*A GENERAL AND LIMITED OVERVIEW OF THE CONCEPT OF JUDICIAL DOCUMENTS AND THE USE OF ELECTRONIC INSTRUMENTS IN ELECTRONIC JUDICIAL PROCESS**

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Abstract

This study provides a very general and limited overview of the understanding of judicial electronic documents in electronic judicial proceedings in general and the steps of electronification of the judiciary that are currently taking place from the perspective of traditional civil procedural law. How judicial electronic documents, electronic data, electronic media and electronic tools are constructed and what kind of position they can occupy in electronic judicial process is briefly scrutinised with a few examples. In this context, electronic substantive/formal judicial activities and electronic judicial systems where judicial electronic documents are created or stored are briefly mentioned through examples. Issues such as the use of artificial intelligence tools, virtual hearing and the principles of use of secure electronic signature are not directly included in the scope of this study, as they expand the scope of the subject matter excessively and are also debatable areas.

Key Words: *Electronic judiciary, judicial electronic document, electronic document, electronic judicial system, judicial electronic transactions*

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Elektronik Yargı Faaliyetinde Adli Belge Anlayışı ile Elektronik Araçların Kullanılması Meselesine Genel ve Sınırlı Bir Bakış

Öz

Bu çalışmada elektronik yargı faaliyetinde genel anlamda adli elektronik belge anlayışına ve geleneksel medenî usûl hukuku bakış açısıyla halihazırda gerçekleşmekte olan yargıda elektronikleşme adımlarına son derece genel ve sınırlı bir bakış sunulmaktadır. Elektronik yargı faaliyetinde adli elektronik belge, elektronik veri, elektronik ortam ve elektronik araçların ne şekilde kurgulanmış olduğu ve nasıl bir yer tutabileceği birkaç örnekle kısaca mercek altına alınmaktadır. Bu bağlamda, elektronik maddi/şekli yargı faaliyetlerinden ve adli elektronik belgelerin oluşturulduğu ya da saklandığı elektronik adli sistemlerden örnekler üzerinden kısaca söz edilmektedir. Yapay zeka araçlarının kullanımı, elektronik duruşma ve güvenli elektronik imzanın esasları gibi meseleler, konuyu fazlaca genişlettiğinden ve ayrıca tartışılabilir genişlikte alanlar olduğundan bu çalışmanın doğrudan kapsamına alınmamıştır.

Anahtar Kelimeler: *Elektronik yargı, adli elektronik belge, elektronik belge, elektronik yargı ağı, adli elektronik işlemler*

INTRODUCTION

Similar to the fact that classical documents are generally embodied on paper, recorded in the physical filing environment with traditional filing methods and archived in archive rooms; electronic documents are also embodied by occupying a virtual space and are recorded and stored in the electronic storage, which is also its own natural environment[1].

It is recognized that there are basically two types of electronic media. These are online and off-line electronic environments[2]. It should be noted that it has become extremely rare to come across an electronic environment that is not online, especially today, when concepts such as

[1] Alexander Roßnagel/ Maxi Nebel; "Beweisführung mittels ersetzend gescannter Dokumente", NJW, 2014, p. 886-891, p. 886, *available on* beck-online.de, *accesed* 21.05.2022.

[2] *Franz Hasenböhler, Das Beweisrecht der ZPO, Bd. 1 Allgemeine Bestimmungen, Mitwirkungspflichten und Verweigerungsrechte, Schultess Verlag, Zurich, 2015, p. 185, para. 5.38, 5.39; Billur Yaltı, E-İmza ve E-Belge: Kağıtsız ve Mürekkepsiz Dünyada Hukuk-I, Vergi Sorunları, Nisan 2001, V. 151, p. 127-135, p. 131; Mine Erturgut, "Elektronik İmza Bakımından E-Belge ve E-İmza", Bankacılar Dergisi, V. 48, 2004, p. 66-79, p. 66 etc.*

the Internet of Things are widely discussed and used. Today, electronic transactions, especially in terms of being the subject of legal disputes, are mostly carried out in online electronic environments.

In order to talk about and define an activity called electronic judgement, it is necessary to first understand the concept of electronic data as a meta-concept. However, it is also necessary to understand the concept of electronic media as a meta-concept. For example, considering that the majority of judicial proceedings in Turkish Law today are carried out through the National Judicial Network Project Informatics System, it does not seem possible to perform judicial activities without understanding the use of the National Judicial Network Project Informatics System[3]. Understanding their working system in general and how they should be used seems to be an important step in actively using electronic judicial activity.

In this study, although only general explanations are given, it has been tried to include general and selective information that a jurist may need to be aware of, especially in terms of electronic judgement, from a very narrow perspective. The aim of this study is to classify and understand electronic data which are possible judicial documents. For this reason, some concepts are explained only in general terms, but deep discussions are not included in order not to get away far from the subject.

I. The Importance and Necessity of Understanding the Concepts of Electronic Data and Electronic Environment as Meta Concepts

The concepts of electronic media, data carriers and digital data are discussed here as meta-concepts. In order to understand electronic documents, it is first of all very important to categorise them accurately[4]. Just like a promissory note, an electronic document also has elements. According to these elements, the nature and examination procedure of the

[3] *For further information see https://www.uyap.gov.tr/Hizmetler; https://www.uyap.gov.tr/Projeler; https://www.uyap.gov.tr/Altyapi, accessed 21.09.2022.*

[4] *For difficulties of understanding the difference of various electronic documents and evidence based discussions see Helmut Rüssmann, "Moderne Technologien im Zivilverfahren", 53 Annales U. Sci. Budapestinensis Rolando Eotvos Nominatae, 2012, available on (HeinOnline) accessed 21.09.2022, p. 418, 419; fn. 111; Richard Zöller, Zivilprozessordnung, 33. A., Otto Schmidt, 2020, § 371 para. 1; Arnd Becker, Elektronische Dokumente als Beweismittel im Zivilprozess, Peter Lang, 2004, p. 10; Ignacio Czeguhn, "Beweiswert und Beweiskraft digitaler Dokumente im Zivilprozess", JuS, 2004, p. 124-126, p. 126. Also see Margarethe Bergman/ Sirgfried Streitz, "Beweisführung durch EDV-gestützte Dokumentation", CR, 1994, p. 77-83, p. 78; Henning von Sponeck, "Beweiswert von Computerausdrucken", CR, 1991, p. 269-273, p. 270, 272.*

electronic document may change. For this reason, first the characteristics such as the type of electronic data, how it is recorded and how it is classified in terms of its technical elements are important.

As stated above, it has become the new normal to keep files in electronic media rather than physical media. Just as a paper document needs a physical medium, an electronic document also needs an electronic medium. In other words, just as classical documents are generally embodied on paper, recorded in the physical filing environment with traditional filing methods and archived in archive rooms, electronic documents are also embodied by occupying a virtual space in the electronic environment, which is its natural environment, and are recorded and stored in the electronic environment, which is also its own habitat.

Moreover, as pointed out above, concepts such as the Internet of Things have been widely discussed recently[5]. Therefore, considering the widespread use of electronic devices, it should be noted that it has become extremely rare to come across an electronic environment that is not online. Today, electronic transactions, especially in terms of being the subject of legal disputes, are mostly carried out in online electronic environments.

Online electronic environment is divided into two main sub-headings. These are the general network, i.e. the internet environment and the relatively newer cloud computing environment. In particular, cloud computing environment is a highly innovative electronic data storage environment and is nowadays being widely discussed[6]. Especially following the emergence and widespread use of cloud computing, the tradition of data immigration is being abandoned. This means that even the devices where the data is physically stored need to be recorded and transferred to the devices that physically carry them. The cloud computing system can even eliminate this need. Thus, an application that supports the concept that can be defined as the statelessness of electronic data has also emerged.

The importance of these concepts ultimately hits two important

[5] *Armağan Bozkurt-Yüksel; "Nesnelerin İnternetinin Hukuki Yönden İncelenmesi". Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi 17, V. 2, (Aralık 2015), p. 113-140, p. 116 etc.*

[6] *Kutan Koruyan/ Fatma İtır Bingöl, "Bulut Bilişim Hizmet Sağlayıcılarının Veriyi Koruyamamaları Durumuyla İlgili Türk, Avrupa Birliği ve Amerikan Hukukundaki Düzenlemeler", Dokuz Eylül Üniversitesi Sosyal Bilimler Enstitüsü Dergisi, 2016, 17(3), 367-388, p. 370 etc., available on https://Doi.Org/10.16953/Deusbed.67150 accessed 21.09.2022.*

points. The first of these is the electronic transactions and documents corresponding to the procedural proceedings, which can be regarded as the formal proceedings of the judgement. For example, a hearing transcript kept in an electronic environment, the electronic transmission of a party's procedural action to the court and its recording in an electronic environment, etc.[7]. On the other hand, there are transactions that may be referred to as the material transactions of the proceedings, especially those related to the law of evidence. An important point that should be known about the transactions related to the law of evidence is that when the proof activity is carried out on the electronic document, the physical environment almost loses its importance. The real meaning of this is as follows: For example, in a traditional judicial activity, the place where all kinds of procedural procedures or proof activities are carried out is usually the courtroom. Naturally, there may be exceptions to this, such as discovery and the authority of the expert to examine on site. However, when an electronically stored data is analysed, the environment of that data will be none other than an electronic environment.

II. Electronic Signature as an Important Element of Transactions Performed Electronically

The most important element of the electronic document is undoubtedly the electronic signature. For this reason, the definition of electronic signature, its types and its place in the legislation are extremely important in electronic judicial activity[8]. An electronic signature, depending on the type of signature, will indicate the value of an electronic document in two aspects. The first of these is the place and reliability of that electronic document in the electronic case file. The second is that the signature is an important element that reveals the strength of proof of that document. This means that, depending on the nature of the signature, that document may turn into a means of proof that binds the judge in the proof activity. The most important example of this is that the deed evidence, which is accepted

[7] *Mustafa Serdar Özbek/Mehmet Ertan Yardım, "Elektronik Noterlik İşlemleri", Türkiye Noterler Birliği Hukuk Dergisi, B. 3, V. 1, Ocak 2016, p. 3-118. p. 10 etc.; Mustafa Serdar Özbek, "Elektronik Ortamda Düzenlenen Noter Senetleri", Cevdet Yavuz'a Armağan, 2016, p. 2213-2282, p. 2215 etc.; Alexander Roßnagel, "Neue Regeln für sichere elektronische Transaktionen – Die EU-Verordnung über elektronische Identifizierung und Vertrauensdienste", NJF, 2014, p. 3686-3692., p. 3690; Roßnagel/Nebel, Gescannter Dokumente, p. 886 et seq.*

[8] *Özbek/Yardım, Elektronik Noterlik, p. 13.*

as conclusive evidence in the Turkish Code of Civil Procedure, is a type of evidence that binds even the judge themselves[9]. If there is a fact that needs to be proved by absolute evidence, the judge will be bound by that absolute evidence according to the circumstances[10].

After the importance of the signature element in the electronic document and the types of electronic signature are discussed in general terms, it is necessary to examine the most common types of electronic documents in the courts. It would be useful to provide a non-limited number of examples and explanations, especially the types of electronic documents that are most frequently encountered in court files, in order to illustrate which types of electronic documents may be in need of the judge's direct perception in a civil proceeding. In addition, it is likely that new documents that have never been mentioned here will be brought in front of the judges in a short period of time, depending on the use of new types of electronic documents.

III. An Overview of Electronic Judiciary and Digitalisation of Judicial Activities of Courts

A. In General

Electronic judiciary refers to the execution of judicial activities in electronic environment as a whole. The concept of electronic judiciary is a broad concept that covers the virtual hearing and all other judicial

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[9] *Evidence is the instrument used for the proof of a fact, which enables the judge to perceive the events that took place outside the court in order to transfer them to the proceedings. In this context, see Baki Kuru, Hukuk Muhakemeleri Usûlü, B. I-VI, İstanbul, Demir Demir Yayıncılık, 2001, B. II, p. 1966; Murat Atalı/ İbrahim Ermenek/ Ersin Erdoğan, Medenî Usûl Hukuku, 5. E., Yetkin Yayınları, Ankara, 2022, p. 484; Oğuz Atalay, Pekcanıtez Usûl – Medenî Usûl Hukuku (3 Cilt), İstanbul, On İki Levha Yayıncılık, 2017, p. 1731; Necmettin Berkin, Medenî Usûl Hukuku Esasları, İstanbul, 1969, p. 169; İlhan Postacıoğlu, Medenî Usûl Hukuku Dersleri, 3. E., İstanbul, Sulhi Garan Matbaası Kollektif Şirketi, 1975, p. 527; Baki Kuru/Burak Aydın, Medenî Usul Hukuku El Kitabı, İkinci Baskı, B. I-II,Yetkin Yayınları, Ankara, 2021, p. 616; Serdar Nart, "Alman ve Türk Hukukunda Senetle İspat", DEÜHFD, B. 9, V. 1, 2007, p. 207-232, p. 208; Oğuz Atalay, "Emare İspatı", Manisa Barosu Dergisi, Y. 18, V. 70, 1999, p. 7-22, p. 7-8.*

[10] *In German law, the law gives the judge discretionary authority in terms of evidence, but it is stated that the evidence of the promissory note gains extra strength with certain presumptions. In this direction, see Dieter Leipold, "Die gerichtliche Anordnung der Urkundenvorlage im reformierten deutschen Zivilprozess", Festschrift für Walter Gerhardt, Köln 2004, p. 563-585, p. 570; Eberhard Schilken, "Gedanken zum Anwendungsbereich von Strengbeweis und Freibeweis im Zivilverfahrensrecht", Recht und Risiko – Festschrift für Helmut Kollhosser zum 70. Geburtstag Band II Zivilrecht, Karlsruhe, 2004, p. 649-662, p. 655.*

proceedings included in the judicial activity. This may include the collection of judicial documents by the courts, preparation of minutes, filing, collection of evidence and all other proceedings related to the judgement.

B. Formal and Substantive Judicial Activities

1. In General

As it is known, courts fulfil their judicial activities through the clerical office of the court. It is a rule that each court has a court clerk's office and clerks. They assist the judge in the administrative and judicial organisation of the courts. Accordingly, the judicial activity of the courts is divided into two. These are formal judicial activities, including the internal affairs of the courts, and substantive judicial activities, which are the main task of the courts [11].

The closer the decision is to the material truth in a trial, the better the substantive judicial activity is carried out. In other words, the substantive judicial activity rather refers to the procedures that touch the core or substance of the proceedings. For example, the examination of the evidence by the judge is a substantive judgement activity. Similarly, the substantive judicial activity in a broad sense is identified with the investigative phase, which is the phase where the evidence is evaluated in Turkish law. In this context, although the judicial activity in the literal sense refers to the judicial activities in the substantive sense, it is necessary to examine which transactions can be carried out by the courts under the name of electronic judgement, especially within the scope of the evidence activity. The first step of electronic judgement is for the courts to obtain the electronic data related to the case file through an electronic environment. The second step is to receive, evaluate and store the electronic data duly delivered to the courts as a means of evidence or as a judicial document, depending on its nature.

It is possible to divide the electronic judicial activity into two as formal and substantive electronic judicial activity, just as the basic judicial activity is divided into two. Accordingly, the second step mentioned above is within the scope of electronic judicial activity in the substantive sense. In particular, it is stated that if the examination of evidence can be carried out in a healthier way in the electronic environment, they should be examined

[11] *Richard Susskind, Online Courts and Future of Justice, Oxford University Press, 2019, p. 197, 198; Hakan Pekcanıtez/Oğuz Atalay/ Muhammet Özekes, Medenî Usûl Hukuku Ders Kitabı, 11. E., On iki Levha Yayınları, İstanbul, 2023, p. 25 et seq.*

in their own environment by means of appropriate tools[12]. For example, a document that is traditionally submitted to the court file printed on paper can be scanned and transferred from paper to electronic media in accordance with the digitalisation practices in the judiciary[13].

Thus, in the electronic environment, the courts first receive the electronic data duly transmitted to them and then examine these data in the electronic environment. This activity of obtaining and examining evidence refers to electronic judgement in a material sense. The procedures such as conducting discovery on electronic data, conducting expert examination, hearing witnesses electronically, sending and receiving various judicial documents electronically, and making electronic notification are examples of electronic judicial proceedings. In addition, holding a virtual hearing is also within the scope of electronic judicial activity.

2. Necessity of Legal Arrangements for the Implementation of Electronic Judiciary and Judicial Electronic Document Transactions

In this context, legal regulations are needed in order to realise electronic judicial activities. Special attention is paid to issues such as whether a judicial document has been received by the court or not, and on which dates it has been received. This is because time periods are of particular importance in terms of civil procedural law. For this reason, it is necessary to look at the provisions regulating electronic judiciary in a broad sense. In German Law, some regulations have been made in order to realise electronic judiciary. Firstly, a draft law called "Elektronischer Rechtsverkehr Gesetz" (ERGV) was prepared. However, the name of this draft law was later changed to "Justizkommunikationsgesetz" (JKomG). The Justizkommunikationsgesetz became applicable on 1 April 2005[14].

The JKomG (Justizkommunikationsgesetz) amended some articles of the German Code of Civil Procedure and made some additions to it[15].

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[12] . *Roßnagel/Nebel, Gescannter Dokumente, p. 886 et seq.*

[13] *Roßnagel/Nebel, Gescannter Dokumente, p. 886 et seq.*

[14] *Susanne Hähnchen, "Elektronische Akten bei Gericht - Chancen und Hindernisse", NJW, 2005, p. 2257-2259, p. 2257; Henning Müller, "eJustice – Die Justiz wird Digital", JuS, 2015, p. 609-613, p. 609; Hans Michael Malzer, "Elektronische Beglaubigung und Medientransfer durch den Notar nach dem Justizkommunikationsgesetz", DNotZ, 2006, p. 9-32, p. 9; Onur Oğlakçıoğlu, "Medenî Usûl Hukuku Yönünden Elektronik Adli İletişim" Aydın, 2008, available on https://oglakcioglu.av.tr/ accessed 20.12.2021.*

[15] *Hähnchen, Elektronische Akten bei Gericht, p. 2257; Müller, eJustice, p. 609; Malzer,*

The JKomG or the Law on Judicial Communications has introduced regulations on the principles of electronic form in legal proceedings. However, important amendments have also been made regarding the place and effect of electronic documents in terms of the law of evidence. Accordingly, documents signed with a qualified electronic signature are no longer the subject of judicial inspection evidence and are now recognised as the subject of documentary evidence[16].

In addition, there are various regulations in Swiss law that can support electronic judicial activities and provide the opportunity to issue judicial electronic documents. Some of the main electronic media and electronic data regulations concerning the Swiss Law can be listed by giving examples as follows: Qualified electronic signature as a substitute for handwritten signature (OR Art. 14, 2), storage of electronic data by the auditor (OR Art. 730c, 1), management and keeping of the commercial register by using information technologies (OR Art. 929a), electronic storage of commercial documents (OR Art. 957 and 963), regulation of prohibited contact by electronic methods (ZGB Art. 28b, 1 and 2), electronic certification of civil status (Art. 39 and Art. 48, 5 ZGB), maintenance of the land registry using information technologies (Art. 942 ZGB), electronic communication with the land registry offices (Art. 949a, 2 and 3 ZGB), electronic administrative communication pursuant to the Trademark Protection Act, Design Act and Patent Act (Art. 40 MSchG, Art. 26a DesG, Art. 65a PatG)[17]. As can be seen, there are many adaptation regulations in Swiss law for the use of electronic data in daily life and its incorporation into the jurisdictional law. It is seen that information technologies are tried to be used as much as possible in the field of civil procedure law and civil law. In terms of electronic data, a distinction is made in terms of being signed and unsigned. Electronic data is a data subject to the free evaluation of evidence by the court[18].

Elektronische Beglaubigung und Medientransfer, p. 9.

[16] *Hähnchen, Elektronische Akten bei Gericht, p. 2257; H. Müller, eJustice, p. 609; Oğlakçıoğlu, Elektronik Adli İletişim, available on https://oglakcioglu.av.tr/ accessed 20.12.2021.*

[17] *For further information, see Heinrich Andreas Müller, Schweizerische Zivilprozessordnung ZPO Kommentar, 2.A., Dike Verlag AG, 2016, p. 1442.*

[18] *Müller, ZPO, p. 1422, para. 17-20.*

3. The Importance of the Signature Once Again Reveals Itself: Equating Electronic and Handwritten Signature

With the Justizkommunikationsgesetz, it is expressed that in German law it is desired that the electronic signature has the same value as a handwritten signature [19].

This idea in German law is parallel to the value attributed to secure electronic signature in Turkish law, and constitutes one of the most important manifestations of the effect of electronification on proof activities in the judiciary.

It is stated that the German legislator, by attaching a consequence to the signing of electronic documents with an electronic signature, foresees that they can be used in court and thus, a validity condition is imposed on electronic documents[20]. For this reason, while mentioning electronic judiciary, it is thought that it will be guiding for this study to take a general look at and include the legal regulations made in this regard in German Law.

It is also necessary to briefly mention once again the regulation referred to as the Reform Law on Notification, which was introduced in 2001, in parallel with the important regulations mentioned above. The Law on the Reform of Notification was adopted on 25 June 2001 and, as its name suggests, it is a reform regulation considering the year of its adoption and the fact that it was enacted more than twenty years ago[21]. In order to understand the true spirit of these and similar reforming regulations, it may be useful to look at the other regulations introduced in 2001. After the Notification Reform Law, the "Law on the Adaptation of the Provisions of Private Law on Form and other Provisions to Modern Legal Relations" was adopted[22]. Adopted on 13 July 2001, this Law complements other electronic

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[19] *Müller, eJustice, p. 609; Alexander Roßnagel/Stefanie Fischer-Dieskau, "Elektronische Dokumente als Beweismittel - Neufassung der Beweisregelungen durch das Justizkommunikationsgesetz", NJW 2006, p. 806-808, p. 808. Oğlakçıoğlu, Elektronik Adli İletişim, available on oglakcioglu.av.tr accessed 20.12.2021.*

[20] *Oğlakçıoğlu, Elektronik Adli İletişim, available on https://oglakcioglu.av.tr/ accessed 20.12.2021.*

[21] *Giesela Rühl, "Preparing Germany for the 21st Century: The Reform of the Code of Civil Procedure" 6 German Law Journal, Vol. 06 No. 06, 2005, p. 910-942, p. 912 et seq.; Roßnagel/Fischer-Dieskau, Elektronische Dokumente, p. 808.*

[22] *For further information about the Code, see "Gesetz zur Anpassung der Formvorschriften des Privatrechts und anderer Vorschriften an den modernen Rechtsgeschäftsverkehr", BGBl 2001 I, S. 1542. Also see http://www.egvp.de/software/dokumente/ZustellungsreformG.pdf; Oğlakçıoğlu, Elektronik Adli İletişim, available on https://oglakcioglu.av.tr/ accessed 20.12.2021.*

reform laws and shows how digitalisation can be concretely applied to the judiciary. In this context, a number of amendments to the Law have been enacted, introducing fundamental regulations on electronic filing, the acceptance of electronic documents in courts, the evidentiary nature of electronic documents and electronic notification[23].

This Code (FormVAnpG), which is briefly referred to as the Code on Harmonisation of Forms in the doctrine, has amended various laws and introduced form regulations that, as its name reflects, endeavour to make electronic documents and physical documents equivalent to each other in terms of form. For example, Article 126 of the German Civil Code (Bundesgesetzbuch - BGB) is a formal regulation. Furthermore, Article 126a was added to the German Civil Code by the Harmonisation of Forms Act (FormVAnpG). Accordingly, the first paragraph of Article 126a is as follows: "Unless otherwise provided by law, adding the name to the electronic form and signing it with a qualified electronic signature is sufficient to substitute the written form with the electronic form[24]. "

In the doctrine, along with this article, there is a point that is particularly emphasised due to its importance[25]. This is the equivalence recognised in terms of electronic form. This step was taken for the first time with the Harmonisation of Forms Act mentioned here, which was followed by other regulations. Considering that it was adopted twenty-two years ago as of the writing of this research, it is obvious that it is a real reform and it is a regulation that supports the digitalisation movement, which started in many countries in the same years, in a very positive way.

In addition to the above-mentioned provision on form in Article 126a of the German Civil Code, Article 130a of the German Code of Civil Procedure should also be mentioned[26]. Similar to Article 130a of the German Code of Civil Procedure, Article 130b regulates judicial electronic documents and the electronic form for judicial electronic documents [27].

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[23]. *Rühl, 21st Century: The Reform, p. 912 et seq.; Oğlakçıoğlu, Elektronik Adli İletişim, available on https://oglakcioglu.av.tr/ accessed 20.12.2021.*

[24] *Oğlakçıoğlu, Elektronik Adli İletişim, available on https://oglakcioglu.av.tr/ accessed 20.12.2021; Rühl, 21st Century: The Reform, p. 912 et seq.*

[25] *Oğlakçıoğlu, Elektronik Adli İletişim, available on https://oglakcioglu.av.tr/ accessed 20.12.2021; Rühl, 21st Century: The Reform, p. 912 et seq.*

[26] *Walter Zimmermann, Zivilprozessordnung, 10.A., Bonn, 2016, §130a; Zöller, ZPO, § 130a.*

[27] *Oğlakçıoğlu, Elektronik Adli İletişim, available on https://oglakcioglu.av.tr/ accessed 20.12.2021; Zimmermann, ZPO, §130a; Zöller, ZPO, § 130a.*

Article 130b was added to the German Code of Civil Procedure by the German Code of Judicial Communications. Article 130b of the German Code of Civil Procedure, entitled "Judicial Electronic Documents", reads as follows "Where the original signatures of judges, trustees, registrars, registry clerks or bailiffs are prescribed, it shall be sufficient for the document to be registered as an electronic document if the person concerned adds his name to the end of the document and signs the document with a "qualified electronic signature[28]. "

4. Two Reasons for Giving Examples from German Law: German Legislative Tradition and European Union Regulations

The most important reason why there is a tendency to focus on the German Code of Civil Procedure while providing explanations on electronic judgement is the detailed regulations in the German Code of Civil Procedure. The tradition of introducing detailed rules, which is accepted to be dominant in German law as a whole, has also manifested itself here. It can even be said that the German law-making tradition is elaborative and this can be seen as a positive feature that enables the utilisation of German law in comparative law. Namely, Articles 130a and 130b separately regulate the meeting of electronic documents with the court and the filing processes. The importance of Articles 130a and 130b for this study lies in the procedure in which electronic documents, which are intended to be submitted as electronic legal documents or electronic evidence, will be presented to the court and the method/tool by which they will be examined by the judge. In order to explain all these, it is necessary to first understand Articles 130a and 130b, which stipulate the principles of submission of electronic documents to the court. In summary, it is possible to state the following: Article 130a regulates the procedure for the actors of the proceedings other than the judge to submit electronic documents to the court[29]. Article 130b, on the other hand, is more related to the internal functioning of the court[30].

Another important reason is the endeavour in German law to follow the European Union rules in a rigorous and comprehensive manner. While describing the steps taken in Germany with regard to electronic judiciary, the issue of how to start implementation in connection with the reforms is

[28] . *Zimmermann, ZPO, §130b; Zöller, ZPO, § 130b.*

[29] *Hans-Joachim Musielak/Wolfgang Voit, Zivilprozessordnung, 20. Auflage, 2023,§ 130a.*

[30] *Musielak/Voit, ZPO, § 130b.*

discussed as an example[31]. Indeed, the judicial reform efforts in German law are shown as an example of the steps taken in terms of digitalisation in the judiciary[32]. Pilot courts were selected as the first step for the implementation of these new reforming regulations. In this context, it is emphasised that the pilot application was implemented in the Hamburg Tax Court in 1999 and that this was a first in history[33]. The practice at the Hamburg Tax Court continued as a pilot application for approximately two years. It is important to emphasise in this respect that the Hamburg Tax Court was the first judicial authority to accept applications by electronic mail[34]. In connection with all these developments, the importance of the electronic signature supporting the concept of electronic judgement is once again emerging. Article 2, paragraph 3 of the German Electronic Signature Act of 2001 regulates the nature, format and encryption of electronic documents.

The above-mentioned Judicial Communication Act has also amended the German Code of Civil Procedure. Accordingly, Article 299 of the German Code of Civil Procedure has been amended, and the features that bind all statements together and reveal their importance in terms of civil procedural law have been emphasised. Thus, the issues concerning the electronic judgement, which are important for the subject matter of this study, have been placed on a relatively more solid legal basis. In particular, the electronic examination of the judicial file and the creation of copies of the originals in the electronic environment are now included in the German Code of Civil Procedure[35].

In German law, an important issue regarding the sending of electronic documents to the court via electronic mail is the issue of signature. Accordingly, in order for the court to accept and examine the electronic document sent to it, the document must be signed with an

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[31] *Musielak/Voit, ZPO, § 130b. Also see Oğlakçıoğlu, Elektronik Adli İletişim, available on https://oglakcioglu.av.tr/ accessed 20.12.2021.*

[32] *Michael Huber; "Verfahren und Urteil erster Instanz nach dem Zivilprozessreformgesetz (ZPO-RG) - 2. Teil. Weitere besonders wichtige Änderungen im Verfahrensrecht erster Instanz", JuS, 2002, p. 690-693, p. 690 et seq.; Rühl, 21st Century: The Reform, p. 912 et seq.*

[33] *Huber, wichtige Änderungen im Verfahrensrecht, p. 690 et seq.; Oğlakçıoğlu, Elektronik Adli İletişim, available on https://oglakcioglu.av.tr/ accessed 20.12.2021.*

[34] *Oğlakçıoğlu, Elektronik Adli İletişim, available on https://oglakcioglu.av.tr/ accessed 20.12.2021; (http://fhh.hamburg.de/stadt/Aktuell/justiz/gerichte/finanzgericht/elektronischer-rechtsverkehr/start.html).*

[35] *Oğlakçıoğlu, Elektronik Adli İletişim, available on https://oglakcioglu.av.tr/ accessed 20.12.2021.*

electronic signature. However, the signature in question should not be an ordinary signature, but a qualified electronic signature. In fact, it is specifically emphasised that the fact that this document is signed with a qualified electronic signature is a matter that fulfils the requirement of form[36]. As can be seen, the institution of signature once again emerges as an important and distinctive element for all kinds of electronic documents. For this reason, the issue of signature and electronic signature has been the subject of a separate chapter in this research.

In the context of this strict rule regarding the existence of a qualified electronic signature, an opinion has been expressed in the doctrine in order to soften the losses caused by this strictness[37]. As a rule, for documents sent to the court via electronic mail, each document must be signed separately with a qualified electronic signature. However, according to this opinion, it should not be expected that each of the documents sent to the court electronically should be signed with a qualified electronic signature separately. In other words, it is stated that the fact that only one of the electronic documents submitted to the court by electronic procedure is signed with a qualified electronic signature should be sufficient for the accompanying documents to be accepted as signed by the person who has the qualified electronic signatureAs a rule, for documents sent to the court via electronic mail, each document must be signed separately with a qualified electronic signature. However, according to this opinion, it should not be expected that each of the documents sent to the court electronically should be signed with a qualified electronic signature separately. In other words, it is stated that the fact that only one of the electronic documents submitted to the court by electronic procedure is signed with a qualified electronic signature should be sufficient for the accompanying documents to be accepted as signed by the person who has the qualified electronic signature[38].

However, in order for this to be accepted, it is expected that the party submitting the electronic documents must at least undertake that they are in conformity with the original. This commitment and the expectation of declaration of conformity to the original can be likened to the "'as original'

[36] *See Leyla Keser Berber, İnternet Üzerinden Yapılan İşlemlerde Elektronik Para ve Dijital İmza, Ankara, 2002, p. 203.*
[37] *Musielak/Voit, ZPO, § 130a; Zimmermann, ZPO, §130a; Zöller, ZPO, § 130a et seq.; Keser Berber, Elektronik Para ve Dijital İmza, s. 203.*
[38] *Keser Berber, Elektronik Para ve Dijital İmza, s. 203.*

records" that are frequently used in practice and used when submitting copies of documents to the court. Thus, it may be possible to overcome the formal barriers constructed by the strictness of the qualified electronic signature that the Law insists on. Because the purpose of introducing the acceptance of documents through electronic environment into the law is basically to make the proceedings faster, cheaper and effortless. In addition, the maxim of procedural economy, one of the basic principles, also supports this approach.

5. The Issue of Submission Date as an Example of a Problem That May Arise

An important issue here is the date of submission if the electronic document is submitted to the court electronically. In this respect, the third paragraph of Article 130a of the German Code of Civil Procedure provides guidance. Accordingly, the time of submission of an electronic document shall be deemed to be the moment at which the electronic document is stored in the court's system[39].

In other words, the moment the sent electronic document leaves the possession of the sender is not accepted as the date of submission. However, technically, sending and receiving operations can take place within seconds. Therefore, the sending and receiving times of a document transmitted to the court electronically will mostly have the same sending and receiving dates. However, if there is a dispute regarding such a fact, i.e. the sending and receiving times, this may need to be investigated by the court within the framework of the judge's duty to enlighten the case.

An important point to be noted here is that the date when the electronic document is printed out and physically placed in the court file cannot be accepted as the date of submission. In this respect, the fact that the electronic document is printed out to be placed in the physical court file does not lead to a change in the dates.

In terms of electronic documents, the concepts of printout and copy are of additional importance[40]. Two important features stand out in terms of copies of electronic documents. The first one, as mentioned above[41], is

[39] *See Musielak/Voit, ZPO, § 130a; Zimmermann, ZPO, §130a; Zöller, ZPO, § 130a et seq.*

[40] *Johann Bizer/Volker Hammer, "Elektronisch signierte Dokumente als Beweismittel", DuD, 11/1993, p. 622; Erturgut, Elektronik İmza, p. 67.*

[41] *Bizer/ Hammer "Elektronisch signierte Dokumente als Beweismittel", DuD, 11/1993, p. 622; Erturgut, Elektronik İmza, p. 67.*

that the date on which the electronic document is printed out cannot be accepted as the date on which the document was delivered to the court. The second feature is that the printout obtained from the printer is not the original document, but only a copy of it.

C. A few examples of Auxiliary Systems in Electronic Judiciary

Electronic judiciary means not only electronic judicial communication, but also a wider range of judicial activities carried out by means of electronic judicial assistants[42]. In order to carry out such an activity in a secure manner, various systems and software are needed. For example, the audio and video information system in Turkish law is an important part of this. This system is generally designed for judicial proceedings that need to be carried out through audio and video transmission[43]. Today, in Turkish law, it is generally used in the criminal procedure rather than in the civil procedure.

In addition to the audio and video information system, another example is the virtual hearing system. This system, the electronic hearing platform, which allows the hearings to be held virtually, is also an important example of a system for conducting the judiciary electronically. Especially during the pandemic, in Turkish law, with an amendment made to the Code of Civil Procedure, if an virtual hearing is held, which can now be accepted by the judge even upon the request of one of the parties, the transactions in electronic environment are carried out through this virtual hearing platform. The proper functioning of such systems depends on the provision of appropriate and advanced infrastructure. In other words, it requires serious work and preparation in the background.

An important example in this context is Justitia 4.0, which is considered as the digitalisation and evolution of the judiciary in Switzerland[44]. The project aims to involve more than 15.000 staff of courts and prosecutor's offices at all federal levels, as well as approximately 12.000 lawyers and staff in the processes of digitalisation in the judiciary[45]. It is stated that the project is currently at the beginning of the realisation

[42] *Kevin D. Ashley, Artificial Intelligence and Legal Analytics New Tools for Law Practice in the Digital Age, Cambridge University Press, 2017, p. 122 et seq.*

[43] *Yücel Oğurlu, İdare Hukukunda E-Devlet Dönüşümü ve Dijitalleşen Kamu Hizmeti, On İki Levha Yayıncılık, 2010, p. 225 etc.*

[44] *In this context, see Justitia40.ch/de, accessed 24.04.2023.*

[45] *In this context, see Justitia40.ch/de, accessed 24.04.2023.*

phase after a long conceptual phase and the project processes to be realised until 2027 are planned[46].

Another example in Turkish law is electronic auction sale procedures. Such a system has been adopted in respect of movable goods and immovables that need to be sold through enforcement and are foreseen to be sold by auction procedure. The sale of seized goods through electronic auction is carried out with the security elements provided by the system. Thus, risks such as bid rigging, bid manipulation, informality, favouritism or special treatment are intended to be eliminated. Electronic sales and electronic auction information systems can be somewhat forcibly likened to the use of electronic commerce platforms, which are becoming increasingly widespread in the world today. Just as it is possible to shop regardless of time and place, it is now possible to carry out judicial electronic sales, seizure and restriction procedures electronically. Transactions such as payment of fees, costs and charges can be made through credit cards, debit cards, electronic letters of guarantee or electronic fund transfer, just like electronic commerce sites.

Considering the high number of case files especially in Turkish Law, it can be assumed that the number of users entering the system will also be extremely high. The high number of users requires a high capacity of the elements supporting the system. For example, the performance of an electronic information platform may be continuous depending on the number of visitors being within a predicted range. For example, an information platform that is planned for 1,000,000 user visits in a day may not function properly if 5,000,000 visitors demand service at the same time within an hour. In such an example, problems may occur in terms of servers and other systems supporting the platform. In order to overcome these problems, these support systems should be put into service by carrying out the necessary infrastructure works. Otherwise, there will be an indirect risk that access to justice cannot be provided due to technical reasons.

CONCLUSION

The first of the many important conclusions that can be reached in terms of this research is that the replacement of the traditional document approach with the electronic document is no longer a surprise for jurists. The point to be considered here is that in order for the electronic document

[46] *In this context, for further information see Justitia40.ch/de, accessed 24.04.2023.*

to find its proper place in the electronic judicial activity, it must first be defined correctly.

For this reason, as stated in this study, the technical concepts that may constitute the elements of electronic judgement should be drawn correctly at least to the extent that their framework can be understood. Electronic data is one of the most important of these concepts. Electronic data refers to a broad meta-concept that includes concepts such as electronic document and electronic promissory note, just as document is a broad concept that includes the concept of promissory note in Turkish law. In order to understand electronic judicial instruments correctly, electronic data and electronic environment must first be understood.

Understanding these concepts also brings the electronic signature to the forefront as an important element of the transactions carried out in the electronic environment. Since electronic signature is a wide research area in itself, it is not directly included in this study. However, conducting judicial electronic transactions, even in electronic environment, requires the evaluation of the electronic versions of the signature, which provides identification and security functions in terms of all kinds of legal transactions. The use of auxiliary tools related to signature in all kinds of electronic judicial systems regulating forensic electronic communication systems and judicial document exchange is an important aspect of this.

It would not be wrong to say that electronic judiciary refers to the execution of judicial activities in electronic environment as a whole. In this context, it is possible to divide judicial activities into two as formal and substantive judicial activities. As a result of this study, it can be concluded that it is also possible to classify judicial activities as electronic formal judicial activities and electronic substantive judicial activities.

A final conclusion to be reached here is that it may be more appropriate to bring the digitalisation of judicial activity to a general application area by first launching various pilot applications and going through certain trial periods. In addition, such change studies aiming at digitalisation must be carried out on a legal basis. Otherwise, there is a risk of damaging the deep-rooted principles of civil procedure law. In order to take steps in the name of modernisation, it should be ensured that the essence of long- and well- established principles that have been applied for centuries is not harmed and that the practitioners adapt to the practice over time in a way that will not alienate them.

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