

# Digitalization of Legal Proceedings: Global Trends

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## ABSTRACT

In modern world, we hear more and more the word digital. The widespread dissemination of information technology has influenced the criminal and civil proceedings of many countries. At the present time, in a number of states, the rules governing the use of information technology in the administration of justice are being consistently implemented. The aim of this paper is to study and analyze some new problems caused by the rapid development and increased use of information technology and their possible further impact on the civil proceedings. On the example of analysis of the legislation of the USA, Great Britain, Japan, Singapore, Russia and a number of other countries, the authors made a conclusion about the basic principles and features of the use of information technology in the civil process and their relationship with the principles of traditional civil proceedings. Based on the results of the research, the authors put forward a number of theoretical and practical proposals for improving legislation in the sphere of using the information technologies in the civil proceedings.

**Keywords:** *Judicial proceedings, digitalization, electronic evidence, assessment of evidence, justice, civil procedure, criminal procedure.*

## 1. INTRODUCTION

At the beginning of the new millennium, the world community entered a new era of the industrial revolution, the so-called "digital era." The digitalization process harshly changed the methods of daily communication and interaction of subjects of legal relations. The process of digitalization of public relations in different countries occurs at different rates. Digital technologies help to create a new reality of "digital space", "digital economy", "digital justice", etc. Expanding the range of application of digital technologies in modern society raises a number of issues which are needed to be resolved.

Duguzheva and Simaeva noted that digitalization involves the process of transition to a new higher level of public relations, and therefore requires detailed normative regulation and legal protection by the state [1]. These changes imply the necessity to develop and implement an effective system of legal means that will be able to regulate social relations, taking into account the rules of behavior that have changed under the influence of digital technologies.

As noted by Kartskhia, the digital economy is a reality of modern world, and this is caused the digital transformation of the traditional forms of companies and industries management which became the areas of practical application of new information technologies [2].

The development of a legislative framework aimed at the effective regulation of public relations in the electronic space is an essential element in protecting the

rights and freedoms of man and citizen in modern conditions. The process of digitalization accelerates the process of an information exchange through new means of communication. Information transformed into digital form becomes more accessible for transmission and distribution. Increasing the speed of information transfer increases the speed of document circulation, transaction and has a direct impact on the legal relationship between individuals and legal entities.

The transformation of civil law relations under the influence of digitalization requires the transformation of the existing justice system.

## 2. LITERATURE REVIEW

The problem of digitalisation of justice and implementation of e-justice concept is nowadays one of the most debated issues by many authors in Russia and foreign countries, such as Anosov [3], Antonov [4], Golovko [5], Zhdanova [6], Kartskhia [2], Talapina [7], Bruno [8], Katsh and Rabinovich-Einy [9], Kengyel and Nemessanyi [10]; Contini and Lanzara [11].

According to Katsh and Rabinovich-Einy, modern judicial systems around the world are too "slow" for new technologies [9].

In most of the scientific works the authors ask the same questions what e-justice is and what the mechanisms of justice digitalization at the international level and in each particular country are. Most researchers focus their attention on the fact that the e-justice can not fully replace the existing model of judicial systems.

In addition, the authors are actively discussing the question of whether certain aspects of the introduction of electronic justice contradict the fundamental principles of civil and criminal proceedings. Most of the authors expressed cautious about the digitalization of criminal proceedings and a significant part of the work of Russian and foreign researchers consider the introduction of electronic justice in cases dealt with in civil proceedings. It should be noted that both Russian and foreign authors indicate that, first of all, a deep processing of the national legislative base on the introduction of information technology in the process of administration justice is necessary.

### **3. ELECTRONIC JUSTICE - LEGAL ISSUES**

Paolo Bruno noted that the demand for justice is steadily growing in Europe and it significantly increases the load on the judicial system as a whole. Every year, the number of litigations in EU courts increases [8].

A similar trend is noted everywhere. Over 10 years the number of cases in the Russian Federation examined by the courts of general jurisdiction and the Arbitration courts is constantly growing. Individuals and legal entities began to apply to the court for the protection of their violated rights more often. This is facilitated by increasing the available access to justice and the legal literacy of the population.

Increased burden on the judiciary requires continuous improvement of its effectiveness, including introduction of information and communications technologies (ICT). The introduction of ICT in the administration of justice offers great opportunities to improve the efficiency of the judicial system.

Inevitable changes have already touched on some aspects of the work of the courts in Russia and in most foreign countries. Practically everywhere, a system of electronic filing the documents to the court was developed and actively implemented, so as the possibility of submitting electronic evidence, the use of audio and video communications during the court session. These ways of use of information telecommunication technologies are under development and require detailed normative regulation.

Digitalization of the justice system in different countries is carried out in various directions from the introduction of information technologies in the institutions of civil and criminal proceedings to the development of the concept of the introduction of electronic justice (e-justice) as a whole.

It should be noted that the use of digital technology as an auxiliary tool of the judicial system is used much

faster than the formation of the conceptual basis of the e-justice system takes place as a whole. However, the majority of researchers in the Russian Federation and Western countries, including Spain, Germany, France, Italy, the USA, and Great Britain express a unified position on the inevitability of reforming the existing models of judicial systems and creating a system of "e-justice". The development and implementation of this conceptual model is impossible without a deep and complete reform of not only the procedural rules, but also the norms of the legal system. Most researchers note that the implementation of the e-justice system can significantly affect the fundamental postulates of the legal process. In the development of this concept it is necessary to emphasize that the fundamental principles of criminal, civil and administrative proceedings must be complied during the introduction of new digital technologies.

"E-justice" is one of the debate issues in legal science nowadays. Kiselev considers "e-justice", along with e-government and e-democracy as an element of e-government. In his opinion, "Electronic justice is a special form of state activity for the consideration and resolution of various categories of cases in electronic form, including filing an application and attached documents in electronic form, conducting a trial using information technology, including adjudication, transferring it to the parties on electronic communication services and posting judicial documentation on court sites" [12]. A similar view is held by Denisov [13].

At the same time, in the Judicial Department Order under the Supreme Court of the Russian Federation dated 26.11.2015 No. 362 (amended on 28.08.2019), electronic justice is defined as "the method and form of the implementation of procedural actions prescribed by law, based on the use of information technologies in the activities of the courts, including the interaction of courts, individuals and legal entities in electronic (digital) form [14].

These determinations of the definition "e-justice" are quite debatable. It seems that we can talk about understanding of this term in a narrow and broad sense. In a narrow sense, it implies the possibility of e-justice court and the participants in the process to carry out certain procedural acts in electronic form or by means of information and communication technologies, i.e. in fact, legal proceedings in electronic form. In a broad sense, "e-justice" includes not only electronic legal proceedings, but also other automated information systems used by the court in considering and conducting cases and providing access to the court acts and materials of the case. A similar view is held by Romanenkova [15], Zhdanova [6].

In most foreign countries, "e-justice" means the use of information and communications technologies in the implementation of certain procedural actions by the courts and to improve citizens' access to justice [8].

Ponomarenko, points out that e-justice in foreign countries means a special judicial procedure for resolving civil cases by the electronic-digital form of securing information on the case and the interaction of the participants in the process, including during all procedural actions [16].

In addition, in a foreign interpretation, the system of "e-justice" includes not only judicial, but also not judicial forms of conflict resolution.

Katsh and Rabinovich-Einy put forward the idea of creating an electronic court (dispute) to resolve certain legal disputes arising from online transactions [9]. This point of view is more revolutionary, because involves replacing the traditional form of litigation with a digitized process. An example of the implementation of this concept can be observed in the Netherlands, where the Internet court on civil disputes was created and operates from 2011. Parties that have accepted the terms of a dispute by an online court recognize the validity and binding nature of the decisions made by that court. Adjudication is carried out on a competitive basis and documents obtained by the online exchange are considered as evidence. The Internet court cannot be fully equated with state courts; the system of arbitration courts is closest to it. In some cases, this method can be effective, especially in relation to indisputable claims and for online transactions. However, it is thought that identifying this system with justice in general is incorrect. The concept of the "Electronic Dispute" is better considered as an alternative way to resolve disputes in relation to a particular category of cases.

This concept is reflected in the Online Dispute system on the ODR platform for out-of-court dispute resolution on the European Commission portal [17]. The main objectives of e-justice are:

- Increasing the accessibility and openness of the courts to administer justice;
- Increasing efficiency in protecting the rights and freedoms of man and citizen;
- Increasing the transparency of the justice process;
- Optimization and increase of efficiency in the field of protection of human and civil rights and freedoms;
- Reduction of negative consequences associated with the process of administering justice;
- Increased interaction between the various parts of the judicial system;
- Reducing the time for consideration of cases in court.

On June 1, 2016, a group discussion was held in New York on the topic "E-justice: enhancing transparency, efficiency and access to justice". The discussion was organized by the Coordination and Advisory Group of the United Nations on the Rule of Law issues. Several key topics were raised during the discussion. The participants in the discussion noted that the introduction of e-justice elements has provided significant time and money savings and this is allowed to increase the efficiency of the proceedings and the timely administration of justice. Easier access to information and, therefore, the transparency of the judiciary are not only important in their own, but also improved the quality of justice. Access to monitoring the progress of court proceedings, high-quality legal databases and the availability of public versions of court decisions also provided an opportunity to monitor and inform the public, improving the quality of reports of the entire judicial system. This has led to a change in the expectations of the public, in particular young people [18].

#### **4. DIGITALIZATION OF JUSTICE IN THE RUSSIAN FEDERATION AND FOREIGN COUNTRIES**

Based on the analysis of normative legal acts, scientific literature and open information resources of the courts of the Russian Federation and foreign countries, several main directions of digitalization of justice can be distinguished. One of the most common directions is the introduction of electronic filing of applications with the court. A similar system is widely used in the USA, where it received the name "E-Filing". This system allows lawyers and other process participants to file applications and petitions with US federal courts. After the appropriate registration, the person receives an account to submit the document. At the same time, these persons are responsible for the confidentiality and reliability of the transmitted information. A similar system is implemented in the UK, and this system also implies the need for pre-registration to apply. In addition, the categories of these applications and petitions are limited and they may also be limited in substance or in the nature of the case at hand.

In Canada, electronic filing is available in English and French. This system allows a party or its legal representative to file documents with the Federal Court electronically through a secure Internet system in all areas of the Court's jurisdiction. Each submitted application is assigned a unique identification number. This further facilitates citizens' access to information. Currently, electronic registration system does not provide special treatment for confidential documents. Therefore, such documents should not be submitted electronically. Canada's electronic filing of applications and docu-

ments does not require pre-registration. This system allows initiating a new proceeding or filing documents on an existing lawsuit that is under consideration [19].

The Russian State Automated System (SAS) “Justice” allows you to go to the submission of procedural documents in electronic form from the site of almost any court. To submit documents, similarly to the current system in the UK and the USA, pre-registration on the State Services portal is required in order to identify a person.

The My Arbitrator system is implemented in the system of arbitration courts, and this system is of particular interest. By means of this system, it is possible to submit applications, petitions and other important for the consideration of cases documents signed by electronic signature. In addition, the search system is more convenient by the case number or the name of one of the participants. In addition, the search system is more convenient by the case number or the name of one of the participants. So you can get information about the status of the civil case consideration, about the court rulings in the case and get acquainted with them, put in control the calendar of the civil case consideration, and also get acquainted with the decision of the Arbitration Court in the public domain [20].

The openness of this system allows you to obtain information about the counterparty, in order to assess the potential risks of cooperation, which undoubtedly can be considered as a positive moment.

In Germany, a two-way communication system (ERV) is used. This system allows citizens to send documents to the court (requires a citizen card and registration) and the court to send documents on the case to the participants in the process in electronic form. In 2018, 7.6 million e-mails were delivered on return traffic, which saved more than 12 million Euros on postal items only. Last year, 14.5 million electronic transactions were counted, including 4.7 million records and automatic feedback by file number. 94 percent of all civil claims and 76 percent of all requests are filed electronically.

In the EU countries, the digitalization of the justice system, in addition to the above goals, is aimed at increasing uniformity in legal issues in the EU member states. Thence, for example, in the ECLI system, any document must contain a number of mandatory elements, such as a country code, an indication of a legal act, the name of the court that made the decision, a serial number of no more than 25 alphanumeric characters, and also contain an established set of metadata. These requirements are designed to facilitate the search, improve accessibility and exact citation of decisions of European and national courts of the EU member states.

At present, 12 EU Member States have fully implemented this system, in other countries (Latvia, Romania, Estonia, etc.), implementation work is ongoing. Electronic exchange of legal information is complicated due to the differences between national legal systems, as well as the differences in technical e-justice systems in some countries.

The second important direction in digitalization of justice is posting accessible information about the movement of the case in public domain, as well as posting the court decision on the case. This system is widespread almost everywhere. In the Russian Federation, it is not required to be registered for searching the information on a case, as this information is available in the public domain. It is enough to know the case number, or the data of one of the participants in a civil case. Any person can get information about the date and time of the court hearing and the composition of the court. After a court decision is made, and the decision came into force, its text is posted on the website with the depersonalization of certain points, in order to protect the rights and freedoms of citizens. On the websites of the Arbitration Courts not only the specified information is posted, but also all court decisions adopted in the case, during its consideration.

In the United States courts, the E-Track system operates and this allows tracking the movement of civil cases.

For example, in the state of New York, this system makes it possible to obtain information on cases pending from the courts of all 62 counties of the state. In addition, the texts of decisions taken by the courts, as well as the most common and sought-after forms of procedural documents, are freely available [21]. It should be noted that due to the peculiarities of the US legal proceedings and the significant role of lawyers, special opportunities have been established for this category of people to work in the E-court system and the NYSCEF application system. Similar systems are implemented in the EU, India, Mexico, Singapore and South Korea.

The most controversial area of digitalization of justice is the possibility of presenting and using electronic evidence in legal proceedings. There is currently no single position on this issue either among theoreticians or among practitioners. Currently, there is no single position on this issue either among theoreticians or among practitioners. The use of electronic evidence in the process is fraught with a number of practical problems. These problems are associated with assessing the reliability and admissibility of evidence, as well as the need for mandatory identification as a participant in the process of the person who provided them. In addition, it is necessary to ensure the safety and protection of per-

sonal data and other personal information transmitted by the user through an electronic communication channel.

In 2014-2016, the Council of Europe conducted a comparative study and analysis of existing national legal norms that fully or partially regulated the use of electronic evidence in civil, arbitration and administrative proceedings.

According to the results of the comparative legal research, the key discussion points of the use of electronic evidence in legal proceedings were outlined:

- Admissibility of electronic evidence;
- Evidentiary value of electronic evidence;
- The burden of proof;
- Assessment of the veracity and reliability of electronic evidence, their invariability;
- Archiving and preservation of evidence;
- The role of the court in demanding electronic evidence;
- Pre-trial procedure for collecting electronic evidence.

## 5. CONCLUSIONS

Many researchers focus on the fact that electronic evidence must be considered in two aspects. In the first case, electronic evidence is understood as a digital medium of information that exists outside and has a material form. These include a scanned copy of a written document. In this case, the electronic form is not the original evidence, but is only a copy on a digital medium and its authenticity, truthfulness; reliability and admissibility can be checked at any time. In the second case, we are talking about information exists only in electronic form and received by using information and telecommunication technologies. In this aspect, the understanding of electronic evidence is somewhat broader, and raises a number of problematic issues. They are related to the identification of sources of electronic evidence; the method of obtaining and fixing them; integrity of evidence; reliability and admissibility of evidence; assessment of evidence by the court. Thus, the question of the use of electronic evidence requires a detailed study in the legislative and technical bases.

This study allows us to conclude that the process of digitalization of justice seems inevitable. The introduction of information and communication technologies in the administration of justice opens up great opportunities to improve the efficiency of the judicial system. Digitalization of justice helps to promote transparency, efficiency and access to justice. The introduction of some elements of e-justice provides significant time and money savings that will allow increasing the efficiency and timeliness of the justice enforcement.

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