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Implementation of electronic justice in Ukraine in conditions post-pandemic development of society

Abstract: In context of the digitalization of society the main objective of this study is to analyze the state of legal regulation of electronic justice and remote trial in Ukraine, including the mode of video conference in the conditions of post-pandemic development of society and martial law, what is designed to simplify access to justice and to lead the saving of costs and procedural means in the consideration of court cases. The article pays special attention to the work of the Unified Judicial Information Communication System (UJICS) and its modules, such as the Electronic Office, the Electronic Court and the subsystem of videoconferencing. The purpose of this article is to identify problematic issues regarding legal regulation of distance litigation in Ukraine and to propose mechanisms for its improvement.

Key words: electronic justice, the Unified Judicial Information Communication System (UJICS), remote trial, the Electronic Office, the Electronic Court, the subsystem videoconferencing

Introduction

Electronic technologies have become an integral part of the everyday life of society, the basis of building information flows at the state and international levels around the world, including the work of the judiciary in Ukraine. A significant impetus to the development of information technologies in the field of access to justice was given by the implementation of restrictions related to the introduction of quarantine and pandemic due to the spread of the SARS-CoV-2 coronavirus. This accelerated the introduction of electronic document management and video conferencing during court proceedings in Ukraine.

An integral part of this research is the study of foreign experience in this regard on the improvement of national legislation. The analysis of international legal norms on this issue becomes especially relevant.

The purpose of this research is to study the prerequisites for the introduction of e-justice and remote trial in Ukraine, their main advantages according to scientists, identify problematic issues in this area of legal regulation, identify not only the advantages but also the disadvantages of remote justice, and propose ways to improve legal mechanisms for the effective use of e-court for its further use and implementation.

To achieve the goal set in this study, the following research methods were used: the historical method based on the study of the emergence, formation and development of electronic justice in chronological order; the analysis method, which made it possible to identify and study the main concepts and structure of the Unified Judicial Information and Communication System, regulatory and legal support of electronic document flow; the method of synthesis, by means of which the logical connections between the modules and subsystems of the electronic court were established; method of generalization, which contributed to highlighting the main aspects of the research and their clear coverage; the special legal method which was used to develop proposals for improving legislation on the use of electronic technologies in the judiciary of Ukraine.

1. The prerequisites and advantages of introducing electronic justice in Ukraine

The prerequisite for the introduction of electronic justice in Ukraine was the establishment of the need to ensure simplified access of citizens to effective justice and speed up the consideration of cases in a number of normative legal acts of the Council of Europe. According to The Recommendation No. R (84) 5 Of The Committee Of Ministers To Member States On The Principles Of Civil Procedure Designed To Improve The Functioning Of Justice [1] judicial authorities must have the most up-to-date technical means to enable them to administer justice in the most efficient way, in particular by facilitating access to various sources of law and by speeding up the administration of justice. According to The Recommendation No. R (95) 13 Of The Committee Of Ministers To Member States Concerning Problems Of Criminal Procedural Law Connected With Information Technology [2] information on case law in all areas of law and in all regions should be disseminated through one or more automated systems, which, in turn, would facilitate the provision of online court hearings. According to The European Convention on Human Rights [3], stipulates in Article 6, paragraph 1, everyone in determining

his or her civil rights and obligations or in bringing any criminal charges against him or her, has the right to a fair and open hearing within a reasonable time by an independent and impartial tribunal established by law. The general right to judicial protection is also enshrined in the International Convention on the Elimination of All Forms of Racial Discrimination 1965 (Articles 5, 6) [4]; Convention on the Rights of the Child 1989 (Articles 12, 37, 40) [5]; UN General Assembly resolution No.40/33 etc. According to Opinion № (2011) 14 of the Consultative Council of European Judges "Justice and information technologies (IT)" [6], IT should be a tool or means to improve the administration of justice, facilitate user access to courts and strengthen the guarantees established by Art. 6 of the European Convention on Human Rights, access to justice, independence of the judge, fairness and reasonable time for consideration of the case. Video conferencing can facilitate security hearings and the taking of testimony from witnesses and experts. Videoconferencing has also become an effective tool that has facilitated and accelerated cross-border litigation in European Union countries. In the context of European e-Justice, video conferencing has been introduced in a new concept - interstate video conferencing. According to Bogunov V. the introduction of the protection possibility and their rights exercise in court by videoconference is justified by such factors as saving time and money of participants in the process, which are spent on travel (or delivery) to court [7]. Garievskaya M. considers that the advantages of holding court hearings by videoconference also include the ability to speed up the trial and save money for both the judiciary (for example, to send summonses to the hearing) and for participants in the process (including business trips) [8] Among the so-called "disadvantages" or "difficulties" of conducting court hearings by video conference Ozernyuk G. highlights the following: the need for technical equipment of courts with special facilities for organizing a court hearing by videoconference, the availability of high-speed Internet; the need for awareness of the participants of the process with the latest technologies and the ability to use them; legislative unresolved issues on participation in the trial by videoconference, in particular, outside the courtroom; loss of the verbal side of communication with the participants of the process with the participation of an interpreter, etc. [9].

2. The current state of regulation and the main stages of e-proceedings in Ukraine

The current legislation of Ukraine on electronic documents and electronic document management includes two basics Laws of Ukraine:

- 1) "On Electronic Identification And Electronic Trust Services" [10], which defines the legal and organizational principles of electronic identification and the provision of electronic trust services, the rights and obligations of the subjects of relations in the fields of electronic identification and electronic trust services, the procedure for state control of compliance legislative requirements in the fields of electronic identification and electronic trust services;
- 2) "About Electronic Documents And Electronic Document Flow"[11], which defines the concept of "electronic document", the principles of electronic document flow and the organization of electronic document flow.
Consider the main stages of e-proceedings in Ukraine.

The use of electronic technologies in the field of judicial administration in Ukraine was initiated by the Law of Ukraine "On Access to Court Decisions"[12], adopted on December 22, 2005. This law provided for the introduction in 2006 of the Unified State Register of Court Decisions as an automated system for collecting, storing and searching for electronic copies of all court decisions passed by the courts of Ukraine.

The next stage is related to the adoption of the Law of Ukraine "On the Judiciary and the Status of Judges"[13] dated July 7, 2010, which amended all procedural codes regarding the introduction of an automated document management system in all courts, designed to ensure an objective and impartial distribution of cases between judges, providing individuals and legal entities with information about the state of consideration of the cases in which they participate, etc.

From January 1, 2011, on the basis of the Regulation on the Automated Court Document Management System, appropriate system began to function in all courts of Ukraine.

In 2017, after the adoption of the new version of three procedural codes (Commercial Procedure Code, the Civil Procedure Code and the Administrative Judicial Procedure Code of Ukraine), which came into force on December 15, 2017, in all courts of Ukraine the Unified Judicial Information and Telecommunication System (UJITS) began to function.

The UJITS was renamed as the Unified Judicial Information and Communication System (UJICS) by the Law of Ukraine dated June 29, 2023.

The UJITS is an organizational and technical system that ensures the exchange of documents (sending and receiving documents) in electronic form between courts, between the court and the proceeding participants, between the participants.

It also ensures the recording of the trial and the participation in remote trial in video conference mode outside another court. Until then, it was possible to participate in a videoconference only if the participant of trial was in another court.

But unfortunately even after the introduction of UJITS from December 2017 to April 2020, participation in a court session in videoconference mode outside the court premises using its own technical means was impossible in Ukraine due to the lack of a legally defined mechanism for its application.

The situation has changed only in the conditions of a global pandemic.

As a result after establishing the quarantine by the Cabinet of Ministers of Ukraine to prevent the spread of the coronavirus (COVID -19) on April 2, 2020 the amendments to the three Procedure Codes were entered into force.

According to this amendments during the quarantine the participants in the case could participate in the court session in videoconference mode outside the court premises using their own technical means. As result a The Temporary Procedure for working with technical means of video conferencing during a court trial with the participation of parties outside the court premises was approved by the State Judicial Administration of Ukraine.

In accordance with The Temporary Procedure, confirmation of the identity of the participant in the case could be carried out not only with the use of an electronic signature, but also if the person does not have an electronic signature, at the beginning of the court session, he had to show his passport or another document certifying his identity, in an expanded form on the page with a photo in the camera to allow the secretary of the court to confirm the identity of each participant. This order existed until October 5, 2021 and became invalid when three subsystems (modules) of UJITS began to function officially: Electronic office, Electronic court, subsystem of video conferencing.

As a result, the following changes were made to the order of procedural actions:

- the order and form of submitting procedural documents to the court has changed, it's became possible not only in paper but also in electronic form;
- mandatory court registration of procedural documents submitted to the court in electronic form has been introduced;
- a mechanism for scanning procedural documents received by the court in paper form is provided, if the case is transferred to electronic form at the initiative of the court or at the request of the participants of trial;
- it is determined that cases can be considered (formed and stored) in paper, electronic or mixed form depending on the possibilities available in the court;
- consideration of the case, its formation and storage, as before, is carried out in paper form;
- the possibility of sending notices or procedural documents to the parties of the case and familiarization with the case materials in electronic form has been introduced in the court;

- it is possible to send copies of documents submitted to the court by one party to another party in the case by means of the UJITS, if the person is registered in the electronic cabinet;
- in case of submission of documents to the court in electronic form, an obligation has been introduced to provide proof of sending copies of the documents to other participants of trial in cases defined by procedural legislation;
- it is determined that when submitting procedural documents to the court in electronic form, a coefficient of 0.8 is used to reduce the corresponding amount of the court fee rate;
- the procedure for submitting appeals and cassations to the court in electronic form directly to the court of the relevant instance has been changed;
- the procedure for conducting and recording of remote trial in the video conference mode has been changed, it's became possible only through the electronic office in the electronic court.

In addition, on October 18, 2023, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding Mandatory Registration and Use of Electronic Cabinets in UJICS"[14] came into force, it introduced the obligation to register electronic cabinets in UJICS:

- to lawyers, notaries, state and private executors, arbitration managers, judicial experts, state authorities and other state bodies registered under the legislation of Ukraine as legal entities, their territorial bodies, local self-government bodies,
- to private legal entities - in economic proceedings, and in civil and administrative proceedings - from February 20, 2024.

The Criminal justice has undergone changes only on March 16, 2024 when The amendments to the Criminal Procedural Code of Ukraine entered into force, with which the code was supplemented with provisions on the procedure for submission of procedural documents to the court by participants in criminal proceedings in electronic form and their registration using UJICS, the code was supplemented with provisions on the procedure for summoning a person in criminal proceedings with the use of UJICS, for the first time the procedure for the participation of participants in criminal proceedings in a court session in the mode of video conference outside the court premises using its own technical means was regulated, the grounds for remote proceedings in the event of the introduction of martial law or during the quarantine established by the Cabinet of Ministers of Ukraine were added.

The specified procedure for registration in UJICS (registration of the Electronic Cabinet and official electronic address) currently involves the completion of the registration procedure proposed by means of the Electronic Cabinet with the use of a qualified electronic signature and the entry

of the contact data of the person, in particular, the e-mail address, telephone number (including mobile), indicating other means of communication that ensure recording of a message or call. Users are obliged to enter complete and up-to-date information in the UJICS Electronic Cabinet not only after its creation, but immediately after such information is changed.

Conclusion

Summarizing the conducted research, we note that the introduction of electronic justice in the conditions of post-pandemic sustainable development of society significantly simplified access to justice, facilitated work with procedural documents in systems of electronic document management, document compilation and court management, simplified procedural actions in the courtroom and recording of the process by technical means, including during online court sessions; made it easier to inform participants of court proceedings about the course of court proceedings, communication between participants in court proceedings and public access to court decisions, made it more accessible to participate in court proceedings via video conference.

The advantages of the introduction of electronic justice in the post-pandemic reality in Ukraine include the following:

- 24-hour access to the "Electronic Court" subsystem, which provides an opportunity to review documents or, conversely, create and upload new documents to the subsystem at any time, regardless of the court's work schedule;
- automatic recording by the subsystem of the actual time of submission of electronic documents;
- no need to print documents and spend time and money on sending them;
- the possibility of paying the court fee online and saving money on its payment thanks to the application of the reducing factor of 0.8 when submitting documents through the electronic cabinet. The disadvantages of the introduction of UJICS include the following:
- lack of levers of influence on court employees regarding the scanning of procedural documents and uploading them to the subsystem when converting the paper form of the case into an electronic one;
- impossibility of uploading to the system documents that are signed using an electronic signature, but not sent through the electronic cabinet subsystem;
- limited maximum file size for download;
- the ability to send procedural documents to other participants in the proceedings through the subsystem only if they are registered in this subsystem and if you have information about the person's identification number;

- outages with electricity and the Internet, including in the conditions of martial law in Ukraine, which makes impossible to use electronic justice;
- the risk of technical impossibility of participating in a video conference outside the court premises, interruption of communication, etc. is borne by the participant in the case who submitted the relevant application.

In order to further implement electronic justice and its more effective use in Ukraine, it is advisable:

- at the legislative level to introduce the possibility of bringing to justice persons who ignore the requirements of the law regarding the mandatory registration of an Electronic Office;
- to expand the possibility of searching for information about the existence of an Electronic Office of another participant in court proceedings only by the person's ID, but also by other search criteria, such as: name of a natural or legal person, e-mail, contact phone number.

Literature

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Implementacja elektronicznego wymiaru sprawiedliwości w Ukrainie w warunkach postpandemicznego rozwoju społeczeństwa

Synopsis: Biorąc pod uwagę proces cyfryzacji społeczeństwa, głównym celem niniejszego artykułu jest analiza stanu regulacji prawnych dotyczących elektronicznego wymiaru sprawiedliwości w Ukrainie. Analiza ta uwzględnia problematykę procesu zdalnego, w tym kwestie z zakresu trybu wideokonferencji w warunkach postpandemicznego rozwoju społeczeństwa i stanu wojennego. Ukazane zagadnienia mają na celu uproszczenie dostępu do wymiaru sprawiedliwości i doprowadzenie do oszczędności kosztów i środków proceduralnych w rozpatrywaniu spraw sądowych. W opracowaniu zwrócono szczególną uwagę na pracę Jednolitego Systemu Teleinformatycznego Sądownictwa (UJICS) i jego modułów, takich jak Elektroniczny Urząd, Elektroniczny Sąd i podsystem wideokonferencji. Celem niniejszego artykułu jest zidentyfikowanie problematycznych kwestii dotyczących regulacji prawnych sporów sądowych na odległość w Ukrainie oraz zaproponowanie mechanizmów ich usprawnienia.

Słowa kluczowe: elektroniczny wymiar sprawiedliwości, Jednolity System Informacji Sądowej (UJICS), zdalny trójpodział władzy, Elektroniczny Urząd, Elektroniczny Sąd, podsystem wideokonferencji.