

THE IMPACT OF THE DIGITALIZATION OF THE PROCEDURAL FORM ON THE CIVIL PROCESS

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The subject. The impact of online communication technologies used in the civil process on its procedural form is analyzed.

The purpose of the study is to assess whether the introduction of digital tools corresponds to the basic principles of the civil process, its principles, and how this may affect compliance with the civil procedural form.

Methodology. The author uses systemic approach to interpretation former legal studies concerning issues of digitalization of civil procedure. Formal legal analysis of Russian legal acts is applied also.

Main results. The author substantiates of the necessity of analyzing the introduction of new technologies into the civil process from the standpoint of the effectiveness of achieving the purpose of justice. Modern technologies provide a huge or even endless range of possibilities, and not all digital tools are necessary for the civil process. The possibility of fully remote participation in court proceedings entails some "dying out" of procedural rituals, which simplifies the civil procedural form. Any implementation of digital tools should be evaluated in terms of the effectiveness of achieving the goal of justice, which is to protect a violated subjective right or legally protected interest.

Conclusions. In the context of the digitalization of the civil process, remote forms of participation in court hearings transform the procedural framework, simplifying and optimizing it. These changes are enhancing the transparency and accessibility of justice, being largely technical in nature. These changes do not affect the achievement of the main goal of justice – the protection of violated or disputed rights, freedoms and legitimate interests.

1. Introduction

The construction of the information society in Russia has led to a complication of the structure of public relations.

The penetration of information and digital technologies into all spheres of public relations as a reflection of the realities of the digital economy requires a new basis for the development of the public administration system and society as a whole [1, p. 4].

These processes, which change public relations, cannot but affect the implementation of the constitutional right to judicial protection, and the rules of conduct that ensure its implementation.

The use of new technologies in the civil procedure process "significantly relieved paperwork in Russian courts, structured information about court cases, made it possible to promptly keep statistical records and respond to issues arising in the activities of the courts" [2, p. 6].

Among the advantages of introducing new technologies in the civil process are speed, convenience, saving office space, reducing financial costs, safety, openness to society, and environmental friendliness [3, p. 37].

On the one hand, the use of information technologies in the civil process ensures transparency and accessibility of justice, and on the other hand, "the tasks and functions of the courts remain the same; the technological component of procedural activity does not change the essence of justice" [4, p. 4].

Today, the government has to keep up with the development of new technologies and their constant implementation.

The breakthrough development of digital technologies leads to the emergence of new types of intangible assets and the transformation of traditional tangible assets, the formation of important direct and inverse dependencies between objects of the virtual world (cyberspace) and the real world [5, p. 6].

As technology evolves, so do human capabilities. Previously, computers were used to perform template mathematical calculations, then it became possible to program computers, that is,

to give them precise step-by-step instructions (algorithms) to perform a task. Today, software developers strive to ensure that "programmed hardware becomes smarter than themselves – in other words, so that the machine learns to reason on the same level as humans and thus becomes artificial intelligence" [6, p. 66]. The development of neural networks has reached such a level that machine vision, speech recognition, and other things that were once considered impossible are now being implemented in many areas at a level comparable to that of humans.

The current level of technology allows us to talk about the development of artificial intelligence, which is capable of self-learning and acting autonomously in a certain context.

The widespread use of such systems has undeniable advantages, in particular, a person is freed from the need to perform routine tasks and thereby creates favorable conditions for his creative development [7].

However, the advantages of using artificial intelligence systems correspond to certain risks. For example, "the uncontrolled use of artificial intelligence systems can lead to a violation of privacy, discrimination in decision-making by such systems, harm to human health and property, manipulation of behavior through the use of recommendation algorithms" [8, p. 4], the dissemination of false statements under the guise of verified information due to the lack of validation by an outside party.

Modern technologies provide a huge or even endless range of possibilities, and not all digital tools are necessary for the civil process.

Any implementation of digital tools should be evaluated in terms of effectiveness in achieving the goal of justice, which is to protect a violated subjective right or legally protected interest. Does such an introduction correspond to the basic principles of the civil process, its principles, and how can this affect compliance with the civil procedural form? It is the purpose of the administration of justice, the principles of the civil process and the civil procedural form that should serve as an indicator of the need to introduce new technologies into the field of civil and arbitration proceedings.

2. The civil procedural form as an indicator of the introduction of new technologies in the civil process

The process is the movement of a civil case from one stage to another, ordered by the norms of procedural law, aimed at achieving the ultimate goal - the restoration of a right or the protection of a legally protected interest [9, p. 20]

The movement of the civil process and the development of procedural relations occur according to a certain algorithm, which has its own beginning and ending. Such an algorithm, a system of rules established by procedural legislation regulating the procedure for the administration of justice in civil cases, as well as the procedure for the activities of each participant in the civil process carried out in order to protect rights and legitimate interests, is the procedural form. Justice is carried out exclusively in a procedural form. Thus, "the civil procedural form provides maximum guarantees of judicial protection and is characteristic only of justice" [10, p. 64].

The essence of the civil procedural form is "the detailed and strict regulation of the procedural behavior of the court and other participants in the process, firstly, in terms of the specific content of this behavior, secondly, in terms of the logical sequence of procedural actions or omissions; thirdly, in terms of the place and time of their commission or imperfection" [11, pp. 105-106].

At the same time, the civil procedural form is not a simple set of rules that establish requirements for the administration of justice. The civil procedural form is "a system of guarantees designed to protect both from possible arbitrariness on the part of the litigants and the court. It is precisely the clarity and necessary sequence of actions that most likely guarantees that justice has actually been carried out" [12, p. 50].

The civil procedural form determines not only the content of procedural behavior, but also its logic – the sequence of commission (imperfection) of procedural actions.

On the one hand, the civil procedural form is characterized by normativity, consistency, formal certainty and stability, on the other, it is distinguished by dynamism.

Despite the stability of the civil procedural form, certain optimization of it periodically occurs, for example, the introduction of simplified procedures in the civil process, the exclusion of the reasoning part of the court decision in cases stipulated by law and when.

As is known, the civil procedural form has the property of variability [13, p. 13] and the use of new technologies in the civil process cannot but affect the procedural form.

The traditional civil procedural form is oral and written in nature [14, p. 62]. At the same time, as A.V. Neznamov rightly notes, "the emergence of new ways and means of transmitting information in many ways calls into question the relevance of this concept. Mechanisms for applying to the court in electronic form, electronic court notices, video conferencing and web conferences, which initially emerged as an alternative to traditional forms of procedural communication, have now significantly displaced, and in some places completely replaced them. Thus, a significant part of procedural communication now takes place outside the traditional oral and written form" [15, p. 218].

According to Y.N. Zipunnikova, "depending on the method of recording and transmitting information, oral, written and electronic civil procedural forms can be distinguished" [16, p. 54].

In this regard, the approach of Yu.A. Lukonina is interesting, who believes that "the basis for the transformation of civil procedural law can be the creation of a digital civil form that has led to the effective functioning of the so-called prototype of "digital justice" in Russia" [17, p. 4]. According to this author, "the digital procedural form is an external normative legal expression of the procedure for the consideration and resolution by courts of civil, administrative cases and economic disputes using digital technologies for recording, processing and transmitting information of legal significance" [18, p. 46].

The above indicates the significant impact of digitalization processes on the civil procedural form.

At the same time, speaking about the impact of digitalization on the procedural form and the advantages of introducing new technologies into the civil process, it should be remembered that "underestimating the civil procedural form and

ignoring its strict principles and rules are very dangerous for both justice and society as a whole" [11, p. 109]. "Procedural norms and the procedural law give not only the rights of the participants in the process, but also place the activities of the court within the framework defined by law, thereby streamlining its power functions and powers" [19, p. 53]. "A law without a ritual, without a procedure for its action, leads the government to arbitrariness, and the citizen to lawlessness" [20, p. 29].

3. Online communication technologies and civil procedural form

The most striking example of the impact of digitalization on the civil procedural form is the use of online communication technologies in the civil process.

Participation in court proceedings using a videoconferencing system has been used in arbitration and civil proceedings for quite a long time. This method of participation in the court session provides for an appearance in court at the location of the participant in the process. The court, which ensures participation through the use of a videoconferencing system, establishes the identity of the participant in the process. In the context of the 2020-2022 pandemic, this method of participation in court sessions proved ineffective due to the fact that access to all courts was limited. In these extraordinary circumstances, remote judicial communication technology has been developed in the arbitration process, such as participation in a court hearing through the use of a web conference (online sessions). This method of participation in the court session involves filing a corresponding petition to the arbitration court, the identification of the participant in the process is carried out through the Gosuslugi system. This method of participation in the court session does not require attendance in court, the participant can be located anywhere in the world, it is not connected by the difference in time zones. Thus, spatial and temporal boundaries are erased.

Noting the undoubted positive aspects of the use of online communication technology in the civil process, the question of changing the civil procedural form and its possible transformation

should be raised.

It seems that when using the videoconferencing system, the rules of procedure for the court session are fully respected, and accordingly, there is no significant transformation of the procedural form in this case.

Meanwhile, participation in the court session through the use of a web conference system in some way simplifies and optimizes the procedural form. On the one hand, time costs are reduced, it is not necessary to wait until the participants enter the courtroom, it is enough to quickly connect the participant in the process and quickly hold a court session, and on the other hand, the persons involved in the case lose the psychological aspect of being present in court, the court does not have the opportunity to face-to-face perception when presenting the participant in the trial his position on the case.

The use of remote judicial communication technologies in the civil process has both positive and negative sides.

Foreign authors mention among the negative aspects of online hearings the inability of a participant in the process to fully participate in the trial and the fact that some "nuances and body language" of witnesses may go unnoticed [21]. "The positive aspects include reducing the psychological burden on the participants, since even the courthouse can be frightening, not just the court itself, and it can be unpleasant for the party to physically contemplate the opponent" [22, p. 140].

The scientific literature notes that during online meetings, "the parties speak more compactly, less in time, and in general, the speech is more formal. This effect can be announced through the phenomenon of introspection. In this case, introspection is also visualized. A person speaking at a court hearing sees himself on a computer screen, directly perceiving his own feelings, it is difficult for him to observe his own emotions from the outside, which results in a desire to speak without emotional coloring" [22, p. 150].

This psychological effect has both advantages and disadvantages. The positive aspect lies in the concentration of the participant in the process on the essential points of his legal position. The disadvantage is that it is more difficult for the

court to identify lies in explanations.

In addition to the noted psychological effect, online meetings also discipline the participants in the process in the sense that participants in the process cannot interrupt each other due to the technical features of online meetings. In particular, two or more voices in an online broadcast are perceived much worse than in real life, respectively, the persons involved in the case are forced to choose other communicative strategies of behavior in court. "To a certain extent, this disciplining effect makes it possible to minimize destructive speech acts such as aggression, the exchange of barbs, the use of tactics to discredit one's opponent, and manipulation of the interlocutor" [22, p. 150].

When conducting a court session using a web conference, there are no obstacles to compliance with the rules of procedure established by the procedural law. At the beginning of the court session, the court determines the appearance of the parties. The participant in the process appears to have his data already in the Moyarbitr system, in which identification was carried out through the Gosulugi system. Next, the court session is held in the standard procedure.

The features of an online meeting, as well as participation through the use of video conferencing systems, are the examination of evidence.

Physical evidence is not examined when using remote forms of participation, physical evidence must be provided to the court considering the case before the court session.

Written evidence is provided to the court before the court session, since the functionality of the Moyarbitr system does not provide for the possibility of providing written evidence during an online meeting.

The explanations of the participants in the process are heard in the same manner as at an in-person court hearing

In the event that witnesses, experts, and interpreters participate in a court session via a web conference, the arbitration court reviewing the case takes a subscription from such participants in the process explaining their rights and obligations and warning them of responsibility for their

violation, which is submitted to the arbitration court in the form of an electronic document signed with an enhanced qualified electronic signature.

When using the web conference system, a protocol is drawn up and a video recording of the court session is conducted. The material carrier of the video recording of the court session is attached to the minutes of the court session.

In the scientific literature [23, pp. 3-6], it is widely believed that in the context of digitalization, the civil process develops under the influence of deritualization and dematerialization.

Indeed, the possibility of fully remote participation in court proceedings entails some "dying out" of procedural rituals, which simplifies the civil procedural form.

In particular, the following situation is an example of such a deritualization of a civil procedural form.

The Arbitration Procedure Code of the Russian Federation, in article 154, regulates that when judges enter the courtroom, all those present in the courtroom stand up. All persons present in the courtroom shall listen to the decision of the arbitration court standing. They give their explanations and testimony to the court, questions to other persons involved in the case, and answers to questions standing up. A deviation from this rule may be allowed only with the permission of the court.

When using a web conference system, this rule raises some doubts about the behavior of the participant in the process. If a participant uses a mobile phone to connect to an online meeting, there are no particular problems in complying with this rule. If a personal computer is used, the question arises whether such a participant should lift the monitor, if not, what the court will see on the screen. Of course, this is more of a technical issue, but it has a place to be and creates negative aspects in practice. In addition, in practice, explanations and testimony to the court, questions to other persons involved in the case, and answers to questions are given by participants in the process while sitting at online meetings. Perhaps this rule should be partially changed.

4. Conclusion

An analysis of the correlation between such a manifestation of the digitalization of the civil process as a remote form of participation in a court session and a civil procedural form allows us to assert that changes are taking place in the civil procedural form. These changes are expressed in the optimization and simplification of the civil procedural form. However, these changes are rather technical in nature, ensuring transparency and accessibility of justice, and do not affect the achievement of the main goal of justice – the protection of violated or disputed rights, freedoms and legitimate interests.

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