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**PROBLEMS OF AUDIO RECORDING IN COURTS OF THE
RUSSIAN FEDERATION**

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Abstract

Digital environment in the Russian Federation is constantly evolving in all areas, including economics and law. Nowadays, in the context of progress in various aspects of life, it is necessary to confirm the legal framework that regulates relations to those that are present in society. Judicial procedures are no exception to that notion. We can say that the process of applying information technology in the courts contributes to the judicial process and makes it possible to provide openness and accessibility to the judicial process. In this work, the rather relevant issue of court transcripts in the courts of the Russian Federation is brought up, particularly, the one of transcription by audio recording. This article discusses the features of audio recording during court hearings held in the courts of the Russian Federation. The author also cites the positive aspects of the court transcript through audio recordings. The author also identifies problematic issues of audio recording in the courts of the Russian Federation, analyzes the prospects for further development of audio recording in the courts of the Russian Federation, and also suggests ways to solve problematic issues that arise in the process of audio recording. In addition, in this article, the author proposes methods for solving problems identified during the study of this topic.

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Keywords: Law, legislation, court session, protocol of the court session, audio transcripts.



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1. Introduction

The improvement of the judicial process in the conditions of development and formation of the information society is implemented through the development, implementation and application of information and communication technologies, which are designed to increase the effectiveness of the judicial activity, create additional guarantees for citizens and legal entities to exercise their rights, as well as contribute to the accessibility of justice and its openness. In this work, the authors study the recording of trials in the courts of the Russian Federation.

2. Problem Statement

In this paper, we will try to characterize the current situation of audio recording in the courts of the Russian Federation. The legislation establishes the need for a court transcript, however, practice suggests that there are certain problems that affect the process of forming a transcript in the form of audio recordings. In this paper, we characterize the above questions.

3. Research Questions

- What is the transcript of the trial?
- How is the audio protocol process implemented in the courts of the Russian Federation?
- What problems arise in the process of audio recording of court hearings in the courts of the Russian Federation?
- How to solve the arising problems?

4. Purpose of the Study

The purpose of this study is to study the current status of audio recording of court hearings in the courts of the Russian Federation, to ascertain its positive and negative sides, as well as to propose ways of changing the process for its improvement. Furthermore, the author studies the process of audio recording in courts of foreign countries. The purpose of this study is also to study the prospects for the development of the audio protocol process in the courts of the Russian Federation.

5. Research Methods

In the process of writing this work, the following research methods were used: situational analysis, logical structuring. The method of situational analysis helped to characterize the current situation with recording court transcripts in audio in the courts of the Russian Federation. The logical structuring method helped to draw conclusions after the analysis.

6. Findings

In the educational literature evidence classification is based on the source of its origin: personal and material. Personal evidence refers to evidence of which a person is the source, and in the material the source

is a material object. Material evidence includes written evidence. Since the audio recordings are recorded on a separate medium, they can be attributed to written evidence.

Currently, the transcript of the court session acts as a written and audio evidence, it must comply with the requirements established by law. It is worth noting that the legislator defines two forms of the transcript of the court session, which are attached to the case file. Currently, the case file contains a written transcript of the court session and an audio recording of the court session, which is recorded on a separate information medium, which is attached to the last protocol of the court session of the first or second instance. The legislator sets forth general requirements for this procedural document in the current Codes (Savrasova, 2019).

The transcript of the hearing is the guarantor of the principle of publicity, which is an important principle of justice since, the openness and transparency of justice is an important and one of the fundamental points of justice in general.

At the present stage of development of society, it is possible to form a protocol automatically. The result of these actions is the basis of a written procedural document and a draft phonogram, which, in turn, allows you to clarify the protocol as soon as possible.

This type of transcription records details of litigation events in their fullest, while there is a real link to the chronology of events.

Audio recordings of court hearings are carried out in the following ways:

- 1) By connecting digital recorders to the workplace;
- 2) Using hardware and software systems;
- 3) By connecting external microphones to the workplace.

Considering that the written transcript of the court session is drawn up by the court clerk there is a risk that such transcript shall not reflect in detail and conform it with the actions that take place during the trial. The introduction of audio recordings of the court hearing in arbitration, administrative and civil cases helped to eliminate this error.

On the audio recordings, the full course of the court session, testimonies of witnesses, experts and other information that are recorded in the written transcript of the court session, court (court board)ruling, court decision are also recorded. Documents and explanations provided by the participants in the trial at the hearing are considered evidence. The expert's opinions, expert's explanations and witness statements are also evidence in the case. In other words, the transcript of the court session, both in written and in audio form, records the actions of the participants in the process that they committed during the court session, as well as all the evidence they provide in the case file. The significance of the court session. The high value of the transcript is also shown in the following, if the transcript of the court session does not reflect any request to attach new evidence to the case file or to request other evidence, then the higher court may refuse to include or request the evidence, since new evidence in a higher court is accepted only in exceptional cases. When drawing up a written transcript, failure to indicate the above evidence is possible in case of inattentiveness of the clerk to the course of court session. However, the audio recordings reflect all requests, explanations, conclusions, testimonies and those are presented unchanged, respectively, there is no risk of distortion of the actual circumstances of the case.

Recording of the court session by using audio recording means that such is carried out without interruption during the trial. At the same time, the written transcript of the court session should contain a note that audio protocol is used to transcript the hearing (Makartsev & Kolesnikova, 2012).

Information carriers obtained by using audio recording tools are attached to the case materials. Disks, floppy disks or flash cards that capture the data of the court session attached to the case. In arbitration proceedings before the latest amendments to the Arbitration procedural Code of the Russian Federation that came into force in 2019, the prevailing view was that the absence of an audio recording was not regarded as the absence of a trial transcript.

After the changes were made, the legality of the arbitration court ruling became directly dependent on whether there is a data carrier in the case file on which the sound recording of the court session is stored (Bonner, 2015).

Mandatory audio recording is provided only in the courts of first instance and appeal courts. At the cassation instance in arbitration cases, the audio protocol of the court session may be conducted at the discretion of the presiding judge. Audio recording of the court session is carried out for both arbitration cases in open and closed court sessions. The difference between audio recordings of closed court hearings and open ones is that the audio recording of a closed hearing is stored only on an optical disk.

The audio recording of the hearing is of greater importance in the arbitration process. The absence of an audio transcript of the arbitration court hearing leads to the annulment of the judicial act. In our opinion, these changes, of course, are a huge step to protect the rights and legitimate interests of legal entities.

The value of the audio recording of the court hearing in civil proceedings today is equal to the value of the written transcript of the court session. This conclusion is based on the fact that the legislation does not provide for the abolition of a judicial act in the absence of an audio recording of trial, if there is a duly signed written transcript of the court session in the case file. Equally the absence of a duly signed court transcript in the case file, if there is an audio recording of the court session, such absence shall not lead to the annulment of the judicial act.

Since the audio recording of the court session reflects the entire course of the court session and its recording is provided by technical means, and the written transcript of the court session is compiled by a person, for more accurate reflection of the court session the audio recording should be more important than the written protocol of the court session. Audio recording of court sessions increases the accessibility, openness and transparency of justice by virtue of the fact that they ensure the maximum completeness and accuracy of the court transcript.

And from September 1st, 2019, the audio recording of the court session became mandatory in civil and criminal trials. It is worth noting that the audio protocol in a civil case is also conducted in a preliminary court session, while in an arbitration case the audio recording of a preliminary court session is carried out only in the presence of one of the parties and (or) if necessary to reflect certain procedural actions or circumstances.

There is a number of circumstances in which court hearing is not transcribed by audio recording. Such circumstances include the consideration of the case without the participants of the trial, in case of the failure to appear at the hearing of the persons participating in the case. Within five days from the date of

signing the transcript, it is possible to familiarize yourself with the audio recording, as well as submit comments on it. Sound recording in closed court sessions is prohibited. Now we must note the positive aspects of audio recording of court hearings.

1. As previously noted, audio transcript serves as a guarantor of the implementation of the principles of civil proceedings.

For example, audio transcripts allow you to get complete information about what the judges presiding, of the challenges that were stated at the hearing, about the procedure for their consideration and resolution, about the implementation of the rule of law, about the fulfilment of procedural obligations, about compliance by participants in the process with the rules of procedural law. All this ensures the principle of legality of the administration of justice only by the court.

In addition, the principle of legality will be ensured through the use of an audio recording in cases where the announced operative part of the decision does not correspond to a reasoned court decision that will be made in full (Tarasov & Yulberdina, 2016).

For example, in accordance with the court transcript of 24.05.2016, the court made a decision and announced the operative part of the decision.

In the process of listening to the audio recording of this court session, it was found out that by declaring the operative part of the decision the court of first instance did not collect interest up to the date of execution of a decision on the amount collected in accordance with Part 3 of Art. 395 of the Civil code of the Russian Federation (Civil code of the Russian Federation of November 30, 1994 N 51-FZ, 1994).

At the same time, the text of the operative part of the decision of May 24, 2016 and the operative part of the full reasoned text of the decision of the court of first instance, which is in the case file, did not correspond to the operative part of the decision announced at the hearing. The text of the operative part of the decision and the operative part of the full text of the decision contained an indication that interest is charged on the amount of the debt in the amount of 10,794,550 rubles, from June 1, 2015 to the day of actual execution of the monetary obligation based on the refinancing rate of the Central Bank of the Russian Federation, which was established on the day of the decision, is 8.25% per annum (Trusova, 2019).

Consequently, the court violated Art. 176 of the Arbitration procedure code of the Russian Federation, since the operative part of the court decision and the court decision made in full, which are available in the case file, do not correspond to the operative part of the decision announced at the court of first instance, which is unacceptable (Arbitration Procedure Code of the Russian Federation dated 07.24.2002 N 95-FZ).

2. Audiotape provides a guarantee of immediacy in the study of evidence. So, for example, the court of cassation established the absence of an audio recording of the court hearing in which the expert clarified the expert opinion, which was in the case file, and was one of the grounds for the decision. The court of cassation overruled the judicial acts of the court of first instance, which committed violations of procedural law, and the court of appeal, which did not account these violations;

3. The introduction of mandatory audio recordings, the provision of the law with the opportunity to obtain a copy of the audio recording of the court session, have a disciplining effect on participants in civil proceedings. The judge must observe a high culture of behaviour in the process, maintain order in the court session, behave with dignity, courtesy in relation to the participants and other persons in the process;

4. Also, as a positive side of audio transcripts, we can note the fact that audio protocols are highly informative and exclude the misinterpretation of actions and words of the parties;

5. Audio transcripts provide an opportunity to identify errors on the part of the court, as well on the part of case parties;

However, audio transcript has a number of disadvantages. Such as:

1. The financial factor. After all, equipping courts with everything necessary for the implementation of audio recording requires large government expenditures;

2. The time factor. The duration of familiarization with the court transcript by listening to an audio recording is increased;

3. Organizational and technical factor. To get acquainted with the audio transcript of the court session, special rooms are needed that will be technically equipped and adapted to let confidently play audio of the court session;

4. Lack of sufficient skills for working with equipment that provides audio recording for court employees;

5. Lack of control over the implementation and use of the audio logging system.

The website of the Supreme Court of Canada hosts webcasts of court cases. Moreover, these webcasts are systematized in an archive and quite simple to use (Supreme Court of Canada, 2020).

The Supreme Court of Australia website also contains an archive of audio and video records of court hearings (Supreme Court of Australia, 2020).

The website of the Supreme Court of the Republic of Kazakhstan, on the contrary, contains the rules for the technical use of audio recording tools that record the course of the hearing (Supreme Court of the Republic of the Republic of Kazakhstan, 2020).

The website of the United States court of Appeals for the Federal district of Madison contains audio transcripts of court proceedings (United States Court of Appeals for the Federal Circuit, 2020).

Speaking about conducting audio recording of the trial it is important not to miss such an important point as the procedural execution of the requirements that are set by law to the contents of the protocol, the procedure for its preparation, familiarization for the persons who are involved in the case, and the introduction of corrections to the protocol. In this connection, it is important to eliminate the existing shortcomings of audio recording in the Code of civil procedure of the Russian Federation, because the effectiveness of civil justice depends on how detailed the legal regulation of the process is (Code of civil procedure of the Russian Federation dated 14.11.2002 N 138-FZ).

7. Conclusion

Based on the foregoing, it can be said that the traditional way of court transcription in written form does not meet modern requirements, does not entail the optimization of judicial activity, or reflect transparency and accessibility of justice. Such a document does not reflect the completeness and reliability of what is happening in the courtroom.

The process of introducing audio recording into the judicial process is an actual trend, the meaning of which is the introduction of digital technologies in all spheres of life, including in the judicial process. Using mandatory audio logging, you can eliminate a significant number of problems, for example, exclude

the possibility that the protocol will be amended or falsified. The use of audio recording will provide an opportunity to ensure efficiency, as well as improve the quality of legal proceedings, which, in turn, will positively affect the protection of the rights and legitimate interests of individuals and legal entities. The problems of audio recording can be eliminated by conducting high-quality preparation of equipment for the court session. If problems arise that are not related to personnel error (the rules for operating technical equipment are not violated), then they can be solved by using multi-channel recording.

In conclusion, it should be noted that the audio recording reflects the modern development of the judicial system. The significance of the audio recorded transcript is obvious, due primarily to the fact that the recording of the entire course of the trial is comprehensive and continuous. Even if there are any objections to the transcript, which is written, the audio recorded transcript will be fundamental and of primary value. The fact that maintaining a protocol using modern digital technologies will have a beneficial effect on the activities of the courts through its optimization is indisputable.

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