

Selected aspects of legal regulation of e-justice in Russia

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Abstract. The article is dedicated to the research of how information and telecommunication technologies are used in the legal procedure and of problems of development of e-justice in Russia. What is more, the topic of additional opportunities for the trial parties in civil law cases is covered as well. The authors have identified several problems connected to the development of e-justice and have suggested solutions, using video conferences in court proceedings. Recommendations are given in the article, as well as possible solutions to problems emerging in the process of development of e-justice in Russia.

1 Introduction

Among the aims of creating the electronic justice system are the improvement of its availability and the transparency of administration as well. Availability of justice is generally understood as the feasibility of receiving legal protection, the effectiveness of justice mechanisms at all stages of its realization, the pretense of actual guarantees of getting a fair and effective ruling upon recourse to the court.

The European community recognizes the need of introducing electronic elements to the functioning of public authorities, including the judiciary. Electronic institutes should naturally complement the traditional institutes of democracy by ensuring the fullest realization of fundamental human rights and freedoms [1]. While uncovering the problem of legal regulation of e-justice in Russia, the authors have sought to analyze the current state of electronic digital law enforcement.

2 Problem Statement

It must be noted that one can easily forget about the risks innovations cause while being immersed in them. For instance, the electronic workflow includes more safety risks than the habitual paper one. The possibility to amend electronic documents calls into question their credibility as evidence when assessed by the court and creates additional requirements for identification of persons submitting such documents [2].

3 Research Questions

The term “e-justice” has been understood ambiguously in scientific literature for a long time. In the absence of a normative definition different scientists have implied a

wide range of phenomena starting from the activity of judiciary ending with the order of submitting electronic documents to court [3].

The Concept of development of court computerization until 2020 contains the first legal definition, according to which e-justice is a method and a form of actions established by courts based on applying the information technologies system to their work, including the electronic interaction between courts, citizens and organizations [4].

Despite the significance of e-justice and the rise of scientific activity on the problem in recent years, the autonomous nature of the research object is currently still in question. Despite the particularity of such a form of realization of the right to judicial protection, using it changes neither aims nor the essence of justice, as it is a law enforcement activity that has some distinctive features of technical and procedural character.

The application of information technologies is aimed at increasing the transparency and availability of justice, the realization of rights to receiving reliable and actual information. All these goals do not stand out of the general conjuncture of justice administration, so, in our opinion, the interest in researching e-justice and its technical and procedural peculiarities is caused by its relative novelty. Once e-justice becomes an established institute in civil law and other spheres of procedural law, it will stop being a special research subject.

However, considering the tendencies of e-justice formation in Russia, one can assert with certainty that this process is far from over.

The active stage of e-justice formation in Russia started in 2000 after the All-Russian Congress of Judges V. At the same time, the first program of information management of courts of law was created. The next milestone of the process was the adoption and functioning during 2002-2006 of the federal program

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dedicated to the development of the judicial system in Russia.

The first practically important achievement in the e-justice sphere was the creation of “Justice”, an electronic court filing system which has formed a united information space of courts of law and has provided not only the electronic support of the procedure but also the information about it to the citizens and organizations on the Internet.

It was clear that despite the progress made, the system was far from perfect, qualitative changes were needed, as well as a broader distribution. In this regard the next program of the Russian judicial system development for the period of 2007–2011 was adopted, during which the “The register of judgements of State commercial courts” information system was created in 2008.

The changes introduced to the Code of Arbitral Procedure of the Russian Federation in 2010 were a breakthrough. Due to them, the sides have been provided with the opportunity to submit procedural documents via the Internet, it became possible for the sides to participate in judicial proceedings not in person but using the means of teleconferencing applications.

The next Federal target program was the program of development of the judicial system during 2013–2020, according to which improvement of the e-justice system was one of the key tasks, as it made it possible to ensure the availability of justice, the trust of the citizens and the protection of personal data of the participants of the process.

It must be noted that the legal positions of the Supreme court of the Russian Federation have become more profound and better developed over the years. The ruling of a plenary session of the Supreme court of the Russian Federation of 09.02.2012 №3 “On altering some orders of plenary sessions of the Supreme court of the Russian Federation”, the ruling of a plenary session of the Supreme court of the Russian Federation of 29.09.2015 №43 “On some issues connected to applying the rules on the statute of limitations of the Civil code of the Russian Federation” have regulated only some aspects of e-justice; for instance, informing the parties of judicial proceedings via SMS and the moment of submitting the statement of claim in electronic form [5], [6]. In 2016 the Department of Justice of the Supreme court of the Russian Federation has established the order in which the electronic documents should be submitted to courts of law [7]. In 2017 the plenary session of the Supreme court of the Russian Federation published a fundamental rule №57, regulating the aspects of e-justice not covered by the law [8].

In conclusion, during the years of its existence e-justice in Russia has undergone long and complicated development; however, the process is not over yet.

4 Purpose of the Study

Let us address some practical problems that arise in the field studied due to the faults of technical equipment and procedural norms, namely the problem of using

teleconferencing systems in arbitral courts and courts of law to provide participation of the sides in judicial proceedings in the process of justice administration.

Digital technologies are developing by the requests of society. A video conference is a technology letting subjects who are physically distant to interact and exchange information in real time.

The emergence of this system has significantly reduced the money and time spent on proceedings.

As S. V. Vasilkova notes, e-justice aims at improving the quality of judicial paperwork services and the quality of workflow in general by using information and communication technologies [9].

The introduction of the rule on judicial proceeding using videoconferencing systems to the legislation is caused by several factors. Firstly, this way the time spent on procedural actions, such as questioning the witnesses, interviews, expert consultation, etc., is reduced. Secondly, the availability of justice increases. Thirdly, the necessity to use video calls can be caused by such situations when the parties are located in different regions for objective reasons. There are also cases when it is difficult to present certain evidence in court.

According to part 1 of article 155.1 of the Civil Procedural Code of the Russian Federation, the provision of a video conference to the parties, their representatives, experts and other specialists is only possible upon submission of a motion [10].

As demonstrated by judicial practice, such a motion must contain good reasons for the possibility to have a video conference. For instance, one ruling of cassation contains an indication to the fact that the possibility to participate in judicial proceedings by using the means of video conferencing is a right and not an obligation of the court. The motion submitted was not granted, as the court had not found reasons for it, namely, there was no reason to grant the motion that could have influenced the decision. Thus, the appeal was investigated without the representative taking part [11].

As stated in point 8.1.5 of the order of the plenary session of the Supreme Arbitration Court of the Russian Federation of 2013, before appointing a judicial proceeding using the video conferencing systems in courts of law, one has to consider the following circumstances: timezone of the region, “video conference plan” created with the help of the United corporate portal of arbitral courts created for convenient planning of session time [12]. In this regard, conducting a court session via a videoconference is possible under several conditions, namely the same timezone and the technical possibility to do so in courts.

According to article 153.1 of the Code of Arbitration Procedure of the Russian Federation, there are two grounds for refusal: the necessity to conduct a closed session and no technical possibility to provide a video conference [13].

According to part 5 of article 159 of the Code of Arbitration Procedure of the Russian Federation, not granting a motion on a video conference can be based on the fact that the motion had not been submitted in time and when the submission of such notion delays the process and creates obstacles for proceedings [10].

It is worth paying attention to the fact that organizing a video conference shortly before a session does not seem to be possible in case the motion had been submitted on short notice.

5 Research Methods

The main method used was dialectical; it has made it possible to identify the purpose of the study. To solve the problems of this research the authors have used various specific cognition methods.

6 Findings

Experience has shown that in civil proceedings a motion for a side to take part in a session via a video conference can be denied for various reasons that depend upon a judge. We suppose that this problem requires a solution on the legislative level by amending the Civil Procedural Code of the Russian Federation.

Clear grounds in which the court must refuse granting the motion on making it possible to take part in the court session via video conference and cases in which it cannot be denied must be introduced to the Russian Procedural codes (article 153.1 of the Arbitration Procedure Code of the Russian Federation, article 155.1 of the Civil Procedure Court of the Russian Federation, article 142 of the Code of Administrative Procedure) [13], [10], [14].

The researchers Bochkarev Y. A. and Shapovalov S. I. note that the question of the absence of the possibility to appeal against the decision of the court on refusing the usage of a videoconferencing system should be taken into consideration as well [15].

Thus, addressing the gaps will establish justice with no violations from the court. It must be noted that using a videoconferencing system in court during proceedings has its advantages: it saves time, decreases the duration of proceedings and expenses necessary to commute to the court from where the person is.

An issue of organizational character is the fact that in courts there are no hardware specialists that could ensure continuous work of video conferences. Such a person must be responsible for the maintenance of video calls. The introduction of such specialists can improve the efficiency of using modern digital technologies in judicial proceedings.

7 Conclusion

Thus, using video conferences in judicial proceedings is a mechanism as important and necessary in today's circumstances as the possibilities to initiate proceedings online, submit documents in electronic form, record videos of court sessions and keep digital case files.

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