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PROBLEMS OF VIDEO-CONFERENCE COMMUNICATION SYSTEMS USE IN COURTS OF THE RUSSIAN FEDERATION

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Abstract

Nowadays we face constant development of digital environment in all aspects of life, economics, law. The judicial system of the Russian Federation is no exception to this change. A rather interesting issue is the use of video conferencing systems in the courts of the Russian Federation. In connection with the above, this article analyzes the development of the digital environment in judicial activity, namely, the author in this article defines the concept of video conferencing and studies the current state of the process of using the video conferencing system in the courts of the Russian Federation. The article analyzes the positive aspects of using the video conferencing system in the courts of the Russian Federation. In addition, the author highlights the problematic issues of using a video conferencing system in the courts of the Russian Federation. The author in this article analyzes the prospects for the further development of the video conferencing system, and also suggests ways to solve problematic issues that arise during the use of this system. Also, in this article, the author concludes that it is necessary to amend the current legislation, which, in turn, will help to change the problems that arise in the process of using video conferencing system.

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Keywords: Law, legislation, judicial system, video conferencing, the advantages of video conferencing, problems of video conferencing.



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1. Introduction

The digital development of all spheres of the economy and vital processes is one of the priority goals for the development of society. In this connection, approaches related to the implementation of information and computer technologies in the activities of courts also need to be developed. A rather pressing issue is the use of video conferencing in court proceedings.

This is due to the fact that courts often encounter a problem when a participant in a court session is absent from the trial. Moreover, its absence may be due to a remote place of residence from the court, disability, inability to move independently due to limited health, stay in places of deprivation of liberty, etc. At the same time, several principles of legal proceedings are violated at once: direct participation, competition, access to justice, as well as the equality of all citizens before the court. In such cases, it would be more convenient and simpler to use the specified video conferencing system. Videoconferencing will be able to solve these problems and will enable the parties to remotely participate in the trial.

2. Problem Statement

In this paper, we try to characterize the current situation of using the videoconferencing systems in the courts of the Russian Federation when considering cases. Legislation provides for the possibility of participating in a court session through the use of a videoconferencing system, however, in practice, participants in the court session, as well as the court itself, are faced with certain problematic issues that we characterize in this work.

3. Research Questions

- What is video conferencing?
- How is the process of using the videoconferencing system in the courts of the Russian Federation implemented in practice?
- What problems arise during the use of video conferencing systems?
- How to solve the problems?

4. Purpose of the Study

The purpose of this study is to study the current situation of using the video conferencing system in the courts of the Russian Federation, the characteristics of their positive and negative sides, as well as proposals for their change and improvement. This study also aims to characterize the prospects for the development of video conferencing in the courts of the Russian Federation. In addition, it is necessary to find out what changes may help solve the problems that arise in the process of applying video conferencing systems in the courts of the Russian Federation.

5. Research Methods

In the process of writing this work, the following research methods were used: situational and comparative analysis, logical structuring. Using a comparative analysis, a comparison is made of the use of

the video conferencing system in the courts of the Russian Federation. The method of situational analysis helped to characterize the current situation in the use of video conferencing systems at the moment. The logical structuring method helped to draw conclusions after the analysis.

6. Findings

Let's define what videoconferencing is. Videoconferencing is a telecommunication process of interaction between subscribers who are remote from each other, but at the same time, exchange audio and video information in real time. The current procedural legislation of Russia provides for the possibility of using the videoconferencing system in civil cases by courts of general jurisdiction and arbitration courts and in criminal proceedings and ensures the holding of court hearings in the mode of remote participation of parties (plaintiff and defendant), convicted persons, witnesses and victims. However, it should be noted that in the criminal process in Russia, the use of videoconferencing appeared relatively recently.

The federal target program for the development of the judicial system in Russia involves equipping the country's courts with complexes that allow the use of videoconferencing technologies. But even the absence of appropriate complexes should not be the basis for refusing to conduct procedural actions using the videoconferencing system. Today, the use of video conferencing is more fully regulated in the arbitration process. The person who participates in the case and other participants in the process who have the authority to file the relevant application initiates the meeting using video conferencing (Kolokolov, 2011). The legislation does not fix the court at what level the organization of video conferencing is carried out, however, analyzing the norms of the law, we can conclude that this is a court of any level, including a higher one.

The court refuses to satisfy the application for participation in the hearing through video conferencing if:

1. There is no technical opportunity to participate in the meeting using video conferencing;
2. The trial is being held in closed court.

However, the law does not disclose the concept of "technical capability", and, therefore, does not disclose why the court may lack technical capability and what exactly is included in this concept of lack of technical capability.

In addition, the legislation does not establish the possibility of appealing against a court ruling to refuse to satisfy a motion to hold a court hearing by using a video conferencing system. At the same time, the absence of this possibility in the legislation is a violation of the rights of the parties in connection with the fact that they restrict access to justice. It seems appropriate to provide for the indicated possibility of appeal in the legislation. It is forbidden to use videoconferencing in a closed court session, since the regime of secrecy and confidentiality of information must be observed. In foreign countries, things are as follows. The Canadian Criminal Code provides for the ability of an accused to take part in a trial using cable television or other means that enable the court and the accused to participate both visually and verbally (Justice Laws, 1985).

New Zealand Evidence Act establishes the ability to use video conferencing (New Zealand Legislation, 2006). Based on this law, a New Zealand court receives evidence and materials using video calling and a conference call from Australia.

At the same time, Australian law established that video conferencing can be used only when hearing witnesses reside or stay in a foreign country, and allows using video conferencing only when considering criminal cases of sexual offenses against children (art. 272), child pornography (art. 273) as well as terrorism (Federal Register of Legislation, 1995).

The Rules of the Supreme Court of the Republic of Belarus stipulate that meetings of the Plenum may be held using video conferencing, and it is necessary to be guided by the general rules established by these Rules. At the same time, the place of decision-making is the place where the chairman is located. An additional fact is that during video conferencing, a video is recorded in the room where the presiding judge is located at the time of its holding (Regulations of the Plenum of the Supreme Court of the Republic of Belarus dated 04.01.2014 N2).

Some authors believe that videoconferencing should be provided only for inter-regional disputes (Nekrestyanov, 2011). In our opinion, the use of a videoconferencing system is necessary only in case of full compliance with the law, without bending restrictions set by law.

The scientific literature contains questions about the ability of the court to decide on holding meetings with video conferencing.

Chernykh (2011) offers the following point of view, which implies that the law does not establish any obstacles to using videoconferencing by court order. In our opinion, this point is legitimate, however, there is a need to set in the law that such a decision is made by the court if the parties agree.

Before ruling on the granting the application for the use of video conferencing systems, the judge commits a set of actual actions of an organizational nature. This means that the court that is considering the case is entrusted with the facilitating court to organize videoconferencing, and therefore the judge rules on that motion.

In a facilitating court, they check the appearance of the participants in the court session, establish the identity of the participants, check the credentials of the representatives, find out about the possibility of participating in the court session, after which the judge leaves the court and does not take part in the hearing.

In our opinion, the procedure for conducting videoconferencing is a rather complicated and labor-intensive event for a judge. This problem is partially solved by checking the powers of the participants in the hearing by the court clerk. However, in order to implement the foregoing, it will be necessary to amend the legislation, but, given that the number of cases in court is constantly increasing, it is important to redistribute procedural powers between judges and specialists of the court apparatus to implement a reduction in the weight on judges (Terekhina, 2017) At the same time, sometimes there are situations in which a judge is supposed to make a quick decision. For example, to establish order in the courtroom. The problem here is that it is often difficult for one judge to cope with this problem.

Often, when conducting court hearings when using video conferencing systems, technical issues arise. This is due to the fact that sometimes the quality of communication leaves much to be desired and repeatedly, even during the trial, it is necessary to interrupt in order to further resume the trial in connection with the loss of sound, image or all at once. At the same time, parties are obliged to wait for the resumption of the broadcast, and, if necessary, must repeat all that was said earlier. In addition, there are often situations when the quality of communication is so bad that the party in the case cannot clearly convey its position to the court, and the court, accordingly, correctly perceive the information received and give this information

a proper assessment. At the same time, such circumstances are further complicated by the fact that the staff of the court most often does not have employees of IT services who are able to solve the problem. So the human factor prevails here, in addition to the technical factor.

At the same time, if the court session, which is held using the video conferencing system, is interrupted, this violates the person's right to participate directly in the court session and in this case, the court must either postpone the proceedings or adjourn. In this case, if the court does not perform these actions, it will violate the rights of the participant, in connection with which, it will be possible to file a complaint. And such cases do not go unnoticed and form the basis of appeals or cassations, on the basis of which the higher instance cancels the decision and, as a rule, sends the case for a new consideration, in connection with procedural violations.

The court session in the videoconferencing mode is accompanied by the keeping of a transcript in court, which ensures the organization of broadcasting. At the same time, a note is put in the transcription that video conferencing is used.

The legislation establishes that the evidence in the case is the explanation of the persons involved in the case obtained through video conferencing. However, it is rarely possible to meet a situation where in a lawsuit the parties only give explanations. The law granted the right to participants to submit evidence in writing, subject to the availability of technical means to ensure such a presentation.

Despite the consolidation of this possibility, it is rather difficult to provide additional evidence. In fact, there is a contradiction with the principle of immediacy in the examination of evidence by the court considering the case, since the law does not regulate the mechanism of how to submit the original documents. In our opinion, it is possible to give the "remote judge" additional powers to investigate the evidence presented by the parties, but then, in fact, the case will be partially considered by the "remote judge", and not the judge in whose proceedings the case is being processed.

However, it is not clear how to implement the provision of a full familiarization. Practice shows that the parties do not even send statements and reviews to each other, and there is no need to talk about other kinds of documents. At the same time, of course, it is possible to legislatively fix an early deadline at which the parties must send these documents to the party and to the court, however, by setting such a deadline, it will also be necessary to establish responsibility for the failure to submit these documents, which also complicates the judicial process.

Another problem with the use of video conferencing systems is the participation in the hearing of persons who suffer from health defects, for example, speech, sight, hearing impairment, and various mental deficiencies. In modern times, you can solve these problems, for example, by using subtitles, sign language interpreters and more. In our opinion, the participation of such a category of persons in a court session through the use of a video conferencing system is possible only if these persons can fully perceive and transmit information, use the rights that they have, and also protect these rights. If there is even the slightest possibility that this person cannot carry out these actions, we consider it impossible to participate in the court session of such a person through the use of video-conferencing systems.

Also, an analysis of the current legislation allows us to conclude that there is a number of serious gaps in the regulation of the videoconferencing procedure in the court of first instance when considering criminal cases. First, the question regarding the warning of the interrogated about criminal liability for

refusing to testify and giving false testimony in the event of interrogation of a person located outside of Russia is not properly resolved. In the literature, the opinion is expressed that the subject should be warned of such responsibility, if this is provided for by the legislation of the host country.

Another problem is the lack of a direct indication of the possibility of a witness and a victim translator participating in the interrogation, as well as a representative of the victim. In our opinion, the legislator should not only provide for such an opportunity, but also indicate where these persons should be at the time of the judicial investigation - in the courtroom or at the location of the interrogated. The first option seems more reasonable to us, more aimed at protecting the interests of the interrogated person.

The issue of providing a territorially remote victim with the opportunity to participate in the course of the entire trial and familiarization with the transcript of the court session has not been resolved in any way. In our opinion, this provision should be directly resolved in the Code of criminal procedure of the Russian Federation dated 18.12.2001 N 174-FZ. At the same time, it is advisable to indicate that an electronic copy of the transcript of the court session should be sent to the victim for review if there is a corresponding request from him.

The next step in introducing IT technologies into the criminal process, in our opinion, there should be the expansion of the possibility of using videoconferencing in the pre-trial stages of the process and the expansion of the subject composition of persons whose interrogation is possible using videoconferencing. Currently, such legal norms are absent in the Code of criminal procedure of the Russian Federation dated 18.12.2001 N 174-FZ.

In our opinion, the use of the videoconferencing is advisable if it is impossible for the witness and the victim to appear in person to conduct such investigative actions as interrogation, confrontation, presentation for identification with their participation. In the circle of subjects whose interrogation is possible using the videoconferencing, in our opinion, experts, specialists, civil plaintiff and defendant should be included.

Thus, the study allows us to come to the conclusion that it is necessary not only to improve the criminal procedure legislation governing the use of video conferencing at various stages of the criminal process, but also to develop forensic recommendations aimed at improving the effectiveness of investigative actions carried out using video conferencing.

7. Conclusion

Lastly we can summarize and highlight the positive aspects of using a video conferencing system:

1. The time limits for the consideration of court cases are reduced, since cases are not postponed due to the person's failure to appear in court;
2. Justice becomes available, without any restrictions for individuals;
3. Financial expenses are significantly reduced;
4. Criminal trials are becoming safer.

We consider the negative aspects of using video conferencing systems to be completely solvable. Some problems are eliminated by adjusting legislation, others by improving judicial practice. However, when comparing the advantages and disadvantages of using video conferencing systems, the advantages of

using clearly outweigh the disadvantages. Thus, the use of video conferencing systems is a successful area in the legal proceedings, and therefore, this area of application will only expand and improve.

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