

SLCMC 2021

International conference «State and law in the context of modern challenges»

**THE LATEST TRENDS IN THE DEVELOPMENT OF CIVIL
PROCEDURAL LEGISLATION**

Oksana V. Isaenkova (a)*, Tatyana V. Solovyova (b), Anastasiya V. Chekmareva (c)

*Corresponding author

(a) Saratov State Law Academy, 1, Volskaya St., Saratov, Russia, oisaenkova@mail.ru

(b) Saratov State Law Academy, 1, Volskaya St., Saratov, Russia, s80tv@mail.ru

(c) Saratov State Law Academy, 1, Volskaya St., Saratov, Russia, anastasiya-chekmareva@yandex.ru

Abstract

This article analyzes the latest trends in the development of civil procedural law, which are determined by modern informatization, the mentality of Russian society and its individual representatives, as well as the degree of state influence on the positive attitude of most of society to the activities of the judicial system. It is established that within the framework of simplification of civil proceedings as a trend of development of civil procedural legislation the direct competition of the parties – plaintiff and defendant is minimized, which has a negative impact on the quality of justice in civil cases, therefore, the “documentary” competitiveness, which approved itself from the judicial and practical position should be enshrined in law. Regarding the trend of “robotization of justice,” the authors believe that artificial intelligence cannot replace a human judge, because their activity is largely related to the application of evaluation categories, the establishment of legally relevant circumstances for the case, the determining the real legal relations of the parties, the assessment of evidence and, finally, the decision-making based on their personal conviction. The following main directions for improving procedural legislation in the context of the informatization of court proceedings have been outlined: drafting special orders for procedural actions under quarantine or other restrictive measures; introducing digital technologies that simplify and accelerate court proceedings; improvement of the material and technical equipment of courts; and ensuring information security.

2357-1330 © 2022 Published by European Publisher.

Keywords: Access to justice, civil procedure law, civil procedure, information society

1. Introduction

The rapid development of technological innovations leads to the penetration of information technology in all spheres of modern society. The patterns of law and society development and functioning in the new digital era require their research, as well as the formation of models of legal regulation of various areas of social life (Andreeva & Zaitsev, 2020; Pashentsev, 2020). A number of policy documents stipulate the following as targets: large-scale introduction of digital technologies into various spheres of society, creation of information and telecommunication infrastructure; improvement of living standards through the use of modern technologies, etc.

The development of the information sphere could not fail to have an impact on the area of judicial protection of the violated and contested rights of citizens and organizations. Civil justice is still the most popular form of dispute resolution. Despite an age-old tradition and the prevailing stability of the civil procedure and its principles, it is worth admitting the inevitable transformation of the procedural form, the introduction of elements that simplify and speed up judicial proceedings, thanks to technological advances. The above makes it necessary to approach the study of trends in the development of civil procedure legislation in a systematic way, initially identifying which of the basics of legal proceedings should be addressed as soon as possible and in which way they should be transformed.

2. Problem Statement

The latest trends in the development of civil procedure legislation are determined by numerous circumstances – from technological progress and the current booming informatization of all spheres of human activity to the mentality of society and its individual representatives at a particular stage of social development and the possibility of state influence on the positive attitude of the majority of society to the judicial system activity. At the same time, among the various factors affecting the judicial process, there will always be the main ones, which can be identified only on the basis of justice, i.e., its principles. If we ignore the fundamentals of court procedure in general and civil procedure in particular, judicial reform will become permanent (we have to note that the process of permanent reform is not dangerous in itself, but in that it makes the civil procedure form unstable, "fuzzy" and therefore, unclear and ineffective) and will never achieve its goal, which must be understood as the optimization of justice in civil (and other) cases. Such optimization means that the state must ensure that any civil case is considered and legally resolved as soon as possible (but without harming guarantees of the rights of those involved in the case). Thus, first of all, it is necessary to determine the directions and scope of modernization of the principles of civil proceedings – which of them should remain unchanged, which should be developed, or, on the contrary, limited, and which can be abandoned, as it has already been done by the Russian legislator in relation to the principle of continuity. There should be no doubt that these principles are the starting ideas of civil procedural law (Vavilin & Volos, 2018, p. 54), but there is a need for legislative adjustments of their content to ensure that judicial protection is accessible (Sakhnova, 2020, p. 104). Particular attention should be paid to the principles of trial immediacy, adversarial proceedings and transparency, the development of which, together with the large-scale introduction of digital technology in the judicial process, has become the main trends in the development of the civil process.

3. Research Questions

Recent decades have been characterised by rapid technological developments in the process of administering justice around the world. In particular, e-justice legislation has been adopted in the European legal area to address issues such as: access to information on court activities, electronic communication between court and litigants (Die österreichische Justiz (April 2021) as well as between the judicial authorities of member states, creation of electronic bankruptcy registries, extensive use of video-conferencing systems (hereinafter VCS), etc. (Multiannual action plan for European e-Justice, 2014; Proscuryakova, 2018). Emphasis is also placed on new types of evidence in the context of information technology developments (Fu & Meng, 2016; Handayani, 2017; Pico-Junio, 2019; Sugiyama, 2019).

It is worth noting that the possibility of electronic filing of documents in court, the use of video-conferencing systems, the submission of electronic evidence are not new for participants in Russian civil proceedings. Nevertheless, the procedural legislation was not prepared for the restrictive measures that emerged under the COVID-19 pandemic, resulting in a hasty adaptation of law enforcement practice, which, in part, led to the “digital inequality” and the leveling of guarantees of the participants’ rights in court proceedings. Thus, in accordance with part 2 of article 155.1 of the Civil Procedural Code of RF, participation in a court session should take place using VCS of those courts, which are located on the area of residence (or stay) or location of participants of the process, which has become impossible under conditions of restricted movement and access to court premises. As a result, courts began to hear cases through video links, using messengers. It is worth recognizing that the pandemic has greatly increased the use of information and communication technologies in civil litigation.

It is highly likely that the population will face the pandemic more than once, so the right of access to justice under restrictive measures, as well as the special procedure of procedural actions (namely, the grounds for adjournment, suspension of proceedings, calculation of procedural time limits, conducting web-conferences, etc.) should be reflected in the procedural legislation. The first steps in that direction are already being taken. The Ministry of Justice of Russia, in particular, has developed amendments to the Code of Civil Procedure, expanding the opportunities for the introduction of information technology. The draft law proposes to use web-conference system along with the videoconference system, allowing the use of personal means of communication without the need to appear in court (Draft Federal Law “On Amendments to the APC RF, the CPC RF, the CAS RF and other legislative acts of the Russian Federation”, October 2020). However, despite the fact that the number of Internet users in Russia is increasing annually and, according to Digital 2020, has reached 118 million Russians, nevertheless, we cannot forget about the citizens who do not have access to the Internet (Internet 2020 in Russia and the World: Statistics and Trends, February 2020). In this regards, worries about the principle of equality before the law and the court are justified, as e-justice “increases its accessibility for some, but decreases it for others” (Artizanov, 2020, p. 33).

The next aspect of the digitalization of justice concerns the study of legal support for robotization (Balkin, 2015; Tikhomirov & Nanba, 2020) as well as the prospects of introducing artificial intelligence and replacing a human judge with a robot (Aletras et al., 2016). Realizing the inevitability of a partial

“entry” of robotization into civil procedure, legal scholars insist that it should take into account the experience of the operation and attributes of the civil procedural form, logic, the Russian mentality, not just the need to protect health in times of pandemics (Isaenkov, 2020, p. 339). We believe that artificial intelligence cannot replace a human judge, because their activity is largely related to the application of evaluation categories, the determining the real legal relations of the parties and, finally, the decision-making based on their personal conviction. At the same time, finding out questions such as whether the state fee has been paid for the application, for example, may well be entrusted to the artificial intelligence. The introduction of artificial intelligence is currently in conflict with the basic principles of civil procedure – immediacy of the trial, adversarial and publicity, but these very principles are now actively developing.

The principle of immediacy of the trial is known to include the judge’s obligation to personally examine the evidence in the case. There has long been only one exception to this principle: letters rogatory. Since the introduction of the VCS systems, the principle of immediacy set out in Part 1 of Article 157 of the RF Civil Procedural Code has not fully reflected the existing procedure for hearing civil cases (Stepanov & Pechegin, 2018, p. 161). This is due to the fact that holding a court session through Internet systems does not allow us to talk about the comprehensiveness of the received information, as technical means are often not able to convey the emotional component of the participant in the process. Another limitation of the principle of immediacy is the possibility to submit evidence to the court in the form of a copy (Article 57 of the RF Civil Procedural Code). As a negative aspect of presenting evidence in the form of a copy, it is worth mentioning the possibility of misrepresentation and forgery of the information contained in the original document. In this regard, there is a need to amend Article 157 of the CPC RF, which would establish the judge’s obligation to examine the evidence of the case, also by using a video-conferencing link. Only then, we can ascertain compliance with the principle of immediacy, as well as the principle of publicity.

The next principle is that the adversarial principle imposes on the parties the obligation to prove the circumstances on which their claims are based. Limitation of the adversarial principle must be considered within the context of the simplification and informatization of civil proceedings. And if the simplification of civil proceedings is aimed at reducing the workload of the court, the informatization of court proceedings, which involves the use of VCS, filling out documents on the court website can have an effect on the quality of the adversarial process, namely, the defence of the position on the case.

We have already paid attention to the principle of transparency of court proceedings. This principle is aimed at ensuring transparency of information relating to the conduct of legal proceedings in civil cases. Information about the courts’ activities can be obtained in various ways, namely, citizens have the right to be present at court hearings and to make recordings of court proceedings, court proceedings can be conducted using VCS, and the court must publicly announce the court decision (Samsonov, 2019, p. 294). Let us examine what limitations and changes the principle of publicity undergoes.

In 2020, this fundamental principle of judicial procedure was limited due to the implementation of anti-coronavirus measures (Kosolapova et al., 2021, p. 16). Thus, on March 18, 2020, due to the spread of a new coronavirus infection, the Presidium of the Supreme Court of the Russian Federation adopted Decree No. 808, which limited access to courts to persons who are not parties to judicial proceedings (On

suspension of personal appointments of citizens in courts, 2020, p. 2). Indeed, only the people involved in the case and their representatives were allowed into the courtrooms. These innovations limited access to the courts for representatives of the media.

Taking into account that the RF Civil Procedural Code provides for restrictions on participation only in closed court hearings involving any secrecy, in order to comply with the principle of publicity it is necessary to supplement the content of Article 10 of CPC RF with a provision that would secure the rule on the possibility of limiting participation in court hearings during the introduction of a high-readiness regime or restrictive measures.

Regarding the possibility of holding court sessions via videoconferencing and public announcement of decisions, we should note that the quality level of video and audio communication, as well as the procedure for holding judicial sessions in such form are not determined in the regulations. The quality of video and audio communication can significantly affect the final result of consideration and settlement of the case, since if any technical problems arise, there may be obstacles to the complete and objective perception of the circumstances of the case, and, therefore, to the transparency of the proceedings.

4. Purpose of the Study

The aim of the work is to identify the main prospective trends in the development of civil procedure legislation, including the rapid informatization and existing conditions of the spread of a new coronavirus infection, as well as the special public importance of civil proceedings.

5. Research Methods

The basis of the study was the formal legal method, analysis of statistics of judicial practice, a systemic perception of the subject of research in its dynamic development, the comparative legal method

6. Findings

The analysis of the latest trends in the development of civil procedural legislation and the main areas of modern judicial practice in civil cases leads to a number of conclusions, namely:

Within the framework of simplification of civil proceedings as a trend of development of civil procedural legislation the direct competition of the parties – plaintiff and defendant is minimized, which has a negative impact on the quality of justice in civil cases, therefore, the “documentary” competitiveness, which approved itself from the judicial and practical position, should be enshrined in law. In order to develop the principle of transparency of civil proceedings the Code of Civil Procedure of the Russian Federation should be amended, to establish mandatory broadcasts of hearings held in the VCS format, including the announcement of judgment in specially designated premises located in the court buildings. A similar position could be applied to court hearings held in other online formats (messengers, web conferences) only if the concept and the order of such hearings were to be enshrined in law. Taking into account that the Civil Procedural Code of the RF provides for restrictions only on participation in closed court hearings related to any secrecy, in order to observe the principle of publicity

it is necessary to supplement the content of Article 10 of the Civil Procedural Code of the RF with a provision that would enshrine the rule on the possibility of restricting participation in court hearings during the introduction of a high-preparedness or restrictive measures. In order to observe and develop the principles of immediacy and publicity it is also proposed to amend Article 157 of the Code of Civil Procedure, establishing the judge's obligation to examine the evidence of the case, including the use of video-conferencing.

7. Conclusion

The development of information and communication technology in the last decade has had a significant impact on all areas of modern society, including civil litigation. The main directions of improvement of procedural legislation in the context of informatization should be: drawing up a special order of procedural actions in conditions of restrictive measures; implementation of digital technologies that simplify and speed up court proceedings; ensuring information security. Adoption of such measures should be carried out within the framework of a unified concept of civil procedural policy, formulated with reference to the development of the "e-government" and the information society, but preserving the fundamentals of immediacy, competitiveness, publicity and identified trends in their development.

References

- Aletras, N., Tsarapatsanis, D., Preotiu-Pietro, D., & Lampos, V. (2016). Predicting judicial decisions of the European Court of Human Rights: a Natural Language Processing perspective. *PeerJ Computer Science*, 10, 2–19.
- Andreeva, O. I., & Zaitsev, O. A. (2020). Legal regulation of criminal procedural relations in the digital era. *Bulletin of Tomsk State University*, 455, 190–198.
- Artizanov, A. I. (2020). Realization of the principle of procedural economy in civil proceedings under pandemic conditions. In *Prospects of development of civil procedural law* (pp. 33–38). Saratov State Law Academy.
- Austrian justice*. (2021). <https://www.justiz.gv.at/home/gerichte~734.de.html>
- Balkin, J. M. (2015). The Path of Robotics Law. *California Law Review*, Forthcoming; Yale Law School. *Public Law Research Paper*, 536, 45–60. <https://ssrn.com/abstract=2586570>
- Fu, Y., & Meng, X. (2016). Civil Justice in China. *Brics law Journal*, III(4), 94–124.
- Handayani, D. (2017). Legal principles of evidence on civil cases in public judiciary. *Hang Tuan Law Journal*, I(1), 111–127.
- Internet 2020 in Russia and the World: Statistics and Trends* (February 2020). <https://www.webcanape.ru/business/internet-2020-globalnaya-statistika-i-trendy/>
- Isaenkov, A. A. (2020). Artificial Intelligence Technologies and civil litigation: real and possible. In *Problems and challenges of the digital society: trends in legal regulation of digital transformations* (pp. 335–339). Saratov State Law Academy.
- Kosolapova, N. A., Belousov, S. A., Lapaev, I. S., Akhrameeva, O. V., & Belousova, K. A. (2021). Society and the state in the pandemic context. *Journal San Gregorio*, 44, 14–19.
- Multiannual action plan for European e-Justice (2014). *Official Journal of the European Union*, 57, 2. [http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52014XG0614\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52014XG0614(01)&from=EN)
- On Amendments to the APC RF, the CPC RF, the CAS RF and other legislative acts of the Russian Federation* (October 2020). Draft of the Federal Law. <https://regulation.gov.ru/projects#npa=109498>

- On suspension of personal appointments of citizens in courts.* (2020). Decree of the Presidium of the Supreme Court of the Russian Federation, the Presidium of the Council of Judges of the Russian Federation of 18.03.2020, no. 808. <http://www.supcourt.ru/>
- Pashentsev, D. A. (2020). *Features of law application under conditions of public relations.* *Bulletin of St. Petersburg University. Law*, 11(1), 35–49.
- Pico-Junio, J. (2019). Some current situations and problems regarding with the new types of evidence. *XVI World Congress on Procedural Law Challenges for Civil Justice As We Move Beyond Globalization and Technical Change* (pp. 548–596). Kobe.
- Proscuryakova, M. I. (2018). E-justice in Germany: current state and prospects of development. *Bulletin of St. Petersburg University. Law*, 9(3), 433–447.
- Sakhnova, T. V. (2020). Development of simplified procedures in civilistic process in context of legislative reforms. *Journal of the Siberian Federal University. Series: Humanities, Part 13*(1), 103–115.
- Samsonov, N.V. (2019). To the question of the place and importance of judicial practice and judicial precedent in the national civil procedural law. *Bulletin of St. Petersburg University. Law*, 10(2), 293–310.
- Stepanov, O., & Pechegin, D. (2018). Legal View on the Introduction of New Technologies. *Russian Law Journal*, 6(3), 149–171.
- Sugiyama, E. (2019). Current Situations and Problems regarding New Types of Evidence. *XVI World Congress on Procedural Law Challenges for Civil Justice As We Move Beyond Globalization and Technical Change* (pp. 484–545). Kobe.
- Tikhomirov, Y. A., & Nanba, S. B. (2020). Robotization: the dynamics of legal regulation. *Bulletin of St. Petersburg University. Law*, 11(3), 532–549.
- Vavilin, E. V., & Volos, A. A. (2018). The system of principles and their operation in civil law of Russia and China. *Bulletin of Perm University. Legal Sciences*, 39, 53–73.