

TRENDS AND PROBLEMS OF E-JUSTICE ENFORCEMENT IN UKRAINE

Kaniuka Natalia

Annotation. *The paper aims to explain the trends and problems of the electronic justice development in Ukraine. Within the research the tasks include an analysis of the regulatory documents and organizational features of the implementation the certain measures of court digitalization.*

The methodological basis of the study. The main scientific method used in the article is deductive. In the study conditions, a gradual transition is made from the general problems of e-justice implementation to the peculiarities of functioning of its individual subsystems. After that, several proposals are substantiated for its improvement in the future.

The structure of the article is formed in accordance with theoretical and analytical tasks. It also reflects the use of certain methods of scientific research and scientific materials.

The theoretical method is used during the study of the regulatory documents and problems of electronic justice implementation. The materials for the method application are legislative acts, regulations, strategy and scientific literature.

The tabular, analytical and generalization methods were used to study the dynamics of applying the video conference mode for the trial and trials recording by technical tools. The materials for applying the method are data from the Ukrainian Judicial Authority Portal.

Results. In the article, the legal norms of the Unified Judicial Information and Telecommunication System Modules' functioning have been studied. The main reasons for the low number of applications submitted through the e-court were determined, and the participation of a third party (Center of the Provision of Administrative Services) was justified to increase the use of digital court services and their popularization. The necessity of clarifying the norm of the Regulation on the procedure of functioning the separate subsystems (modules) of the Unified Judicial Information Telecommunication System regarding the mandatory duplication the digital version of documents with a paper one for trial parties, if the other party does not use e-judicial methods, is substantiated. The dynamics video conferencing mode and technical tools use in the trial were carried out, and the reasons for the identified trends were substantiated. Specific features and problems of using electronic evidence in digital justice are outlined.

Conclusions. Solving the organizational problems and eliminating legal inaccuracies will allow achieving the goal of implementing e-justice.

Keywords: *electronic court; Unified Judicial Information and Telecommunication System; Electronic Cabinet; video conferencing subsystem; electronic evidence.*

1. Introduction.

The trends of court digitalization determine the construction of a global digital space that will lead to the maximum speeding up, cheapening, and simplicity of the judicial process. This result is possible due to: the opportunity of full two-way communication between the court, participants of the trial, and all other interested parties using modern electronic information communication technologies. It also requires the recognition of the entire range of electronic information resources that exist today as proper and fully admissible evidence in the court process and the possibility of performing all procedural actions in electronic form during court case consideration.

Ukraine based its justice digitalization system on the Estonian model. The legislator made the appropriate change to the laws in 2017 to implement the changes. As a result, the foundations of the Unified Judicial Information and Telecommunication System (UJITS) started to develop. The purpose of this system was to automate the document flow of judicial institutions and introduce an approach to submitting all documents to the court in electronic form. This system can provide significant information support in the work of judges and all trial parties [1]. The implementation of such a system in Ukraine began in 2020.

2. Analysis of scientific publications.

The publication is devoted to the trends and problems of electronic justice in Ukraine. Ukraine is actively developing in this direction. Adeleye J.T., Ahmed R.K., Nyman-Metcalf K., Draheim D. in the study of the development of e-judiciary in developing countries, identified the following critical factors: high-quality information system, functioning interoperability platform, user-friendly interface, end-user participation, stakeholders support, updated legal framework and organizational changes [16]. Alankar, A.M.M., Zaizi, N.J.B.M., Hamid, H.B.A. determine the following most critical aspects of user interaction with the electronic court: human behavior, technology advancements, organizational structure, and legal issues [17]. Gronic, I.A. studied the general principles of electronic justice. [18]. In recent years Ukrainian scientist [1; 10; 14] brought their attention to the issue of legal support for the functioning of separate subsystems of e-justice. O. Oliynychuk, R. Oliynychuk, and A. Kolesnikov [11] conducted a statistical analysis of the implementation of electronic justice. At the same time, several regulatory and organizational aspects of the effective functioning of the electronic justice system in Ukraine remain unsettled.

3. The aim of the work.

The paper aims to study the specific features of the Unified Judicial Information and Telecommunication System modules application, especially the scale and problems of implementation.

4. Review and discussion.

The legal basis of the UJITS is the Regulation on the procedure of functioning the separate subsystems (modules) of the Unified Judicial Information Telecommunication System [2]. The document includes the following digital tools: "Electronic Cabinet" (E-Service Account), subsystems of video conferencing and "Electronic Court" (E-Court), electronic document, electronic document administration, audio and video recording of the trial.

The basic subsystem of **UJITS** is the E-Court, which provides the possibility for users to create and send procedural and other documents in electronic form to the court or other bodies and institutions of the justice system, as well as to receive information about status and results of the document review. This is possible in accordance with the available technical capabilities of the **UJITS** subsystem and in cases according to law. Taking into account many technical aspects when using the E-Court subsystem in conditions of a low-level digital literacy of citizens, a specialized instructional platform [3] has been developed. State Enterprise "Centre of Court Services" administrates this platform. The purpose of the platform's operation is the timely filling and updating of data in all areas of development and support of the Ukrainian judicial system software products.

The work of the E-Court is carried out by creating electronic documents using an integrated text editor and applying a qualified electronic signature. Next, the responsible employee of the court or other body of the justice system checks the correctness of uploading the documents and verifies the possibility of opening those documents. After that the documents are registered, and a corresponding message is sent to the user's E-Service Account. If it is impossible to open (view) the document, it is not registered. The corresponding certificate is drawn up about this issue. Next, a copy of this certificate is sent to the person by notification. After that, for another participant of the case with the relevant identification features during registration in the E-Service Account, the functionality of the E-Court automatically provides proof of the sending the digital documents by all parties of the trial.

The representatives of the judicial corps [4] mention that the number of applications submitted through the E-Court is many times smaller than paper ones. Moreover, even state organizations and business structures prefer the traditional way of submitting documents.

Another feature that distorts the idea of court digitization is the practice of printing materials that have arrived in digital form for further work with them by the judge.

The low number of electronic applications submitted, among other things, is evidence of the influence of two key factors: mistrust of the mechanisms and methods of information protection in the digital court space and the inability to work with the E-Court subsystem. The second is partially solved by placing instructional materials on an official platform [5], but the impact of the generally low level of computer literacy and the fear factor remains significant. In this regard, we consider it appropriate to create an intermediate consulting unit for a certain period (2-3 years), which will help to use the E-Court services. Thereby, the trust in this subsystem and the digital literacy will increase. The Administrative Service Center (Center of the Provision of Administrative Services - CPAS) can perform such functions. The responsibilities of the Center's specialists will include: assistance in digitizing documents, uploading them to the subsystem, and applying a qualified digital signature. The implementation of this project will create a layer of people who, after using the E-Court, will spread information about its advantages through interpersonal communication.

We agree with O. Bryntsev's position that the Electronic Court will contribute to the solution of existing problems in the judicial system, especially: ensuring access to justice through the exchange of electronic documents between all parties of the court, reducing court costs associated with the transfer and production of paper documents, arrangement and speeding up the transfer documents between courts, etc. Electronic justice ensures an increase in the transparency and accessibility of the justice system, improves the quality of court work and significantly save state funds [6, p. 6]. At the same time, the specified organizational and administrative difficulties and specific features make it necessary to explore further ways of improving the functioning and administration of the E-Court subsystem. This necessity is clearly expressed in the conditions of martial law.

Work in the Electronic Court requires the mandatory registration of a digital profile on the Ukrainian Judicial Authority Portal. The "Electronic Cabinet" subsystem (E-Service Account) is a structural element of UJITS. After user registration and further authentication, E-Service Account provides access to UJITS modules within the limits of the granted rights. At the same time, the registration of citizens is necessary only if they choose the digital format of judicial proceedings. Bur "attorneys, notaries, private executors, forensic experts, state bodies and local self-government bodies, economic entities of the state and communal sectors of the economy register their official electronic addresses in UJITS in mandatory procedure" [2]. Clause 29 of the Regulation, mentioned before, states that "in case of submission of documents to the court in electronic form, the participant is obliged, in cases defined by procedural legislation, to provide proof of sending copies of the documents submitted to the court to other participants in the case" [2]. This may cause a circumstance when a participant in the legal process who chose the electronic form of the proceedings will be obliged to duplicate all the documentation in paper form to another participant in the case who chose the paper form of the proceedings. Situation described demotivates parties of the trial to use the E-Court, which may be one of the reasons for refusing to use it. We believe that the legal norm should be clarified. We suggest one of two options: developing a procedure for reaching an agreement on the use of the Electronic Court by all parties of the trial, or redirecting the function of sending paper copies of documents to court employees.

Clause 23 stays unfinished and incomplete. This clause determines the possibility for **UJITS users** transferring the access to information and taking actions on their behalf to third parties (at the same time, such actions will be considered committed by the user personally). Unclear here is the tool for accessing the **E-Service Account**. Paragraph 29 of Part 1 Article 1 of the Law of Ukraine "On Electronic Trust Services" states that the private key is available only to the signatory or creator, and paragraph 1 of Part 2 Article 12 of the same Law states that "users of electronic trust services are obliged to ensure confidentiality and the impossibility of access of other persons to the personal key" [7]. Thus, the necessity arises to register one's own e-mail and obtain personal access to perform the specified actions by a third party (if it is not a lawyer, and we are talking about minor cases). However, the legislation does not regulate how trust actions can be carried out and the technical possibility of third-party access to digital documents.

According to the Regulation, such access cannot be granted automatically, since the third party is not a party of the case.

The technical and legal difficulties of the functioning of the Electronic Court increased significantly in wartime conditions. The conditions of widespread power outages and the lack of alternative sources of energy supply cause doubts the possibility of the stable functioning of digital justice. The administration of the Electronic Court subsystem is entrusted to the SE "Centre of Court Services"; however, on their official website [8] there is no algorithm for system maintenance and a description of the features of automatic saving of information in cases of emergency power outages. In this way, the first stated purpose of the Enterprise is violated: "organization of access for individuals and legal entities to the information resources of bodies and institutions of judicial power" [8]. The support of the website of the judicial power and user profiles of citizens is provided by the SE "Centre of Court Services". SE "Information Court Systems" is responsible for the administration of the internal infrastructure of the courts and its connection with the subsystem "Electronic Court". In such a situation, it is necessary to clearly define the specifics of cooperation between enterprises in the event of unforeseen circumstances of a technical nature.

One of the directions of The Strategy is "the introduction of modern electronic document administration in the court, electronic case management, e-communications with the court, the judge's account, and the account of trial parties" [9]. We consider this element of the Strategy as achieved, taking into account the practical implementation of all the specified components. In particular, the registration confirmation or the absence of an electronic cabinet confirmation is sent to the electronic document administration system using UJITS.

A significant advantage of using electronic document administration is the speed of working with documents and the reliability of their storage, since the digital format of documents determines their preservation, increase the convenience of their use during a practically unlimited period of time. Thus electronic document administration and document management systems form a new organizational culture of the judiciary, making the work of court employees more efficient.

In subsection 4.1.1 of the Strategy for the Development of the Justice System and Constitutional Judiciary for 2021-2023, among other important directions it is noted the consideration of world standards in the field of information technology in the development of the Ukrainian judiciary and its integration into the national structure of e-government through the implementation of the possibility of considering certain categories of cases online regardless of the location of the parties and the court and other electronic court services [9].

The video conferencing subsystem enables the trial parties to participate in the court session in video conference mode outside the courtroom using their technical tools through the E-Service Account. Also, communication can be made from another courtroom, pretrial detention center, prison, or medical institution using the tools of these institutions.

The video conferencing subsystem also provides the opportunity to participate in meetings of other judicial bodies and institutions via video conferencing. The detailed procedure for conducting such meetings may be determined by competent bodies and the justice authorities.

To participate in the trial in the video conference mode, the participant must first register with the use of an electronic digital signature on the official Ukrainian Judicial Authority Portal in the EasyCon system and check their tools for compliance with the technical requirements. A party of the trial submits an application for participation in the court session via video conference outside the court premises no later than 5 days before the court session. The participant's application is registered in the court's automated document management system on the day it is received by the court and, if it is technically possible, is transferred to the authorized judge, who presides and makes the decision to hold the meeting in videoconference mode [10, p. 43].

This direction of the Strategy is one of the least implemented today. The Activity Report of the State Judicial Administration of Ukraine in 2021 indicates the use of 6,206 devices with the option of recording audio and video, which is 61.4% of the need (in 2020, this indicator was 74.5%) [12]. For a better understanding the dynamics of this development direction, we present numbers in Table 1.



Table 1

Trial using technical tools and cases handled in the video conferences mode

	2019		2020				2021			
	Video**	Technical tools***	Video**	Technical tools***	Dismissed Video 2020/2019	Dismissed tools 2020/2019	Video**	Technical tools***	Dismissed Video 2021/2020	Dismissed tools 2021/2020
Local Courts	22380	557913	25176	495361	2790	-62552	28905	471677	3729	-23684
– local economic courts	3241	31699	4388	25047	1141	-6652	7612	28554	3224	3507
– local general courts	19139	526214	20788	470314	1649	-55900	21293	443123	505	-27191
Courts of Appeal	4298	39372	5007	29042	709	-10330	7745	30664	2738	1622
– administrative court of appeal	2385	23289	2408	16392	23	-6897	3356	15888	948	-504
– economic court of appeal	1913	16083	2599	12650	686	-3433	4389	14776	1790	2126
District Administrative Courts	2223	40198	1677	26838	-546	-13360	2275	22991	598	-3847

* – established by the author based on [13]

** – cases in which court proceedings were conducted via video conference

*** – cases in which the court process considered with recording by technical tools

Analyzing the data in Table 1, we can notice unstable trends in the digitalization of the judiciary between 2019-2021. The holding of meetings in the video conference mode is characterized by a steady upward trend in all courts, except for district administrative economic courts in 2020. The situation with the use of technical tools is different. For all types of courts, in 2021, compared to 2019, there was a decrease in the number of cases with recording of the court process by technical means. Moreover, in district administrative courts, the drop was almost 43%. Analyzing the data in Table 1, we can notice unstable trends in the digitalization of the judiciary between 2019-2021. The holding of meetings in the video conference mode is characterized by a steady upward trend in all courts, except for district administrative economic courts in 2020. The situation with the use of technical tools is different. For all types of courts, in 2021, compared to 2019, there was a decrease in the number of cases with recording of the court process by technical means. Moreover, in district administrative courts, the decrease was almost 43%.

In addition to the fact of using digital tools (technical tools and video conferences), their technical excellence and adaptability are important. The **Ukrainian Judicial Authority Portal** in the section "Online broadcasts of court hearings" provides the possibility to watch particular court hearings. Unfortunately, when a customer tries to watch the video, a message is displayed that the media could not be loaded, either because the server or network failed or the format is not supported. It is concluded that the statement about the availability and publicity of online court hearings is currently declarative. In the archive of broadcasts tab (online broadcasting doesn't relate here), files can be opened, but for some there is a note "the conference has ended and is no longer available." The technical side of the work of SE "Information Judicial Systems" in the administration of the platform is unclear since the very name "archive of broadcasts" implies the completion of the conference, and this cannot be a reason for its absence in the library. We believe that it is necessary to clearly define the functions and obligations of the SE "Information Judicial Systems" technicians regarding the establishment of the correct display of online broadcasts and the record archive.

One of the problems that can be found is the technical unpreparedness of the courtroom for the online court hearing with the use of technical tools or videoconference mode. According to statistical data from local economic courts [13], the number of such cases is insignificant (in 2019 – 7, in 2020 – 23, in 2021 – 21 cases), but the upward trend is indicative.

To increase the readiness of the judicial system to conduct trials remotely, the Supreme Court, the Council of Judges of Ukraine, and the Supreme Council of Justice are jointly developing a practical guide on

remote trials in wartime conditions. The practical guide answers specific questions that practicing lawyers may have when organizing online hearings in civil, administrative, or criminal proceedings, regarding technical and organizational requirements, as well as compliance with the right to a fair trial.

Another innovation within the transition to a digital procedural form, is the use of electronic evidence, which contains information in electronic form (photos, video and audio recordings, texts, diagrams, maps, plans, data from websites, electronic profiles in social networks, messages, etc.). The digital evidences can be stored on portable devices (memory cards, mobile phones, etc.) and on servers or backup systems and other places where data is stored electronically [14, p. 26-27]. In fact, we are entering the so-called "era of digital evidence" which requires special attention both at the level of scientific and theoretical justification, and at the level of practical use to achieve the goals of the trial.

Among the issues that arise when submitting and using digital evidences, it is worth noting the problem of identifying the originals of electronic evidence. The Code of Civil Procedure does not define clear criteria for distinguishing the original electronic evidence or its copy. The original of such evidence and their copies, will most often be located on the same external network resources, servers or devices. In addition, the Civil Procedure Code, as a rule, does not regulate the methodology for evaluating the admissibility of electronic evidence.

Another problem associated with electronic evidence in civil proceedings is the lack of high-quality modern equipment for reading e-evidences. Also, among the issues that electronic evidence can cause difficulties in detecting forgeries and falsified documents, since the screen never reflects the quality and other physical features of the design of the document [15, p. 138].

The specific feature of working with digital evidence in the conditions of their potential acceptance without a qualified digital signature is the development of approaches to check the authenticity of materials based on the use of specified methods and tools.

5. Discussion.

The advantages and the need for further development of the e-justice system are indisputable. Certain provisions of the e-court legal support in regulatory documents are debatable. The author's suggestions are regarded the participation of a third party at the initial stage of popularization of electronic justice, as well as transferring to the court the function of forwarding a paper copy of documents for a party that does not participate in the system of electronic justice (the other party participates in it). Those suggestions can be developed in the future, or substantiated as alternative ways of solving the problem.

Summing up, we note the significant advantages of electronic justice for the judicial system and citizens. At the same time, a number of issues remain problematic, including: the risk of losing important information as a result of external interference in the system; the need to raise the level of computer literacy to the level of a qualified user among judges and court employees; further improvement of the software; the regular updating of the technical support of the courts. We also consider as an issue the transition to the e-justice system in full, and not in a fragmented manner (using only video conferences or recording the trial by technical tools).

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Kaniuka Natalia,
PhD Candidate
West Ukrainian National University
e-mail: kanuka.natalia.ua@gmail.com
ORCID ID: 0000-0003-3484-8950