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**ENSURING ACCESS TO JUSTICE THROUGH INFORMATION
TECHNOLOGY**

T. S. Korobeinikova (a)*

*Corresponding author

(a) Far-East Institute of Management, Branch of RANEP, Muravieva-Amurskogo Street, 33, Khabarovsk, Russia,
korts@rambler.ru

Abstract

Ensuring the accessibility of justice is currently associated with e-justice, the mechanisms of which are aimed at ensuring the accessibility of the judiciary, its openness and transparency for citizens and organizations. The gradual transition to information technology in the administration of justice has been one of the main directions of reforming the judicial system for several years now. The process of implementation of modern digital technologies is dynamic, however, it is carried out only in relation to some procedural actions and the functionality of the court staff, not covering such activities entirely. Using a materialistic, positivist worldview, applying a number of general scientific, special scientific and particular methods, the author concludes that the use of modern information and communication technologies will allow solving a number of problems related to the quality of justice, the timing of legal proceedings, insufficient awareness of citizens of the activities of the judicial system, ineffective execution of judicial acts. From the point of view of practical significance, the implementation of the proposals made by the author will speed up the process of introducing modern technologies in the activities of courts of general jurisdiction. In particular, the introduction of electronic document management and the formation of an electronic file in the courts of general jurisdiction will ultimately result in reducing the burden on the courts apparatus, cut of budget expenditures. Digital technologies will increase the level of efficiency of the judicial system as a whole, make it more mobile and meet the needs of modern society.

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1. Introduction

The provisions on the accessibility of justice are enshrined in Art. 10 of the Universal Declaration of Human Rights (Universal Declaration of Human Rights, 1948). In Russia, in order to implement this principle and improve the judicial system, Federal Law No. 262-FZ of December 22, 2008 "On Ensuring Access to Information on the Activities of Courts in the Russian Federation" was adopted (Federal Law No. 262-FZ..., 2008). The legislator directly associates ensuring publicity and accessibility with the use of information technologies. Kapustin (2020) formulates the following principles related to the introduction of information technology into the courts operation: dynamic development, an alternative to information technology for citizens, information security.

The use of information technology is an element of e-justice (Jneid et al., 2019; Korobeinikova, 2021; Tokarev et al., 2019; Velicogna, 2017). The Federal Target Program "Development of the Judicial System of Russia" for 2002 - 2006 indicated the need to create computerized workplaces in courts for judges, assistants to judges and employees of court apparatus, local computer networks equipped with centralized and publicly available information, legal and other information resources (Resolution of the Government of the RF No 805, 2001). At the same time, No. 75 Resolution of the Council of Judges of the Russian Federation of 11.04.2002 "On Courts Informational Support" (Resolution of the Council of Judges of the RF No. 75, 2002) secured the key role in the implementation of the measures provided by the specified program for "Justice" State Automated System of the Russian Federation ("Justice" SAS). The result of these initiatives was the widespread provision of courts with the means of automatic performance of court proceedings based on computer equipment; development of 27 functional subsystems of "Justice" SAS, which are used in the operation of all courts, in all territorial bodies of the Judicial Department under the Supreme Court of the Russian Federation. These changes were supposed to lead to shortening both the terms of review of litigation and the number of cases "on the balance"; the possibility of restoring a lawsuit in the exceptional case when its paper form was lost; providing convenient and quick access to judicial information; improving the quality and efficiency of the judicial apparatus.

The system of arbitration courts was the fastest to adapt, where by 2012 a system of automatic publication of all legal judgments adopted by arbitration courts in the open access was introduced on a united portal "Bank of Arbitration Court Decisions" was introduced; the structure of this portal was modified - a number of subsystems were developed: "Card file of arbitration cases" (hereinafter referred to as the CAC), "Calendar of court hearings", "Electronic guard", "My arbitrator"; it became possible to hold a court session in arbitration courts using videoconferencing.

The opportunity for citizens and organizations to filing documents in electronic form to courts of general jurisdiction was provided later through the "Justice" SAS system. Since 2013 in courts of general jurisdiction (in criminal cases for convicts in custody much earlier, since 2001) it has become possible to conduct court sessions using videoconferencing. This innovation ensured the remote participation of the party in the process with the assistance of another court, checking the attendance and establishing the identity of the persons who appeared.

The practice of placing judicial acts of courts in electronic form on a specialized information official resource naturally caused the need to develop a regulatory legal framework that would allow judges to use

an electronic digital signature. Corresponding changes were made to the procedural codes. Another of the most important initiatives was the formation of an electronic court case, which is the main element of electronic justice; for this purpose the question of mandatory scanning of all documents submitted to the courts was raised.

Thus, a system of automation of legal proceedings began to form in the Russian courts, which is a software and hardware complex that ensures the conduct of court proceedings, the electronic consolidation of the results and the course of procedural actions carried out by the court and other participants in the proceedings.

2. Problem Statement

In 2019, the Council of Judges of the Russian Federation once again noted that one of the priority tasks in the implementation of strengthening guarantees of accessibility and openness of justice is to continue the technological modernization of courts. The topic for discussion was the issue of ensuring the security of storage of electronic file information, the provision of which is possible through the blockchain. Scientists also draw attention to this, noting that the use of blockchain technology in forensic activities has a perspective (Kapustin, 2020). This technology prevents unauthorized changes to information, which guarantees the parties access to reliable information posted in electronic form. These innovations will enable the transition to a fully digitalized courtroom infrastructure.

In recent years important programs have been introduced into the work of the courts, providing audio recording of court sessions, video conferencing during a court session, notifications via SMS messages, etc., the importance of which is undeniable. The Government of the Russian Federation has announced a future super service "Justice Online" for courts of general jurisdiction, which is supposed to be integrated with other information systems. "Justice Online" will provide opportunities for the remote format of filing and receiving court documents in electronic form, remote participation in the trial. A special form will appear for preparing a statement, which, in particular, will allow to fill in information about the defendant and automatically fill in the missing information by identifying him according to the available data through a unified electronic population register. Despite the fact that the plaintiff will need to fill out the descriptive part of his statement himself, the next column allows you to select the claims from the list, which provides, along with an indication of their fee, automatic determination of jurisdiction. Citizens who choose this method of filing will need to pay only 70% of the state fee, the amount of which will be determined automatically.

The COVID-19 pandemic has stimulated the creation in arbitration courts of a technical base in short time for conducting online meetings, as well as a service for reviewing case materials online. These innovations were required by the objectively developed situation in the country. But at the same time, new online services currently lack the appropriate regulatory regulation.

Consequently it can be noted that conditions have been formed under which a person participating in the case and choosing electronic document flow as a form of his interaction with the court, as well as remote participation in the court session, can expect that the organizational and technical support of any courtactivity will allow him to carry out the appropriate procedural actions. Meanwhile, it is not possible to say that this goal has been achieved in full.

3. Research Questions

The implementation of information technology into judicial activity involves the identification of various problems that require constant monitoring and, accordingly, changes in legal regulation. To achieve this goal it is necessary to resolve a number of tasks:

- determine the advantages of using information technology, both for the courts and for the participants in the process;
- consider modern possibilities of using electronic technologies in activities of courts of general jurisdiction and determine their merits;
- to determine the directions for improving the current legislation, ensuring the application of information technologies by the courts of general jurisdiction.

4. Purpose of the Study

The imperfection of the use of e-justice elements in Russia was clearly demonstrated by the restrictive measures introduced in connection with the difficult epidemiological situation, which totally, starting in March 2020, paralyzed the work of the courts. Despite the fact that the restrictions on the access of participating in the case persons to the courthouse were terminated on 12 May 2020, problems arose related to the measures taken at the level of the constituent entities of the Russian Federation. For example, the obligation for citizens arriving to the territory of a subject to provide a two-week self-isolation ruled out the possibility of participating in a court hearing in courts located in another entity, which became the reason for the next postponement of court proceedings, the conduct of which using videoconferencing was not agreed. At the same time, arbitration courts realized the technical possibility of holding online court sessions through web conferences using the Card File (CAC). Thus, citizens observing the regime of self-isolation were able to express their position in the trial without leaving their place of residence. However, the specified form of hearing has not been procedurally fixed to date, its creation was urgent, forced. The procedure for filing an application for participation in an online meeting, its consideration and, accordingly, holding an online meeting is governed by the local regulations of a particular arbitration court. The use of this online service is not regulated by the current legislation, which requires improvement and further development.

More recently researchers have noted the risk of transformation of the problem of justice accessibility from its traditional representation to the problem of digital accessibility of justice (Branovitsky, 2018; Kapustin, 2020; Legg & Song, 2020). According to the international principles of creating the information society, the introduction of information technologies should be accompanied by bridging the digital divide, taking into account the special needs of disadvantaged people and vulnerable groups of the population (Declaration of Principles "Building an Information Society - a Global Challenge in the New Millennium", 2003; Okinawa Charter for the Global Information Society, 2000). In particular, the Parliamentary Assembly of the Council of Europe notes that the use of information technology can indeed simplify the proceedings for certain participants in the judicial process and, at the same time, can create certain difficulties for the needy segments of the population who are limited in the use of these

technologies (Access to justice and the Internet: potential and challenges, 2015). In this regard, it was recommended not to abolish the traditional ways of accessing information, since the argument about the "accessibility" of information technologies turned out to be erroneous (Conclusion of the Advisory Council of European Judges N 14, 2011).

So, despite the existence of an electronic justice system in France, today the question of a complete transition to electronic document flow is not raised - citizens and organizations still have the right to choose the form of filing for judicial protection (Lazarev, 2021). A similar situation is developing in England, where electronic document flow has not yet replaced the traditional one (Muromskaya, 2019).

The purpose of the study is to analyze the implementation of information technologies in courts of general jurisdiction as a mechanism to ensure the principle of access to justice, as well as to develop proposals aimed at improving the legal regulation of electronic justice in the Russian Federation.

5. Research Methods

To solve the assigned tasks and to achieve the goals of this work, the following methods of scientific research are used: comparative legal, formal legal, method of abstraction, analogy, analysis, synthesis, and others.

6. Findings

As experts correctly point out, the use itself of information technology in the implementation of judicial activity does not allow to expect its realization at a level that meets the requirements of the information society.

Recently, the matter of the need to create a unified information space for courts of general jurisdiction, arbitration and magistrates' courts has been discussed. Yet this idea can't be realized, for it is associated with the technical complexity of the operation of such an automated database. To date, the courts of general jurisdiction, as well as the Judicial Department at the Supreme Court of the Russian Federation use the "Justice" SAS, the magistrates' courts - "Amirs" program module and arbitration courts – Card File (CAC).

To date, there is also no mechanism for creating a unified system providing access to information for all courts of general jurisdiction. However, its prototype is the Unified Portal of Courts of General Jurisdiction of Moscow City - an information space that unites and synchronizes data on operation of 36 Moscow courts. Alternatively a unified system of courts of general jurisdiction can be ensured by launching the "Justice Online" service.

As Afanasyev (2021) correctly notes, digitalization is not proceeding as quickly in courts of general jurisdiction as in arbitration courts, which is due to the level of insufficient preparedness for the use of information technologies.

The difference in the possibilities available in the courts of general jurisdiction and arbitration courts are reflected in Table 1.

Table 1. Comparative analysis of the use of information technology in courts of general jurisdiction and arbitration courts

Criteria	Arbitration court	Courts of general jurisdiction
Opportunity to get information about any case of any court	There is (CAC)	There is no
Publication of the texts of judicial acts in the open access	There is (has procedural force)	There is (impersonal text is placed, unenforceable)
The need to send copies of judicial acts to the participants in the process by mail	There is no	There is
Publication of interim judicial acts(for example, on adjournment of the hearing, on the demand for evidence, on the appointment of a forensic)	There is (CAC)	There is no
The electronic signature of the judge	There is	There is
Frequency of use of the electronic signature	Constantly (signs all legal acts)	Occasionally
The possibility to fill out a form for the formation of a draft judicial act	There is	There is no
Online familiarization of the participant in the process with the materials of the electronic court case	There is	There is no
Formation of a court case in electronic form	There is (CAC)	There is no

Based on the analysis of these data, the following conclusions can be drawn.

1. A party interested in receiving information about the presence / absence of a specific court dispute in the proceedings in the absence of information of a specific court of general jurisdiction, to whose territorial jurisdiction it belongs, is deprived of the opportunity to receive it promptly.
2. Often, participants in court proceedings are faced with problems when placing the texts of judicial acts. The possibility of publishing a judicial act of a court of general jurisdiction in electronic form with an electronic signature of a judge is not provided. The judicial act posted on the official website of the court has no procedural force.
3. There is a need to send copies of judicial acts to citizens and organizations by mail, which entails additional budgetary costs. In addition, the sending of court rulings through the postal service does not always contribute to the timely execution by the parties of the court orders due to the late receipt of correspondence.
4. There is no mechanism in the courts of general jurisdiction that allows automatically when signing documents in an “internal” computer-based system to ensure its placement in an open specialized source.
5. According to the instructions for organizing office work in arbitration courts (paragraph 7), the use of automation systems by courts is mandatory, while in the instructions for office work in courts of general jurisdiction there are no such directions.
6. There is no possibility in the courts of general jurisdiction for online familiarization of the participant in the process with the materials of the electronic court case.

This clearly does not correspond to the goals of digitalization of the judicial system - to ensure openness and accessibility of justice. We assume that the identified problems significantly violate the rights

of interested parties on access to justice. In this regard, it is necessary to agree with the authors who propose to refuse documenting on paper the trial transcript, but store audio recordings by attaching files of the corresponding protocol to the registration and statistical card of the case formed in electronic form; conduct clerical office work exclusively in electronic form (Latysheva, 2020).

The implementation of a system of interaction between information systems of the court and various bodies (prosecutor's office, the Ministry of Internal Affairs, Russian Register) in electronic form will reduce the time for consideration of cases, provide a convenient and quick exchange of information and, in general, improve the quality of the courts work (Krisko, 2019; Latysheva, 2020).

Moreover, topical is the refusal of the excessive volume of paper documents in courts and the formation of cases in electronic form. In this regard, it is essential to consolidate in the procedural legislation the possibility of online familiarization of a process participant with the materials of the electronic court case in the courts of general jurisdiction and, in addition, by analogy with the arbitration process, provide for the obligatory placement of the judicial act in the form of an electronic document signed by the qualified signature of the judge on the court's website general jurisdiction.

As Kapustin (2020) rightly points out, the use of information technology in judicial activity should be of an alternative nature until these technologies become available to all. Citizens must have the skills to use information technology, trust them, and only then they will be ready to interact with the court exclusively electronically (Rooze, 2010).

To this end, it is necessary to increase the level of legal education and information literacy of the population (Latysheva, 2020); to create new user-centric tools using technology to provide access to justice (Cano et al., 2015; Prince, 2020).

7. Conclusion

The foregoing indicates that today various elements of electronic justice find their application both in courts of general jurisdiction and in arbitration courts in the Russian Federation. However, to conclude the successful and widespread use of information technology in the domestic judicial system is not possible. This is due both to the lack of a unified system that ensures both external and internal uniformity in the activities of the courts, and to the imperfection, insufficiency of those elements that have already been implemented, but do not provide the desired effect.

For more than fifteen years, events related to the introduction and use of modern technologies in the activities of the courts have been one of the main measures in reforming the judicial system. At the same time, the process of transition to modern technologies in the courts of general jurisdiction is proceeding rather slowly, which negatively affects both the activities of a particular court and the participants in the trial. Currently, e-justice is fully implemented only in the system of arbitration courts.

It is necessary to modernize this system so that courts of general jurisdiction can use the functionality that allows participants in the arbitration process to exercise their rights at all stages of justice. It is possible that at the first stage the "Justice Online" super service will become the basis for a unified information space of courts, ensuring the availability and openness of justice.

Thus, it is necessary to overcome the backwardness in the application of modern information technologies in the activities of courts of general jurisdiction, which will contribute to ensuring access to justice in the Russian Federation.

References

- Access to justice and the Internet: potential and challenges. (2015). *Resolution 2054 of the Parliamentary Assembly of the Council of Europe (PACE)*. Retrieved (April 24, 2021) from <http://websitepace.net/documents/19838/1085720/20151026-InternetAccess-FR.pdf/8d3c44d4-da6c-4dac-ab15-94dc1fcc5d48>
- Afanasyev, S. F. (2021). Justice and a Court Ruling Using WhatsApp: Admissible Civil Procedure Reality? *Arbitration and civil procedure*. 2, 41-44. <https://doi.org/10.18572/1812-383X-2021-2-41-44>
- Branovitsky, K. L. (2018). The influence of information technology on civil proceedings. *Arbitration and civil procedure*. 7, 24-27.
- Cano, J., Jimenez, C. E., Hernandez, R., & Ros, S. (2015). New tools for e-Justice: legal research available to any citizen. *2nd International Conference on eDemocracy and eGovernment*, 108-111.
- Conclusion of the Advisory Council of European Judges N 14. (2011). Justice and information technology. *ATP "ConsultantPlus"*.
- Declaration of Principles "Building an Information Society - a Global Challenge in the New Millennium". (2003). Geneva. *United Nations*. Retrieved (April 7, 2021) from https://www.un.org/ru/events/pastevents/pdf/dec_wsis.pdf
- Federal Law No. 262-FZ "On Ensuring Access to Information on the Activities of Courts in the Russian Federation". (2008). Retrieved (April 2, 2021) from http://www.consultant.ru/document/cons_doc_LAW_82839/
- Jneid, M., Imad, S., & Fakhoury, R. (2019). Digital transformation in justice: Discussion of challenges and a conceptual model for e-justice success. *19th European Conference on Digital Government. Proceedings of the European Conference on e-Government, ECEG*, 35-42, <https://doi.org/10.34190/ECDG.19.051>
- Kapustin, O. A. (2020). Principles of organization of judicial activity in the information society. *Russian Justice*. 1, 51-55.
- Korobeinikova, T. S. (2021). E-Justice: The State Of Implementation In Russian Federation. *European Publisher. EpSBS*, 103, 143-151, <https://doi.org/10.15405/epsbs.2021.03.19>
- Krisko, V. S. (2019). On the issue of the implementation of the principle of accessibility of justice and the creation of a unified information space of the judicial system. *Administrator of the court*. 1, 54-56.
- Latysheva, N. A. (2020). On the Way Toward Artificial Intelligence in the Arrangement of Judicial Procedure. *Court Administrator*. 3, 8-11.
- Lazarev, S. V. (2021). Management of cases in civil proceedings abroad. *NORMA, INFRA-M*, 40-44.
- Legg, M., & Song, A. (2020). Commercial Litigation and COVID-19 - the Role and Limits of Technology. *Australian business law review*, 48(2), 159-168.
- Muromskaya, Yu. V. (2019). Electronic form of legal proceedings abroad. *Innovative science*. 4, 137.
- Okinawa Charter for the Global Information Society. (2000). Retrieved (April 30, 2021) from <http://www.kremlin.ru/supplement/3170>
- Prince, S. (2020). Encouragement of mediation in England and Wales has been futile: is there now a role for online dispute resolution in settling low-value claims? *International journal of law in context*, 16(2), 181-196. <https://doi.org/10.1017/S1744552320000130>
- Resolution of the Council of Judges of the Russian Federation No. 75. (2002). "On the Informatization of Courts". <http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=ARB&n=15890#046365298612472317>
- Resolution of the Government of the Russian Federation No. 805. (2001). "On the federal target program" Development of the judicial system of Russia "for 2002 - 2006". Retrieved (April 2, 2021) from http://www.consultant.ru/document/cons_doc_LAW_34171/

- Rooze, E. J. (2010). Differentiated Use of Electronic Case management Systems. *International Journal for Court Administration*. Retrieved (April 21, 2021) from <http://www.iaca.ws/files/ErwinRooze-ElecCaseMgmt.pdf>
- Tokarev, D. A., Usanova, V. A., Kagalnitskova, N., & Sandalova, V. A. (2019). Development of e-justice in Russia: Modernization of legal regulation and deepening of scientific. Research (Book Chapter). *Studies in Computational Intelligence*, 826, 215-222.
- Universal Declaration of Human Rights. (1948). Retrieved (April 1, 2021) from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>
- Velicogna, M. (2017). International E-Justice in Europe: From national experiences to EU cross-border service provision E-Government Development. *Policy, Implementation and Best Practice*. Book Chapter, 39-72.