

Electronic Proceedings in Modern Legal Conditions

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Summary

The article is devoted to the problems and prospects of integration of informational technologies in the administration of justice as a necessary component of the development of the informational society in Ukraine. In general, informational technologies make it possible to create new forms of organization and interaction of bodies of public authorities with society, to introduce innovative solutions for legal regulation and organization of public relations. More and more services for citizens are moving to electronic format. Judicial reform is aimed at ensuring more comfortable and convenient interaction with the courts. The need for the usage of informational technology in the proceedings is preconditioned by the global informatization of modern society, the development of new forms of interaction in the civil sphere with the usage of electronic means of communication: the global Internet, mobile, and satellite communication systems and more. "Electronic justice" involves the use of information and communication technologies in the implementation of procedural law.

Key words:

information, information society, electronic proceedings, legal liability, Internet, right to a fair trial, language of proceedings, translator

1. Introduction

The idea of continuous informatization of all spheres of public life, including the proceedings, in Ukraine was laid down by the Law of Ukraine "On Basic Principles of Information Society Development in Ukraine for 2007-2015" dated January 9, 2007, №537-V5.

The development of the informational society in Ukraine and the introduction of the latest ICT in all spheres of public life and in the activities of public authorities and

local governments have been proclaimed as one of the strategic priorities of Ukraine's state policy.

The further development of modern technogenic civilization, in particular, in the form of information society offers another version of justice - electronic, i.e. on the basis of informational technology, which now includes automation of certain court procedures and simplification of informing stakeholders via the Internet, mobile communications, and more. Online hearings and their audio recording, electronic document management (internal and external), open access to the Internet to information at all stages of the trial have been introduced into judicial practice. Thus, new concepts have appeared in jurisprudence – e-justice, e-proceedings, e-court or online court, etc. And most importantly, the introduction of these concepts in jurisprudence is not abstract, but primarily the result of the actual usage of new technologies and their legal consolidation in the field of proceedings. As a result of such self-regulation of society, when informatization, automation, virtualization of processes is an integral part of all spheres of life, we can already talk about certain positive movements in the direction of judicial reform, namely increasing the openness and accessibility of the judiciary, the overall efficiency and acceleration of all court proceedings, the complication of corruption and other negative phenomena that cause outrage and form legal nihilism in the population for decades.

The process of digitalization of proceedings has also significantly accelerated due to the coVID-19 coronavirus pandemic, which covered the world in early 2020. All over the world, remote hearings have become almost the only way out in quarantine, so as not to stop justice. The British Commercial Court has even considered whether to make some court hearings remote after the end of the pandemic. However, due to the lack of formalization of the remote trial, some procedural shortcomings and even violations are possible, because when the video connection is turned off, we can only hope for the integrity and decency of the

participants, who, unfortunately, do not always follow the established requirements and rules of conduct.

Theoretical and applied aspects of informational policy, the importance of informational technology in various spheres of public life, issues of information, and technical support of individual public authorities are under the constant attention of legal scholars. Among them are A.B. Agapov, A.V. Anisimov, Yu.E. Atamanova, O.A. Baranov, I.L. Bachylo, O.P. Dzoban, V.O. Yeltsov, O.E. Simson, Kalyuzhny, V.P. Kolisnyk, V.S. Tsymbalyuk, V.G. Pylypchuk, M.Ya. Shvets, M.M. Yasynok, and others. Such circumstances indicate the lack of a comprehensive approach to the development of the problem of the introduction of electronic information technologies in the judiciary and cause the incompleteness of its solution.

2. Theoretical Consideration

One of the sectors of e-government is the e-justice system. Along with other services of state power and administrative services, e-justice is one of the elements of e-democracy, which is implemented to ensure accessibility, accountability, effective feedback, inclusiveness, transparency in the activities of public authorities. The judiciary is a key component of democracy. Therefore, it is rightly considered that e-justice is the most important facet of e-democracy. The combination of the latest socio-political trends with the modern economic environment and the latest information technologies creates new challenges and opens new opportunities, including in the reform of proceedings.

As widely known, proceedings are one of the most conservative areas of human activity. Most basic principles of proceedings are hundreds of years old. Most of these principles will retain their "constitutional" status in the future "e-Court". The process of transforming traditional forms of proceedings into a new electronic system is essentially a process of translating these traditional procedural frameworks into a new "digital" language.

According to Article 129 of the Constitution of Ukraine, one of the main principles of judicial proceedings is the publicity of the trial and its full fixation by technical means [1]. Article 7 of the Civil Procedure Code of Ukraine stipulates that the court during the consideration of the case in court carries out a complete recording of its course with the help of video and (or) audio recording equipment [2]. It is doubtless that the modern means of administration of legal proceedings enshrined in law must first and foremost ensure the convenience, transparency, openness, and accessibility of justice, and the integration of information technology into the administration of justice must take into account the principles of the rule of law. Due to the development and introduction of new technologies and modern telecommunication means, such

procedural actions became possible as the creation of the Unified State Register of Court Decisions, videoconference hearings, audio and video recording of court hearings, broadcasting the court hearing on the Internet, electronic filing of procedural documents.

In modern legal conditions during the implementation of electronic proceedings, special attention should be paid to ensuring the constitutional rights of the individual. Among the system of these rights, in order to ensure the fairness of the proceedings, equality, and adversarial proceedings of its participants, the constitutional right of a person to use in court his native language or the language they speak is important. The exercise of the right in question in the conduct of electronic proceedings provides the involvement of an interpreter in a court hearing by videoconference for persons who do not speak the language of the trial process. Given the specifics of court translation, video conferencing requires the provision of proper Internet and computer equipment to maintain the excellent image and sound quality between participants in the process, as well as the security of information transmission over the Internet. Therefore, given this necessity, it seems appropriate to create and use electronic systems with the possibility of using an interpreter to participate in a remote court hearing [3].

This is confirmed by the provisions of the Law of Ukraine "On the Judiciary and the Status of Judges", which stipulates that justice in Ukraine is administered on the principle of equality of all participants in the trial before the law and the court, regardless of race, skin color, political, religious, or other beliefs, gender, ethnic and social origin, property status, place of residence, language, and other characteristics [4]. In addition, the norms of the aforementioned normative act clearly establish that courts use the state language during the proceedings and guarantee the right of citizens to use their native language or the language they speak in court proceedings. Nevertheless, the provisions of the Law of Ukraine "On ensuring the functioning of the Ukrainian language as the state language" in the article on the usage of the state language in court proceedings do not enshrine a person's constitutional right to use their native language or a language they understand in legal proceedings. In particular, it is indicated that in the courts of Ukraine the proceedings are conducted and the records are kept in the state language. A language other than Ukrainian may be used in court proceedings in accordance with the procedure established by procedural legislation and the Law of Ukraine "On the Judiciary and the Status of Judges". Courts make and publish decisions in the state language in the manner prescribed by law. The text of the court decision is created taking into account the standards of the Ukrainian language [5].

Sending procedural documents in electronic form involves the use of the "E-court" service, in accordance with the

preliminary registration of the official e-mail address (Electronic Cabinet) and with the mandatory usage of one's own electronic signature. That is, with the help of this program, the parties of the proceedings have the opportunity to pay court fees online, track the status and progress of court proceedings, draw up and provide an electronic order, receive information related to the state of the case, etc. [6].

That is, the exchange of electronic documentation between the party to the proceedings and the court is one of the most important mechanisms of digitalization of justice. As aptly noted by O. Ukhrynovska, "this is a procedure for exchanging documentation between the parties of the proceedings and the court may be used provided that:

– the participant of civil proceedings has passed registration in the system of electronic document exchange.

– filed an application with the court in order to receive in electronic form electronic documents on a particular case" [7].

Thus, A.Yu. Kalamaike in his monograph on the study of electronic means of proof in civil proceedings, emphasizes that specialized studies of the legal nature of electronic means of proof, their classification, and problems of usage in civil proceedings in the home science of civil procedural law, in particular in the dissertation levels, has not been implemented. To some extent, it hinders the effective usage of modern sources of information and inhibits the development of relations with the usage of modern information and communication technologies, including e-commerce. This situation is caused, along with the aforementioned, by the lack of legislative consolidation of electronic means of proof in the system of means of proof as a whole and the lack of established mechanisms for their submission, research, evaluation, provision, etc. [8].

The analysis of the opinions expressed in the scientific literature and the experience of applying the current rules of the procedural law of Ukraine shows that currently very relevant are studies in the direction of scientific development of such elements of electronic legal proceedings:

- 1) the possibility of full-fledged two-way communication between the court, participants in the trial process, and all other stakeholders through modern electronic information and communication technologies;
- 2) the recognition of the full range of currently existing electronic information resources as appropriate and fully admissible evidence in court proceedings;
- 3) the possibility of committing all procedural actions during the consideration of any court cases in electronic format.

A special place in procedural law has always been given to the institution of judicial evidence due to the fact that evidence is the main legal tool in proving their position by the participants in the trial process. In the context of the

digitalization of society and all the processes taking place in it, the usage of electronic evidence in civil cases becomes especially relevant. This type of evidence has been used not so long ago, but it already has some problems with its usage.

The procedural law operates on three concepts - "original", "electronic copy", and "written copy" of electronic evidence – when it comes to filing them in court, however, does not contain a definition of these concepts.

The Law of Ukraine "On Electronic Documents and Electronic Document Management" interprets the "original electronic document" as an electronic copy of the document with mandatory details, including electronic or equivalent to the author's signature. In the case when the author creates identical electronic documents in terms of information and details or when they send an electronic document to several addressees or store it on several media, they are all originals and have the same legal force.

It follows from the aforementioned that the "original electronic proof" is a copy of an electronic document, website (page), text, multimedia and voice messages, metadata, databases, and other data in electronic form, which are created by electronic means and have a visual form that allows one to display the data they contain and which are relevant to the correct interpretation of the circumstances of the case, electronically or on paper in a form suitable for human perception of their content.

Despite the fact that courts perceive evidence in electronic form, the attitude of courts to their assessment is quite meticulous. In particular, the courts pay special attention to confirming the authenticity of electronic documents that a party submits as evidence in a case.

For example, a post on Facebook can be deleted by the author at any time, and messages on Messenger, Telegram, Viber, or Whatsapp can be deleted by one of the interlocutors, which will result in deletion for all chat participants. However, recovering deleted messages will be impossible or extremely difficult. For example, the Telegram messenger permanently deletes both the content of messages and the traces of their sending; Whatsapp deletes only the content, but also permanently. Similar technology is used in Viber, and the technical support of the service can provide information only about the fact of sending messages or making calls with the date and time, but not their content.

In addition, such a service will be paid and provided only after the verification procedure of the account holder.

Since the Law stipulates that in case of doubt about the authenticity of electronic evidence from another party to the case or in court, the court must demand the original evidence, and in case of its absence - to refuse to accept the evidence for consideration, the removal of the messages as originals will mean their complete destruction as evidence. For these reasons, courts often, at the request of one of the parties, take steps to secure such evidence by

examining it in court from the portable devices of the parties concerned.

One cannot but agree with the statement that the full-scale implementation of the project, called “e-court”, will help solve the existing problems in the judicial system, namely ensure access to justice through the exchange of electronic documents between all participants in the trial process, reduce court costs for mail and paper documents, improve and accelerate the transfer of court documents between courts, etc. E-justice is aimed at ensuring transparency and accessibility of justice, improving the quality of court work, and significant savings of public funds. Implementation of the e-court project is one of the ways to increase the efficiency of justice in Ukraine [9].

However, the realities of today are such that the development of information technology cannot be stopped, as it will penetrate more and more into public and private institutions, and ultimately - into our daily lives. Therefore, the task of the modern legal system is to make the usage of information technology as safe as possible for human rights, as well as to use the digital world to facilitate complex legal procedures, improve the protection of rights, freedoms, and interests of individuals in public relations [10]. It is rightly noted that in the future, informational technologies will become the foundation of the judicial system, which will lead to radical positive changes in procedural law and the protection of constitutional rights and freedoms of citizens [11-12].

Conclusions

Summing up, it can be noted that the development of informational technology, in addition to positive changes, will certainly contribute to the potential abuse by certain individuals of their right to disseminate information on the Internet. It is also possible to conclude that under certain conditions it is possible to temporarily restrict certain rights in order to preserve national sovereignty (for example, conducting an anti-terrorist operation, the introduction of a legal regime of “martial law”, etc.). In particular, this also applies to the right to freedom of speech.

At the same time, given the international experience and significant public resonance due to the possibility of influencing the above constitutional law, the primary direction of the state should be to enshrine at the legislative level clear responsibilities for entities that own “platforms” for the distribution of fakes. In such circumstances, cases of protection of honor, dignity, and business reputation on the Internet will become increasingly relevant, as anyone in our time can become the victim of the spread of inaccurate information about themselves. That is why knowledge of the basic algorithm of actions in the case of dissemination of such information will help to more effectively protect their rights and restore their reputation.

As for the evidence, we can note that it is possible to submit electronic evidence to the court. However, it should be borne

in mind that the originals of electronic evidence exist only in the form of electronic data on portable media or on the Internet, and therefore, when submitting copies to the court in the form of, for example, screenshots, printouts, or Internet links, care must be taken to properly certify them and to preserve the originals from destruction. It is advisable to file a request for such evidence by examining it in court before filing a lawsuit. Nevertheless, it cannot be said that the legislative introduction of electronic justice is hasty. After all, the level of development of informational technology under the condition of public demand and the formation of the appropriate legal field will make e-proceedings an effective tool for protecting the rights, freedoms, and interests of individuals and legal entities.

References

- [1] Constitution of Ukraine: Law of Ukraine of June 28, 1996 № 254/96 VR. Information of the Verkhovna Rada of Ukraine. 1996. № 30. Art. 141. URL: <https://www.zakon.rada.gov.ua/laws>
- [2] Civil Procedure Code of Ukraine: Law of Ukraine of March 18, 2004 № 1618-IV. Information of the Verkhovna Rada of Ukraine. 2004. № 40-41, 42. Art. 492. URL: <https://zakon.rada.gov.ua/laws/show/1618-15#Text>
- [3] Slipenyuk VV Ensuring the constitutional right to use the native language or a language that a person understands in the judicial process of Ukraine for the period of the COVID-19 pandemic. Bulletin of Zaporizhia National University. Legal sciences. 2020. № 4. Volume 2. C.21-28 Link: <http://dspace.onu.edu.ua:8080/handle/123456789/30676>
- [4] On the Judiciary and the Status of Judges: Law of Ukraine of June 2, 2016 №1402-VIII. Information of the Verkhovna Rada of Ukraine. 2016. №31. 545.
- [5] On ensuring the functioning of the Ukrainian language as the state language: Law of Ukraine of April 25, 2019 №2704-VIII. Information of the Verkhovna Rada of Ukraine. 2019. №21. 81.
- [6] Problems of administrative and legal support of electronic court in Ukraine in the context of the COVID-19 pandemic / S. Yu. Obrusna, IV Ivanova, VS Chuban. - 2020. - №4. - P. 196–199.
- [7] Uhrynovska O. Electronic document circulation in the civil process of Ukraine / O. Uhorinovska // Visnyk of Lviv National University. –2017 - Vip. 64. - P. 144–150.
- [8] Kalamaiko A. Yu. Electronic means of proof in civil process [Electronic resource]: dis. ... Cand. jurid. Sciences: 12.00.03 / A. Yu. Kalamaiko. - Kharkiv, 2016. - Access mode:

- http://nauka.nlu.edu.ua/download/diss/d_Kalamaiko/
d_Kalamaiko.pdf.
- [9] Loginova NI Implementation of electronic justice in the judicial system [electronic resource] / NI Loginova. - access mode: <http://www.apdp.in.ua/v72/61.pdf>.
- [10] Belous B, 'Innovative directions of informatization of judicial proceedings' (2011) 11 Theory and practice of forensic science and criminology 97
- [11] Iasechko, S., Ivanovska, A., Gudz T., Marchuk M., Venglinskyi O. and Tokar A. Information as An Object of Legal Regulation in Ukraine. International Journal Of Computer Science And Network Security. Vol. 21 No. 5, 2021 pp. 237-242 <https://doi.org/10.22937/IJCSNS.2021.21.5.33>
- [12] Kuryliuk Y., Khalymon S. (2020). Criminal profile of migrants' smuggler across the State Border of Ukraine. Amazonia Investiga. Vol. 9 No. 27, pp. 195–208