

QUESTIONNAIRE
SEMINARE – 27 SEPTEMBER 2017

ELECTRONIC ACCESS TO THE COURTS

1. The implementation of your electronic document system

- what is hoped to achieve through the digitization of proceedings?

Digitization of procedures will mean;

- Reduced problems in physical document usage. (Use of stationery, lost or damaged documents).
- Reduced problems resulting from dependence on place and time.
- The ability to easily plan the operation and operation's compliance with the plan.
- Faster and easier follow-up thanks to quicker access to each phase of the procedure.
- Reduced loss of labor as a result of shortened procedure times
- Faster archiving procedures and document accessibility
- Faster and more reliable handling of statistical calculations thanks to grouping of similar procedures
- The possibility to authenticate documents relating to the procedure.
- Increased possible means for the security of the operation and document, and
- Faster potential detection and elimination of problems through the creation of a “Transaction History” and analysis of such history as a result of the commencement-conclusion-interruption and final completion of a procedure relating to a document and recording of errors causing increased time spent and the interruption of the process at every stage of the process.

- Must court documents be transmitted electronically?

Documents required to be electronically served by the Court can be transmitted to relevant persons. The Courts may also serve electronic notices to individuals and organizations with registered email addresses filed at the Court. However, this is not a mandatory procedure.

- if that is the case:

- which players are involved?

- are certain aspects reserved for these players?

- What are the consequences if an application is not seen electronically?

Since it is not mandatory to serve documents electronically, no penal sanctions are provided in case of failure to transmit the application electronically.

- Can litigants consult their files and track their progress online?

Through Uyp, the National Judicial Network, the progress of petitions and cases can be tracked online by individuals through the “Uyp Citizen Portal” and by attorneys through the “Uyp Attorneys Portal.”

Thanks to the UYAP Attorneys Information System (Attorneys Portal), attorneys are able to track the status of client cases they represent online while they are in their offices (and files of clients they do not represent, again over the same system with the approval of the relevant judge), make copies of the files of such cases, insert documents into the docket in the system using their electronic signature, open new dockets and pay the Court fees. So, the attorneys, thanks to this information system, are now practically able to fulfill all formalities, except for appearing at hearings, while they are in their offices.

And thanks to the Citizen Information System (Citizen Portal), citizens are able to see the certain details (subject, value and parties of the case, hearing dates, the progress of the case, whether or not an order has been made, whether or not the judgement was overturned by the Supreme Court) of dockets being heard before ordinary courts and administrative bodies within the scope of UYAP via the internet and using their Turkish identification numbers. However, in this system, citizens with no e-signatures or mobile signatures are unable to view the contents of the docket for information safety purposes. To enable the citizens to be able to open new dockets via the internet using e-signatures or mobile signatures as in the case of attorneys by connecting to UYAP Citizen Portal, to pay Court fees, review authorized dockets in the system in detail, insert documents into dockets and make copies of such dockets, works to allow access UYAP Citizen Portal using e-signatures and mobile signatures have been completed and the system has been brought to the use of citizens, and it has been integrated with the e-Government portal.

- Are the application and the law firms’ internal software interoperable? Is it envisaged to make them interoperable?

Uyp National Judicial Network currently ensures the operation of many different structures in cooperation.

- What feedback have you had about the use of these methods by the litigants, practitioners and authorities?

The system receives positive feedback particularly from attorneys. Attorneys and citizens are able to keep up to date with the status of their cases in their offices without visiting the court

houses, saving from time and labor, and to do almost all paperwork except for attending a hearing.

2. Statistics

- What percentage of applications are filled per annum?

In 2016, 269570 dockets have been opened at the Council of State.

In 2016, 1024 electronic dockets have been opened at the Council of State.

(3,8 per-mille of dockets have been opened electronically.)

Also, all sorts of documents related to the cases are scanned and transmitted into UYAP environment, so all applications are filed electronically.

- What percentage of users (law firms, authorities and litigants) are now using this method?

In 2016, 3,8 per-mille of dockets filed at the Council of State have been opened electronically.

- Have you estimated the total cost of setting up an electronic working system in your court of your type of court?

Cost estimation could not be made since all judicial units are integrated with UYAP system and since this system is centrally maintained by the Ministry of Justice.

3. Observing the adversarial principle

- How does your system ensure that the parties' statements are exchanged?

The parties are able to insert documents into the docket any time through supplementary statements filed during the lawsuit process.

- How are the parties and the court registry notified that a document has been filed or consulted by the opposing party?

When a document is inserted into the docket, the said document is seen on the UYAP screen of the court clerk and then it is filed by the court clerk. The parties are able to review their dockets through UYAP Portals and have access to newly inserted documents in this manner.

- Is the authenticity of electronic documents ever challenged before the courts?

The parties need to have e-signatures in order to be able to insert documents into dockets electronically. Documents signed with e-signatures are considered as original documents. Since it is not possible to insert electronic documents into the system without getting signed with an e-signature, documents inserted into the system with an e-signature are considered authentic.

- Can the third parties also intervene in proceedings electronically?

Starting from September 21, 2011 video conferencing system is put into use by the Courts (particularly by ordinary courts) under the name of SEGBIS (Audio and Video Communication System). This system ensures the hearing of individuals who are beyond the boundaries of the relevant jurisdiction or who do not attend the trial through video conferencing and recording their testimonies. Electronic attendance of third parties to hearings is possible only thanks to this system (e.g., taking testimonies of witnesses etc.). It is not otherwise possible for third parties to insert documents into the dockets.

4. The acceleration of proceedings and urgent proceedings

- Have you found that cases have been proceeds more quickly due to the introduction of this technology?

- A central information system was established through UYAP, which was designed pursuant to electronic signature infrastructure, and a functional and full integration was maintained between the judiciary and judicial support units in this system. Thanks to UYAP's full integration and its archive kept in central electronic environment, accurate and consistent information is made accessible to all parties, particularly the judges and then the prosecutors and judicial staff within the frame of the powers established in the legislation. The users can have quick and easy access to such information when they need, and judiciaries exchange all sorts of information and documentation among themselves electronically and in a very short span of time, almost instantly.
- Correspondence between different units within the judiciary can be made electronically without the use of hardcopy documentation.
- Court instructions for response by mail which could take months in the hearing and investigation procedure can be communicated to the other unit through UYAP thanks to the on-line connection, and the unit which receives the instruction can immediately send the response after necessary processing.
- All files related to a person in Turkey are under the hands of our judges and prosecutors during hearings thanks to the online system. Instant access to such information results in more accurate and quicker resolutions.

In consideration of all such issues, it can be concluded that hearings are now handled in a quicker manner through the implementation of this technology.

- What have been the consequences, on work of the courts, for the staff of the court registry, for the judges and other members of the court, and for the organization of the court?

Through central structure and internal integration, the data is entered once, no several entries are needed for the same data, and since the data is kept in a single place in the system, accurate, complete and update data becomes accessible by judges, prosecutors and other judiciary staff who need such data within the frame of the powers established in the legislation. Again, the Courts' transfer procedures lasting for days at year ends can be done in a very short time and time sheets can also be received within a matter of minutes. Thanks to UYAP's reporting and query facilities, it becomes possible to easily find and information or file queried. Thanks to all such facilities, time, labor and workforce are saved, the courts' operations have become plannable, jobs among court personnel have become automatically, fairly and objectively distributable, and this had positive contributions to the peace in the place of work.

- When a procedural time limit is subject to a limitation period, when does it begin to run (when a document is put online or when it is actually seen by the staff of the court registry or by the judge or other member of the court)?

Under the Administrative Jurisdiction Procedural Law no 2577, time period to file a lawsuit, is thirty days in tax courts unless otherwise provided in their specific legislation, and six days in the Council of State and administrative Courts. This time period starts to count from the date of notification of administrative procedures. Lawsuits that will be filed against an administrative procedure must be filed during such time periods. Again, the same time period applies for lawsuits to be filed electronically. In the event that a lawsuit is filed electronically against a procedure, to understand whether or not the lawsuit has been filed within the statutory time limits, the date on which the declaration has been signed with an e-signature and electronically recorded into the UYAP system.

5. The technical aspects of your electronic document system

- Have you experienced any major technical malfunction (e.g. non-availability of the application for several days)? How did you tackle the problem?

No major technical failures lasting for several days were experienced so far. There have been interruptions lasting from several minutes to several hours. The interruptions experienced in UYAP system are remedied immediately by technical units within the IT Department of the Ministry of Justice.

- What consequences can malfunctions have on the use of the electronic document system? If so, of what type?

Failures and interruptions can result in the short disruption of the judicial process, and slowing down of the judicial process. However, since there were no major interruptions so far, it had no negative impacts on the judicial process, resulting in no losses of rights.

- Have courts had to deal with disputes relating to the use of the electronic document system? If so, of what type?

Disputes in relation to the use of the electronic document system generally arise on whether or not the lawsuit has been electronically filed within the statutory time periods. And this is considered at the initial investigation stage of the docket by the court where the lawsuit is filed. Court rulings in this regard can be appealed to supreme courts.

- If it is possible for a party to file a statement or other documents for practical reasons, what does the court do with respect to the time limits within which documents must be submitted?

The parties can submit their documents electronically or they can at any time submit the documents physically to the court within the limits of the statutory time period.

6. Keeping information secure

- How are the security, confidentiality, integrity and traceability of the exchanges ensured? How do you control access to the files and documents that pass through the system? Have you put in place degrees of authorisation or clearance?

The integrity (keeping of information without distortion), confidentiality (prevention of unauthorized access to the information) and protection of accessibility (making information available without interruption) of such data processed and stored in the system and in order to be timely and accurately address security events on the system, necessary measures are taken at the UYAP headquarters by the Division of Information Security. Various security policies have been created in this regard. The authorizations of each user in the system (judges, prosecutors, clerks, attorneys etc.) have been individually set, and authorization and clearances have been put in place on the bases of roles. Authorizations of each user have been separately configured.

- Are judges and other members of the court able to access the electronic files in their own homes? On a dedicated professional computer or on a personal computer? From any location?

Judges and prosecutors can, within the limits of their authorization, have access to and track the files using electronic signatures at their homes. This eliminated the space limitation in judicial activities, saving from time and bringing efficiency and speed to the judicial process.

- Are the judges and other members of the court able to access all the electronic files dealt with by their court?

They can have access to relevant dockets relating to the courts where they are assigned within the limits of their authorization.

7. Notification of decisions to the parties

- Are decisions notified through the court's electronic system? If so, when are the parties deemed to have taken cognizance of the decisions?

Under the article 7/aof the Law of Notifications and the regulations on electronic notifications, notifications can be sent electronically to individuals who submit their email address to be used for official notifications by relevant authorities. All real persons and entities with electronic notification addresses can benefit from this system. Lasting for weeks in the physical environment, the notification system can be completed within a matter of seconds. If the notification is not read in the electronic environment, it will be considered having been received and read at the end of five days.

- Is it possible to bring an action for negligence if the court's electronic documents service malfunctions??

In the event of failure/interruption in the court's electronic document system, relevant individuals may file lawsuits to the unit offering the service in relation to such failure/interruption.

8. The influence of electronic documents systems on the court's operating methods

- Does use of an electronic documents system cause the supreme administrative court or ministry of justice to require users to comply with technical standarts relating to the adoption of administrative measures?

The users are obliged to observe the legal regulations regarding the use of the electronic document system, and the instructions set out in the regulations, circulars, communiques etc. published.

- Has electronic working contributed to a change in the role of the administrative courts?

Thanks to the use of the electronic system, correspondence between the units within the judicial system can now be made electronically without paperwork, information and documentation affecting the decision-making processes of the judicial units and administrative courts have become easily and quickly accessible, resulting in positive contributions to accelerated judicial processes.

- Has electronic working contributed to a change in the working methods of the administrative courts? Particularly collegial working?

With the use of the electronic system, there have been positive changes in the courts, particularly with regards the services of clerks, and the books, resolution cards etc. documents that were being manually kept before the electronic system are now being kept in the electronic environment, resulting in the minimization of potential errors out of the human factor, the ability to instantly see the errors made even while handling the procedure and instant inspection of the procedures.

Distribution procedures can now be handled automatically, fairly and objectively at the judicial units. This made it possible to fairly and equally share the dockets among courts with the same authority and responsibility.

The system made it possible to review the information previously entered into the system for any reason by the parties and any previous lawsuits opened in the same subject matter, and this resulted in the identification of repealed ill-intentioned lawsuits. Issuance of dissimilar court orders by various courts on the same subject matter brought by the same plaintiff has been prevented.