

## **Deutscher Verwaltungsgerichtag - Hamburg 1. bis 3. Juni 2016**

### **Implication of new IT developments in courts on the work of judges**

#### **« Télérecours » est la téléprocédure du contentieux administratif**

The telecommunication system of Administrative Courts is named "Télérecours".

France is not giving informations about this topic to EU and the CEPEJ because it was considered to be sensitive.

#### **Introduction: overview**

This reform is included in the program of modernization of the French State Administration through the implementation of "E-government".

Definition: Télérecours is a computer application that manages the paperless communication between the administrative courts and the parties, represented with lawyers as well as public administrations. It aims to simplify exchanges between the administrative courts and the parties by providing them an internet platform for sending requests, briefs and other documents and receipt of pleadings.

Télérecours was generalized in all administrative courts seated in metropole on December 2, 2013, after an experimental phase, that began in Ile de France (area of Paris) in 2009 in the field of tax litigations. This application is now being extended in the Administrative courts seated in the french overseas territory.

What about the scope? Télérecours is not yet open to all claimants. This system is only open to parties represented by a lawyer, as well as public authorities and private bodies having a mission of public service. This system applies to all disputes and all procedures (including emergency interim measures).

Much more than 50% of eligible actors (lawyers and administrations) are registered now, and this figure is constantly and rapidly increasing: it's a success among lawyers. The statistics of Télérecours observed in the Administrative courts of appeal in April 2016 show that:

73.9% of "eligible" actors are included now in Télérecours.

59.8% of letters are sent electronically by the Courts.

It is a national application: By entering in Télérecours, an administration or a lawyer is identified in a national directory, which allows all administrative courts to communicate with him (her) in this way. After registration, the authentication of lawyers takes place automatically.

Once a part is identified in the application, which is a voluntary action on his part, any administrative court may validly submit any communications and notifications required by the code of administrative justice, including the folders of the cases recorded before the implementation of the application, even if it has not availed itself of this application.

## **1. How does it work in practice?**

### **1.1. Télérecours functionalities :**

For lawyers and administrations:

They can send all their documents to the administrative courts (applications, statements, documents, letters, various correspondences). All documents are converted into PDF. They are automatically time-stamped. Automatic acknowledgments are exchanged. Parties may access the same way to documents produced by the other parties. They can check an historical summary on the system.

So the main features are: a possibility of online application, automatic accused-receptions, TV-transmission of requests for additional parts and pieces, download pleadings, portfolio access, PDF transformation of all deposited elements, timestamp deposits, electronic signature.

The registers (secretary of judges) are using this application to register new requests, receive files, and upload the pleadings (preparatory measures, notice of hearing, notification of the decisions...). Judges can access their cases through download.

### **1.2. Presentation of the use of the application process**

There are two methods of access to connect to télérecours. For solicitors and lawyers registered, access to télérecours system can operate from the E-Bar platform. For administrations and lawyers not registered in this system of lawyers, access is done by login with a password.

#### **1. First step : register to Télérecours.**

This registration is necessary for the activation of its Télérecours account. According to Data Protection in France, it is forbidden for public administrations to use the same number for identification.

For a lawyer registered, it completes the form and valid its registration via the portal of the National Center of Layers (E-Bar). Then It connects to Télérecours via E-bar gate.

For administrations and other lawyers, the Courts send an information on Télérecours. The party seeking registration receives a mail with a temporary registration code valid for 60 days. It can then connect to the site "Télérecours" to create its account. Then Télérecours automatically sends a registration confirmation email with an account activation link

#### **2. The party registered may use this application to all administrative litigation procedures.**

The creation of the first user account "Télérecours" allows the organizational setting of the application and open a possibility of creation of new users in managing their access rights.

#### **3. After selecting the jurisdiction, the party may file a petition in Télérecours.**

4. After recording this request by the Registry, a registration receipt is sent automatically to the party.

5. This party may file additional documents for this case.

6. The application allows the transmission of pleadings: the party is getting mails sent by the registry.

7. The party may consult its entire portfolio of files

## **2. The legal framework of Télérecours**

A decree (act from the Government), codified in the Code of Administrative Justice, and several ministerial orders (“arrêtés”) had been published.

### **2.1. The Decree No. 2012-1437 of 21 December 2012 on electronic communication to the Council of State, the administrative courts of appeal and tribunals established five principles:**

a) All communications from the lawyers and administrations (request, memories, and other documents) and from the administrative courts (preparatory measures, notice of hearing, notification of the decision) can be carried out so (dematerialized, electronically), for all litigations.

b) The court may communicate via Télérecours to the lawyer or the administration which is included in the application (Article R. 611-8-2 of the CJA).

c) Digital signature: after identification the application is considered to be signed (Article R. 611-8-4 of the CJA). Télérecours allows parties to sign their electronic filing in accordance with the requirements of Article 1316-4 of the Civil Code, if they have an electronic certificate to that effect. Lawyers can use the certificate they have, or dematerialized procedure with the Court of Cassation. In the absence of electronic signature, the parties are simply compelled to keep a written copy of their production, with a handwritten signature, in order to be able to produce when necessary.

d) An automatic timestamp of documents is made, and also automatic alerts to users are sent (Article R. 611-8-2).

e) Documents sent are automatically considered to be read by the parties. The procedural deadlines are computed from effective consultation document, or, failing that, following an 8 day waiting period (Article R. 611-8-2). For emergency procedures, the period runs from the availability of the document in the application (art R. 611-8-2)

### **2.2. This decree is complemented by ministerial decisions published in March, May and September 2013**

**The decision of 12 March 2013 “on the technical characteristics of the application” specifies:**

- The list of registration informations needed in the application.
- The technical characteristics of the application that ensure the security, confidentiality and integrity of exchanges: identification via secure electronic certificates, ability to electronically sign documents (applications, statements and correspondence), certification by timestamp.

The ministerial decision specifies the meaning of the signing of documents in the Télérecours application.

The date and time of the provision of a document in the Télérecours application, as well as its first consultation by the recipient, are certified by sending a message issued automatically by the application, in a box to application letters dedicated to the traceability of electronic exchanges.

- The technical requirements that users must meet: including indexing documents transmitted, identified by a bookmark, according to the inventory of these parts. It is planned to penalize non compliance with this obligation by an inadmissibility.
- The ministerial decision also specifies the technical specification required: browser types, formats and file sizes which can be transmitted. When a party or his agent transmits the application Télérecours a PDF file with multiple parts, each part is listed by a bookmark according to the inventory that is drawn up.
- Access to the sites: the Télérecours application is accessible via a secure HTTPS protocol.

The application compatibility is ensured for Internet Explorer versions 7 or 9 (Internet Explorer 7 is recommended) and Mozilla Firefox 13).

Télérecours uses a cookie on the client browser to store the session ID of a user. There is no other information and it is destroyed at the end of the session.

It is necessary for the workstations to be equipped with reading PDF software, type ADOBE READER or SUMATRA.

Format of filing: accepted document formats are: PDF, DOC, DOCX, RTF, TIF, TIFF, JPG, JPEG, BMP and ODT. The maximum size of each file can be transmitted is set at 32MB.

All documents are in PDF format once deposited in the application.

The computer application "Télérecours" mentioned in Article R. 414-1 of the Administrative Justice Code, is an electronic transmission procedure.

It is accessible:

- On the site of the Council of State: [www.telerecours.conseil-etat.fr](http://www.telerecours.conseil-etat.fr);
- For administrative appeal courts and tribunals, through the site: [www.telerecours.juradm.fr](http://www.telerecours.juradm.fr).

**The ministerial decision on 12 March, 27 May and 19 September 2013 clarified the entry into force of the decree on the electronic communication to the Council of State, the administrative courts of appeal and administrative courts and amending the Code of Justice administrative (regulations).**

### **2.3. Two national agreements signed with the representative bodies of lawyers**

The main national convention is that of 5 June 2013 concluded between the Council of State and the National Bar Council. It defines the commitments of each part, on promoting inclusion and effective use of the application, as well as the establishment of joint monitoring procedures.

A second similar agreement was signed earlier in March 2013 between the Council of State Council and the Bar Association of the Council of State and the Court of Cassation.

### **3. Review and foresight: the report of the State Council published in July 2015**

The Chairman of the Council of State Council set up a working group that was tasked with drafting a balance sheet report, that puts forward new proposals. This report was published in July 2015.

#### **3.1. The results of the implementation of online procedures in administrative courts and administrative courts of appeal reveals that**

This teleprocedures system was deployed in an accelerated manner in all administrative courts of France metropolis, less than 2 years.

The online procedures modify the registers tasks, but without result in a substantial reduction of duties. This application had two positive impacts: this system is cancelling the need to envelope and postage document, and producing quick and safe communications with the parties. But this relief transplant tasks is partly offset by the emergence of new tasks: the necessity to support lawyers and administrations for the implementation, and to manage asymmetric digital work files for judges. This change in working method is accompanied locally by difficulties in exercising the transplant missions. The impact of online procedures vary across jurisdictions, especially given the weight of asymmetric procedures.

Télérecours was originally designed as a tool for exchange between the parties and the court registries. Only in a second time it is intended to affect the terms of judicial work. The appropriation of remote procedures by judges is heterogeneous and remains unfinished. We are still in a transitional period, marked by a strong heterogeneity of practices across jurisdictions and even within each jurisdiction. Télérecours system facilitates the conduct of the investigation, but the collegial work of dematerialized records is still not widespread. The quality of judicial work is exposed to risks that are not only the result of computerized procedures, but the consequences of work organization adopted locally.

#### **3.2. Prospective**

The appropriation of remote procedures by all staff of the courts should be strongly encouraged. This is a collective challenge that should be a reflection within the jurisdiction and a strong mobilization of the coaching team of each court. The adoption of guidelines at national level appears essential to facilitate this appropriation.

#### **This implies respect with 4 requirements:**

- The respective judicial assignments of judges and court officers (registers), who are not affected by this reform, must be reaffirmed. Under the current provisions of the Code of Administrative Justice, the registers have to ensure the preparation of cases and the judges have to ensure the conduct of the investigation, regardless of the procedure medium, paper or digital.
- The availability for the chamber of courts (bench or panel of judges) of a complete and orderly single file is a necessity to maintain the quality of judicial work, to ensure that judges

decide in the light of all the evidence, upon which will be solve the dispute and prevent procedural irregularities.

- The reduction of the asymmetry, which requires the Registers of heavy tasks of scanning and printing, is a necessary condition to take full advantage of the benefits of remote procedures.

- Membership of lawyers and administrations should be facilitated by a uniform treatment of this new system in all jurisdictions.

**The report proposes three sets of objectives:**

**First objective: to facilitate and guarantee the quality of judicial work on paperless records.**

The use of the application “Télérecours” should be made mandatory for all lawyers, and governmental departments and public institutions before the end of 2016.

The obligation for the parties to index the documents transmitted should be accompanied by a legal sanction to ensure effective compliance: that is to say, after formal notice, the inadmissibility of the application or non inclusion of attachments for subsequent submissions.

The Registry should prepare for judges a unique working folder, complete and orderly. Regarding this folder support, extreme ways of "zero paper" and "all paper" appear one another as unrealistic. The judicial work on a dematerialized support is recommended. But some folders do not lend themselves easily to work on screen. The development of paperless work depends less on the nature of the litigation. Anyway, the registers do not have to establish both a digital record and later a paper file to the same case.

**Second objective: to preserve and develop at the same time the harmony of the legal work community.**

The appropriation of the implementation by all member jurisdictions should always be facilitated by appropriate trainings. To support the management of change, dialogue between judges and registry staff should be promoted. The consequences implied by the dematerialized work on the workstations must be taken into account, including the effects of computer work on health.

**Third objective: to increase adherence to the service of remote procedures and help reduce asymmetric procedures to all users of administrative justice.**

The cases investigated by Télérecours should be treated according to standard procedures in all jurisdictions. Dematerialized exchanges could be opened to private institutions as well as experts. The extension of the obligation to have a lawyer in the first instance (like at the appeal level) and its generalization in appeal would reduce of asymmetry.

Common management principles in all courts shall be defined in the near future vis-à-vis external users Télérecours, especially regarding the treatment of asymmetric procedures. A debate should be launched to define functional modalities and technical solutions for the opening, medium or long term, after significant experimentation, computerized exchanges with the private people, which will at once reduce asymmetry and improve the service provided to litigants.

**The Secretary-General of the State Council issued a circular on 2 December 2015 following the publication of this report, which advocates:**

A similar organization in each jurisdiction.

It is to the register to prepare the case file attributed to the rapporteur which must be unique, complete, ordered, in paper or electronic form (cf choice made within the jurisdiction).

The electronic use is done through using shared folders between the judges and the registry and emails.

The problem of asymmetric records, some using télérecours and others not, is also mentioned. The production of a paper document should never be claimed in part that uses télérecours.

**The Association of French administrative judges continues to claim a systematic paper copy**

It is officially written in the circular that the registry shall make available to the judges and ordered a complete file. This dossier can be prepared on paper or dematerialized form and the Registry is not responsible for conducting indexing parts if it has not been made by the parties. It is recommended that new requests are examined in dematerialized release.

Above all, each court are able to choose between paper or dematerialized files, while the French association was waiting for common instructions to all jurisdictions. The underlying idea is to promote cloud files, but not to write it.

Pressure is put on the courts managers to arbitrate potentially conflicting interests between the judges and other categories of workers in courts.

**Conclusion**

French administrative judges are quite never using paper documentation. The National newspaper publishing new laws and courts decisions is not printed.

Documents about immigration cases are not printed. Judges are working directly with screens. Each judge has two screens.

The new documents coming before the hearing are sent to the judges by the register only electronically.

Judges are not printing reports and draft decisions. Only the final decision is printed for signature of the judges.

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