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Tehnoredactare: Ameluța Vișan
Coperta: Ionuț Militaru
Angelica Mălăescu

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EDITORIAL

Light rays for dozens of Afghan judges and prosecutors rescued by Romania, Poland and Greece

*Dragoș Călin¹
Lucia Zaharia²*

In August 2021, a world collapsed in Afghanistan and chaos took place. Thus, the operation to rescue Afghan judges and prosecutors has become a duty for any colleague of them in any other state.

In a brief interview on 16 August 2021,³ Afghan Judge Tayeba Parsa (Kabul Court of Appeal) expressed serious concerns about the fact that, after the fall of the government, Afghan judges (and especially women judges) would be killed without any further guilty trials, as they were already sought at home.

In the face of such an unimaginable situation, the international community could not remain careless. In addition to international pressure for the newly established regime to respect human rights, it was necessary to immediately open all forms of humanitarian assistance.

The reactions that followed the interview were multiple, involving unknown forces and hopes that no one could shape.

With the help of the Polish Government, the International Association of Women Judges and a hearty lawyer in Warsaw, Anna Kruszewska, to whom the Romanian Judges' Forum Association provided all the support, maintaining the non-stop dialogue on WhatsApp, Tayeba Parsa and some of her colleagues were saved.

The operation was described, for the Romanian press, by the Polish Ambassador to Bucharest, Mr. Maciej Lang, participant in evacuation from Afghanistan:⁴ *"We communicated on WhatsApp in the first place and these people received messages when about*

¹ Ph.D. Judge, Bucharest Court of Appeal, co-president of the Romanian Judges' Forum Association, Director of the Judges' Forum Review. Professional e-mail: dragos.calin@just.ro.

² Judge, Bucharest Court of Appeal, co-president of the Romanian Judges' Forum Association. Professional e-mail: zaharia.ana@just.ro.

³ See webpage <http://www.forumuljudecatorilor.ro/index.php/archives/4494> .

⁴ See webpage <https://www.historia.ro/sectiune/general/articol/ambasadorul-poloniei-la-bucuresti-maciej-lang-participant-la-evacuarea-din-afghanistan-am-scos-oamenii-prin-canalul-de-scurgere-al-orasului> .

and where they needed to be. Because there were two places we could get people from. In front of the airport gate and out of the drain. It's an open channel through which wastewater flows from the city's sewer. It's just not covered. I think it's 2 meters deep, and it's 5 meters wide. The people we had contact on WhatsApp received information, messages that they had to come there and our soldiers were waiting for them there, on the other side of the sewer channel. The drain was near the airport. Then there was the issue of physically extracting these people. The Afghans came from one side and grouped on a shore. The soldiers were on the opposite side of the canal. A signalling and identification system was developed because there were crowds of people. There was water down to the knees in the canal. Those who came in, went into the canal and identified themselves. Then they waited until our soldiers could extract them. It was very hard. The people who were in the sewer channel, like I said, had a sign, a sheet of paper with a word, a password, and after I wrote down their presence, I checked if the people I was looking for were true, and in this case I could get them out. It was usually about families. And we had to find someone from a certain family and then other members. After we pulled these people out of the canal, I checked their identity once again and transferred them to a temporary camp. When we had a group of 100 people I was transferring to the airport in the military section where the planes were waiting. I've extracted over a thousand people. Polish citizens, but mostly Afghans. And we helped other international partners and international organisations that organised evacuation operations."

At the same time, following the public call made on 16 August 2021 by the Romanian Judges' Forum Association, in September, 6 judges and one Justice auxiliary, as well as their families, all Afghan citizens, were evacuated through the constant effort and support of the crisis cell within the Romanian Ministry of Foreign Affairs, which carried out the necessary procedures to bring these people under the protection of the Romanian state.

The episode was told by an Afghan university professor, Zaker Hussain Ershad, for a daily newspaper in Bucharest:⁵ *"At some point, the Romanian authorities contacted me: You need to get ready. A Romanian agent will handle your evacuation. After we met, I took my wife and five children and went to Kabul airport. Just when we were at the main entrance gate to the airport, there was a massive explosion next to us. I was a few hundred yards from the plane I had to leave on, but I couldn't move forward. We're back out of the way. Three of my students, who were there, died. I saw them with my own eyes (Zaker Ershad starts crying) Please excuse me. I can't control myself when I remember those moments. Where did you go from Kabul airport? The only option was to leave for Torkham, a city on the Pakistan border. It was the hardest way, because I had to stay hidden. I'm a public figure in Afghanistan, so some Taliban could recognise me at any time. I consulted with my family and chose to take that risk. We drove alone, with two cars made available by Romanians. We were astonished with fear. I changed my clothes, put on a strange hat, tried to camouflage myself the best I could. The Romanians helped us, but they were unable to accompany*

⁵ See webpage [https://www.libertatea.ro/stiri/interviu-un-profesor-afgan-povesteste-cum-agentii-](https://www.libertatea.ro/stiri/interviu-un-profesor-afgan-povesteste-cum-agentii-romani-l-au-salvat-cursa-cu-masina-3749968)

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us. Luckily, no one stopped us. From Torkham, I went to Islamabad, to the Embassy of Romania. From there to Dubai, where we could get to Bucharest.”

All these Afghan refugee judges in Romania, in the Galati Refugee Centre, are constantly helped by Romanian judges and prosecutors with food, clothes, other goods of strict necessity, with donations on an individual basis and on collective professional basis or as a result of the public subscription launched by professional associations (Initiative for Justice Association – Banca Comerciala Romana account RO52RNCB02031625 79230005, where you can also make donations in EUR). These funds also supported the travel of family members of these magistrates, refugees themselves, from Afghanistan by their own means.⁶

Afghan judges and other refugees follow psychological and accommodation programs in Romania, have begun studying the Romanian language and have to start life again. *“I think it’s an opportunity for me to teach in Bucharest, at the Faculty of Political Science, but we haven’t discussed any details yet. I’m here in Galati for now. I don’t know what’s going to happen, because I don’t know Romanian language. Maybe I’ll take some classes to talk about political science and the Islamic world. I have over 10 years of experience at the department, so I trust that I will be able to share new ideas in the field of political science”*, says Professor Zaker in the same interview.

The refugees in Galati are of all age categories, being 43 children (from

3-month-olds to students in terminal classes). Children need school, young people need university training.

Fawad’s wife, a refugee at Galati Centre, former judge of the Supreme Court of Afghanistan, is still wanted by the Taliban: *“My family was well known in Afghanistan. The Taliban came to our house, asked about my wife. We gave up everything. I gave up everything I had. I left with only one luggage, and I couldn’t get their clothes from home,”* says Fawad. He won the freedom to live instead. And a life he wants to build now in Romania. Children seem to get through the most painful memories and worries about the future. We’ll find a few of them on the football field. The Centre works like a student home. Kids, adults, they’re all self-sustaining. They play football, they play in the parks here. This is how a normal life goes for the 139 Afghans, Romanian media comment.⁷

The Romanian Judges’ Forum Association is trying to transfer Afghan colleagues and their families to Bucharest in order to have more possibilities for integration. The Ministry of Justice refused to get involved, but a few universities are ready to offer help. In Poland, accommodation conditions are better, fortunately.

However, dozens of judges remain in Afghanistan who desperately request the help of the Romanian Government and the associations of Romanian judges for evacuation.⁸ *These are people who can at any time be killed by the Taliban authorities, who are at the highest risk (judges, prosecutors, journalists, offi-*

⁶ See webpage <https://stirileprotv.ro/stiri/international/campanie-umanitara-declansata-de-magistratii-roman-care-vor-sa-isi-ajute-colegii-salvati-din-afganistan.html> .

⁷ See webpage [https://observatornews.ro/social/cei-139-de-afgani-care-au-fost-ajutati-de-statul-roman-sa-fuga-in-ultima-clipa-din-calea-talibanilor-](https://observatornews.ro/social/cei-139-de-afgani-care-au-fost-ajutati-de-statul-roman-sa-fuga-in-ultima-clipa-din-calea-talibanilor-duc-o-viata-noua-vor-sa-studieze-si-sa-munceasca-in-romania-440690.html)

[duc-o-viata-noua-vor-sa-studieze-si-sa-munceasca-in-romania-440690.html](https://observatornews.ro/social/cei-139-de-afgani-care-au-fost-ajutati-de-statul-roman-sa-fuga-in-ultima-clipa-din-calea-talibanilor-duc-o-viata-noua-vor-sa-studieze-si-sa-munceasca-in-romania-440690.html) .

⁸ See, for example, the webpage http://stiri.tvr.ro/exclusivitate-un-judecator-afgan-aflat-pe-lista-neagra-a-talibanilor-cere-romaniei-ajutor-pentru-a-putea-fugi-din-ara-magistratul-a-judecat-doar-cazuri-de-violenta-impotriva-femeilor_892005.html#view .

cials), people who survive dramatically, changing their hideout very often, deprived of food, practically sentenced to death.

Professor Zaker Hussain Ershad tells the drama of those who remain in Afghanistan: *“I have a lot of friends and former colleagues who are now hiding in Kabul. They are in mortal danger, there’s no exaggeration at all. They didn’t have this chance I had. I am grateful to the Romanians for saving my family and bringing me here. I would have been killed, if I stayed in Kabul, I wouldn’t have had a chance. Hussein, my youngest child, is still traumatised. He’s thinking about his schoolmates, everything he left behind. It’s very difficult for him. I’m safe now, but my colleagues who stayed in Afghanistan aren’t. I kindly ask you and those who will read this interview: save the people of Kabul! Save the people of Afghanistan! We have to do this for them! We all have a moral responsibility towards these people.*

Professor Zaker’s thoughts are not singular. Weekly we receive requests from fellow judges or prosecutors on WhatsApp. They live in an impossible terror, changing their hideout every night.⁹

We offer you some of the testimonies of such colleagues, which we anonymise so as not to endanger them:

- *“Once again, help me and my family! We are all very tired of this situation, we do not know what to do, our only hope is to get out of here in some way.”*

- *“Hello and politely, I would like to point out that in addition to being a judge in my family, my father has also been a judge for 20 years, and now the Taliban arrested my father and they are looking for me to find me, and before the fall of the government by the Taliban, we were threatened with death several times by the Taliban, even once above us. here was an armed attack in which one of our*



⁹ The Afghan judge asking Romania for help to flee the Taliban-led country is 35 years old. He’s the father of a little girl for a few years, and his wife is a journalist. In recent years, he has only tried cases of violence against women in a court of appeal: from beatings and rapes, forced marriages

to killing. Now, he has to run away to save his life and his family. See http://stiri.tvr.ro/exclusivitate-un-judecator-afgan-afat-pe-lista-neagra-a-talibanilor-cere-romaniei-ajutor-pentru-a-putea-fugi-din-ara—magistratul-a-judecat-doar-cazuri-de-violen—a-impotriva-femeilor_892005.html#view.

family members, (...), was wounded and shot in the hand. Now we escape, we are hiding somewhere else, and the Taliban have come several times behind the gates of our house to arrest us. My life and my family are in serious danger. and the Taliban think that we are the infidels because we ruled according to the laws of the time and I hope we will get rid of this miserable situation.”

• “taliban took all the provinces and all the prisoners and LawBreakers are free now. Most of them are searching for me and asking about my home and family members. I am in danger with my wife and two little child. I am from an educated family. My father is (...) and my mother is (...) in public school. My elder brother is (...). Younger brother is graduated from (...) faculty. Another young brother is a (...) student. My sisters have (...) in public school. We are all educated and a bright family. Please consider my problem I am really in danger and I am hidden in my sister’s home. Please help me and save my life.”

• “try to get me out of Afghanistan as soon as possible. Wild terrorists are shooting at the streets with guns and waiting for foreign forces to leave. Please try to save my life. Time for evacuation is very short. How can I get out of the house? Help me.”

• “please save my life and my family! With the help of my friends, I moved the furniture to another location. I’m hiding in

my friends’ house. According to my friends, Unidentified gunmen came to the back of my house several times and asked me where the judge was.”

Another fellow Afghan judge, under anonymity, released the following for Romanian Television: “We are in a very difficult situation. My family and I are hiding in Afghanistan. If the Taliban or other prisoners released from prison find us, they’ll kill us. Every night or at most every 2-3 days, we change our hideout because the situation is extremely dangerous. I kindly ask Minister Bogdan Aurescu to help us to get out of Afghanistan for a quiet life in Romania. Please kindly help us. We’re in imminent danger. Sooner or later, the Taliban and the ones I’ve condemned will take revenge. They’ll kill us!

Romanian Judges’ Forum Association has specifically asked the Ministry of Foreign Affairs to continue to engage in the rescue of Afghan judges and prosecutors whose lives are endangered (“Do not let innocent people be hunted and cruelly killed!”¹⁰ The Association also addressed the President of Romania asking for a decision to be taken at the highest level to save Afghan colleagues.

Fortunately, hope seems to appear from the south, namely from Greece: 26 judges and lawyers were evacuated to Athens.¹¹

“ To save one life is as if you have saved the world” (Talmud).

¹⁰ See webpage <http://www.forumuljudecatorilor.ro/index.php/archives/4543> .

¹¹ See webpage <https://www.ekathimerini.com/news/1168955/women-judges-and-attorneys-from-afghanistan-arrive-in-athens/> .

INTERVIU

Interviu cu judecătoarea afgană Tayeba Parsa (Curtea de Apel din Kabul)

1. Care este principala temere pentru dumneavoastră după ce talibanii au preluat controlul în Afganistan?

Tayeba Parsa: Pentru talibani, simplul fapt de a fi judecător al statului afgan este un motiv suficient pentru ca acesta să fie ucis fără vreun proces judiciar prealabil. Recent, săptămâna trecută, doi bărbați judecători au fost uciși de talibani în momentul în care talibanii au descoperit că ambii erau judecători. Dar pentru femeile judecător pericolul este mult mai mare. Talibanii cred că regulile Islamului interzic femeilor să fie judecător. Nu ne simțim în siguranță și nu mă îndoiesc că, după căderea guvernului, judecătorii - în special femeile judecător - vor fi executați fără un proces.

2. Credeți că toate femeile judecător din Afganistan vor fi îndepărtate din funcție?

Tayeba Parsa: Da, credem că femeile judecătorești vor fi eliminate din funcții, în special judecătorii care fac parte din grupul etnic Hazara, minoritar, și din comunitatea religioasă Shi'a, minoritară. În timpul regimului taliban anterior, au fost concediați doar judecătorii Hazara.

3. Cum vă poate ajuta comunitatea internațională și, în special, judecătorii din întreaga lume?

Tayeba Parsa: Comunitatea internațională poate presa talibanii pentru a



respecta statul de drept, drepturile omului și ale femeilor. Se prefac că le respectă, dar noi înțelegem că fac asta doar din cauza comunității internaționale.

4. Emigrarea din Afganistan va fi singura șansă de a scăpa cu viață pentru judecătorii afgani ?

Tayeba Parsa: Da, singura modalitate de a fi în viață și în siguranță pentru femeile judecător din Afganistan este să emigreze. Noi, femeile judecător afgane, discutăm pe un grup. Sunt atât de îngrijorate colegile și se tem, vor să părăsească Afganistanul pentru că și-au pierdut toate speranțele. Am auzit că talibanii vor începe să ne caute prin case.

Interviu realizat de
Judecător Dragoș Călin,
copreședinte al Asociației Forumul
Judecătorilor din România, 17.08.2021

Interview with Afghan Judge Tayeba Parsa (Kabul Court of Appeal)

1. What is the main fear for you after the Taliban took control?

Tayeba Parsa: For the Taliban, simply being a government judge is enough reason to be killed without trial. As recently as last week, two male judges were murdered by the Taliban the moment the Taliban discovered both men were judges. But for women judges, the danger is much greater. The Taliban believe that women judges are forbidden by the rules and regulations of Islam. We do not feel safe, and I do not doubt that after the government's fall, judges — especially women judges — will be executed without a trial.

2. Do you think that all women judges in Afghanistan will be removed from office?

Tayeba Parsa: As I said The Taliban believe that women judges are forbidden by the rules and regulations of Islam. We do not feel safe, and I do not doubt that after the government's fall, judges — especially women judges — will be executed without a trial.

Yes, we think women judges will be removed from offices especially the judges who are from the minority Hazara ethnic group and minority Shi'a religious community. During the previous Taliban regime, they fired only Hazara judges.



3. How could the international community, judges around the world, help you?

Tayeba Parsa: International community can press the Taliban for regarding rule of law, human and women rights. They pretend to regard but we understand that they pretend it because of the international community.

4. Will emigration from Afghanistan be the only chance for Afghan judges to escape?

Tayeba Parsa: Yes, the only way to be alive and safe for women judges is immigration. We, the Afghan women judges, are talking in a group. They are so worried and afraid all of them want to leave Afghanistan because they lost all their hopes. We heard that the Taliban are going to start searching homes.

Interview conducted by
Dragoș Călin,
judge, Bucharest Court of Appeals¹²,
17.08.2021

¹² E-mail professional: dragos.calin@just.ro.

ATITUDINI

The Use of Technology (and other measures) to Increase Court Capacity: A View from Australia

*Felicity Bell,
Michael Legg,
Joe McIntyre,
Anna Olijnyk**



Abstract:

This paper is a submission to the House of Commons Justice Committee Inquiry into Court Capacity. The purpose of this submission is to describe how technology has been used, especially during the COVID-19 pandemic, to increase court capacity in Australia. The submission identifies some challenges raised by the use of technology, and the responses to those challenges. The submission also covers some measures, not limited to technology, that have been taken to increase court capacity in response to COVID-19. Part I of this submission sets out the range of uses for which technology may be used in the justice system and develops a taxonomy of these uses. Part II provides an

* Felicity Bell is the Law Society of NSW Future of Law and Innovation in the Profession research stream (FLIP stream) Research Fellow at UNSW Law, Sydney. Email: f.bell@unsw.edu.au

Michael Legg is Professor and Director of the FLIP stream at UNSW Law, Sydney. Email: m.legg@unsw.edu.au

Joe McIntyre is a Senior Lecturer in Law at UniSA: Justice and Society, University of South Australia. Email: joe.mcintyre@unisa.edu.au.

Anna Olijnyk is a Senior Lecturer and Director of the Public Law and Policy Research Unit at Adelaide Law School, University of Adelaide, South Australia. Email: anna.olijnyk@adelaide.edu.au.

overview of the use of technology to increase court capacity in Australia, both before and during the COVID-19 pandemic. Part III identifies challenges that have arisen in connection with open justice, procedural fairness, access to justice and jury trials. We explain how Australian courts have responded to these challenges.

Rezumat:

Această lucrare reprezintă o cercetare transmisă Comisiei de Justiție a Camerei Comunelor în cadrul Anchetei privind Eficiența Instanțelor de Judecată. Scopul acestui articol este să descrie modul în care a fost utilizată tehnologia pentru a crește eficiența instanțelor din Australia, în special în timpul pandemiei de COVID-19. Lucrarea identifică unele provocări ridicate de utilizarea tehnologiei, precum și răspunsurile la aceste provocări. Prezentarea include, de asemenea, unele măsuri care privesc aspecte tehnologice, dar care au fost luate pentru a crește eficiența instanțelor ca răspuns la pandemia de COVID-19. Partea I din lucrare stabilește gama de utilizări ale tehnologiei în sistemul judiciar și elaborează taxonomia acestor utilizări. Partea a II-a cuprinde o prezentare generală a folosirii tehnologiei în vederea creșterii eficienței instanțelor din Australia atât înainte, cât și în timpul pandemiei de COVID-19. Partea a III-a identifică provocările care au apărut în legătură cu principiul transparenței justiției (open justice), echitatea procedurală, accesul la justiție și procesele cu jurați, și explică modul în care instanțele australiene au răspuns acestor provocări.

Keywords:

Online Courts; Online Dispute Resolution; COVID-19; AI; LawTech; Australia; Courts; Judges; Court Administration

Introduction

The purpose of this submission is to describe how technology has been used, especially during the COVID-19 pandemic, to increase court capacity in Australia. The submission identifies some challenges raised by the use of technology, and the responses to those challenges. The submission also covers some measures, not limited to technology, that have been taken to increase court capacity in response to COVID-19.

The language of ‘court capacity’ is not widely used in Australia. However, concerns of the kind that have provoked this inquiry (the cost, time, and availability of judicial dispute resolution) are certainly familiar. Australian discussions about

these concerns tend to use language such as ‘efficiency’ and ‘access to justice’ rather than ‘court capacity’.

Technology has not been the most prominent tool in improving court efficiency and access to justice in Australia. Instead, efforts to improve efficiency have centred around case management¹³ and alternative dispute resolution. Prior to the 2020 pandemic, technology played a relatively modest role. This may change in the future, following the widespread use of technology during the pandemic.

Part I of this submission sets out the range of uses for which technology may be used in the justice system and develops a taxonomy of these uses. Part II provides an overview of the use of

¹³ See, eg, Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No 89 (2000) 3.

technology to increase court capacity in Australia, both before and during the COVID-19 pandemic. Part III identifies challenges that have arisen in connection with open justice, procedural fairness, access to justice and jury trials. We explain how Australian courts have responded to these challenges. The Appendix contains legislative provisions referred to in the submission.

A note on the scope of this submission. There is a separate system of courts in each of the six Australian States; each of the two self-governing Territories (the Northern Territory and Australian Capital Territory); and at the federal level. This submission does not attempt the formidable task of capturing the detail of each jurisdiction's experience.¹⁴ Instead, we describe in general terms experiences that have been near- universal across all jurisdictions; and focus on specific cases that have been interesting, innovative, or contentious.

I. Form of Digital Justice Technologies

Technological innovation has always impacted upon the operation of courts and judicial decision-making. Those impacts are not always easy to anticipate, and no doubt this has contributed to reticence within the legal culture as to the adoption of such technologies.

Technology will always bring costs as well as benefits, and often those costs are unexpected and unpredictable. These concerns make it particularly important to reflect very deeply upon the potential

costs and proper limits of proposed innovation as a means of increasing court capacity.

However, before we can analyse these issues, it is necessary to begin with matters of definition. A major part of the challenge in anticipating how digital technologies may impact upon the efficiency and functioning of courts is to clearly define the ambit of the enquiry. This is complicated because digital justice lacks a shared common language and conceptual taxonomy. This submission begins, therefore, with a taxonomy to help frame the issue and foster clearer communication about the issues, scope and benefits of potential reforms.

Taxonomy of Justice Technology, ODR and Online Courts

The issue of terminology is particularly acute in the emerging areas of Online Dispute Resolution and Online Courts. Not only are various names – including Electronic Dispute Resolution ('EDR'), Online Dispute Resolution ('ODR'), Internet Dispute Resolution ('IDR'), Online Alternative Dispute Resolution ('OADR')¹⁵ and 'Online Courts'¹⁶

– used interchangeably to describe the relevant systems, the minimum required to constitute such a system is itself contested. For some authors, ODR is given a broad inclusive definition. Sourdin and Liyanage, for example, use the term ODR to 'refer to dispute resolution processes conducted with the assistance of communications and information technology, particularly the internet'.¹⁷ For

¹⁴ The Judicial College of Victoria has created a detailed compilation of developments in the courts of each jurisdiction: Judicial College of Victoria, Coronavirus and the Courts <https://www.judicialcollege.vic.edu.au/news/coronavirus-and-courts>; Judicial College of Victoria, Coronavirus Jurisprudence <https://www.judicialcollege.vic.edu.au/news/coronavirus-jurisprudence-0>.

¹⁵ See Vivi Tan, 'Online Dispute Resolution for Small Civil Claims in Victoria: A New Paradigm in Civil Justice,' (2019) 24 Deakin Law Review 101, 103-4.

¹⁶ See Doron Menashe, 'A Critical Analysis of the Online Court,' (2018) 39(4) University of

Pennsylvania Journal of International Law 921; Ayelet Sela, 'Streamlining Justice: How Online Courts Can Resolve the Challenges of Pro Se Litigation,' (2016) 26(2) Cornell Journal of Law and Public Policy 331.

¹⁷ Tania Sourdin and Chinthaka Liyanage, The Promise and Reality of Online Dispute Resolution in Australia in Mohamed S Abdel Wahab, Ethan Katsh and Daniel Rainey, Online Dispute Resolution: Theory and Practice (Eleven International Publishing, 2012) 483, 484 (emphasis added).