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E-DOCUMENTS IN RUSSIAN CIVIL PROCEEDINGS AS A MEANS OF OPTIMIZING ECONOMIC PROCESSES

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Abstract

Currently legal actions in the sphere of entrepreneurship in Russia increasingly require the use of electronic documents (e-documents). The electronic document management, which optimizes the economic processes, has received a certain development. Elements of e-justice are being introduced into the work of the general jurisdiction courts in civil proceedings, enabling citizens to use information technologies to file court complaints, obtain information on the movement of a case and perform specific procedural actions. In the present study, the authors consider the trends and problems of the use of e-documents in civil proceedings in the context of the elements of e-justice. Attention is paid to the characteristics of documents in electronic form, in particular e-documents, the procedure for their submission to the court, the realities of using e-documents as evidence, and the problems of establishing the reliability and evaluation of e-documents as evidence in civil proceedings. At the same time, the efficiency of electronic document management is reduced if material and technical support is low; court staff is not ready to work with e-documents. The prospects in application of e-documents in civil proceedings are considered. Attention is drawn to the relevance of the use of e-documents in civil cases under simplified and ordered procedures, for example, using computer programs called "electronic judge". When hearing civil cases under the above procedures, due to the indisputable right of the applicant to claim, the courts will be able to issue the relevant court decisions in electronic form without court sessions or summons to court.

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1. Introduction

Modern economic processes require an actual legal framework, legal actions in the field of entrepreneurship with the use of electronic documents. Electronic document management allows to ensure greater efficiency of business. A high-tech way of formalizing legal relations affects the efficiency and transparency of business, constructive interaction between entrepreneurs and public authorities, quick access to justice for entrepreneurs, and openness of justice. Information technologies are increasingly penetrating the sphere of judicial activity. They provide an opportunity to work quickly with a database, make court information more accessible, simplify the performance of individual proceedings, make it as convenient as possible for persons involved in a case, and provide rather substantial savings in the resources (time, financial, human, etc.) spent on the conduct of legal proceedings. New methods of administering justice based on the use of information technologies used in modern Russia are elements of e-justice. Currently, there are a lot of questions related to their implementation in the activities of general jurisdiction courts in civil proceedings. The use of documents in electronic form in the context of e-justice elements is a topical issue.

2. Problem Statement

To study the trends and problems of the use of electronic documents in civil proceedings in connection with the development in modern Russia of electronic document management, optimizing economic processes, the introduction of elements of e-justice in the activities of general jurisdiction courts in civil proceedings.

3. Research Questions

To analyse current trends and problems in the use of electronic documents in civil proceedings in the context of e-justice elements. To characterize electronic documents as evidence in civil proceedings.

4. Purpose of the Study

The purpose of this study is the research of electronic documents application in civil proceedings in the context of elements of e-justice.

5. Research Methods

The research methods are: general scientific (systematic, logical) and private scientific (formal and legal).

6. Findings

In the modern practice of business relations, the use of electronic documents increases rapidly. This tendency is reflected to a certain extent in the Russian procedural legislation. The Civil Procedural Code of the Russian Federation provides for the use of information technologies in the activities of

general jurisdiction courts in civil proceedings. The organization of a videoconference with the court; filing of a complaint to the court in electronic form; submission of electronic evidence; organization of an electronic document management system and other elements of e-justice are now part of legal activities. The Civil Procedural Code of the Russian Federation provides for the possibility to file a lawsuit in court in electronic form. The peculiarities of filing a complaint in electronic form and the subsequent procedure for its acceptance or dismissal are specified in Order No. 251 of the Judicial Department under the Supreme Court of the Russian Federation of December 27, 2016 "On approval of the Procedure for filing documents in electronic form, including in the form of an electronic document, to federal courts of general jurisdiction" (Order No. 251..., 2016).

In practice, the right to appeal to the court in electronic form is realized as follows. Filing a complaint in electronic form is carried out by filling out the appropriate form posted on the official website of the court in the Internet. Submission of documents is made on the official site of the court in the section "Submission of procedural documents in electronic form", which is integrated into the "Electronic Justice" service of the online portal of the State Automated System (SAS) "Justice". This system of court proceedings automatization used in Russian courts ensures that court proceedings are conducted and the results and course of proceedings conducted by the court and other participants in the proceedings are electronically fixed. In order to submit documents to the court it is necessary to be registered on the Internet portal of SAS "Justice". When an individual's personal data is confirmed on the court's website, a user profile is automatically created. Access to this account is performed either with the help of an enhanced qualified digital signature of the user or with the help of a confirmed account of an individual in the Unified Identification and Authentication System (UIAS). The mentioned information system provides authorized access to the information contained in state information systems. Documents filed to the court via the Internet can be submitted both in the form of an electronic document signed by an electronic signature and in the form of a scanned document.

The capabilities of SAS "Justice" should be evaluated positively, as registered users can easily track the movement of cases in which they are participants and perform various procedural actions. They can also receive information on the status of complaints, including out-of-court ones, which are filed in the judicial authority. Nevertheless, such a positive innovation of modern technology is not available to everyone, taking into account the economic inaccessibility for some elderly citizens or, for example, their place of residence and Internet coverage area in villages that are difficult for the operator to use (Nikolaychenko & Nikolaychenko, 2019).

According to Borisova (2019) the development of the electronic way of addressing the court is hindered by the factors of material and technical character, which include insufficient technical equipment of courts with computer equipment, lack of access to the Internet, the unpreparedness of the court staff for electronic innovations and increase in the volume of work connected with registration and processing of incoming electronic correspondence, as well as weak stimulation of interested persons to address the court in electronic form (for example, in some countries electronic judicial recourse saves the state fee), lack of bonuses from electronic filing in the form of saving time and expenses for duplicating documents (Borisova, 2019).

Information technologies have provided the court with an opportunity to hold court decisions (rulings, decrees) in electronic form. The said decisions must be certified with an enhanced qualified electronic signature by the judge. When making a court decision in electronic form, an additional copy of it is made as hard copy. Persons participating in the case, but not present in the court session, at their request or with their consent can be sent copies of the court decision by placing them on the official site of the court in the Internet in the section to which access is provided to the parties and other participants of the process. To public authorities, other bodies and organizations involved in the case, whose representatives were not present at the court session, copies of the court decision can be sent by posting them on the court's official website in the Internet in the mode of limited access.

In the activities of general jurisdiction courts in civil proceedings, documents in electronic form are currently used, which include electronic images of documents and electronic documents. Electronic image of a document (electronic copy of a document made on paper) is a copy of a document translated into electronic form by means of scanning tools and certified with an electronic signature. Electronic document is a document created in electronic form without prior documentation on paper, signed with an electronic signature (Laptev & Solovyanenko, 2019).

It should be noted that Russian legislation does not regulate electronic evidence as an independent means of proof, does not use or disclose this concept. Civil Procedural Code of the Russian Federation classifies electronic means of proof as written evidence, indicating that these are electronic documents and other materials made in digital form and obtained using special technical means of communication.

Written electronic evidence can be of various types, but the most common are electronic documents, messages and e-mail correspondence, screenshots of websites and other sources of electronic information in the form of electronic images. In turn, all of them can be electronically signed or not (Zarubina & Pavlov, 2019). According to Groysberg (2019) the attributes characterizing such proof as an electronic document are: creation and existence in electronic form; the document must be signed by an electronic signature.

According to Chucha (2019) in order to act as evidence in a civil proceeding, an electronic document must meet the following requirements: be created, transmitted and stored using software and hardware; have details allowing to identify and determine the legal validity of the document (the author of the document with the full name and address, date of compilation, addressee, outgoing document number, i.e. details similar to the written document should be indicated); be presented in a form understandable to a person (a study of the document should allow to establish the source of the message, its authenticity, reliability, relevance and admissibility); must be reliable, i.e. provide an opportunity to establish the time and place of creation of the document, the person from whom it comes from, and the person who received it, as well as the invariability of the content of the document (Chucha, 2019).

Kotlyarova (2019) points out that electronic evidence is increasingly used in practice, but since the legislator has not yet regulated its concept, types and criteria, there are difficulties in recognizing it as evidence and evaluating it.

According to Boyko and Yulberdina (2019) because of the relative ease with which electronic documents can be forged or fabricated, courts are currently suspicious of electronic evidence and require the submission of paper evidence (a judge may require the submission of original evidence in cases where

it is impossible to resolve a case without the original documents; the copies submitted are different in content; the judge had doubts about the validity of the documentations submitted).

One of the problems with the use of electronic documents as evidence is verifying their authenticity. The reliability of electronic evidence is ensured by the possibility of identifying the author of the created file or the person who signed the electronic document. Verification of the reliability of electronic evidence in court may be carried out in several ways. One way of verifying the authenticity is to establish the identification of the sender and the recipient; the authority of the sender and the recipient to make the relevant decisions constituting the subject of the electronic communication; and recognition by a party of the authenticity of the electronic communication content.

The second way to verify the authenticity of electronic evidence is to notarially record the evidence. The notary is able to inspect text and multimedia messages; he can set the phone number to which the message was sent, the name of the subscriber in the recipient's phone, the date and time of receipt of the message, its content (Begichev, 2014).

The possibility to turn to the services of specialists and experts, if it requires special knowledge in the field of information technology, is the third way to establish the reliability of evidence. A specialist or expert, as a person with specialized knowledge in programming and information technology, may answer questions, such as whether an electronic document have been modified or not, and other questions where their usual perception is not sufficient. If necessary, the court has the right to request a forensic investigation in accordance with the current norms of the Civil Procedural Code of the Russian Federation.

According to Samsonov (2019) the courts are not fully ready to establish the circumstances of the case that took place in the virtual world, which appeared in electronic networks, and to study electronic evidence in the absence of normative regulation of the procedure of their evaluation. Therefore, it is necessary to ensure not only proper technical equipment of the court proceedings, but also verified, thorough and detailed regulation of the procedure for accepting, examining and evaluating electronic evidence, the procedure for filing electronic documents with the court, the procedure for determining their authenticity and evidentiary value, as well as the procedure for verifying information received by the courts in electronic form (Samsonov, 2019). Insufficient experience, conservatism or personal preconceived opinion of the judge may lead to a biased decision in a civil case where various electronic documents appear as evidence.

There is currently an upward trend in electronic filing of court documents in civil proceedings (Legin, 2018).

Valeev and Bazilevskikh (2018) note that, despite the use of electronic technologies, documents are still being printed and the traditional paper document file is still being formed, so we cannot talk about a sufficiently substantial informatization of the civil process in modern Russia. In order to realize the task of correct and timely hearing of the case, acting at his discretion, the judge may require the submission of the originals of those documents that were previously submitted in electronic form. (Valeev & Nuriev, 2019a). It seems that it is still impossible to completely switch to electronic document management and refuse paper media as a form of securing procedural documents due to the low level of logistic support

and the conservatism of the judicial system. In addition, the paper form of documents minimizes the risks of forgery of electronic documents.

In the long term, in case of elimination of the factors preventing the development of electronic document circulation, it is possible to use the artificial intelligence of the program "robot-judge" in relation to legal proceedings (Valeev & Nuriev, 2019b).

In our opinion, the greatest use of electronic documents can be in civil cases under simplified and ordered procedures using computer programs called "electronic judge". There are no objections from the debtor in these procedures of civil proceedings, there is an indisputable right of claim, actual recognition, but the defendant's failure to comply with the amount of the debt, and so on. Therefore, the courts can freely examine the electronic evidence submitted by the applicant with the use of necessary technical devices and issue the relevant court act in electronic form without court sessions and summons to court or the need to involve third parties. Starting from the receipt by the court of an application for the issuance of a court order or a statement of claim under the simplified procedure, signed in accordance with the established order, together with electronic documents (or) electronic images of the document, which confirm the requirements, through the SAS "Justice" and ending with the issuance of the final court act, a civil case may acquire an electronic form, unless the court has grounds for requiring the parties to confirm their signatures, original documents in paper form.

7. Conclusion

Functioning of such elements of e-justice as filing a lawsuit in the court in electronic form, organization of an electronic document flow system within the court and communication of the court with other public authorities, maintenance of electronic archives of court cases is impossible without using documents in electronic form, in particular electronic documents. In the activities of general jurisdiction courts in civil proceedings, documents in electronic form are currently used, which include electronic images of documents and electronic documents. Electronic document is a document created in electronic form without prior documentation on paper, signed with an electronic signature. In order to act as evidence in civil proceedings, an electronic document must meet the following requirements: it must be created, transmitted and stored using software and hardware; it must have details that allow it to be identified and determine the legal validity of the document; it must be presented in a form that is understandable to human perception; it must be authentic. These ways of formalizing procedural legal relations with the use of information technologies have a positive impact on the constructive interaction between entrepreneurs and government agencies, prompt access to justice for entrepreneurs, and openness of justice.

A positive aspect of the use of electronic documents in civil proceedings is the rapid search for information and documents, saving time and labor resources, openness and accessibility for all participants in the proceedings. The effectiveness of the use of electronic documents is reduced if the material and technical support of the court is low, its staff is not ready to work with information technologies, the court has difficulties in assessing the reliability of electronic documents as evidence, given the risks of forgery, not widespread availability of the Internet due to the large territorial remoteness of settlements.

The use of electronic documents in civil cases in the simplified and ordered procedure, for example with the use of computer programs with artificial intelligence elements called "electronic judge", is relevant. When hearing civil cases under the above procedures, due to the indisputable right of the applicant to claim, the courts will be able to issue the relevant court decisions in electronic form without court sessions or summons of the parties.

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