Background information on the study on 'Resilience of democracies in the course of the digital transformation of the state'

The explicit aim of our study is to contrast the eGovernment benchmarks, indexes or surveys, for example from the EU, OECD or UN, with a different approach. The major well-known reports, for example, place particular emphasis on factors such as 'user centricity', 'user experiences' or 'convenience'. They follow the 'smart government' logic inspired by the guiding principles of the economy.

While these types of reports primarily measure the progress of government digitalisation in terms of 'higher, further, faster', our novel approach attempts to focus more on the 'how?' of government digitalisation. Our goal is to understand the effects of the entire digitalisation measures, especially their consequences for the established democratic system. The focus is on the consequences for the separation of powers, federalistic structures, the prevention of the concentration of power and state sovereignty. In short, we are addressing the question of how the digital transformation can succeed in a way that preserves existing democratic structures and institutions in the digital space as well. As part of the study, we will also create a ranking with a cross-country comparison (Switzerland, Germany, Estonia, United Kingdom).

In the context of the resilience and longevity of democratic systems, the independent, administrative courts play a central role as a counterweight to the administration. In a world in which administration and society are undergoing an increasingly rapid digital transformation, the courts face particular challenges.

Firstly, the administrative courts will have to deal with a presumably increasing number of proceedings (with fewer staff) in the coming years. Both the numerous legal tech start-ups that have been established in recent years and the new capabilities of 'Generative AI' in drafting lawsuits are significantly lowering the hurdles to filing lawsuits. In addition, the administration's efforts to digitally automate decisions hold great potential for dispute. Those affected will regularly disagree with the result of automated administrative procedures and go to court.

Secondly (and more importantly), courts increasingly need their own digital know-how and technological capabilities in order to level the playing field with a digital state administration. The more the administration operates on a data basis and uses increasingly complex technological tools to do so, the more difficult it will be for analogue courts to independently review the administration's actions. And at some point, involving external experts each time will no longer be possible in terms of finances and time.

The Supreme Court of Estonia is affected by similar necessities (in relation to the other "powers", i.e. parliament and administration that are already digitally updating.

From our research perspective, it is therefore necessary for ensuring separation of power whether the courts will operate the necessary digital infrastructure and digital systems on its own or obtain them as a 'service' from the administration

Questions

For this reason, we are trying to answer the following questions in the context of democracy resilience in the study:

1. Digital transformation of (administrative) court proceedings (process level)

-   *Have digital communication channels been set up for the judiciary (electronic access to the legal system, electronic legal communication)?*
-   *Has the filing system been digitized?*
-   *Have new digital dispute resolution procedures been tested or established to relieve the courts?*

2. Digital transformation of the adjudication process (content level)

-   *Are there projects for the digital automation of mass or standard proceedings?*
-   *Can AI or other digital tools support judges in writing judgments?*

3. Building expertise in the assessment of "digital facts" (content level)

-   *Do judges receive further training on digital topics?*
-   *Are there specialised training programmes for judges in a digital context?*
-   *Have specialised judges been established to assess automated decisions by public authorities?*

4. Technological assessment of (partially) automated administrative procedures by the courts

-   *Have the courts developed skills to assess the basis – such as the data basis or training data – of administrative digital systems?*
-   *Can they, for example, empirically test AI tools of the administration – for example for discrimination – in order to bypass the 'black box problem'?*

5. Digital infrastructure of the courts

-   *Who finances the digital infrastructure of the courts?*
-   *Who hosts the digital infrastructure?*
-   *On whose systems will the infrastructure for AI models or analysis tools run?*

So far, we have included the following publicly available information in the report:

-   Information system E-File (E-Toimik, Digitoimik)
-   Court Information System (KIS)
-   AI assistant Salme

Should we have overlooked any important/central projects or measures, or should you have any further or additional information regarding our questions, we kindly request that you send

electronic Public Institutions and Administrations Research Forum (e-PIAF), University of Basel
them to us so that we can take them into account in the study and the evaluation in the country comparison. Thank you very much!

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