

Shifting Boundaries Between Dispute Resolution Systems: Re-Assessing the Geography of Justice

Expert Workshop

- **Date and time:** 17-18 September 2024
- **Venue:** Tilburg Law School, Faculty Club, Warandelaan 3, 5037 AB Tilburg
- **Conveners:** [Eric Tjong Tjin Tai](#), [Elena Alina Onțanu](#), [Marco Fabri](#), [Francesco Contini](#), [Marco Velicogna](#), [Elena Zucconi Galli Fonseca](#), [Carolina Mancuso](#) and [Angela Maria Felicetti](#)

Central theme and questions

The cumulative effect of the multidimensional changes which have taken place in the last 20 years radically transformed the geography of civil dispute resolution. The landscape is beginning to show a radically new configuration with reduced space for traditional court litigation, which is complemented by a growing space for a variety of dispute resolution mechanisms. Among the many factors influencing the administration of justice in contemporary European society, the literature has specifically highlighted: the progressive digitalization of civil litigation in courts (Onțanu, 2023; Hess, Koprovika Harvey, 2019; Onțanu, 2019; Velicogna 2007), the gradual decrease in the number of civil proceedings initiated each year (van Dijk, 2022), and, simultaneously, the proliferation of alternative dispute resolution (ADR) tools, promoted by both national and EU legislators and often managed by private entities (Hess, 2019; Velicogna 2022). In the same years, new public management tenets pervaded court organization. These apply private sector techniques and metrics, and promote efficiency, effectiveness, and customer orientation. In this context, charting a geography of justice is becoming increasingly challenging since dispute resolution is no longer exclusively offered by national courts.

The charting of the new geography of justice has to consider various forms of dispute mechanisms and changes which affect the status of court-based procedures and the role of the actors providing or seeking justice. To tackle well-known issues concerning duration, costs and effectiveness, several reforms at the domestic and EU level are pushing toward a higher degree of digitalization of civil proceedings. In this direction are headed initiatives such as: the implementation of digital case management systems, the more frequent use of virtual hearings (Onțanu, 2023; Velicogna 2021; Biasiotti et al., 2018; Contini and Fabri, 2003), the further development of online access portals for users and the implementation of more advanced digital case-law database (Onțanu and Velicogna, 2018; Van Opijn, 2018). Many national legal systems are also amending the rules of civil procedure to further emphasize the parties' autonomy in selecting the most suitable dispute resolution tool and in shaping the outcome of the proceedings. More broadly, non-adjudicative methods of dispute resolution are promoted by establishing a seamless connection between litigation and ADR systems, exemplified through court-annexed mediation, as well as pre-trial negotiation and mediation schemes. A new role for the judge is therefore emerging: no longer solely a decision-maker

but also a facilitator of agreements (van Rhee, 2022). The function of the lawyer is also adapting to this change: professionals are required to guide the party through the naming, blaming and eventually claiming, and possibly facilitate the selection of the most suitable system for resolving the specific dispute before filing a case in court, seen as last resort.

Through the aforementioned trends, domestic legal systems adopt and incorporate certain techniques already experimented in ADR mechanisms, which are characterized by the use of the latest technologies to facilitate dispute resolution procedures (Durovic&Lech, 2021) and the attention to parties' consent and autonomy in dispute management and settlement (Cadiet, 2014).

Beyond civil litigation, the out-of-court dispute resolution landscape comprehends tools which are regulated at the national level, such as arbitration, or at EU level, such as civil and commercial mediation and consumer ADR, as well as new online dispute resolution (ODR) tools implemented by private platforms.

The EU and domestic regulators are undertaking efforts to better align ADR with fair trial principles and to incentivize their use in various contexts (at the EU level see: the 2023 proposal for reform of Directive 2013/11/EU on consumer Alternative Dispute Resolution; in Italy see: Dalla Bontà, 2022). Meanwhile, dispute resolution mechanisms provided by private platforms, such as content moderation and internal complaint-handling systems – though not encompassed by the aforementioned regulatory frameworks for ADR – exert a significant impact on the fundamental rights and liberties of millions of European citizens who engage daily on very large online platforms (Quintais et al., 2023; Tjong Tjin Tai & Frenken, 2023). The EU lawmaker is therefore beginning to implement new standards to ensure fairness and adequate protection of procedural safeguards in this new field (Van Duin et al., 2023; Ortolani, 2023).

Overall, out-of-court dispute resolution is at the center of a wave of regulatory efforts, which may impact on the nature and quality of mechanisms and may lead to a new balance between guarantees and efficiency in ADR and ODR.

In light of these considerations, many research questions emerge: what factors are contributing to the decline in civil litigation cases, and what are the broader implications of this trend? How is the digitalization of civil litigation affecting the values underpinning the delivery of justice? Why despite digitization and managerialisation courts are losing attractiveness and centrality in the dispute resolution geography? How are ODR mechanisms evolving in terms of procedural justice, fairness, and public trust? Can they replace or complement/work interchangeably with digitalized court procedures? Ultimately, to what extent is civil litigation influenced by ADR and ODR systems, and *vice versa*? Furthermore, in what ways are the roles of judges and lawyers evolving in response to these changes?

This workshop assembles a diverse group of academics and legal experts in civil procedural law, private international law, judicial administration and digital transformation, to discuss and map the current and emerging trends of dispute resolution in Europe. The discussion aims to focus particularly on the process of decline of court litigation, the digital transformation of courts from an organisational and procedural perspective, the forms and imitations of (online) alternative dispute resolution, the interplay between technology designs and procedural standards for ODR, and the development of new geographies of justice triggered by these court and out-of-court developments.

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Expert Workshop – Programme

Day 1 – 17 September

13:30: **Welcoming participants and guests at the Faculty Club**, Tilburg Law School, Faculty Club, Warandelaan 3, 5037 AB Tilburg

13:55: **Opening** by Eric Tjong Tjin Tai, Professor of Private Law and Elena Alina Ontanu, Assistant Professor of Global and Comparative Private Law, Tilburg University

14:00 – 15:50: **Litigation (the decline)**

- *The Dispersion of Dispute Resolution Fora in EU (or) From court delay to escape from justice: The collapse of civil justice in Italy*, Francesco Contini, Senior Researcher and Marco Velicogna, Researcher, Institute of Legal Informatics and Judicial Systems, National Research Council of Italy
- *The Decline in Commercial Court Cases in The Netherlands*, Frans van Dijk, Professor at Utrecht University
- *The Decline of Litigation: A Commercial Lawyer's Perspective* (in particular from the perspective of arbitration practice), Bas van Zelst, Professor of Dispute Resolution and Arbitration at Maastricht University and Partner at Van Doorne Law Firm, Amsterdam

Discussion

Break (20 min)

16:10- 18:00: **Courts (organization and procedures)**

- *Twenty Years of Digital Justice*, Marco Fabri, Research Director, Institute of Legal Informatics and Judicial Systems, National Research Council of Italy
- *Technology and National Procedures: Compulsory Use of Electronic Means*, Pauline van der Grinten, Senior Legislative Lawyer, Dutch Ministry of Justice and Security
- *The Digital Transformation of the Dutch Courts and the Efficiency of Judiciary*, Eveline de Greeve, President of the Amsterdam Court of Appeal (President Gerechtshof Amsterdam)
- *Digital transformation of Courts and Procedures: A Lawyer's Perspective*, Nadine Groeneveld-Tijssens, Professor, Special Chair on Appellate Proceedings, Tilburg University and Partner at AKD Law Firm

Discussion

18:30 **Dinner for participants – Auberge du Bonheur**

Day 2 – 18 September

9:00 – 10:50: Alternatives (forms and limits)

- *The Rise of ADR and Their Digitalization*, Elena Zucconi Galli Fonseca, Professor, Procedural Law, University of Bologna
- *Integrating Litigation and ADR: The Role of Cooperation*, Carolina Mancuso, Adjunct Professor, University of Bologna, and Lawyer
- *Balancing Scales in a Digitalising World: Citizen-Centered Approach to Access to Justice and Due Process*, Anna van Duin, Associate Professor, University of Amsterdam
- *ADR in the Platform Economy: the Experience of the P2B Regulation*, Angela Maria Felicetti, Adjunct Professor, University of Bologna
- Discussion

Break (20 min)

11:10 – 13:00: Technology & procedural standards

- Technology and Cross-border procedures: the e-CODEX Experience, Ernst Steigenga, Senior Adviser, De Bruggenbouwers
- *Design of ODR*, Marco Giacalone, Professor, Co-Director of the Research Group on Digitalisation and Access to Justice (DIKE) of the Vrije Universiteit Brussel
- AI & Courts: voorRecht Development, Pieter van Riemsdijk, Senior Judge, District Court Midden-Nederland, Program Leader voorRecht
- Discussion

Lunch: 13:00 - 14:00

14:00-15:30: Closing

- *The New Geographies of Justice*, Elena Alina Ontanu, Assistant Professor of Global and Comparative Private Law, Tilburg University
- *Role of Procedural Justice in an Evolving Landscape ?*, Eric Tjong Tjin Tai, Professor of Private Law, Tilburg University
- Concluding discussion & planning of future joint initiatives with participants

List of Participants

- Francesco Contini, Institute of Legal Informatics and Judicial Systems, National Research Council of Italy
- Frans van Dijk, Utrecht University
- Anna van Duin, University of Amsterdam
- Marco Fabri, Institute of Legal Informatics and Judicial Systems, National Research Council of Italy
- Angela Maria Felicetti, University of Bologna
- Eveline de Greeve, Amsterdam Court of Appeal
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