

Model of registration of road accidents: problems of law enforcement

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Abstract. This publication focuses on the theoretical investigation of issues arising in the Russian Federation in law enforcement related to the recently introduced digital procedure for the registration of road accidents through the "DTP.Europrotokol" electronic application running on the Android or Apple iOS operating systems. The purpose of the study is to examine the above method of independent registration of a road accident without authorized police officers, developed by the Russian Association of Motor Insurers, with a substantiation of the possibility of subsequent attaching evidentiary value to the information contained in such an application in legal proceedings for the recovery of insurance compensation in connection with the occurrence of this road accident. The authors assessed the effectiveness and feasibility of this digital traffic accident model, including the lack of sufficient regulatory guarantees for the safety of the information uploaded by the user to the mobile application, the existence of virtually unlimited powers of the application developer to control its functioning. They drew attention to certain enforcement problems associated with the assessment of the information available from the "DTP.Europrotokol" application, which is not possible to use in all cases, data the accuracy of which depends on many technical factors.

1 Introduction

The doctrine notes the progressive movement of technological progress, with qualitative shifts clearly visible as early as the middle of the 20th century [1]. Digital technology has permeated all areas of human activity. There is already discussion about creating a new reality that has no parallel in the old world. The digitalization of society and its political and economic components suggests the urgent need to fill national legal systems with standards that will acquire a different degree of compatibility within forming the macro-environment of legal regulation [2]. The proliferation of digital technologies led to the creation of new ways and means of regulation [3]. However, there is no doubt about the need for regulatory models to be consistent with international human rights standards [4].

The society with digital relationships is called the digital society [5]. The digital paradigm of activity in the Russian Federation, becoming more widespread year by year, has had a significant impact on motor insurance, affecting not only the possibility of an electronic insurance policy (E-CMTPL) confirming that the insured has concluded an insurance contract with a particular insurance company, but also the possibility of applying a digital model to the procedure for handling road traffic accidents. Such a digital model of processing road

accidents through the use of the "DTP.Europrotokol" and "CMTPL Assistant" electronic applications running on the Android or Apple iOS operating systems is certainly not possible in all cases. The law regulates the circumstances and conditions where it can be implemented independently by parties involved in a road traffic accident without the help and presence of authorized police officers. The statutory legal provision for the absence of authorized police officers at the scene of the accident itself confirms that the digital procedure can only be used when there are no obvious and directly dangerous consequences for the parties involved. This study will focus on the effectiveness of the electronic (mobile) application "DTP.Europrotokol" because there is no universal solution to the problem of legal effectiveness to date [6]. Although this electronic application, by filling in all the data and conditions contained therein, significantly increases the statutory limit of the insurer's liability, the statutory electronic model of processing a road traffic accident contains some questionable legal provisions. It is important to note that the execution of a road traffic accident in a simplified form by using the electronic application "DTP.Europrotokol" does not negate the possibility to further initiate legal protection of their rights by the injured party to the accident, if the insurance company fails to perform (not properly perform) the civil law

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obligations imposed on it by the car insurance contract. In this case, a proper judicial legal procedure to protect the victim's rights is not possible without a thorough judicial evaluation of the information and data contained in the "DTP.Europrotokol" electronic application, the accuracy and integrity of which are dependent on many technical factors.

2 Problem Statement

There is the need to revise universal human rights and to extend them in view of the era of information technology [7]. The issue of balancing interests in the sphere of insurance relations, including in the digital transformation of public activity, in this regard, annually attracts the indispensable interest of the public authorities. There are various reasons for this: legislative actualization of an alternative extrajudicial (quasi-judicial) procedure for settling motor insurance disputes by appealing to a competent public person; regulatory adjustment of the contractual relationship between the insured and the insurer to expand the permissible legal framework for the use of electronic means in this case; seeking the legal introduction of a simplified procedure for the registration of a road accident (insurance event) which may subsequently be recognized as an insured event. Certainly, the latter must have a legal formulation, interpreted in such a way as to prevent uncertainty whether the means envisaged by the Act are necessary to bring the parties to the insurance relationship into a balance. It is justified to note the relevance of the task of society in view of the full realization of the political and legal potential of the Constitution through law-making and its direct application, improving the activities of the authorities, increasing their constitutional and legal responsibility [8]. Policy-making should not exclude a focus on information security and the protection of human rights [9].

The initial prerequisites of the simplified procedure of registration of road accidents introduced by the Russian legislator and justified, *inter alia*, by the accelerated procedure of such registration and recording of the event, have shown their practical importance in a positive aspect and led to its further legislative development and implementation, but with the increasing digitalization of society. This has resulted in the adoption of legal regulation concerning the digital ability of road accident participants to independently complete a road accident without the presence of authorized police officers at the scene of the accident by using the special electronic (mobile) application "DTP.Europrotokol" which operates on the Android or Apple iOS operating systems. The introduced legal regulation involving a displacement of the accident registration procedure by authorized police officers in its classical sense to a digital transformation of the recording of the accident has a limited scope of the circumstances of the accident.

We should note that the simplified procedure for drawing up a road traffic accident was originally introduced into the Russian public domain by the

legislator under Federal Law No. 40-FZ of 25 April 2002 "On Compulsory Civil Liability Insurance for Owners of Motor Vehicles" (hereinafter, the CMTPL Law). It does not presuppose a digital format, currently provides for several conditions for its implementation. Thus, there should be no more than two vehicles involved in a road traffic accident, the civil liability risk of both drivers must be insured under a valid compulsory motor third party liability insurance contract (hereinafter the CMTPL contract); the damage caused must be exclusively material in nature and be caused only to vehicles whose drivers do not have any disagreement about the circumstances of the accident and the list of vehicle damages. The right arising from the compliance of the participants in a road traffic accident with these conditions entitles them to claim insurance compensation from the insurance company in an amount not exceeding 100,000 roubles.

The use of the electronic (mobile) application "DTP.Europrotokol" is possible not only when the participants of a traffic road accident subjectively wish to increase the possible amount of the insurance payout, with a maximum amount of 400,000 roubles (in the territory of the constituent entities of the Russian Federation - the cities of the federal significance of Moscow and Saint Petersburg, and by using digital technologies of the global navigation satellite system of the Russian Federation (GLONASS) and GPS coordinate data), but also if the participants disagree about the circumstances of the accident (including the fault of a particular participant and the list of vehicle damages). "DTP.Europrotokol" is optional without one of these conditions in relation to the circumstances of a specific crash, expressed in appropriate legal definitions to be assessed in a combined manner. Artificial intelligence embedded in the application software has some attributes, such as substantiality, autonomy, indicated in the doctrine [10].

The legislative incorporation of this simplified digital model of registering a road accident has not precluded the initiation of legal proceedings to protect the rights of insured persons, whose procedural features have also changed as a result of this digital modification of the classic procedure for registering accidents. There is a strong case for the non-specificity of Russian law enforcement in resolving issues related to the regulation of electronic processes [11].

3 Research Questions

The practical implementation of a remote electronic digital procedure for the registration of a road traffic accident, similar to the traditional registration of an accident without authorized police officers, has its legal regulation set out in the provisions of Article 11.1 of the CMTPL Act providing for the previously outlined conditions where it can be used by technical means to record violations, the circumstances. Moreover, Paragraph 2.5 of the Russian Federation Road Traffic Rules also establishes the obligation for drivers to self-

record the accident on the legally prescribed accident notification form.

"DTP. Europrotokol" is a mobile application developed by the Russian Association of Motor Insurers, with software for the main mobile operating systems (Android, Apple iOS), which allows for photographic documentation of vehicle damage resulting from a road accident, to a portable (mobile) device (smartphone, tablet) of the user and transfer the received photo-images with additional information about the road accident via GSM communication (mobile Internet) to ST-GLONASS AIS RAMI (automated information system of the Russian Association of Motor Insurers).

But there is the lack of an objective possibility to reproduce the circumstances of the road accident, the location of the vehicles at the territorial police body or a stationary post after the drivers had performed their duties to document the scene of the road accident without traffic police officers, the lack of the possibility, when relevant questions arise, to comprehensively, fully and objectively examine evidence of fixing the event that occurred [12].

3.1 Guaranteeing the integrity of user data: unlimited possibilities for the mobile app developer

As the developer of the "DTP.Europrotocol" software, the Russian Association of Motor Insurers has, accordingly, certain powers to ensure the functioning of this mobile application, establishing, among other things, the right to modify or delete any information posted by the user on the mobile application at any time. This right also extends to the possibility of modifying or deleting photo content (photo images) uploaded to the app by the user at any time for documenting damage to the vehicle as a result of a road traffic accident. Thus, it appears that the objective security of the user's account and all the information uploaded to the mobile application is not only legally established, but actually made dependent on the actions of the application's developer. It is an open question whether it is justifiable and reasonable for a developer to have the power to intrude into the original data of a user's account, who may initiate legal proceedings to vindicate his right, which would require information initially recorded in the mobile app, but during its realization such information may disappear.

3.2 Lack of responsibility of the software developer: is it justified?

As noted, the information about damage to vehicles recorded by photographic images with accompanying information about the accident is transmitted via GSM communication (mobile internet) to the ST-GLONASS AIS RAMI, whose principle of transmission is its invariability. Immutability, in this case, implies that the information transmitted is consistent with its original recording, without giving drivers involved in the crash the right to change it, including by excluding any photographic data.

However, users accept the terms and conditions of the "DTP.Europrotocol" mobile application as set out in the relevant agreement for its use, stipulating that the right to use the mobile application is granted on an "as is" basis. The Russian Association of Motor Insurers makes no warranties or representations regarding the error-free operation (functioning) of the mobile application or its individual parts (materials), independent information elements, or the compliance of the mobile application with the specific purposes and expectations of the user.

Furthermore, the Russian Association of Motor Insurers does not guarantee the authenticity, accuracy or completeness of the information (materials) contained in the mobile application, or provide any guarantees or representations. It is not liable for any consequences associated with the use of the mobile application, including due to errors or malfunctions in its operation (functioning). The app is not guaranteed to function continuously, quickly and without technical failures, reliably and error-free or to provide error-free, complete, accurate and correct results from the mobile app.

4 Purpose of the Study

The purpose of the study was to investigate issues arising from the use of a digital procedure to process road traffic accidents through the use of the "DTP.Europrotocol" electronic application running on the Android or Apple iOS. The study aims to identify legislative gaps in the regulatory framework for the use of this digital method of recording accidents.

5 Research Methods

The study relies on the application of comparative legal analysis, system-structural analysis and the method of synthesis.

6 Findings

6.1 Guaranteeing the integrity of user data: unlimited possibilities for the mobile app developer

It seems that the possibility provided by law for the software developer to modify or delete, at his subjective discretion, the initial information contained therein by the user, the road traffic accident participant, including information about the latter, is an unjustified "extension" of the permissive framework of control over the functioning of this mobile application. The existence of this power, which is outside the responsibility and control of the insured (app user), can complicate the latter's evidentiary activities in litigation against the insurance company, de facto creating a situation where it can exclude the submission of evidence in support of its position (including when challenging the guilt of a particular road traffic accident participant). Lacking sufficient safeguards to protect the user's information,

effectively creating a strong protective "bastion" in his possible subsequent evidential activity, there is no reason to argue for compliance with the principle of procedural fairness in litigation against an insurance company and based on the examination of such data. There is no instrumental nature to the legal procedure noted in the doctrine [13], which implies the possibility of providing subjects with the most favourable regime for exercising their rights. The abstractiveness of textual characterization of legal statehood can be compensated by doctrine and jurisprudence [14].

6.2 Lack of responsibility of the software developer: is it justified?

We believe that a proper legal argument about the liability of the developer of the mobile application "DTP.Europrotocol", legally prescribed for mandatory use by road accident participants in certain cases (circumstances), on the one hand, actually absent and, on the other hand, in principle, enshrining the absence of any guarantees on its part about the reliability of fixation and transfer of information about the road accident to ST-GLONASS AIS RAMI, necessary for investigation when later initiating a court dispute, appears to be an unreasonable legislative decision. The data and information contained in the mobile app are certainly of evidentiary value in a judicial review of an auto insurance dispute, both in terms of determining who was at fault in the accident and for determining the list of damages to the vehicle, the total value of which, together with other circumstances, makes it possible to determine the cost of the repair. The latter affects the procedural possibility of appointing a forensic examination in a court case to determine the cost of repairing the damaged vehicle, which can only proceed on the basis of available photo content (for example, if the vehicle has been taken out of the possession of the user of the mobile app). The lack of provisions on the truthfulness, quality, accuracy, reliability and correctness of the information and data makes it clear that the mobile app user cannot use all possible procedural ways of protecting his subjective right to receive insurance compensation in the relevant proceedings. At the same time, the idea of compulsory protection of the weaker party is increasingly becoming a feature of the law [15].

7 Conclusion

The study confirms the growing importance of digital transformation of insurance legal relations, while at the same time demonstrating the need for legislative adjustments to certain provisions of the digital procedure for the functioning of the "DTP. Europrotocol" mobile application already in use, including from the perspective of legally establishing the principle of invariability and integrity of user information, while limiting the rights of the software developer to subjective control and interference with it and its content. The introduction of this digital traffic accident model, except an accelerated procedure for recording the accident, not

only establishes other guarantees of increased protection for the user (consumer of financial services), but also puts into question the possible exclusion by the developer at his discretion of information uploaded by the user which could affect the outcome of the legal case. The use of a digital procedure for processing road traffic accidents will only be more practical if the results of its implementation, used in court proof of the position of the disputing parties who are parties to the insurance legal relationship, are aimed at increasing the level of protection for the insured (mobile app user) as a weak party by excluding possible procedural defects in the functioning of the software. We have achieved the purpose of this study by identifying gaps in the enforcement of the digital crash model and making proposals to address them.

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