

ELECTRONIC MEANS OF ENSURING FAIR JUSTICE: CONTEMPORARY AND DEVELOPMENT PROSPECTS

MEIOS ELETRÔNICOS DE GARANTIR JUSTIÇA JUSTA: PERSPECTIVAS CONTEMPORÂNEAS E PERSPECTIVAS DE DESENVOLVIMENTO

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Received: 30 Nov 2023

Accepted: 05 Jan 2024

Published: 30 Jan 2024

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Abstract: The scientific value of the research lies in the fact that, on the basis of the study of theoretical-legal and practical problems of the introduction and adaptation of electronic justice in the conditions of the modern information society, conceptual conclusions are drawn, which have a scientific and applied character. In particular, the general concept of digitization of judicial proceedings in modern conditions was analyzed, the author’s approach to understanding the category “justice of justice” was developed, the essence and prospects of using artificial intelligence during judicial procedures were clarified. The ideas available in the doctrine about the expected benefits, consequences and risks of use are considered electronic means of ensuring fair justice. It was concluded that the process of introducing electronic justice and its modernization requires a comprehensive approach to the automation of electronic interaction between court and prosecutor’s offices, the use of electronic document management and access to court cases, the use of modern digital technologies in conducting procedural actions, etc. On the basis of the analysis of the leading foreign practices on the specified issues, further prospects for the digitalization of justice are outlined. Emphasis is placed on the priority of human rights and legitimate interests, taking into account requirements for accountability, a high degree of transparency and protection, appropriate legal, organizational, technical and financial support when taking state measures and technological solutions.

Keywords: E-justice. Fair justice. The rights of the person. Legal regulation. Artificial Intelligence.

Resumo: O valor científico da pesquisa reside no fato de que, com base no estudo dos

problemas teórico-jurídicos e práticos da introdução e adaptação da justiça eletrônica nas condições da moderna sociedade da informação, são tiradas conclusões conceituais, que têm um caráter científico e aplicado. Em particular, foi analisado o conceito geral de digitalização dos procedimentos judiciais nas condições modernas, foi desenvolvida a abordagem do autor para entender a categoria "justiça da justiça", foram esclarecidas a essência e as perspectivas do uso da inteligência artificial durante os procedimentos judiciais. As ideias disponíveis na doutrina sobre os benefícios esperados, as consequências e os riscos do uso são considerados meios eletrônicos de garantir uma justiça justa. Concluiu-se que o processo de introdução da justiça eletrônica e sua modernização requerem uma abordagem abrangente para a automação da interação eletrônica entre o tribunal e o Ministério Público, o uso de gerenciamento eletrônico de documentos e o acesso a processos judiciais, o uso de tecnologias digitais modernas na condução de ações processuais, etc. Com base na análise das principais práticas estrangeiras sobre as questões especificadas, são delineadas outras perspectivas para a digitalização da justiça. A ênfase é colocada na prioridade dos direitos humanos e dos interesses legítimos, levando em conta os requisitos de responsabilidade, um alto grau de transparência e proteção, apoio jurídico, organizacional, técnico e financeiro adequado ao tomar medidas estatais e soluções tecnológicas.

Palavras-chave: E-justiça. Justiça justa. Direitos da pessoa. Regulamentação legal. Inteligência artificial.

1. Introduction

Justice, as a basic value, is one of the central ones throughout the history of civilization, science and practice, and the right to a fair trial is multifaceted and one of the fundamental human rights. Thanks to the functioning of justice, it is possible to talk about the development of democratic, legal principles of state formation, because it is a guarantee of protection of violated rights, freedoms and legitimate interests of the individual. The realization of this right enables citizens to have equal access to the court (Shelever, 2022), to feel protected from any offenses, and for the state to be considered truly democratic and legal.

In the procedural sense, “justice” is analogous to “due process”. Clause 1 of Art. 6 of the European Convention on Human Rights (hereinafter referred to as the ECHR) defines a narrow approach to justice, which consists in: proper notification and hearing, taking into account by the court only evidence obtained by legal means, issuing a reasoned decision, the principle of equality of parties in the adversarial process, prohibition of interference other branches of government to the process of administration of justice, the principle of legal certainty (Convention for the protection of human rights and fundamental freedoms, 1950).

Administration of justice is one of the necessary procedures, thanks to which the combination of law and justice becomes possible, it is a fundamental legal possibility that cannot be prohibited even under conditions of war or emergency (Pryvidentsev, 2022). At

the same time, it must be stated that the administration of justice in some countries is sometimes accompanied by numerous violations of rights, and the provisions regarding the fairness of judicial proceedings due to a number of organizational, technical, economic, procedural and other reasons are declarative and are often violated. This is evidenced by the large number of appeals to the European Court of Human Rights (hereinafter referred to as the ECtHR) regarding violations of the right to a fair trial (Decision of the ECtHR. 2014. The case “Panju v. Belgium”. No. 18393/09; Decision of the ECtHR. 2018. The case “Vega and others against Ukraine”. No. 51414/07; Decision of the ECtHR. 2022. The case “Xavier Lucas v. France”. No. 18393/09 and others).

The trend of the introduction of information and communication technologies in the world and the development of a modern electronic society require the introduction and further development of the digitalization of the judiciary in many democratic countries, which requires a detailed and systematic analysis of legislation and the practice of its application. Today, the issue of implementing the concept of electronic justice in the practical activities of justice bodies of many countries of the world does not lose its relevance, and the gradual digitalization of their activities is a necessary condition for the creation of an effective mechanism of legal regulation of procedural legal relations in which public and private interests intersect. This is dictated, in particular, by the unformed practice of digitalization of certain branches and institutions of the judiciary, in particular regarding: documentation and use of information with the content of electronic information systems and communication systems; implementation of electronic justice evenly throughout the entire territory of the state; implementation of adequate and uninterrupted document flow; use of digital technologies for procedural actions during court proceedings, etc.

One of the key questions of many modern judicial systems of the world is whether they are able to ensure the right of citizens to a fair trial, to administer justice in a reasonable time during the introduction of the latest information and communication technologies. The issue of access to justice and public hearing of cases is no less relevant. In the conditions of digitization of the judiciary, unfortunately, these aspects of the right to a fair trial are not always fully realized, and the state is faced with a number of problems, the comprehensive solution of which is one of the priority directions of a modern democratic society.

The purpose of the scientific article is to analyze the theoretical-legal and organizational-procedural aspects of the introduction of electronic means of ensuring fair

justice in modern conditions, to identify general trends, to review the leading practices of electronic justice and to make relevant proposals for its development at the national level.

2. The general concept of digitalization of legal proceedings in modern conditions

Adhering to the concept of interpreting the accessibility of justice from its components, such as institutional and functional (independence and impartiality of the court; publicity and openness of court proceedings) and procedural (reasonableness of terms; competitiveness of parties in criminal proceedings; appeal of procedural decisions, actions or inaction) (Lyoshenko, 2021), in this part of the research we will focus on the analysis of scientific views on the use of digital means of ensuring fair justice.

The concept of “digitalization” has become so firmly accustomed to modern man that it is impossible to imagine the present without this concept. The phenomenon of “digitalization” occurred as a derivative of computerization and informatization. Today, this concept is widely used in various fields of scientific activity. Opportunities caused by the digital presentation of information lead to the formation of technological environments for its functioning, that is, the creation of digital platforms capable of solving a complex of tasks. It is about the implementation of modern technologies in various spheres of life and business. This also applies to the public sector, in particular justice.

Legal systems around the world are based on the most ancient values, principles and rules of independent and professional resolution of legal conflicts, which are based on the rule of law. New research knowledge and data on how to most effectively resolve legal conflicts, combined with technological advances in everyday life, provide every reason for alternative ways of “legal processing” of disputes. Can artificial intelligence completely replace the judge and what are the risks?

The experience of using Artificial Intelligence in the field of justice shows that its individual elements (programs, algorithms) have a positive effect mainly on the quantitative characteristics of the judicial system (speed, number of considered cases) and indirectly on the quality of administration of justice (freed from certain routine functions, the law enforcement officer can devote more because it really requires his participation); the possibility of using artificial intelligence systems to directly improve the quality of justice is still doubtful. The reason for this is not only the technical and organizational problems associated with the use of Artificial Intelligence in such a conservative field, but also,

probably, the psychological unwillingness of society to trust machines and the algorithms embedded in them in the same way as humans.

In general, the following groups of risks of the use of Artificial Intelligence are distinguished in domestic and foreign doctrine: technical risks, including insufficient transparency of decision-making mechanisms embedded in Artificial Intelligence systems (Artificial Intelligence and the Legal Profession, 2018), risks of disclosure of confidential data used in systems (Garcia, 2017), risks of loss of control over decisions made by artificial intelligence systems (due to unauthorized access to artificial intelligence algorithms by third parties, and involuntary actions (“rebellion of machines”) (Bostrom, 2014); economic risks, such as the risk of the disappearance of some legal professions and a reduction in the number of jobs in the field of justice (Remus, 2016), legal risks, including a change in the concept of justice, based on the immediacy of the examination of evidence and trial, judicial discretion, ensuring a balance between legality and justice (Ashley, 2017; Thompson, 2015; Zeleznikow, 2017), as well as unsettled issues of responsibility of Artificial Intelligence systems (Ponkin, 2018).

In the judiciary, where human activity is limited by certain formal rules, it is permissible to use only specialized (auxiliary) artificial intelligence systems capable of working independently, but under human control. The interaction of the Artificial Intelligence with the participants of the judicial proceedings should ensure that they realize the rights and obligations granted by the law, and the judges the opportunity to correct the decisions made by the Artificial Intelligence in necessary cases. Under such conditions, the question of a person’s legal responsibility for damage caused by a mechanism created by him or by a person who allowed its use does not lose its relevance. We consider a more rational solution, within the framework of this problem, to be guided by a certain formula “assistance of artificial intelligence + human control” and to evaluate artificial intelligence as an auxiliary tool in the field of civil justice.

We note that the future of the use of digital technologies in ensuring fair justice is quite optimistic, as well as the future of lawyers and judges who make changes to their work style, qualifications and processes. Today, people are so used to the ease with which they can resolve their issues online that they increasingly expect and demand this from courts, judges and human rights defenders. Therefore, in order to maintain legitimacy, they should improve their qualifications and get on the path of modern ideas.

Without a doubt, the use of artificial intelligence systems in the judiciary will make it

more efficient, operational and objective, which meets the needs of life in modern society, provided that it will be applied under human control. At the same time, without developing main, strategic directions for the automation of criminal justice based on the principles of judicial power and criminal justice, it is premature to entrust the administration of justice and decision-making to digital devices. Making appropriate decisions regarding the digitization of certain areas of judicial proceedings requires a balanced approach.

3. Analysis of leading foreign practices of digitalization of legal proceedings

The issue of effective functioning and modernization of electronic justice in remains open for many democratic countries of the world, therefore, we consider a brief analysis of successful practices of using electronic tools for the implementation of justice to be useful for developing relevant recommendations for optimizing the process of reformatting justice to electronic.

Science and practice have developed and implemented the following basic elements of electronic justice: publication of information about court activities; register of court decisions; issuance and publication of judicial acts; electronic transfer; submission of documents in electronic form; electronic court notices; information about the time and duration of the trial; exchange of documents between the parties in electronic form; research of electronic evidence in court proceedings; recording court sessions by means of audio and video recording, etc. These elements of electronic justice will be examined by us in this part of the work.

It is not without reason that Finland is considered one of the leaders in the application of paperless document processing technologies in the criminal process. The prerequisites for the transition of Finnish justice bodies to paperless document circulation were the low coverage of the population and the remoteness of law enforcement and judicial bodies from each other. The main coordinator of the program is the Ministry of Justice. The result of the system's operation is the completeness of electronic document circulation, which equates electronic documents with paper ones, which allows courts not to spend time scanning the relevant information carriers (Kujanen, 2003).

In the United States of America, there is an intensive electronic court system (PACER), which is available to registered users. Thanks to the mentioned program, the participants of the court session can familiarize themselves with the procedural documents, the parties to

the process, follow the proceedings of the case and have the opportunity to view the schedule of court cases (Electronic Filing (CM/ECF).

In the Federal Republic of Germany, the possibility of the judicial system to work with electronic copies of the necessary documents is determined at the legislative level. The use of electronic copies will speed up the interaction between courts and interested parties, and will also provide an opportunity to make documents available to all interested parties and organizations. In addition, it will be possible to submit statements, applications via the Internet (Dubova, 2005).

In Estonia, an electronic public announcement system is functioning, which will contain information related to the activities of the judicial system and which must be made public for wide access (The issue of creating an electronic public announcement system in Ukraine was discussed, 2015).

As an example of successful experience in the development and implementation of legal-tech products in the field of dispute resolution, we can mention the Dutch Rechtwijzer Platform - the world's first online platform for settling disputes between individuals, developed in the Netherlands. With the help of this platform, you can divorce, resolve conflicts with your employer or landlord.

In the Kingdom of Belgium, the Federal Service of Information Technologies and Communication "FedIct", within the framework of the implementation of a number of innovative projects, created complex electronic document management systems of state structures: Tax-on-Web, e-Justice, Police on the Internet. Since 2005, the "Electronic Justice" project has been implemented, which allows courts, other bodies of judicial power, subjects of legal relations to exchange documents electronically or interact using Internet technologies (Experience of interaction of state bodies of the countries of the world with institutes of public society, involvement of the public in the formation and implementation of state policy, counteraction to corruption, ensuring e-government. Ministry of Foreign Affairs of Ukraine, 2012).

The resources of the "Electronic Court" are actively used in Singapore, where the system of electronic submission of documents has been in operation since 2000. Thus, in particular, the System of electronic retrieval of documents is successfully functioning, which allows individuals and legal entities to remotely search for and review documents submitted to the court in an administrative case, as well as the Electronic Information Service, which

provides the opportunity to learn about all procedural actions in real time (Pryvidentsev, 2022).

In the French Republic, the “e-huissiers” system functions, where there is an interface for bailiffs, with the help of which they can make their claims for payment, request a decision on the distribution of court costs. It covers all actions of criminal courts (with the exception of police courts and courts for the execution of sentences), which, accordingly, are at the center of the computerized system of criminal justice (Experience of interaction of state bodies of the countries of the world with institutes of public society, involvement of the public in the formation and implementation of state policy, counteraction to corruption, ensuring e-government. Ministry of Foreign Affairs of Ukraine, 2012).

In Canada, due to the threat of disclosure of personal information during the use of e-justice, special recommendations prepared by the Judicial Advisory Committee are applied. The document defines three levels of protection, which apply depending on the issues being resolved and whether a non-disclosure clause applies. In some regions of the country, an online civil court has been introduced, the use of which enables the parties to the proceedings to gradually resolve disputes online using their own gadgets through negotiations, mediation and direct court proceedings (Claims up to \$5,000 in Civil Resolution Tribunal, 2017).

The system of electronic judicial proceedings in Australia provides that at the same time during the six months presented for consideration of cases, a minimum of 2,000 can be decided. There are separate subsystems for consideration of court cases and appeals, conducting court procedures in the mode of video conferences using Skype, etc. (Kushakova-Kostytska, 2013).

Similar approaches to the resolution of minor disputes are used by the judicial systems of other European states. So, for example, in the Federal Republic of Germany, claims up to 600 euros are recognized as small claims, in Spain – up to 900 euros, in the United Kingdom – up to 5,000 pounds (The European Small Claims Procedure is designed to simplify and speed up cross-border claims of up to €5,000, 2023).

Since 2019, the courts of the People's Republic of China (hereinafter referred to as the PRC) have been using artificial intelligence technologies in court proceedings and execution of court decisions to improve services and develop intelligent courts. The country's courts are using e-filing apps, mobile e-courts are being promoted, and mobile micro-courts have been created, allowing smart apps to cover all aspects of court proceedings. Thus, the WeChat “mobile court” platform was launched at the initiative of the Supreme People's

Court of the PRC and more than 10 million court verdicts have been issued since March 2019 (Myalo, 2020).

In the PRC, according to the road map adopted in 2021, it is planned to modernize the judicial system by 2025 through the introduction of so-called “smart courts”. This system, based on artificial intelligence technologies, will be able to analyze the actual circumstances of the case, the evidence (documents) submitted to the court, and notify the judge in case of a deviation from the formal requirements of the law (pay attention to the expiration of the term of consideration of the case, to an error in case of exceeding the established limits of punishment, which is assigned) (Myalo, 2020).

Also, in PRC courts, automated systems help parties to draft procedural documents, and judges to make decisions and conduct online broadcasts without human assistance. Artificial intelligence analyzes the circumstances of the case, the law and court practice, and provides options for the most appropriate decisions. This significantly reduces the burden on judges and improves the quality of justice. By interacting with persons who have applied to the court, Artificial Intelligence helps to correctly draft and submit relevant procedural documents, which makes the work of the court system convenient, transparent and understandable.

What is stated in the subsection leads to an unambiguous conclusion about a number of advantages of electronic judicial proceedings, which consist in the possibility of opening and carrying out proceedings in electronic form, in particular, carrying out procedural actions in it, receiving information about the progress of the case and the results of the case consideration in electronic form. The functioning of electronic court proceedings ensures the continuity of court proceedings using the latest information technologies, the organization of a full cycle of electronic document circulation in the court system.

The study of effective foreign practices of electronic justice only confirms the expediency of further modernization of the activities of justice bodies, in particular regarding: ensuring the transfer of petitions, statements, complaints directly through the electronic case system; conducting court proceedings in electronic digital format; interactions with electronic registers. At the same time, in today's conditions, relevant state reforms and individual technological solutions must be accountable and sustainable, have a high degree of transparency and protection, and comply with the principle of fair trial.

We see the main directions of improving electronic justice at the national level in the following: making changes to the procedural codes regarding the implementation of the right

to submit claims, evidence and other documents to courts in electronic form, the possibility of creating electronic files, archives, as well as other electronic means of ensuring justice; taking measures to inform individuals about the procedure for obtaining electronic signatures by process participants;

modernization and improvement of electronic justice software (functionality, effectiveness for the administration of justice, accessibility and comprehensibility for the user, security); taking measures to transition to electronic document flow between courts and state, primarily law enforcement agencies; provision of courts with high-quality technical means and personnel.

4. Features of introduction and modernization of electronic justice in Ukraine

The issue of transition to an electronic form of judicial proceedings, introduction of remote forms of court work, access to the judge's electronic office is extremely urgent. Corresponding legislative and organizational technical changes, on the one hand, necessary to preserve the life and health of the participants in the judicial process, will become the basis for timely decision-making regarding the evacuation of court employees, and on the other hand, will contribute to the observance of international standards in the field of justice.

At the meeting of the Council of Judges of Ukraine on February 24, 2022, the issue of taking urgent measures to ensure the stable functioning of the judiciary in Ukraine under martial law in connection with the armed aggression of a neighboring country was considered. (The work of judges under martial law, 2022). On July 22, 2022, the European Commission for the Efficiency of Justice under the Council of Europe (another name is CEPEJ) held an online consultation with the Supreme Court of Ukraine regarding the improvement of the legislation on distance justice in conditions of war (CEPEJ's consultation with the judicial authorities of Ukraine regarding the improvement of the legislation on distance justice in the conditions of the ongoing war, 2022).

Also, the order of the State Judicial Administration of Ukraine approved the concept of the program for the informatization of local and appellate courts and the project for the construction of the Unified Judicial Information and Telecommunication System (hereinafter – UJITS) for 2022-2024, which provides for a number of tasks and measures, the implementation of which will allow: to increase the level of provision of modern courts means of informatization; to unify and optimize court activity processes; increase the

transparency, convenience and accessibility of the judiciary for citizens; minimize the impact of the human factor and prevent interference in the administration of justice (On the approval of the sectoral Program of informatization of local and appellate courts and the project for the construction of the Unified Judicial Information and Telecommunication System for 2022-2024, 2022).

In accordance with the requirements of the legislation, on August 17, 2021, the Regulation on the procedure for the functioning of certain subsystems (modules) of UJITS was approved, which, among other things, determines the procedure for the functioning of certain modules in courts and judicial bodies – “Electronic Cabinet”, “Electronic Court”, the functioning of video conferences communication as a separate subsystem, determines the procedure for taking procedural actions in electronic form using the specified UJITS subsystems (Regulations on the procedure for functioning of individual subsystems (modules) of the Unified Judicial Information and Telecommunication System, 2021).

One of the problematic issues is that currently not all courts of Ukraine have a technical connection to the “Electronic Court” subsystem, which makes it impossible to fully use electronic resources and capabilities of the parties to the court process - judges, court employees and others. At the same time, the courts do not always have enough funds to support the necessary communication channels. Therefore, there is a threat that any court, not complying with certain technical conditions, or in the absence of funds to pay for access to the Internet, will be left without access to special court programs, and in fact may find itself in an information vacuum. In particular, the acceptance of documents sent by e-mail and through the "Electronic court" module is stopped; stop filling the Unified State Register of Court Decisions; the exchange of procedural documents between courts will cease, and it will become impossible to send decisions of higher courts about returning cases to appeals and cassation appeals from local courts (Arsirius, 2022).

The fact that access to the “Electronic Court” subsystem is not controlled by the court itself also raises doubts. Thus, a representative who joined an electronic case in the first instance and has authority only for it, actually sees the entire movement of the case (including in the appeal and cassation instances) even after the termination of his authority. Unfortunately, when the court is notified of such a fact, no one cancels access to the electronic file.

According to these indicators, the problems of Ukrainian justice are not so much in the normative plane (since the necessary legislative framework has already been adopted, and key stakeholders in this area show interest in further digitalization), but in providing the

necessary resources. Progressive regulatory provisions that a person can participate in a court session using their own technical means or to read court case materials online, often cannot be implemented in full in practice due to problems in providing technical or human resources of the court. At the same time, program documents in the field of judicial reform declare the further digitalization of Ukrainian justice and the desire to introduce advanced technologies into the activities of courts (in particular, artificial intelligence).

Thus, judicial proceedings in Ukraine are carried out taking into account such electronic tools as: automatic distribution of cases; electronic record keeping; exchange of procedural documents in electronic form between courts, bodies and institutions of the justice system, between the court and the participants in the legal process, between the participants in the legal process; conduct of court cases in the mode of video conference (if possible for all participants in the process); consideration of the case by the court in the absence of the participants in the case (for which it is necessary to submit a corresponding petition / application). The consequences of technological changes in the justice sector must be evaluated from the point of view of the balance of threats and opportunities offered by new technologies – privacy violations, security violations. A significant level of hidden threats includes manipulative influence on the judicial system and specific proceedings, invisible undermining of the rule of law and human rights. Under such conditions, compliance with a fair judicial procedure in the broad sense requires an adequate and flexible regulatory framework, technical and financial support.

5. Conclusions

The right to a fair trial is one of the elements of the rule of law and a fundamental right of every person, enshrined in national legislation and in the provisions of the European Convention on Human Rights. The problem of ensuring the right to a fair trial by the state is multifaceted and involves a complex approach to the implementation of such principles of judicial proceedings as publicity of proceedings, reasonableness of terms, presumption of innocence, independence and impartiality of the court, existence of a dispute regarding rights and duties, etc.

Researched electronic innovations in the field of criminal justice of leading foreign democracies justify their existence, as they simplify its work and offer an effective model of electronic interaction of justice authorities with natural and legal entities, law enforcement agencies, and streamline legal relations in the middle of the justice system. The process of

implementing electronic justice and its regimes requires an integrated approach to: automating the electronic interaction of the judiciary and prosecutor's offices; formation of templates of electronic procedural documents in the register; use of electronic document management and access to court cases in electronic form; the use of modern digital technologies in conducting procedural actions; ensuring proper recording of the court process in video conference mode, etc.

Use of the above e-justice tools of electronic justice should establish smooth and high-quality operation of courts, ensure access to justice, taking into account the priority of human rights and legitimate interests.

Further prospects for the digitalization of justice we see: in the simplification of the transmission of statements, complaints, petitions directly through the electronic justice system; creating conditions to prevent subjective influence on electronic justice, as well as cyber threats; digitalization of interaction with electronic registers. At the same time, relevant state measures and technological decisions must be accountable and sustainable, have a high degree of transparency and protection, comply with the principle of fair trial, requiring an adequate and flexible regulatory framework, proper organizational and technical and financial support.

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