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Perspectives of electronic judicial proceedings' development: international experience and possibilities of its application in Ukraine

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Abstract

The main directions of further development of e-justice are identified and analysed. Particular attention is paid to the current situation in this area in developed and democratic countries. Considering practical experience in the implementation of e-justice, possible ways of implementing progressive forms and methods of e-justice emerged. At present, the development of the judicial system has undergone significant and, first, positive changes in the direction of conducting proceedings in electronic mode. That is, it is commonly spoken of the so-called «electronic litigation», in one way or another it exists in most countries. It is concluded that, even though the international community has implemented measures in which electronic judicial procedures must be carried out, their applicability has been problematic in Ukraine, which has affected the judicial system. Processes related to the administration of justice are one of the key elements of the functioning of society. After all, they are meeting the constantly existing demand for justice on the part of citizens, and this demand is one of the basic human needs.

Keywords: electronic litigation; useful properties; adoption of experience; effective means; international experience.

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Perspectivas del desarrollo de los procedimientos judiciales electrónicos: experiencia internacional y posibilidades de su aplicación en Ucrania

Resumen

Se identifican y analizan las principales direcciones de un mayor desarrollo de la justicia en red. Se presta especial atención a la situación actual en este ámbito en los países desarrollados y democráticos. Teniendo en cuenta la experiencia práctica en la implementación de la justicia electrónica, surgieron posibles formas de implementar formas y métodos progresivos de justicia electrónica. En la actualidad, el desarrollo del sistema judicial ha experimentado cambios significativos y, en primer lugar, positivos en la dirección de la conducción de los procedimientos en modo electrónico. Es decir, se habla comúnmente del llamado «litigio electrónico», de una forma u otra existe en la gran mayoría de países. Se concluye que, a pesar de que la comunidad internacional ha implementado medidas en las que se deben llevar a cabo procedimientos judiciales electrónicos, su aplicabilidad ha sido problemática en Ucrania, lo que ha afectado al sistema judicial. Los procesos relacionados con la administración de justicia son uno de los elementos clave del funcionamiento de la sociedad. Después de todo, están satisfaciendo la demanda de justicia que existe constantemente por parte de los ciudadanos, y esta exigencia es una de las necesidades humanas básicas.

Palabras clave: litigio electrónico; propiedades útiles; adopción de experiencia; medios eficaces; experiencia internacional.

Introduction

Since the earliest times of human existence, individuals have tried to create certain bodies that would be engaged in establishing truth and justice in the conflict between members of society. It is clear that due to the continuous development of society, the courts, as well as other public authorities, continued to improve both organizationally and substantively. Access to justice has become an important issue in many justice systems around the world. Increasingly, technology is seen as a potential facilitator of access to justice, particularly in terms of improving justice sector efficiency. The international diffusion of information systems (IS) within the justice sector raises the important question of how to ensure quality performance (Lupo and Bailey, 2014). The regulatory act should determine the rules, which should be obeyed by the judicial authorities of Ukraine. It is necessary to take into account the law while interpreting the prescriptions of normative acts by the national courts. Such interpretation should proceed from the definitions and formulations available, first of all, in the legislation.

The importance of adhering to the rules and regulations, in the course of such interpretation, used in the law without such unreasonable extension or distortion of their content by relevant court decisions (Lyzohub, 2019).

Numerous studies demonstrate that the application of electronic system of judicial proceedings greatly facilitates litigation. Thus, the level of functioning efficiency of the judicial system of the country significantly increases in the whole. Therefore, Ukraine cannot and should not stand aside from those processes, since modern technology development facilitates all spheres of society's life-sustaining activities. It should be noted that the introduction of electronic judicial proceedings among other things will be categorically a positive step towards the progressive development of the judicial system. In our opinion, this will also make it possible to reduce the level of workload that numerous courts currently have throughout Ukraine. Besides, given the ongoing COVID-19 pandemic, it can be argued that the use of electronic litigation means by the judicial agencies of the country will, first of all, significantly reduce the risks of face-to-face contact between persons involved into litigation; secondly, it will assist to administer justice in remote parts of the country.

Changes in IT information technologies in the judiciary have become particularly evident in the context of the pandemic in an urgent need to file documents electronically, hold online court hearings, and the need to respond and efforts to ensure justice are imposed (Bakaianova *et al.*, 2020). For example, these may be hard-to-reach places that belong to that category due to natural disasters, settlements that are at a considerable distance from district centers, etc. It is known that natural disasters such as floods are extremely common phenomenon in Ukraine, especially on the West and South-West of the country. The country's inability to hold court hearings during such force majeure conditions has been a serious problem in the past. In addition, it ruined the country's image.

The purpose of the article is to determine the perspectives of electronic judicial proceedings' development in Ukraine. In this regard it is planned to solve the following tasks: to carry out the analysis of the current state of affairs in the sphere of electronic judicial proceedings in the developed countries of the world; to conduct a comparative analysis of the forms, methods and means of carrying out electronic judicial proceedings in different countries; to define the possible ways of implementing the progressive forms and methods of the electronic judicial proceedings' organization into national judicial system.

1. Methodology of the research

The methodological basis of the work is generally scientific and special methods of scientific cognition, which are used to achieve the set purpose. The comparative and legal method has been used to study international legislation regulating the legal provision of exercising electronic judicial proceedings. The systematic approach is the basis for the analysis of the legislation of Ukraine, the provisions of which determine the procedure for submission of electronic documents to the court, as well as sending procedural documents in electronic form by such participants in parallel with paper documents in accordance with procedural law. The application of the method of systematic analysis and generalization allowed us to identify legislative gaps and conflicts, on the basis of which scientifically based recommendations of theoretical and applied nature have been formulated. The selected methods have been used within interrelation and interdependence that guaranteed the comprehensiveness and objectivity of the obtained results of the scientific research. This is really through that the state of Ukraine is ensuring that issue of electronic judicial proceedings should be carry-out using the international standard put in place in other countries which has succeeded in using the said methods of proceedings. Our concerned here is not just looking at the methods of application in Ukraine, but rather to look at the difficulties that may have made the issue of electronic proceedings unsuccessful in Ukraine and how it can be remedy.

Examining only the methods of application is not enough in ensuring effective electronic Judicial proceedings, rather the issue is in making sure that electronic judicial proceedings should be effectively implemented so that the rationale of justice should be ensure. The question is not just accepting that this method of proceedings should be used in the country, but rather than to question whether it has able in solving those inconsistencies affecting the justice system, if not of what use is the methods important. Every country has its ways that it function, and for a foreign system to be accepted in a given country, it should be able in accepting the various norms of the said country. The fact that the system or proceedings succeeded in other countries, does not necessarily mean that it will be equally be successful in Ukraine.

2. Results and discussion

One can confidently state that electronic system of judicial proceedings is currently one of the highest priorities both in the context of improving the efficiency of the judicial system and in the context of improving the state system in general. It is the result of the constant development of the judicial system throughout the existence of the judicial agencies in society. Despite the existing calls in Ukrainian society for the introduction and development

of electronic systems of judicial proceedings in Ukraine, we can state that it has not been fully implemented in Ukraine (Fabri and Lupo, 2012).

Thus, we currently see that electronic system of judicial proceedings fully operates in only few countries, namely the United States, Canada, Australia and the European Union Member States. All other states, although claiming to have the means to conduct electronic judicial proceedings, actually have only few tools that are not related to each other and cannot fully ensure the functioning of electronic judicial proceedings (Lupo and Bailey, 2014).

According to the researchers of the above processes, there were several reasons for the creation and implementation of an electronic judicial proceedings system in the judicial agencies. First of all, electronic judicial proceedings will significantly reduce the funds that the state regularly allocates for judicial agencies. Conduction of a whole list of court cases in electronic format is considered more effective than organizing these cases in the traditional format (Cano *et al.*, 2015). Secondly, as foreign analysts and researchers point out, the specifics of legal trials, the introduction of a full-fledged system of electronic judicial proceedings will significantly reduce the burden on both judges and the entire judicial system.

Leading scholars tend to argue that the problem of overburdening of some judicial agencies in Ukraine is considered almost critical. At the same time, the absolute reality for the domestic judicial proceedings is that there are certain courts that hear a small number of cases, and most other courts do not cope with the terms for conducting court hearings (Arial, 2001). In turn, researchers recognize it as a serious obstacle in exercising the justice in the country. It is worth noting that unfortunately, it was typical and traditional for Ukraine to have an overburdened judicial system. In particular, it is noted that it is a consequence of inefficient organization of the functioning of judicial agencies.

Significant organizational problems have been historically inherited from the Soviet era, where a totalitarian political regime created and constantly ensured the state of affairs, when low performance, poor organization and numerous abuses were widespread.

Given the above, as well as based on data provided by researchers, we note that low transparency of state authorities, restrictions on freedom of speech and other prohibitions were among the key factors during the Soviet Union era for transforming the courts into agencies that are sources of corruption (Andrade and Joia, 2012).

Electronic system of judicial proceedings, which according to experts could not be implemented in principle in the Soviet or any other totalitarian system, largely eliminates the negative features of the human factor, which a traditional judiciary has. In particular, we recognize the undoubted advantage of the organizational capabilities of the former.

Researchers, among other things, define the functioning of electronic system of judicial proceedings as one that plays a key role in “combining law and technology” into something common. Indeed, scholars state that technology is still able to significantly improve the daily existence of the legal sphere, and the law provides a kind of platform for high-tech achievements of mankind for their practical application (Aiqa Mohamad Zain, 2018).

It has long been accepted as true in the developed countries of the West that the functioning of electronic system of judicial proceedings should be based on certain principles. Regarding such principles, it is stated that they should ensure transparency in the functioning of mechanisms of electronic judicial proceedings, as well as simplify the processes of judicial proceedings in general. At the same time, the principle of equal access to justice for all citizens must be ensured. The latter is one of the fundamental elements of creating electronic judicial proceedings in general. The system of the above mechanisms should have a simple and accessible interface to each user, which assists the users to exercise their participation in the trial (Afshar and Ahmad, 2015).

Analytical observers point out in this context that the creation of an optimally functioning, reliable and at the same time simple and clear system of electronic judicial proceedings is fully in the interests of the state. It is especially true for statesmen who really focus their efforts on achieving high performance in Ukraine in the field of state system’s efficiency and the reality of the rule of law.

Researchers call the achievement of wide use of such systems by participants in various lawsuits, as well as the further increase of the capabilities of such systems as specific interests. Herewith, it will “justify” the amount of money that was spent on the system of electronic judicial proceedings and, along with this, clearly demonstrate the advantages of such approach (Alshibly *et al.*, 2016).

Other scholars argue that achievement of a necessary balance is very important. It should exist between simple and convenient services of the system of electronic judicial proceedings that would not create difficulties for the vast majority of persons involved in trials, but such system should at the same time ensure the maximum opportunities in the field of judicial proceedings. It is this scientific and practical discourse of experts designed to establish a correspondence between the “convenience” of any system of electronic judicial proceedings and its real practical possibilities (i.e. its effectiveness in general), is one of the main discourse in legal science of the developed foreign countries (Saman and Haider, 2012).

In order to increase the efficiency of electronic system of judicial proceedings, as well as to ensure a consistently high demand, it is necessary that such a system successfully solves key problems and neutralizes the

main shortcomings of the current traditional system of judicial proceedings. Some of them have been listed above in this article.

Meanwhile, verbal battles between leading lawyers in Ukraine are only over the meaning and reasonableness of introducing electronic judicial proceedings, and discussions in the developed democratic countries about the peculiarities of daily operation of electronic system of judicial proceedings are almost non-existent.

We believe that any speculation, the essence of which is to invalidate the certainly useful properties of electronic system of judicial proceedings, should be stopped or should be refuted by other participants in such discussions by providing clear and convincing facts in favor of the above systems. In our opinion, electronic system of judicial proceedings should become a mandatory and reliable element of daily processes related to the administration of justice in the country. The basis of such a system should be elements borrowed from the most successful mechanisms of electronic judicial proceedings of the developed countries. It should also be emphasized that the system of electronic judicial proceedings must be well adapted to the possibilities of its continuous improvement. It is recognized as important because technologies in today's world are rapidly changing and its capabilities are improving and expanding. Therefore, the work on the introduction of such a system into the state structure should be comprehensive and take into account the many peculiarities of daily operation. Besides, it is emphasized that the system of electronic judicial proceedings should be componentised, i.e. should consist of certain modules, which, although operate together, but each has a separate purpose. In case of temporary failure of one componentised element of the system, all others will be able to continue to function stably. Currently, such a technological property of electronic systems of judicial proceedings is becoming the most desirable.

There are several systems of electronic judicial proceedings in European countries, which are characterized by a high level of efficiency, but instead are quite easy for everyday use by the average user. Such systems include: the Italian TOL, the Anglo-Welsh MCOL system and e-CODEX that is the world's first interstate system of electronic judicial proceedings. It should be noted that the latter operates throughout the territory of the European Union Member States, strengthening and unifying their judicial systems. Regarding the Italian TOL system, it should be noted that work on its implementation has been underway since 2001 and was successfully completed in 2005 through the official introduction and implementation of this system. It was the first major success in the development of e-justice on the European continent. Certain prototypes of such systems were surely created simultaneously with TOL, or even earlier. However, it is this Italian system that has demonstrated the wide range of opportunities that e-justice can provide.

With regard to the British MCOL system, it should be noted that it operates mainly in the civil law field, as well as in the field of relations between the authorities and citizens, which are called administrative and legal relations in Ukraine. The peculiarity of this system is its structural component, which is aimed at constant interaction with users of the system and is designed to provide continuous assistance to the trial participants. Such assistance includes, but is not limited to, assistance for filling in court documents and forms by the trial participants, verifying the status of a law suit filed by a trial participant, and creating opportunities for forming a legal request for a court order or other restrictive orders.

The e-CODEX system is a unifying force between EU Member States and has many useful functions, some of which are truly considered innovative (Shepherd and Yeo, 2003). We note that most of the characteristic features of this system are that they are implemented and distributed not within a single state, but have the same effect in all EU Member States. It is, for example applied to the issuance of court orders related to a particular case that has legal force throughout the EU (a court of one EU country may decide to seize property in another EU country, or property in several countries at once). At the same time, there is a permanent possibility for each trial participant in any EU country to be able to fill in certain documents or forms while being in any EU country. This feature of wide interstate access to the services of one system of electronic judicial proceedings is also recognized as completely unprecedented. It is possible that this system will operate in Ukraine, in case of its accession to the EU.

Canada, as one of the most developed countries in the world, as well as the country with the lowest level of violence and the lowest number of offenses in North America, also has a fairly developed system of electronic judicial proceedings (Leyh, 2016). Although, the work on the creation of an electronic system of judicial proceedings began in the mid-1990s, but it was failed for a long period of time and did not produce the desired results, namely as an efficient and reliable system. In particular, the Ontario Attorney General David Young after years of painstaking work on such a system said: “We have invested heavily in creating and implementing this system, taking on a lot of responsibility to taxpayers, but unfortunately the system that was created, still has little useful to demonstrate”.

Some researchers attribute this issue to the low effectiveness and lack of success in the early stages of Canadian systems of electronic judicial proceedings in refusing Canadian provincial governments to cooperate with the United States of America, where such systems have already been active (Julian and Kelty, 2015). Thus, there was a fundamental decision to create a Canadian system of electronic judicial proceedings or, to be more precisely, several systems for each of the provinces. Researchers claim that the direct result of the refusal of Canadian provincial governments to create

a single system of electronic judicial proceedings is the wide difference between the success and functionality of such systems between different provinces. For example, the Ontario government has failed to establish a more or less efficient system of electronic judicial proceedings, then the local government of British Columbia province, which is situated in the West part of Canada, has succeeded in establishing a powerful and efficient system of electronic judicial proceedings that meets all high standards and requirements of the present day. We believe that Canada is also a good example for Ukraine.

Robot judges are involved for trials in Beijing. China has officially announced that an online program – female judges, guided by artificial intelligence – has been held for the first time in the world in the online service center at the Beijing Internet Court. Body, face, mimicry, voice and actions: everything was modeled by a neural network. The prototype of the virtual judge was an active female employee of the institution. It is the second such trial in the country, the first one was in 2018 in Hangzhou city. This is not the first time when China has demonstrated the work of professional robots. For example, the virtual anchor of the Xinhua state news agency caused last year an unprecedented stir in the media. Despite the fact that the appearance of the anchor controlled by the neural network caused some dissatisfaction, one cannot say that virtual employees will soon replace the real ones. According to an official statement from the Beijing Internet Court, the robot judge works with the help of such technologies as the synthesis of language and images. The robotic specialist currently performs only repetitive basic work. This means that it will be only used to make court decisions and online projects, such as maintaining an official Weitao website or providing advice at a service center (There was the trial in China, 2019).

3. What are the steps made in Ukraine in order to implement electronic judicial proceedings?

According to the conducted study, a modern, advanced state cannot fully exist without the functioning of a fast and transparent system of judicial proceedings. However, the current general state of automation of the judicial system of Ukraine cannot be considered quite satisfactory. Instead, the introduction of the latest information and communication technologies will increase the efficiency of judicial proceedings in terms of comprehensive growth of informatization of society. It, in turn, will allow to adhere to the relevant advanced principles, grounds and standards of electronic judicial proceedings (Zuryan, 2020).

We note that the order of the State Judicial Administration of Ukraine No. 105 “On Implementing the Pilot Project Concerning the Exchange of Electronic Documents between Court and Participants of the Trial” was issued on September 7, 2012. That order approved the Provisional Regulations for the Exchange of Electronic Documents between Court and Participants in the Trial, which determined the procedure for submitting documents in electronic form by court participants, as well as sending procedural documents in electronic form to such participants in parallel with paper documents in accordance with procedural law.

Generally, the order determined:

- 1) registration in the system of exchange of electronic documents between court and participants in the trial;
- 2) the procedure of the user’s operation in the System;
- 3) the submission of electronic documents to the court by the user;
- 4) the receipt of electronic documents by the court;
- 5) sending electronic documents by the court to the user.

The System of exchange of electronic documents between court and participants in the trial is a software package that is part of the web portal of the judicial power, which provides the submission of documents in electronic form to the court and sending documents electronically by the court to the trial participants. The holder of this System is the State Judicial Administration of Ukraine, which ensures its maintenance, monitors the implementation of measures related to the protection of information contained there, and performs other functions provided by the Regulations.

The Concept of the Electronic Court of Ukraine was also adopted in 2012. It considers the issues for building, improving and perspectives for universal formats of interaction between document management systems and record keeping. The system of automation of document circulation and record keeping of the judicial system of Ukraine will speed up the terms of consideration of issues related to citizens, enterprises and organizations, as well as issues of interaction with other state agencies, the MPs of the Verkhovna Rada of Ukraine.

Subsequently, a new order of the same name was adopted on May 13, 2013. It provided the introduction of the exchange of electronic documents between courts and participants in the trial (criminal proceedings) in local and appellate courts of general jurisdiction with the usage of an automated court document circulation system in accordance with the Provisional Regulations for the Exchange of Electronic Documents between Court and Participants in the Trial approved by the order of the State Judicial Administration of Ukraine dated from September 7, 2012 No. 105, except

for the provisions on sending electronic documents by the participants in the trial (criminal proceedings) to the court.

As of November 7, 2016, a new order of the State Judicial Administration of Ukraine has been in force in Ukraine, which approved the Provisional Regulations for Sending Electronic Documents by the Court to Participants in the Trial, Criminal Proceedings.

As we can see, the development of electronic judicial proceedings is an important factor of ensuring the accessibility, transparency and efficiency of justice. Ukraine is gradually introducing world achievements of information technologies into the domestic judicial system. However, those innovations still pass through the prism of a complicated bureaucratic procedure. The COVID-19 pandemic and related quarantine restrictions have significantly accelerated the processes of development and implementation of modern telecommunication technologies.

The degree of efficiency of the IP-court in Ukraine depends on the definition of all these components of jurisdiction, which is currently the key one at the initial stage of the formation of its legal base. The definition of each principle creates the conditions for the operation of the second principle, which makes it impossible for them to function independently. However, each of the principles of the judicial system plays an independent role in its construction and they all together contribute to the effective organization and legal functioning of the judicial system in general, and the activities of the IP-court in particular (Volovyk, 2020).

Conclusions

Summarizing all the indicated in the article statements and scientific views of scholars and researchers who studied the characteristic features of the functioning and purpose of electronic systems of judicial proceedings, as well as analyzing the possibilities of implementing such systems in Ukraine, we state that the electronic system of judicial proceedings is definitely useful for exercising justice in the country. In particular, having studied specific examples of the functioning of electronic systems of judicial proceedings in a number of developed and democratic world countries that have fully implemented electronic systems of judicial proceedings, we tend to conclude that Ukraine definitely needs a system that would be common for the whole country.

Thus, we argue that the implementation models typical for federal countries, where each administrative and territorial unit has its own electronic system of judicial proceedings, are completely undesirable for Ukraine. Instead, given the unitary form of government in Ukraine, we

believe that only a common system of electronic judicial proceedings will be an appropriate way to increase the efficiency of the domestic system of providing and exercising the justice.

In order to create and further fully implement such an electronic system into the structure of the domestic judicial proceedings, it is necessary that several important criteria are met. For example, an independent competitive selection should be made between such systems in order to select the best one. It is also important to ensure that the future Ukrainian electronic system of judicial proceedings is useful and highly efficient. In particular, it is necessary to establish whether it really contains the best successful practices of similar systems operating in the developed world countries. We emphasize that the implementation of the above system is an important and serious matter.

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