

UNITY OF JUDICIAL POWER: DEVELOPMENT OF ELEMENTS OF ELECTRONIC JUSTICE

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ABSTRACT

The presented article analyzes the general patterns of development of e-justice elements in all four forms of administration of justice: constitutional; civil; administrative; criminal. Based on the study, it is concluded that there are general regularities in the issues of digitization of procedural relations in all four forms of administration of justice, which leads to the conclusion about the unity of judiciary. The impact of the digital environment on the implementation of the constitutional right to judicial protection is analyzed separately.

Keywords: e-justice; digital economy; digitalization; judiciary.

1.INTRODUCTION

The development of social relations is characterized by a change in the external environment, which indirectly affects the process of regulating social relations. In the conditions when the data in digital form becomes the key development factor in many areas of public relations, the issue of “digitalization” influence on the processes of legal regulation of public relations is acute. At the same time, the implementation of the constitutional right to judicial protection in the conditions of digital economy and the possibility of having the same volume of “digital” procedural rights for the participants in the procedural relations, which may take the form of constitutional, civil, administrative and criminal justice, acquires particular social significance [Damir, Valeev, Anas, Nuriev and Rafael 2018].

2.METHODS

The methodological basis of the study was formed by the general provisions of the science of constitutional law, civil procedural law, administrative procedural law, criminal procedural law. In the study, we used the following methods of scientific knowledge: intersectoral, dialectical, sociological, historical method.

3.RESULTS AND DISCUSSION

As a result of the conducted research, the general laws of the introduction of e-justice elements and the practice of their implementation in all four forms of administration of justice are established, which allows making a conclusion that the judiciary is united in the digital economy.

The “digitization” of social relations cannot affect exclusively the field of material relations, the data in the digital field becomes a key factor, including procedural relations, influencing the development dynamics of legal relations in general. Thus, a consumer, who used the remote method of purchasing the goods in the Internet information and telecommunications network, may use the resources of the State Automated System “Pravosudiye” through the Internet information and telecommunications network to exercise his/her right to claim in case of violation of his/her right. The penetration process of advanced information technologies affecting the administration of justice into the procedural legal relations has been given the collective name “electronic court procedure” [Nuriev and Khodzhev, 2015]. Subject to the provisions of Article 118 of the Constitution of the Russian Federation, the elements of electronic justice in the procedural relations should be implemented in all four forms of administration of justice: constitutional, civil, administrative and criminal legal proceedings. Despite the fact that these elements were introduced at different times in the period from 2011 to 2017 in the chronological order, it is safe to say that the applicants may exercise the same amount of procedural rights in digital form in all forms of administration of justice. In particular, the possibility of applying to the court electronically is fixed in the following legislative acts:

1) In the constitutional legal proceedings: an appeal can be sent to the Constitutional Court of the Russian Federation in electronic form by filling out a special form on the official website of the Constitutional Court of the Russian Federation on the Internet information and telecommunications network in the manner determined by the Regulations of the Constitutional Court of the Russian Federation, or an electronic document signed by a reinforced qualified electronic signature (paragraph 1 of Article 37 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation").

2) In the civil proceedings: a claim, statement, complaint, representation and other documents can be submitted to the court in electronic form, including in the form of an electronic document signed with an electronic signature by filling out a form posted on the official website of the court in the Internet information and telecommunications network (Part 1 of Article 3 of the Civil Procedure Code of the Russian Federation);

3) In the administrative proceedings: an administrative claim, statement, complaint, representation and other documents can be submitted to the court in electronic form, including in the form of an electronic document signed with an electronic signature by filling out a form posted on the official website of the court in the Internet information and telecommunications network (Part 2 of Article 45 of the Administrative Procedure Code of the Russian Federation);

4) In the criminal proceedings: a claim, statement, complaint, and presentation can be submitted to the court in the form of an electronic document signed by a person who sent such a document with an electronic signature by filling out a form posted on

the official website of the court on the Internet information and telecommunications network (Part 1 of Article 1 of the Criminal Procedure Code of the Russian Federation).

At the same time, despite the presence of differences in the form of an electronic document signing, the possibility of influencing the procedural relations of participants in the procedural legal relations initiated on the Internet information and telecommunications network should be perceived as a given.

General patterns illustrating the judiciary's unity are reflected in the regulatory system that ensures the functioning of e-justice elements in legal proceedings. Thus, the appeal filing procedure to the court and the possibility of going to court in the framework of the already initiated proceedings within the constitutional, civil, administrative, criminal proceedings in a general form is enshrined in the sectoral procedural legislative acts (Federal Constitutional Law "On the Constitutional Court of the Russian Federation"; Civil Procedure Code of the Russian Federation; Administrative Procedure Code of the Russian Federation; Criminal Procedure Code of the Russian Federation). The peculiarities of the presentation of application in the electronic form and the possibility of further impact on the development of procedural relations in the electronic form are specified at the level of subordinate regulators: 1) the provisions of the Regulations of the Constitutional Court of the Russian Federation apply to the constitutional legal proceedings; 2) with regard to civil, administrative and criminal proceedings, the provisions of the Order of the Judicial Department at the Supreme Court of the Russian Federation [Safin, 2016]. This suggests that in all four types of legal proceedings, the legislator considers e-justice elements as the interdependence of law and certain technical features that determine the need for legal regulators to comply with certain technical parameters, the establishment of which is of a special nature. In this regard, according to the legislator's logic, these norms cannot be established in the industry procedural sources that contain exclusively the rules of conduct, being independent of certain technical parameters and technologies.

Accordingly, in addition to verifying the compliance of the applicant's action with a rule of law, there is a need to establish certain technical conditions that ensure the legal consequences of committing actions. In the opposite case, an action that does not meet the requirements of the technical regulation will not have legal consequences for the person concerned.

General patterns are manifested in the same approach, which the legislator demonstrates when receiving the electronic documents submitted to the judicial authorities. For comparison, let us take the constitutional and administrative proceedings. When submitting an electronic application to the Constitutional Court of the Russian Federation in accordance with clause 2.7.2. of the Instructions on Judicial Record Management in the Constitutional Court of the Russian Federation, if the applicant's appeal does not comply with the requirements for sending the electronic requests using the "Appeal to the Constitutional Court of the Russian Federation" document submission system, an employee of the Letters Department shall send an e-mail, to the e-mail address specified when the account has been created, indicating the inconsistency [Valeev and Golubtzov, 2014]. When filing an application within the procedure of administrative proceedings in accordance with clause 4.5 of the Order of the Judicial Department at the Supreme Court of the Russian Federation [Anas, 2018; Valeev and Nuriev, 2019], the grounds for rejection may be as follows: 3) documents are unreadable, in particular: the document(s) pages are turned upside down; the document(s) does(do) not contain all pages; there is no possibility to determine the

presence of all pages; there is no electronic document or electronic image of the document in the file; 8) the electronic image of an appeal to the court does not contain a graphic signature of a person, who has applied to the court.

Based on the analysis of these regulations, it can be concluded that at the stage of initiating a case in a court, the current system of regulatory regulators enables all four forms of administration of justice to promptly ensure the protection of violated rights through the use of modern information technology resources, in which digital data becomes a key development factor. At the same time, in the conditions of digital economy, the role of the procedural regulator in all forms of administration of justice begins to be played by "by-law" regulation - orders of the Judicial Department and the Regulations of the Constitutional Court of the Russian Federation. This is due to the fact that legal regulators are made dependent on certain technical conditions, the fulfillment of which begins to be mandatory in order to be able to use them in digital form.

The next important aspect, reflecting the judiciary's unity in the issues of digitization of procedural relations concerns the possibility of tracing the case on the basis of digital data. Within the framework of civil, administrative and criminal proceedings, this is possible due to the State Automated System "Pravosudiye", which allows tracking the case progress, the list of judicial acts adopted in the case. Within the framework of constitutional legal proceedings, this is ensured through the official website of the Constitutional Court of the Russian Federation.

An important consequence of the digitization of public relations, expressed in all four forms of administration of justice, is the new facets of the principle of publicity, which are manifested in the ability to observe the highest court instances live on the Internet. Moreover, the possibility of remote access to the process by the process participants is implemented only within the framework of civil, administrative and criminal legal proceedings and is not available for the participants in the constitutional legal proceedings.

4.SUMMARY

Analysis of the implementation of e-justice elements in all four forms of administration of justice - constitutional, civil, administrative and criminal - showed the presence of common patterns that demonstrate the judiciary's unity, which has a monopoly on the implementation of a special state function - administration of justice in a digital economy. The applicants may exercise the same amount of procedural rights in digital form in all forms of administration of justice. In particular, the following "control points" can be distinguished:

1) the possibility of going to court is fixed in the electronic form: 1.1. by signing a document with a simple electronic signature key (civil, administrative and criminal proceedings); 1.2. by signing a document with the qualified electronic signature key (constitutional, civil, administrative and criminal proceedings).

2) the current system of regulatory regulators makes it possible in all four forms of administration of justice to promptly ensure the protection of violated rights through the use of modern information technology resources, in which the data specified in digital form becomes a key development factor. At the same time, in the conditions of digital economy, the role of the procedural regulator in all forms of administration of justice begins to be played by "by-law" regulation. This is due to the fact that legal

regulators are made dependent on certain technical conditions, the fulfillment of which begins to be mandatory in order to be able to use them in digital form.

3) Possibility of case tracking based on digital data.

4) Possibility of remote access to the court session by the process participants.

5.CONCLUSIONS

All this allows us to conclude that there are general patterns in the implementation of e-justice elements and the practice of their implementation in all four forms of administration of justice, which leads to the conclusion about the judiciary's unity in digital economy.

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