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DIGITALIZATION OF LEGAL PROCEEDINGS IN SOCIO- CULTURAL MEASUREMENT

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Abstract

The introduction of global digital technologies in legal proceedings reveals the feasibility of studying them from the perspective of sociocultural relations and the functions of justice in the modern world. Purpose: an analysis should be made of the impact of digitalization on legal proceedings in general, aimed at protecting the rights and interests protected by law in the context of the interaction of legal norms and modern digital technologies. In modern court proceedings, the already existing means are insufficient to allow the court to fulfill the duties assigned to it by law in the conditions of normativeness of the procedural form, such as audio recording, video recording of the court session, text message notification, electronic document management. Research methods: the study is based on the application of two complementary approaches: a combination of philosophical- methodological and formal legal methods allowed the author to characterize justice in a broad philosophical concept. The comparative legal method, the method of analysis and synthesis made it possible to analyze the regulatory framework and practice of applying digital technologies in the USA, Australia, Germany, Russia and other countries. Result: in the context of the “digitalization-law” interaction it is important to preserve the social functions of justice and corresponding legal principles. The search for the optimal balanced model of law in the context of global and continuous digitalization will ensure the quality of law enforcement activities of its entities.

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Keywords: Digitalization, information technologies, justice, procedural duties of the court



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1. Introduction

Estimated by the combined efforts of law scholars, economists, philosophers of law, legal statistics and law conflictology, the most advanced interdisciplinary field of scientific research and a fundamentally new platform for legal innovations is global digitalization. Some results of its influence are revealed when studying legal proceedings in various legal systems (Anosov, 2016; Reshetnyak & Smagina, 2017).

The needs of a dynamically developing market, especially in the IT sphere, condition submitting electronic media documents or their images (scans of documents) to the court by the legal proceedings participants to confirm their position in the case. Due to an occurred “scientific boom”, the research has concentrated on the possibility of submitting electronic documents to the court and, most importantly, on their qualitative assessment by the court in the case resolution. In a large number of research works the authors suggested introducing the notions of “electronic document” and “electronic document management” into scientific circulation (Smirenskaya et al., 2019), as well as expanding the disposition of a particular article of legal law or completely replacing a human being with the artificial intelligence.

The spread of digital technology in law has been extensively described by a representative of School of Law of Quinnipiac University (USA). On the basis of empirical experience, the researcher pointed to its maximum implementation in legal sphere and law enforcement (Feigenson, 2011).

Russian scientists are studying the process of “digitalization” in two planes: tactical and strategic. The first involves the connection of established legal institutions with innovative technologies, the second - the development of an integrated approach to their implementation (Valeev & Nuriyev, 2019).

The introduction of digital technology in legal proceedings has caused the problem of a uniform establishment of requirements for documents submitted in electronic form. And such a gap is partially filled by a number of instructions and regulations of a sub-normative nature ¹. They determine the conditions for filing a document in electronic form (technical requirements for its creation, submission, signing, drafting the relevant annexes to it), developed procedures for its direct posting on the official website of the court on the Internet and referral to the court.

Such technical and legal requirements for documents submitted to the court are standards that determine the possibility of access to electronic justice. On the one hand, they expand the possibilities of access to judicial protection of violated rights, eliminating territorial barriers, save the actual time of judicial representatives to go to court, on the other hand, their existence and some procedural regulation do not eliminate a number of contradictions that serve as a barrier to judicial protection of violated rights.

Digitalization has a significant impact on law as a system of generally binding rules of conduct established by the state (Germain, 2011). An analysis of the legislation governing the behavior of legal

¹ In the Russian Federation, they include, for example, Order of the Judicial Department under the Supreme Court of the Russian Federation of December 27, 2016 No. 251 “On approval of the procedure for submitting documents to the federal courts of general jurisdiction in electronic form, including in the form of an electronic document” // SZ RF. 2008. No. 19. Art. 2060; 2017. No. 53 (Part 1). Art. 8554; Reprinted from <http://www.cdep.ru/index.php?id=301&item=3658>; Resolution of the Plenum of the Supreme Court of the Russian Federation dated December 26, 2017 No. 57 of Moscow “On Certain Issues of the Application of Legislation Regulating the Use of Electronic Documents in the Activities of Courts of General Jurisdiction and Arbitration Courts” // Russian Newspaper. 2017. Federal issue. No. 7643 (297); Reprinted from <https://rg.ru/2017/12/29/post-vs-57-dok.html>

entities proves that the law is expressed not so much in laws as in acts and instruments of “softer” law expressed in instructions and recommendations received not from the legislative authorities. An example is the regulations of the Judicial Department, orders and other acts of a sub-normative nature, filling the “vacuum” of legal regulation. The result of this process is law, which becomes the subject of digitalization, as a result of which it (judicial law) changes its forms, content, mechanism of formation and action.

2. Problem Statement

Perceiving civil proceedings as a special social value with the aspect of the social orientation of the human rights activities of the Russian state and, accordingly, all its reforms related to the protection of violated rights and interests protected by law, for a normally functioning law and order all promising innovations should be correlated with the principles of civil procedural law as great and unshakable value (Vavilin, & Volos, 2018). Therefore, even a comprehensively implemented e-justice under the influence of global digitalization, together with other achievements of humanity, including technological progress, should be based on the principles of legality, a balance of writing and orality, dispositiveness, transparency, equality and other postulates of fair justice, widely approved by international practice within the context of law (Chestnov & Samokhina, 2020).

3. Research Questions

Procedural law, affected by digitalization, has transformed justice into the new form of e-justice generated by it. One can speak of e-justice as an already-formed legal phenomenon that has firmly entered into the everyday life of legal proceedings participants both seeking to protect their violated rights or assisting justice, as well as law enforcers.

Digital reality is changing the mentality of subjects of law, their legal consciousness, and, consequently, the nature of activities related to the implementation of legal norms (Zaloilo & Pashentsev, 2019). In civil proceedings, the individuals participating in the case, as well as the court, select certain actions, the performance of which will lead to certain legal consequences. For people whose substantive rights are violated, the resolution of the dispute would be desirable if its settlement did not yield “fruits” in compliance with the pre-trial or other alternative (along with the judicial) order and, as a result, minimization of the costs associated with resolving the case. For the court, the most desirable in the conditions of the target settings provided for at the legislative level will be the settlement (!) of the dispute through the implementation of a number of procedural and economic instruments. These include, for example, process agreements or procedural agreements, reconciliation of the parties, negotiations, mediation (Isaenkova et al., 2018) and others. But all of them should be realized in conditions of bona fide exercise of rights and fulfillment of duties under the control of the court, which should actively use mechanisms to prevent abuse of procedural rights (Vavilin & Chekmareva, 2020).

An additional problem that the applicant has to face when applying to the judicial authority with an electronic document is the court’s demand for the documents to be presented in the original, that is, on paper. Often, law enforcers, interpreting the analogy of the law broadly, combining a number of articles of the procedural law under the same letter and ontological sense, proceed from the fact that the submission

of original documents submitted to the court in the form of electronic images should be accompanied by paper form. Failure to comply with the court's instructions on the provision of documents substantiating the stated requirements in the original on paper, entails the abandonment of the statement of claim (complaint, statement) without considering (paragraph 2 of part 9 of the decision of the Plenum of the Supreme Court of the Russian Federation of December 26, 2017 No. 57). It should be assumed that the logic of such regulations is dictated by the need to provide high-quality judicial protection to the person who has applied to the court. At the same time, the presentation of documents on paper is guaranteed to ensure the consideration of the case on the merits, in contrast to going to court by filling out even a somewhat simplified electronic form.

Examples of the contradiction of law in the era of global digitalization are very diverse, as are approaches to their solution. But with the external originality of certain approaches to the definition of "digitalization" as a phenomenon of legal reality, the specialists involved in their development are within the framework of a certain legal field in the historically established legal system (family). And it is impossible to find an original solution to the obvious phenomena that would not have occurred before both in Russian and in international law. In this regard, it is not the development of new concepts and signs of any phenomenon, the definition of "problematic" aspects, but the application of a systematic approach that allows emphasizing and identifying the external connections of the phenomenon under consideration and its functions is relevant.

4. Purpose of the Study

Important in the context of the "digitalization-law" interaction is the preservation of the social functions of justice and the relevant principles of law. The search for the optimal balanced model of law in the context of global and continuous digitalization will ensure the quality of law enforcement activities of its entities.

5. Research Methods

The research is based on the application of two complementary approaches: philosophical-methodological and formal-legal. The first approach shows justice in a broad philosophical concept. The second approach focuses on the disclosure of the methodological potential of modern concepts in the field of law philosophy, analytical and sociological jurisprudence. Thus, the comparative legal method allowed the author to analyze the use of digital technologies in the administration of justice in the USA, Australia, Germany, Russia and other countries. The method of analysis and synthesis made it possible to expose the existing scientific concepts of the applicability of digital technologies in justice, along with such specific scientific methods as formal-legal, technical-legal.

6. Findings

Digitalization has a significant impact not only on law, as a system of prescriptions, but also on the process, even the result, of the work of law. The transition to the independent acquisition of information on the progress of the case by the case participants is determined not only by their subjective interest in

resolving the case, but also, to a greater extent, by the optimization of legal proceedings. Russian law enforcement practice is already characterized by the use of other means (Khabrieva, 2018), which are widespread in the digital environment, along with traditional tools (normative acts, civil procedural legislation).

Electronic interaction between the parties through the exchange of adversarial documentation indicates the need to amend a number of articles of the procedural law. The reason for the procedural innovations is digitalization in the broad sense of the meaning. Its global implementation in legal matters is designed to ensure the organizational and optimizing dynamism of legal proceedings. Underlining the influence of the dynamism of the civil process, which takes about two months in time, a number of foreign scholars in the field of law emphasize its attractiveness for the functioning of the entire judicial system. Without going into the conceptual essence of the “dynamism” notion on which researchers have diametrically opposed judgments (Picker, 2016; Thomas, 2016), nowadays it is important to justify any proposed model from the perspective of the social functions of justice and the role of the court in society. For this, one should proceed from the goals of justice, which determine the conditions for its accessibility, guided by interdisciplinary methods. At the same time, digitalization does not need to be perceived as a threat to the existing law and order, as a kind of technical requirements system imposed from outside and, as a result, the emergence of new responsibilities outside the legal framework. The subjects of law and law enforcement activities, the court and other participants in the process, should stay and act within the legal framework. Therefore, it is impossible to support the opinion of some researchers that the law is already perceived not as a system of norms, but as a constant activity of subjects of law to implement legal requirements and executing them (Chestnov, 2012). Such interpretation of law brings subjective and irrational principles into its understanding.

7. Conclusion

Changing the existing rules, procedures and routine legal culture against the background of robotization and technological development of legal activity should occur within the framework of intersectoral and interdisciplinary interaction, the result of which will be an increase in the quality of law enforcement activities. At its various levels, determined by the hierarchy of the judiciary, it is necessary to highlight general provisions that determine the model of national law:

- the rule of law and its moral justification, which should be a priority in disseminating “global” digitalization;
- the formation of social guidelines, among which are the purpose of legal proceedings conditioned by the protection of violated rights, freedoms and legally protected interests;
- “flexibility” of non-normative requirements conditioned by present-day expectations of the public, which must fulfill a special judicial mission;
- “mitigation” of the requirements for citizens’ applications in the form of an electronic document with an alternative to the implementation of the granted subjective procedural law;
- development of a procedural form based on established principles and foundations, along with a simplified procedure for resolving disputes and taking into account achievements in the field of IT technologies.

References

- Anosov, A. V. (2016). Legal information issues of the formation of electronic justice in the Russian Federation (Candidate dissertation). Institute of State and Law of the Russian Academy of Sciences.
- Chestnov, I., & Samokhina, E. (2020). The Principle of Relativity in the Post-Classical Theory of Law. *Journal of Siberian Federal University. Humanities & Social Sciences*, 13(1), 42-49. <https://doi.org/10.17516/1997-1370-0540>
- Chestnov, I. (2012). *Postclassical theory of law*. SPb.: Alef-press.
- Feigenson, N. (2011). The Visual in Law: Some Problems for Legal Theory, working paper, *Journal of Law, Culture and the Humanities*, 10(1), 13-23. <https://www.researchgate.net/deref/http%3A%2F%2Fdx.doi.org%2F10.1177%2F1743872111421126>
- Germain, C. M. (2011). *Digitizing the World's Laws. Cornell Law Faculty Working Papers*. Paper 72. Ithaca.
- Isaenkova, O. V., Kuskov, A. S., Sirik, N. V., & Vasina, S. M. (2018). In L. B. Filandysheva (Ed.). Mediation as a form of alternative dispute settlement in tourism. *Iop Conference Series: Earth and Environmental Science*, 12-13. Institute of Physics Publishing. <https://doi.org/10.1088/1755-1315/204/1/012013>
- Khabrieva, T. Ya. (2018). The law before the challenges of digital reality. *Journal of Russian Law*, 9, 5-16
- Picker, C. B. (2016). *Comparative Law as an Engine of Change for Civil Procedure. The Dynamism of Civil Procedure – Global Trends and Development*. Springer International Publishing Switzerland.
- Reshetnyak, V. I., & Smagina, Ye. S. (2017). *Information Technology in Civil Proceedings (Russian and International Experience)*. Gorodets.
- Smirenskaya, E., Kalashnikova, N., Osadchenko, E. O., & Tokarev, D. A. (2019). Electronic Notary in Modern Russia: New Juridical Significant Forms of Documents. https://doi.org/10.1007/978-3-030-13397-9_44
- Thomas, J. E. (2016). *Dynamism in U.S. Pleading Standards: Rules, Interpretation and Implementation. The Dynamism of Civil Procedure – Global Trends and Development*. Springer International Publishing: Imprint: Springer.
- Valeev, D. Kh., & Nuriyev, A. G. (2019). Electronic document management in the field of justice in the digital economy. *Bulletin of Perm University*, 45, 467-489. <https://doi.org/10.17072/1995-4190-2019-45-467-489>
- Vavilin, Ye. V., & Chekmareva, A. V. (2020). Some problems of bona fide exercise of rights and fulfilment of duties: material and procedural aspects. *Bulletin of Tomsk University*, 451, 196-202. <https://doi.org/10.17223/15617793/451/26>
- Vavilin, E. V., & Volos, A. A. (2018). The system of principals and their operation in the civil law of Russia and China. *Bulletin of Perm University. Jurisprudence*, 39, 53-73. <https://doi.org/10.17223/22253513/31/12>
- Zaloilo, M. V., & Pashentsev, D. A. (2019). The national rule of law in Russia in the context of digitalization. *Bulletin of St. Petersburg University. Series: Law*, 10(2), 196-209. <https://doi.org/10.21638/spbu14.2019.201>