2021), 2021, or Integrated Criminal Case Filing and Management System (ICMS). <https://stg.statecourts.gov.sg/cws/CriminalCase/Pages/The-ICMS-portal.aspx> (accessed on 25 October 2021), 2021.

³⁰ The current very interesting experience is provided by LEONG. Access to Justice and Innovative Court Solutions for Litigants-in-Person: The Singapore Experience, *International Journal of Online Dispute Resolution*, 5(1/2), 2018, p. 9–17.

³¹ ZOU. 'Smart Courts' in China and the Future of Personal Injury Litigation *Journal of Personal Injury Law*. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3552895 (accessed on 25 October 2021), 2020, p. 2.

³² SUNG. Can Online Courts Promote Access to Justice? A Case Study of the Internet Courts in China. *Computer Law & Security Review*, 39, 2020, p. 6.

³³ ZOU. 'Smart Courts' in China and the Future of Personal Injury Litigation *Journal of Personal Injury Law*. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3552895 (accessed on 25 October 2021), 2020, p. 4.

³⁴ JIN. Research on the Mode of Online Administrative Litigation under the Background of "Internet +": A Case Study of Hangzhou Internet Court, Big Data and Cloud Innovation, 3(1), 2019, p. 33.

³⁵ Cf. Jurisdiction, Beijing Internet Court. https://english.bjinternetcourt.gov.cn/2019-03/25/c_23.htm (accessed on 25 October 2021), 2019.

³⁶ A specific description of how the procedure works is available, for example, here: Video: online lawsuit; Beijing Internet Court. https://english.bjinternetcourt.gov.cn/2019-05/09/c_194.htm (accessed on 25 October 2021), 2021.

³⁷ Introduction, Beijing Internet Court. https://english.bjinternetcourt.gov.cn/2019-03/26/c_26.htm (accessed on 25 October 2021), 2019.

³⁸ ZOU. 'Smart Courts' in China and the Future of Personal Injury Litigation *Journal of Personal Injury Law*. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3552895 (accessed on 25 October 2021), 2020, p. 4.

not agree to resolve the dispute through online mediation, the online courts issue a binding decision online.³⁹ The decision can be appealed and such procedure should also be conducted online.⁴⁰

Current official statistics on the success of the above described approach to online justice are not available, however, as of the end of 2018, more than 15,000 disputes had been initiated by the Hangzhou Internet Court and nearly 14,000 of these disputes had been decided.⁴¹ Especially in the context of the COVID-19 pandemic, the use of these courts is then assumed to increase steeply.⁴² Zhu then illustrates that even in its early days, the court became the most popular in its province and the actual court proceedings were greatly accelerated.⁴³ This acceleration not only caused speeding up decision-making process, optimizing processing the data but also is reducing the costs of the process for the participants.⁴⁴ This, in the author's view, presents the success of such a way of grasping the internet courts; however, it should be noted that this is a rather specific and still quite radical approach (as in the case of eJustice in Singapore) rather only realizable within a given legal culture and authoritarian regime.

2.3. Interconnection Of Binding and Non-Binding Decision-Making Process

In the author's opinion, it is not possible to offer a comprehensive solution addressing all types of disputes right from the start when designing an online court in the case of a gradual transformation of existing systems; it is advisable to focus initially only on certain disputes (typically, for example, low-value civil disputes, where ODR tools have already proven their effectiveness)⁴⁵. Subsequently, it is advisable to gradually broaden the area of focus (typically in the sense of 'hard cases')⁴⁶ based on the experience already gained.

The way to gradually change current court systems to increase access to justice is to be seen both in the automation of familiar processes and operations and the associated transformation of decision-making processes. Repetitive and routine procedures should be automated so that individuals within the institution and litigants can focus on the resolution of the dispute itself and not be distracted by these actions. Process transformation then moves towards a wider use of ODR tools and methods.⁴⁷

The very design of the architecture of the online court described in this chapter (theoretically discussed by Susskind⁴⁸, practically implemented by the Civil Resolution Tribunal in Canada) is based on the linking of non-binding forms of dispute resolution using ODR tools with binding decision-making, which is the final stage of the process. It is in this grasp and understanding of the online court that the author finds the greatest

³⁹ SUNG. Can Online Courts Promote Access to Justice? A Case Study of the Internet Courts in China, *Computer Law & Security Review*, 39, 2020, p. 9.

⁴⁰ SUNG. Can Online Courts Promote Access to Justice? A Case Study of the Internet Courts in China, *Computer Law & Security Review*, 39, 2020, p. 9.

⁴¹ ZHU. "Zhejiang Experience": Problems and Countermeasures in the Construction of Internet Courts Authors, *Proceedings of the 4th International Conference on Economy, Judicature, Administration and Humanitarian Projects (JAHP 2019)*, p. 481.

⁴² WANG. China's E-Justice Revolution. <https://judicature.duke.edu/articles/chinas-e-justice-revolution/> (accessed on 25 October 2021), 2021, or GUO. Internet court's challenges and future in China, 40, 2021. The general increase in the use of at least basic online tools is seen in whole Chinese judiciary: The SPC Releases the Rules of Online Litigation of People's Court. http://english.court.gov.cn/2021-06/18/content_37545136.htm (accessed on 25 October 2021).

⁴³ Cf. ZHU. "Zhejiang Experience": Problems and Countermeasures in the Construction of Internet Courts Authors, *Proceedings of the 4th International Conference on Economy, Judicature, Administration and Humanitarian Projects (JAHP 2019)*, p. 481.

⁴⁴ How China's 'Internet Courts' are adapting to a new era. <https://news.cgtn.com/news/2021-03-07/How-China-s-Internet-Courts-are-adapting-to-a-new-era-YqTdsiEcVy/index.html> (accessed on 2 December 2021), 2021.

⁴⁵ For a definition of the nature of such disputes, see LOUČEKÝ. Vymahatelnost práva pomocí online řešení sporů [Enforcement of the law through online dispute resolution]. Woltes Kluwer, Prague, 2020, p. 33 et seq. 33.

⁴⁶ DWORIN, RONALD. Hard Cases. *Harvard Law Review*, 1975, 88(6), p. 1060 et seq.

⁴⁷ A detailed discussion of ODR methods is available here: LOUČEKÝ. Vymahatelnost práva pomocí online řešení sporů [Enforcement of the law through online dispute resolution]. Woltes Kluwer, Prague, 2020, p. 25 et seq.

⁴⁸ SUSSKIND. *Online Courts and the Future of Justice*. Oxford University Press, Oxford, 2019.

potential, as it has, in our view, the greatest chance for success to be implemented in democratic countries, and thus represents a gradual transformation of existing processes.⁴⁹

The Civil Resolution Tribunal in Canada is an example of the implementation of modern technologies in dispute resolution and of a comprehensive redesign of the architecture of judicial and non-judicial decision-making processes. The whole process is accessible through online platform.⁵⁰ In the author's opinion, this approach to the architecture of the online courts is the most suitable in terms of potential implementation of the given in the decision-making processes including in the Czech Republic. This is because the institution conceived in this way primarily provides an extension for decision-making and at the same time it does not envisage vast changes to the existing judicial decision-making system (including, for example, potentially problematic interconnection with existing electronic information systems in the judiciary, etc.).

The foundations for the Civil Resolution Tribunal were laid in Canada in 2011⁵¹, and on the basis of positive experiences, the Civil Resolution Tribunal Act⁵² was adopted. With the gradual development and increasing popularity of this method of decision-making based mainly on text communication, it has been extended not only to low-value disputes (up to 5,000 CAD), but also, for example, to disputes arising in the context of community housing (strata property disputes)⁵³ or disputes arising from automobile accidents, including disputes over medical expenses (up to 50,000 CAD).⁵⁴ Thus, this institution does not focus only on disputes arising in the online environment.

The mandate of the Civil Resolution Tribunal is to provide the dispute settlement, which is “*accessible, speedy, economical, informal and flexible.*”⁵⁵ “*It does this through a participatory and collaborative approach to dispute resolution which assists parties to reach a consensual agreement, with adjudication as a last resort.*”⁵⁶

Dispute settlement/resolution is divided into four gradual phases:

- 1) Initiation Phase: An online instrument is provided free of charge to help the participant to navigate through the options for resolving his/her dispute by providing clear information, describing potential impacts within specific steps (this instrument is called Solution Explorer).⁵⁷
- 2) Negotiation: The basic information about the dispute, including the claim, is entered and the process is initiated. The information is delivered to the other party and mutual negotiation to settle the dispute without the assistance of a third party follows. The primary role here is played by the clear design of the dispute resolution platform, which presents the parties with individual claims and tries to bring the dispute to an amicable solution by way of basic recommendations.
- 3) Mediation: A case manager⁵⁸ assists the parties in mediation in an effort to reach a mutual agreement (settlement). If an agreement is then reached, it can be considered binding upon approval by the Civil

⁴⁹ Some opinions were also presented here: BLECHOVÁ/LOUTOCKÝ, PAVEL. Online Courts and The Future Of Justice. Susskind, R. E. Review, Masaryk University Journal of Law and Technology, 14(2), 2020, p. 329 et seq.

⁵⁰ Get started. <https://civilresolutionbc.ca/how-the-crt-works/getting-started/> (accessed on 2 December 2021), 2021.

⁵¹ For more details on the historical development, see for example SALTER. Online Dispute Resolution and Justice System Integration: British Columbia's Civil Resolution Tribunal, Windsor Yearbook of Access to Justice, 2017, p. 117 et seq.

⁵² Civil Resolution Tribunal Act. https://www.bclaws.ca/civix/document/id/complete/statreg/12025_01 (accessed on 25 October 2021), 2021, further stated as „Civil Resolution Tribunal Act“.

⁵³ Cf. Strata Housing, British Columbia, Canada. <https://www2.gov.bc.ca/gov/content/housing-tenancy/strata-housing> (accessed on 25 October 2021), 2021.

⁵⁴ Can You Resolve My Dispute, Civil Resolution Tribunal. <https://civilresolutionbc.ca/faq/#can-you-resolve-my-dispute> (accessed on 25 October 2021), 2021. Further dispute resolution options are listed here: Small Claims, Civil Resolution Tribunal. <https://civilresolutionbc.ca/how-the-crt-works/getting-started/small-claims-solution-explorer/> (accessed on 25 October 2021), 2021.

⁵⁵ Article 2 para. 2 Civil Resolution Tribunal Act.

⁵⁶ CASHMAN/GINNIVAN. Digital Justice: Online Resolution of Minor Civil Disputes and the Use of Digital Technology in Complex Litigation and Class Actions, Legal Studies Research Paper Series, 19(40), 2019, p. 5.

⁵⁷ More information on Solution Explorer are accessible here: Small Claims, Civil Resolution Tribunal. <https://civilresolutionbc.ca/how-the-crt-works/getting-started/small-claims-solution-explorer/> (accessed on 25 October 2021), 2021.

⁵⁸ Article 23 et seq. Civil Resolution Tribunal Act.

Resolution Tribunal, thus constituting an enforceable decision.⁵⁹ In case of failure, the case manager helps the parties to prepare for a binding settlement.

- 4) Binding Dispute Resolution: If the dispute is not settled in the previous stages, a binding decision is reached by the tribunal member.⁶⁰ In the binding process, the tribunal member considers the evidence and arguments of the parties and then issues a binding decision (so called adjudication). The written form is preferred, but an oral hearing using online tools can be held if „*the tribunal considers that the nature of the dispute or that extraordinary circumstances make an in-person hearing necessary in the interests of justice.*”⁶¹ Although the dispute is then decided by a “tribunal member” and not by a “judge”, it is a process where outcome is similar to a judicial decision. This is also pointed out by the Civil Resolution Tribunal Act stating that the decision is “*final and binding on the parties.*”⁶² It is then enforceable by filing it to the appropriate institution (most disputes are validated in this manner by the Supreme Court of Canada, small claims disputes by the Provincial Courts).⁶³ The final decision can also be appealed.⁶⁴

The appropriate design of the architecture of the Civil Resolution Tribunal’s online court is underlined by its increasing popularity. In the annual period ending 31st March 2017, a total of 5,505 disputes were initiated, and as of 31st March 2020, 54,680 disputes have been initiated. For that period in 2017, 13 disputes were finally decided with binding effect, and for that period in 2020, a total of 1,274 disputes were finally decided with binding effect.⁶⁵

Thus, in 2020, only about 21% of all disputes (*sic!*) were resolved in a binding process, almost 80% of all disputes⁶⁶ were settled in non-binding stages (or the parties did not escalate the decision to further stages). It is thus evident that the phases preceding the binding decision-making process itself reliably eliminate most disputes; these are settled amicably between the parties and the court then resolves only a fraction of the cases initiated, which further promotes confidence in such resolution by the disputants themselves.⁶⁷

3. A Way Forward (Also) in the Czech Republic?

The above discussed scenarios of the implementation of online courts are not exhaustive but should serve as examples of different approaches to the design of online courts. In the context of possible scenarios suitable for the consideration of online justice in the Czech Republic, it is necessary to consider the issue in the author’s opinion in a similar way as in the last example (theoretically discussed by Susskind and practically implemented by Civil Resolution Tribunal in Canada). The other approaches can then serve, among other things, as inspiration after a more detailed study on how to design particular functionalities of online platforms.

The ODR platform operated by the European Commission to resolve consumer disputes out-of-court could also provide inspiration at the first sight.⁶⁸ However, less than 1% of disputes⁶⁹ between the parties were

⁵⁹ Article 26 para. 4 Civil Resolution Tribunal Act.

⁶⁰ Tribunal member is appointed on the basis of mechanisms mentioned by Article 67 et seq. Civil Resolution Tribunal Act.

⁶¹ Article 39 para. 3 Civil Resolution Tribunal Act.

⁶² Article 115 para. 2 Civil Resolution Tribunal Act.

⁶³ Article 57 et seq. Civil Resolution Tribunal Act.

⁶⁴ Article 56 para. 6 Civil Resolution Tribunal Act.

⁶⁵ Civil Resolution Tribunal. 2019/2020 Annual Report covering the period April 1, 2019 through March 31, 2020. Civil Resolution Tribunal. <https://civilresolutionbc.ca/wp-content/uploads/2020/07/CRT-Annual-Report-2019-2020.pdf> (accessed on 25 October 2021), 2020, p. 18 et seq.

⁶⁶ ROZENBERG. The Civil Resolution Tribunal. The Online Court: will IT work? The Legal Education Foundation. <https://long-reads.thelegaleducationfoundation.org/> (accessed on 25 October 2021), 2020.

⁶⁷ This was implicitly assumed by RULE. Quantifying the Economic Benefits of Effective Redress: Large E-Commerce Data Sets and the Cost-Benefit Case for Investing In Dispute Resolution, University of Arkansas at Little Rock Law Review, 24(4), 2012, p. 772 et seq.

⁶⁸ Online Dispute Resolution, European Commission. <https://ec.europa.eu/consumers/odr/main/index.cfm?event=main.home2.show&lng=en> (accessed on 25 October 2021), 2021.

⁶⁹ Functioning of the European ODR Platform Statistics 2nd year. https://ec.europa.eu/info/sites/info/files/2nd_report_on_the_functioning_of_the_odr_platform_3.pdf (accessed on 25 October 2021), 2018, or LOUČOČKÝ. Vymahatelnost práva pomocí online řešení

settled by this instrument, due to the limited and inefficient use of modern technology, the complexity of the process, the absence of direct negotiation between the parties and due to many other problems.⁷⁰ This way of dealing with the issue thus provides an example of an approach, which should be avoided.

It is then a current reality that in general the electronization of justice in the Czech Republic is problematic and this issue has arisen in the past on the basis of relevant strategies⁷¹ and then fragmentation and inclusion under the more general issue of eGovernment,⁷² which is also reflected in other strategies aimed at the digitisation of the Czech Republic, which often unfortunately lack a comprehensive or conceptually coherent proposal.⁷³

From the above mentioned, it is at least partially evident that the main problem of the implementation of online justice in the Czech Republic is a non-conceptual approach by the author's opinion. Thus, the author sees a possible solution that should ideally lead as easily as possible to the introduction of online courts in the Czech Republic, the way of applying an approach similar to that adopted in e.g., Canada. The latter did not introduce more advanced modern technologies in general to the entire judiciary but took the route of creating a specialised institution that stands outside the classical court system.⁷⁴

This approach offers two main advantages when considering the design of online justice in the Czech Republic. Firstly, the introduction of a specialised institution focused on a particular nature of disputes should lead to a simplification of the design of the architecture of decision-making processes (not only technically, but also in legal procedures) and secondly, the appropriate implementation and design of an online court could act as a suitable inspiration in retrospect on how to introduce modern technologies into the overall justice system. There is then no need to be strictly bound to the IT systems, procedures, and processes already in use and it may be generally beneficial to design the functioning of such an institution to some extent, 'on the green field', thus to some extent freeing oneself from some of the problems associated with the problematic efforts of digitalisation of the justice system.

The above mentioned, however, does not mean that such an institution should be removed from the classical judiciary; it is rather a pragmatic proposal to introduce and unify procedures within a specific method (specialised institution within a specific branch of decision-making process), which in the author's opinion, especially in the current pandemic times, offers great potential and possibilities for simplifying procedures and relieving the congestion of the judicial system. This solution should however still be perceived as an extension of the classical decision-making system, not its replacement.

Based on the above stated, the author concludes this article by suggesting what the dispute resolution process itself should look like and is of the opinion that a specialised institution implementing non-binding binding dispute resolution is the most appropriate way forward in the current situation. However, in contrast to the above discussed, a more transparent layout of the individual steps can be recommended due to the need for a clearer grasp of the whole issue (the author thus modifies the process into 6 successive steps):

sporů [Enforcement of the law through online dispute resolution]. Woltes Kluwer, Prague, 2020, p. 98. Such a trend is also confirmed indirectly by recent report on the functionality of ODR platform: Functioning of the European ODR Platform. Statistical report. https://ec.europa.eu/info/sites/default/files/odr_report_2020_clean_final.pdf (accessed on 25 October 2021), 2020, p. 4.

⁷⁰ Cf. LOUČEK. Vymahatelnost práva pomocí online řešení sporů [Enforcement of the law through online dispute resolution]. Woltes Kluwer, Prague, 2020, p. 52 et seq.

⁷¹ Smart Administration v období 2007–2015 [Smart Administration 2007–2015]. <http://www.mvcr.cz/soubor/modernizace-dokumenty-strategie-pdf.aspx> (accessed on 25 October 2021), 2007.

⁷² Resorní strategie pro rozvoj eJustice 2016–2020 [Ministerial Strategy for the Development of eJustice 2016–2020]. <https://www.databaze-strategie.cz/cz/ms/strategie/strategie-pro-rozvoj-elektronizace-justice-ejustice> (accessed on 25 October 2021), 2016.

⁷³ See Digitální; Česko [Digital ; Czechia]. <https://www.digitalnicesko.cz/> (accessed on 25 October 2021), 2021.

⁷⁴ We draw attention here to the ongoing (but so far unsuccessful) similar activity to introduce online courts in England and Wales. Some information available here: Covid, continuity and change: the courts' response to the pandemic. <https://www.supremecourt.uk/docs/BICBA%20Annual%20Law%20Forum%20%20lecture%2011.20.pdf> (accessed on 25 October 2021), 2021, or LOUČEK. Online Dispute Resolution as an Inspiration for Contemporary Justice, Jusletter IT. Die Zeitschrift für IT und Recht, Weblaw, Bern, 2019, p. 5 et. seq.

- 1) Education: The online court should provide information for potential litigants or interested persons, not only in the form of a simple overview of the court's activities, but also, for example, FAQs, user experiences, etc.
- 2) Concretization of the Procedure before the Initiation of the Dispute: Currently, when a participants would decide to initiate a dispute or not, they would be instructed in more detail about the individual steps, variations of procedures (including the possibility of implementing decision trees if necessary), etc.
- 3) Initiating a Dispute: The complainant would initiate dispute resolution by entering all the necessary information into the online platform. Based on this, the other party would then be contacted and the consequences, options and courses of action that are relevant would be explained.
- 4) Negotiation: In this phase, the parties should be allowed to negotiate with each other, with an appropriate platform design that clearly explains the consequences and follow-up of their decisions, including working with anonymised open data from past similar cases. In the case of a settlement agreement, it is also not problematic for the platform to generate an appropriate agreement.
- 5) Mediation: At this stage, the input and experience of an expert and the 'human element' would be essential, but it is possible to consider automation of the recommendation process using an expert system at this stage in the future.⁷⁵
- 6) Binding Dispute Resolution: It is still necessary to cover the whole process with binding dispute resolution (also to motivate the parties to settle the dispute before this stage), ideally by having an existing court providing its facilities (especially personnel and background) and be able to function even in a purely virtual way.

The above considerations should thus lead to a clearer grasp of the fundamentals of the construction of the online court (the author claims, of course, to say that not only pertaining to the Czech Republic). Thus, at this stage of the research, this is an initial proposal and analysis of possible options, which should be further developed and could potentially serve as inspiration abroad, as the considerations of the introduction of online justice are increasingly resonating in society in general, not only due to the current pandemic situation but also the long-lasting general overload of judicial systems causing problematic access to justice.

4. Literature

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⁷⁵ This is the case, for example, of the auction house eBay. Cf. LOUTOCKÝ. Vymahatelnost práva pomocí online řešení sporů [Enforcement of the law through online dispute resolution]. Woltes Kluwer, Prague, 2020, p. 143 et seq.

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