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*Automation in the German Judicial System: Where Does It Stand? And Where Does It Go?**

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ABSTRACT The current state of automation in the German judicial system has not yet reached a point where it could be considered overly advanced. However, since 2018 the judiciary has made huge progress regarding electronic communication which since has become the norm for exchanges between courts and lawyers. While communication has been prioritized, the electronic file format still must develop as its use will become mandatory for all courts by 2026. Recent achievements in Artificial Intelligence have not found their way into the day-to-day operations of German courts but pilot projects have started in several federal states. Therefore, it seems that Germany is on track with its mission to accelerate the digitalization process of its Judiciary – yet complicated by reoccurring technical setbacks. This article focuses on the state of automation in civil and administrative justice.

KEYWORDS: Automation – Judicial Systems – Ejustice

1. (*Not so) digital Germany: Does reality match the reputation?*

Germans tend to joke about being outperformed by most other highly developed industrial nations, especially the USA or East Asian countries, when it comes to the application of computer technology. Among younger generations former chancellor Angela Merkel's remarks of the internet being "Neuland"[1] (literally meaning new territory) have risen to a certain fame as they were made in 2013, when the internet in one form or another had been in use already for several decades[2] and a generation that used smartphones during childhood was already adult. When in Germany, people from many East Asian countries like South Korea or China get quite surprised when learning about the abundance of fax machines in the public sector or the fact that the only way to make an appointment at certain public offices is by making a phone call.[3]

Digitalization is seen as a process more than as an established fact in society and law makers regularly advertise their parties during elections by demanding more digitalization.[4] However, Germany is clearly working on its digitalization efforts, and it would be wrong to say nothing is moving. For example, a new electronic patient's file is being introduced[5] and electronic communication and files are used in almost all court proceedings – as will be examined in detail below.

Despite the digitalization being not as quick as elsewhere, Germany is not a stranger to innovation. The European Commission's Innovation Scoreboard found that Germany surpasses most other European nations in the summary innovation index, reaching a

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[1] T. Waleczek, *Die Kanzlerin und das Internet: Merkels "Neuland" wird zur Lachnummer im Netz*, in *Tagesspiegel* (www.tagesspiegel.de/politik/merkels-neuland-wird-zur-lachnummer-im-netz-4403470.html).

[2] B. Tarnoff, *How the internet was invented*, in *The Guardian*, 15 July, 2016 (www.theguardian.com/technology/2016/jul/15/how-the-internet-was-invented-1976-arpa-kahn-cerf).

[3] J. Delcker, *Why can't Europe's richest country go digital?*, in *DW*, 16 July 2021 (www.dw.com/en/germany-and-digitalization-why-cant-europes-richest-country-get-up-to-speed/a-58273979).

[4] The current administration sees digitalization as a central challenge and has promised significant progress till the end of the term in 2025, Federal Government of Germany, *Strategie für einen digitalen Aufbruch*, 2022 (https://www.bundesregierung.de/breg-de/themen/digitalisierung/digitalstrategie-2072884).

[5] Federal Government of Germany – Ministry of Health, *Die elektronische Patientenakte (ePA)*, 2023 (www.bundesgesundheitsministerium.de/elektronische-patientenakte).

performance level of 117.8 % in 2023, which marks a 7.6 % increase from 2016. The high number results from top performances in product innovations and firm investments. The field of digitalization on the other hand, remains a problem.[6]

For instance, Germany scores below average in the category "People with above basic overall digital skills", reaching only 66.1%.[7] The digitalization issue seems not to be a problem of reluctant governments exclusively, but also of the slow adaption to new technologies by citizens. While the obvious answer might be a more digital education, the issue of a rather conservative view towards computer technologies among elderly Germans cannot be disregarded. A sense of anti-technology runs deep in Germans' ideology and has its roots in a sense of so-called "Bodenständigkeit" (groundedness)[8] that does not go along well with data carried by binary code from one cloud space to the next. As modern computer technology cannot be even remotely understood by the vast number of its everyday users, a certain mistrust remains strong in German society with many legal practitioners thinking that at least in their lifetime they do not need to adapt to fully electronic methods at work.

However, the reality is different and electronic ways of communications have long become the norm. The following analysis therefore firstly focuses on communication as the most advanced field of digitalization in the German judicial system and then explains the current state of electronic file formats and online court hearings. The next level of technological innovation is about the use of AI and automated procedures. On this field, the German judiciary already has a few plans and pilot projects which will be examined at the end.

The term e-justice will be defined for the sake of this article as the combination of all endeavors leading to the goal of a completely electronic communication and file organization, plus related technologies such as speech recognition, video conference and office software as well as AI programs. Aspects of IT security and data protection are an integral part of this[9] but will not be the focus of this overview on e-justice in the German civil and administrative-law procedures.

2. *Aspects of e-justice in communication*

In Germany, the foundation for formalized e-justice was laid with the enactment of the "Law for the Adaptation of Formal Requirements in Private Law and Other Regulations to Modern Legal Transactions" on July 13th, 2001.[10] This legislation brought about amendments to various procedural codes, setting the stage for the implementation of form-bound e-justice in the following years. Subsequently, the "Law Promoting Electronic Legal Transactions with the Courts" from October 10th, 2013, introduced further measures towards the – first partially and nowadays almost completely – mandatory adoption of electronic communication with the courts.[11]

Within the framework of formalized communication, a distinction can be made between communication from lawyers, notaries, and government agencies to the court (judicial inbound communication) and communication from the court to other legal practitioners (judicial outbound communication).

2.1. *Judicial inbound communication*

The Federal Court of Justice (Bundesgerichtshof) started its project for electronic transmissions already in 2001 and could therefore offer appropriate services early at the beginning of the millennial. The allowance for electronic communication with each specific court has remained contingent upon the enactment of particular regulatory

[6] European Commission, Hollanders, *European Innovation Scoreboard,* Brussels, 2023, 59 (https://op.europa.eu/en/web/eu-law-and publications/ publication-detail/-/publication/04797497-25de-11ee-a2d3-01aa75ed71a1).

[7] European Commission, Hollanders: *European Innovation Scoreboard*, 59.

[8] M. Heidegger, *Gelassenheit*, in *Gesamtausgabe*, vol. XVI, H. Heidegger (ed.), Frankfurt a.M., Klostermann, 2000, 522; crit.: G.A. Goldschmidt: *Heidegger und die deutsche Sprache,* Freiburg/Vienna, ca ira-Verlag, 2023, 77.

[9] H. Müller, *Legal Tech im verwaltungsgerichtlichen Verfahren*, in *Deutsches Verwaltungsblatt*, vol. V, Carl Heymannsverlag, Hürth, 2024, 274.

[10] "Gesetz zur Anpassung der Formvorschriften des Privatrechts und anderer Vorschriften an den modernen Rechtsverkehr", BGBl 2001 I, No. 35, 7 July 2001. 1542.

[11] "Gesetz zur Förderung des elektronischen Rechtsverkehrs mit den Gerichten", BGBl 2013 I, No. 62, 16 October 2013, 3786.

provisions till 2018, when the normative exceptionality was inverted: Since then, all German courts have to accept electronic legal communications,[12] with the latest being the constitutional court, which could be reached exclusively by printed and signed documents or via fax until August 2024.[13]

Since 2022, electronic communication has become the standard in legal procedures. Lawyers, government agencies and legal entities under public law now must submit documents electronically to the competent court, obviating the necessity for supplementary paper submissions.[14]

The particulars of such communication, including permissible file formats, were initially governed by the Electronic Legal Transactions Regulation (Elektronischer-Rechtsverkehr-Verordnung). Since 2018, § 130a ZPO (Civil Procedures Code) states that electronic documents may be submitted to the court via four defined electronic transmission channels:

- the sender-authenticated De-Mail[15]
- the special electronic lawyers' postbox (beA)
- the special electronic notaries' post box (beN)
- the special administration postbox (beBPo)

Provision § 130a (1) ZPO explicitly refers, by its wording, not only to documents requiring written form but to all submissions (written information, statements, expert opinions, translations, and third-party declarations). The same applies to the identical provisions of § 65a SGG (Social Court Code) for the Social Law Courts, § 55a VwGO (Administrative Court Code) for Administrative Courts, and § 52a FGO (Finance Court Code) for Finance Court proceedings.

The technological basis for these current electronic transmission programs was the infrastructure first developed for the Electronic Court and Administration Mailbox (EGVP). This system was considered safe due to its "principle of double envelopes" (Prinzip des doppelten Umschlags), which means that the contents of the messages are strictly separated from the user data necessary for the transferal in the OSCI-standard (Online Services Computer Interface). While in principle, EGVP remains a possible tool for the courts' inbound communication services, it has lost its importance after the reform of 2018: henceforth, it does not count as a safe electronic transmission method. The part of the program which was designed to facilitate communication for all citizens was scrapped as it was deemed too complicated and never came to wide use.[16]

In practice, the beA-channel now is widely used and therefore clearly emerged as the most important way of electronic communication in the judicial system of Germany. The safety issues of the early days, when in 2017 IT-experts form the Chaos Computer Club (CCC) found several security breaches in the end-to-end-encryption method leading to the so-called "beAgate" now have been solved.[17] However, the development of electronic legal transmissions still has not turned into an all-out success story as practicing lawyers in Germany are repeatedly confronted with various technological issues when trying to hand in documents via the electronic transmission program. The beA-program which is operated by the chambers of notaries and lawyers, is subject to frequent software issues ranging from the downing of the whole transmission system for several days to late-night maintenance works. This unpredictability has caused a bad reputation of the program and a headache to legal practitioners working late at night on a deadline who in many cases have no chance but to use a fax machine instead.

Under provision § 31a of the Federal

[12] D. Selle, *ZPO § 130a*, in *BeckOK ZPO*, vol. LII, V. Vorwerk and C. Wolf (eds.), Munich, C.H. Beck, 2024, 2. In Saxony for example, there have been already 45,000 to 55,000 incoming electronic messages to courts in 2019, Saxony State Chancellery: *Masterplan "Digitale Verwaltung Sachsen"*, 2019, 11. Citizens can reach all courts by De-Mail since 2018, the German e-government mailing technology which was introduced in 2011 to implement the demand for the acceptance of legally binding electronic communications by authorities from the Bolkestein directive (Services in Internal Market Directive 2006/123/EC).

[13] § 23 Law of the Federal Constitutional Court (Bundesverfassungsgerichtsgesetz), see also Federal Constitutional Court, Decision of November 19th, 2018 - 1 BvR 2391/18: Here the Federal Constitutional Court dismissed a constitutional complaint as inadmissible because it was sent via De-Mail; Federal Constitutional Court, *Elektronischer Rechtsverkehr*, August 2024 (www.bundesverfassungsgericht.de/DE/Verfahren/Elektronischer%20Rechtsverkehr/eRV_node.html).

[14] See § 130d ZPO (Civil Procedures Code); D. Selle, *ZPO § 130a*, 4.

[15] See footnote 12.

[16] H. Müller, *e-Justice Praxishandbuch*, IV ed., Norderstedt, BoD, 2019, 30.

[17] H. Müller, *e-Jusitce Praxishandbuch*, 34.

Lawyers' Code (BRAO) it is also mandatory for German lawyers to passively use the beA-program. Recently the Federal Court of Justice (BGH) has clarified the requirements lawyers have to meet when dealing with technical difficulties or errors regarding the beA-program.[18] These quite strict requirements make it necessary for all lawyers to regularly check their electronic post box – even on the same day when travelling to an offline court hearing.

The access to the postbox requires an individual chip card or a downloaded electronic signature file and a passcode handed out to every lawyer. The transmitted file must be printable, copyable, and searchable (OCR), which means in almost all cases pdf under Section § 2 (1) ERVV.[19] The verification process is facilitated through electronic protocols that are delivered by the program. If doubt arises in one party during a trial the court must share these transmission protocols for examination which follows from the right to a fair hearing, Art. 20 (3), Art. 103 (1) German Basic Law (GG) and Art. 6 (1) ECHR.[20]

2.2. *Judicial outbound communication*

The judicial electronic outbound communication is established under Section § 173 ZPO. The court may transmit documents in digital format to lawyers, notaries, bailiffs, tax advisors, as well as other persons, associations, and organizations professionally involved in the process, where increased reliability is assumed, as well as government agencies and corporations or institutions under public law. Other persons can be reached by electronic communication from the court only if they have expressively consented to it. As this is not given in the vast majority of cases, courts are sending out printed documents via mail to the parties in civil or administrative procedures when no lawyer has been mandated.[21] However, there is no impediment to applying Section § 173 ZPO accordingly and utilizing approved transmission channels, as well as, by mutual consent, effectively employing other existing transmission channels (particularly the EGVP), provided that the requirements of data protection and IT security are met.

Crucially, the service of process relies on the addressee to send an acknowledgment of receipt back to the court which is not mandatory by the procedural codes. If this is not done, the delivery cannot be legally assumed; the refusal to do so by legal practitioners can however bear consequences regarding the professional conduct.[22]

3. *European e-justice: Cross-border communication*

Enhanced electronic communication in Germany and other member states of the European Union paves the way for European e-justice. According to Recital 1 of Regulation (EU) 2023/2844, the European Commission recognized in 2020 the need to standardize the digitalization of European justice. In the realm of international e-justice, communication is – just like on the domestic level – the first step which then will facilitate other projects. The European Commission has been dedicated to establishing a comprehensive European electronic legal communication system and has been promoting the development of corresponding infrastructure through various projects. Over recent years, a technical solution has been developed, commonly referred to as the e-CODEX (e-Justice Communication via Online Data Exchange) project initiated in 2010. It was aimed at establishing a secure electronic communication channel for the exchange of judicial data and to create reliable, standardized protocols across Europe, which was completed in 2016. The standardized protocols facilitate interoperability between various national IT solutions without fundamentally altering them.[23]

In May 2022, Regulation (EU) 2022/850 was enacted, cementing e-CODEX's role as a fundamental component for the ongoing development of European electronic legal traffic, entrusting its further development and maintenance to the European Agency for the operational management of large-scale IT

[18] BGH, decision of 30 March 2023 – III ZB 13/22; BGH, decision of 4 October 2023 – 3 StR 292/23T, see also Stögmüller: *Die Entwicklung des IT-Rechts*, in *Neue Juristische Wochenzeitschrift*, vol. LII, Munich, C.H. Beck, 2023, 3762, 3768f.
[19] H. Müller, *e-Jusitce Praxishandbuch*, 119.
[20] H. Müller, *e-Jusitce Praxishandbuch*, 152.
[21] J. Dorndörfer, *ZPO § 173*, in *BeckOK ZPO*, vol. LII, V. Vorwerk and C. Wolf (eds.), Munich, C.H. Beck, 2024, 5.
[22] J. Dorndörfer, *ZPO § 173*, 4.
[23] The Judiciary of North-Rhine-Westphalia, *Europäische Projekte aus NRW*, 2022 (www.justiz.nrw/JM//justizpol_themen/Europa-und-Internationales/2022-09-15_5_Europaeische-Projekte/index.php).

systems in the area of freedom, security, and justice (eu-LISA). The coordination of this project in Germany was undertaken by the Ministry of Justice of the state of North-Rhine-Westphalia until it was successfully transferred to the European Agency in December 2023.[24] Under Article 3 (1) Regulation (EU) 2023/2844, which will enter into force in May 2025, the communication between the authorities of different member states and between a national competent authority and a EU body or agency will be carried out through a "secure, efficient, and reliable decentralized IT system" which will use the established infrastructure of e-CODEX.[25]

This paves the way for an increasingly rapid digitization of various legal-assistance instruments and therefore will most likely also have effect on the judiciary. For example, the EU is driving progress in the realm of judicial registers. A linkage of commercial registers across all EU member states has been implemented (also utilizing e-CODEX components), enabling queries about all companies registered in the EU member states and Liechtenstein, Iceland, or Norway. Furthermore, it facilitates the exchange of information about foreign branches and cross-border mergers between companies. Moreover, various national insolvency registers are now interconnected, allowing citizens across Europe to ascertain whether potential business partners may have creditworthiness issues.[26]

Different national registers can be found on the European Justice Platform which also offers information on a wide range of legal issues tailored to most European countries in different languages.[27] Administrative Courts have so far not played a role in the European Justice Platform as the relevant European Mutual Legal Assistance Regulation has been focused on Civil and Criminal Law exclusively.[28]

For the purpose of improving access to justice, under Article 4 Regulation (EU) 2023/2844, a digital communication option shall be made available in the future for communication between authorities and parties involved in proceedings – albeit only within selected cross-border procedures in civil and commercial matters as defined in the regulation. For this purpose, the Commission is to establish a so-called European electronic access point on the European e-justice portal under Article 4 (1), (3), an EU-wide accessible web portal that is to be connected to the decentralized IT system. Through this portal, not only access to information on issues related to legal aid but also the submittal of applications and requests to the competent authorities and the exchange procedure-relevant information with them shall be facilitated.

Based on the generic e-CODEX system, which can be adapted for various domains, several pilot projects have already been conducted. Germany intends to participate in the pilot operation for the European small-claims procedures once the European e-justice portal provides this functionality. In North-Rhine-Westphalia, the jurisdiction for these procedures has been concentrated at the Essen District Court by regulatory decree, with plans to implement the e-CODEX infrastructure there to facilitate cross-border electronic data exchange.[29]

With the adoption of the e-CODEX regulation, the importance of e-CODEX is expected to increase significantly in the future. The revised European Service of Documents Regulation (Regulation (EU) 2020/1784) and the European Production and Preservation Order Regulation (Regulation (EU) 2020/1783) mandate the use of e-

[24] Information obtained by the author through an interview of the press department of the Ministry of Justice of North-Rhine-Westphalia on 6 February 2024.

[25] P. Soller: *Justizielle Zusammenarbeit und Zugang zur Justiz – jetzt digital(er)?VO (EU) 2023/2844 zwischen grundlegender Modernisierung der europäischen justiziellen Zusammenarbeit und symbolischem Akt*, in *MMR: Zeitschrift für IT-Recht und Recht der Digitalisierung*, vol. IV, Munich, C.H. Beck, 2024, 308, 310.

[26] Another project at the European level is dedicated to the interconnection of land registers, known as the Land Register Interconnection project, though Germany is not a part of this (https://lri-ms.eu/).

[27] The European Justice Platform can be reached via its domain (https://e-justice.europa.eu/home?init=true&action=home&plang=en).

[28] Information obtained by the author through an interview of the press department of the Ministry of Justice of North-Rhine-Westphalia on February 6th, 2024.

[29] In the realm of Criminal Law, data exchange between public prosecutors in North-Rhine-Westphalia and the Netherlands has been piloted for several years in international legal-assistance procedures. This includes secure data exchange for the "European Investigation Order in Criminal Matters" (Directive 2014/41/EU) and cross-border enforcement of fines and European Arrest Warrants.

CODEX for cross-border communication. Over 20 additional procedures are slated for digitization with the assistance of e-CODEX by the end of the decade, posing significant challenges for member states.[30]

4. *Aspects of e-justice in internal court procedures*

Internal court procedures particularly encompass e-justice, which includes electronic case management. When courts, authorities, or law firms do not simply print out electronic incoming mail but instead process it electronically, this is referred to as "elektronischer Geschäftsprozess" (electronic day-to-day operations). This entails retaining the electronic document for subsequent – ideally also electronic – sending processes to a third party, the opposing party, or the client, as well as processing the document itself, thereby storing it for further use; for example, in an electronic case record, for extracting text passages especially for later filing a judgement in the case, or for use in structuring tools.

4.1. *Implementation of electronic files*

Court procedural codes lack comprehensive regulations on managing court records. The management of such records is specified by the federal states in record management regulations (AktO), issued as administrative directives. By January 1, 2026, electronic court records will be mandatorily introduced across all branches of the judiciary by virtue of law. The previously voluntary option for adopting e-files will then become obligatory, as stipulated by the Law on the Introduction of Electronic Files in the Judiciary and Further Promotion of Electronic Legal Transactions.[31] Federal procedural codes (Section § 298a (1a) ZPO for civil courts and Section § 55b (1a) VwGO for administrative courts) will make the use of electronic files mandatory from 2026.

Since the Justice Communication Act of 2005, electronic-record management has been possible, as outlined in, for example, § 298a ZPO. Electronic-record management may be limited to specific courts.[32] The current state of usage of electronic files hugely depends on each federal state with many courts still being geared towards paper records. In the federal state of Hesse, all regional civil courts and the entire social jurisdiction use electronic files for new filings in proceedings, plus the entire administrative jurisdiction exclusively uses electronic files.[33] In Rhineland-Palatinate, the first social court has only recently introduced the electronic file, while 47 of all 56 civil courts and all five administrative courts are working with the electronic file.[34] In North-Rhine-Westphalia, all nine social courts have transitioned from paper files to electronic files. The financial and administrative courts have been working with e-files statewide since 2019 and 2021, respectively, while the rollout at the 33 labor courts of the state was completed in June 2023. In the civil jurisdiction, electronic files are used in all civil courts, that is 129 local, 19 regional, and three higher regional courts.[35]

The two main requirements for electronic files are integrity and stability, meaning that the file can neither be manipulated nor deleted so that the entailed information remains safe as long as it is needed.[36] Therefore, the electronic file must adhere to stringent requirements for secure data storage, particularly in guarding against unauthorized alterations. Failure to meet these standards could render its contents unreliable. Moreover, the electronic file is subject to data-

[30] The Ministry of Justice of North-Rhine-Westphalia: *Me-CODEX III*, 2022 (www.justiz.nrw/JM//justizpol_themen/Europa-und-Internationales/2022-09-15_5_Europaeische-Projekte/2022-09-15_51_E-Codex/index.php).

[31] H. Müller, *e-Jusitce Praxishandbuch*, 55.

[32] M. Müller, *Die Digitalisierung der Justiz in Deutschland: Entwicklung und rechtliche Würdigung des EJustizG am Beispiel des Zivilprozesses*, Hamburg, Verlag Dr. Kovač, 2015, 204f.

[33] Ministry of Justice of Hesse, *KI-Projekt „Codefy" am Landgericht Frankfurt gestartet*, 3 July 2023 (https://justizministerium.hessen.de/presse/pressearchiv/ki-projekt-codefy-am-landgericht-frankfurt-gestartet).

[34] Ministry of Justice of Rhineland-Palatinate: *Mit großen Schritten in eine digitale Justiz: Elektronische Akte nun in allen Gerichtsbarkeiten*, 4 March, 2024, (https://lsgrp.justiz.rlp.de/fileadmin/justiz/Gerichte/Fachgericte/Sozialgerichte/Landessozialgericht/Migration_News/images/justiz/Gerichte/Fachgerichte/Sozialgerichte/Landessozialgericht/pdf-Dateien/p240304eAkteEinfuehrung.pdf).

[35] Ministry of Justice of North-Rhine-Westphalia, *Einführung der elektronischen Akte in der Sozialgerichtsbarkeit in Nordrhein-Westfalen abgeschlossen*, 18 March 2024 (www.land.nrw/pressemitteilung/einfuehrung-der-elektronischen-akte-der-sozialgerichtsbarkeit-nordrhein-westfalen#:~:text=Mit%20dem%20Sozialgericht%20Dortmund%20stellt,fl%C3%A4chendeckend%20mit%20der%20E%2DAkte).

[36] H. Müller, *e-Justice Praxishandbuch*, 44f; D. Kallerhoff, *§ 29,* in *Verwaltungsverfahrensgesetz*, XIII ed., P. Stelkens e.a. (ed.), Munich, C.H. Beck, 2014, 31.

protection regulations, demanding safeguards against third-party access. Another issue is the long-term archiving of electronic records: Questions arise regarding how files including sensitive personal information can be securely saved and if, when and how they can be deleted with no risk of getting recovered. A deletion protocol should be in place to ensure compliance with the principle of data minimization, preventing the indefinite retention of data. Ultimately, the electronic file should be disposed of no later than the expiration of statutory retention periods for its paper counterpart.

4.2. *The hermaphrodite electronic paper file*

The concept of the "electronic duplicate file" pertains to instances where the corpus of records exists both in paper format and electronically, often due to the predominant use of electronic communication channels. The electronic duplicate file serves as a tool for practitioners, allowing them to harness the benefits of electronic transaction processing while avoiding the investments necessitated by a complete transition away from paper-based records. This hermaphrodite form of file management has been common during the transition period from all paper files to electronic files that will be mandatory by the beginning of 2026. As the communications with the courts already must be electronic since 2022, the practical need for the electronic duplicate file system is likely to disappear soon.[37]

4.3. *Electronic writing and reading support tools*

In most courts, the EUREKA-program can be used as a structuring tool, for both, writing and reading documents. The out-put function of the program gives judges a variety of templates for judicial orders and every judge can save different text modules in the program that can be pasted within the document. This saves a significant amount of time that would otherwise be lost writing reoccurring passages from scratch every time they are needed. In these text templates easy codes can be integrated so that variables of the case such as the file reference, dates or names are automatically inserted.[38]

To facilitate reading documents, the special file viewing program allows for a "bird perspective" from where all documents can be viewed together, supported by a table of contents which makes it easy to change between different relevant documents. When reading the documents, judges have the possibility to search for key words, put notes at specific locations, use mark ups in different colors and interact directly with the text, e.g. by opening a connected web page to a legal research platform or starting a free web search.[39] The program also has a filtering function which can sort out irrelevant documents such as the electronic sending protocols, authorization letters or court fee receipts and allows for the grouping of different text passages in the documents for a specific topic.[40]

Further intelligent assistant systems such as the integration of automated translation into the file viewing programs are planned and have been already applied in limited pilot projects. Another idea that has been brought up and even piloted for civil procedures is the implementation of a basis document through which the competent court would have the authority to make specific requirements on how the parties must present their factual or legal contributions. This would allow for an easier structuring of facts which is needed especially in mass proceedings where judges currently must read through extensive documents that might only vary in nuances but still could hold important pieces of information. At the same time such structure requirements infringe the freedom of lawyers or parties themselves to present their case in the form that they deem most appropriate.[41]

4.4. *The online court hearing*

Since 2002, Section § 128a (1) ZPO has allowed parties and their representatives to be present at a different location from the court room when there is a live video and audio connection. Initially, there was a controversy over the question whether the same regulation could be applied to administrative-court hearings because these courts bear the responsibility to ascertain the truth (Untersuchungsgrundsatz, Section § 86 (1)

[37] H. Müller, *e-Jusitce Praxishandbuch*, 59f.
[38] H. Müller, *Legal Tech im verwaltungsgerichtlichen Verfahren*, 274, 278.
[39] H. Müller, *e-Jusitce Praxishandbuch*, 314f.
[40] H. Müller, *Legal Tech im verwaltungsgerichtlichen Verfahren*, 274, 279.
[41] H. Müller, *Legal Tech im verwaltungsgerichtlichen Verfahren*, 274, 279.

VwGO) while in civil procedures, the parties are responsible for providing all relevant information (Beibringungsgrundsatz).[42] This controversy has been solved by the lawmakers as nowadays Section § 102a VwGO makes it possible to hold online court hearings also for administrative courts.

The main problems of online court hearings were centered around three main provisions of constitutional rights: The right to information, the right of expression during the procedures following from Art. 103 (1) GG and the precept of effective legal protection, Art. 19 (4) GG.[43] With the steadfast technical development of ever more reliable online communication these critical points have mostly been relinquished. Still, when technical problems arise, the foundational principles of court procedures demand a clear standard for the possibility of online court hearings. If the connection is not steady and single words cannot be understood clearly, the format does not work. If it cannot be solved, an offline hearing must be arranged.

Online court hearings bring the potential to facilitate judicial procedures in an international context, for example when a party resides abroad. In the EU, Article 5 (1) of Regulation (EU) 2023/2844 now allows for courts to give parties or their representatives who are in a different member state permission to participate in civil and commercial proceedings via video conference. However, this general rule is subject to two reservations that are not influenced by the parties: Firstly, the availability of such technologies, which are not explicitly required by the regulation (Article 5(1)(a) of Regulation (EU) 2023/2844), and secondly, the decision of the court, which must determine the appropriateness of using online hearings (Article 5(1)(c) of Regulation (EU) 2023/2844). The opinion of the parties is only taken into account under Article 5(1)(b) of Regulation (EU) 2023/2844 but does not constitute a genuine reservation.[44]

In practice, online court hearings remain the exception with most court hearings taking place offline in the court room. This is partly due to insufficient video-conference technology; some courts only have a single court room prepared with the necessary equipment. Some judges also seem to be reluctant to have an online court hearing because they are looking for a more personal contact with the parties or lawyers,[45] which, after all, has been the practice in court hearings ever since the first courts have been built.

5. *Next level automation in civil and administrative justice*

Germany has seen huge progress in e-justice over the last decade that has mainly been focused on electronic communication and electronic file usage. This will serve as the basis for the next level of automation in the judicial system which will bring along the implementation of centralized data collection, the enhanced use of big data for individual cases and AI tools designed to facilitate the work of judges and other legal practitioners.

The e-Justice Council is tasked with observing and implementing these next level technologies in the German judiciary through decentralized small pilot projects. The e-Justice Council emphasizes the importance of achieving a solution suitable for all federal states and the federal government alike for the use of artificial intelligence, which strengthens digital sovereignty independently of the electronic case file systems and the special procedures that are being used.[46] The following plans are worth mentioning in this

[42] S. Kussel, *Die Digitalisierung der Verwaltungsgerichtsbarkeit: Lösungskonzepte für den Einsatz digitaler Informations- und Kommunikationsmedien im verwaltungsgerichtlichen Verfahren*, Wissenschaftl. Verl., Berlin, 2003, 157f.

[43] S. Kussel, *Die Digitalisierung der Verwaltungsgerichtsbarkeit: Lösungskonzepte für den Einsatz digitaler Informations- und Kommunikationsmedien im verwaltungsgerichtlichen Verfahren*, 151ff.

[44] P. Soller, *Justizielle Zusammenarbeit und Zugang zur Justiz – jetzt digital(er)?VO (EU) 2023/2844 zwischen grundlegender Modernisierung der europäischen justiziellen Zusammenarbeit und symbolischem Akt*, in *MMR: Zeitschrift für IT-Recht und Recht der Digitalisierung*, vol. IV, Munich, C.H. Beck, 2024, 308, 310.

[45] In one of the author's Civil Law cases concerning data-retention periods under the GDPR, the Regional Court of Stuttgart ruled out an online hearing because „the experiences have shown that video conferences are not equivalent to negotiations with all parties present. Therefore, video conferences are only suitable for simple cases; such a case is not present here", LG Stuttgart, Decision of 9 February 2024 – 17 O 255/23, translation by the author.

[46] Ministry of Justice of North-Rhine-Westphalia, *Beschlüsse des E-Justice-Rats in seiner 22. Sitzung am 29. September 2022 in Bremen*, 2022, 3 (https://justiz.de/laender-bund-europa/ejustice_rat/beschluesse/22sitzung.pdf;jsessionid=799C026F1DF1024D049DB8ACFD51B66D).

context.

5.1. *Digital Legal Application Center*

The federal government, in collaboration with other project partners, is developing and testing a digital legal application center as a straightforward, digital contact point for citizens with legal issues.[47] A preliminary check for the approval of legal aid as the first component of a digital legal application center, has already been developed and is available online.[48]

The legal aid applications are the perfect field for taking the first steps towards a more automated judiciary as the main problem for people to apply for legal aid is the lengthy application form. Once this is available online with easy guidance, the judge only must decide whether the case is willfully brought up or if it has a prospect of success. Hence, access to justice can be eased for people who are lacking the funds to start legal procedures.

5.2. *Civil Court Online Procedure*

With another federal project, the "Civil Court Online Procedure", a low-threshold, digital access to the civil courts and a resource-saving, consistently digitally managed procedure – particularly for asserting small claims of up to 5,000 Euro – is being created. Currently, initial prototypes are being developed, which concern the preliminary check, addressing fundamental questions and information for people seeking help when filing a lawsuit by themselves. The ambitious goal is that the first digital complaint could be submitted via the online platform in mid 2024.[49]

When lawsuits are filed via a digital form in cases that do not demand lengthy legal argumentation, the digital-file administration in courts will become easier and judges will be able to find the relevant information more easily. Nowadays, pieces of information can be scattered among several pages, sometimes hidden amongst legal argumentations and therefore consume time and effort to find.[50]

5.3. *Generative Language Model of Justice*

In the research project "Generative Language Model of the Judiciary", the federal states of North Rhine-Westphalia and Bavaria are currently developing and testing a large language model specifically tailored to the needs of the judiciary.[51] Within the project, potential applications of AI models in the judiciary are being researched, particularly with the aim of relieving those civil courts that are heavily burdened by mass proceedings.[52]

The Frankfurt Regional Court has piloted a program for AI-powered document-creation tools, which is especially helpful in mass proceedings connected to air passenger rights, data protection or the wave of law suits caused by the manipulations in the automotive industry.[53] The program was trained to present the judge working on a specific case with individually created text templates and decision proposals, which can be seen as the first steps towards the e-justice of the future. As the administrative courts have not experienced the same pressure due to a lack of comparable mass proceedings, these pilot projects have remained limited to civil courts.[54]

5.4. *Anonymization of court decisions*

Another important task is the anonymization of judgements, because before publication, they must be anonymized to

[47] Ministry of Justice of the Federal Republic of Germany, *Entwicklung einer Digitalen Rechtsantragstelle*, 2 October 2023 (https://www.bmj.de/DE/themen/digitales/digitaler_staat/rechtsantragstelle/digitale_rechtsantragstelle_node.html).

[48] Available in German under https://service.justiz.de/beratungshilfe.

[49] Ministry of Digitalization and Traffic of the Federal Republic of Germany, *Einfacher Zugang zum Recht – mit dem zivilgerichtlichen Online-Verfahren*, 2022 (https://digitalstrategiedeutschland.de/zivilgerichtliches-online-verfahren/#:~:text=Mit%20dem%20zivilgerichtlichen%20Online%2DVerfahren%20soll%20sich%20das%20%C3%A4ndern.,digitaler%20Eingabe%2D%20und%20Abfragesysteme%20einzureichen).

[50] M. Amos, *„Wir denken weiter als beA und E-Akte: Eine Plattform für die Justiz", interview with A. Wolff*, in: *becklink*, Munich, C.H. Beck, March 22nd, 2024, 2030267.

[51] Federal Government of North-Rhine-Westphalia, *Einsatz Künstlicher Intelligenz in der Justiz / Nordrhein-Westfalen und Bayern entwickeln und erproben gemeinsam ein juristisches Sprachmodell*, 26 May, 2023 (www.land.nrw/pressemitteilung/einsatz-kuenstlicher-intelligenz-der-justiz-nordrhein-westfalen-und-bayern).

[52] Information obtained by the author through an interview of the press department of the Ministry of Justice of North-Rhine-Westphalia on February 6th, 2024.

[53] The first AI program was called "FraUKe" and the following one "FRIDA", H. Müller: *Legal Tech im verwaltungsgerichtlichen Verfahren*, 274, 279.

[54] H. Müller: *Legal Tech im verwaltungsgerichtlichen Verfahren*, 274, 279.

protect all personal data. Traditionally, this anonymization process has been largely manual, carried out by the courts which results in significant personnel effort for the courts. Hence, only a small fracture of court decision in Germany are published. The federal states of Baden-Württemberg and Hesse therefore have started the project "JANO" with the aim of creating a reliable AI tool capable of eliminating all personal data from court decisions with minimal need for personnel.[55]

5.5. *Connected systems on the European level*

While the e-CODEX system is exclusively focused on digital communication between European institutions of the judiciary, its electronic infrastructure could potentially be used to form a data base for European court decisions, facilitating a more European approach to justice, especially when it comes to the interpretation of European-Union Law where international comparative law currently only plays an unsubstantial role. For this perspective to become realistic, automation of the judiciary must progress towards an advanced level in every member state. Initiatives of single courts therefore contribute to further developments of e-justice even on the European level.

Advancements in Germany have been slow in the past but recently took up speed opening the window to a European judiciary that is digitally connected and aided by various computer programs. The way to an automated judiciary is long – giving us time to discuss where AI programs can be helpful to support courts and where it should be forbidden because a human decision is indispensable. In the meantime, the German judiciary should focus on improving the existing programs by resolving abundant technical problems.

[55] Ministry of Justice of Hesse, *KI-Projekt „Codefy" am Landgericht Frankfurt gestartet*, 3 July 2023 (https://justizministerium.hessen.de/presse/pressearchiv/ki-projekt-codefy-am-landgericht-frankfurt-gestartet); Federal Government of Baden-Württemberg, *Gemeinsames KI-Projekt zur Anonymisierung von Urteilen*, 5 September, 2023 (www.baden-wuerttemberg.de/de/service/presse/pressemitteilung/pid/gemeinsames-ki-projekt-zur-anonymisierung-von-urteilen).