

Case Notes

THE IMPLEMENTATION OF E-JUSTICE WITHIN THE FRAMEWORK OF THE RIGHT TO A FAIR TRIAL IN UKRAINE: PROBLEMS AND PROSPECTS

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Summary: 1. Introduction. – 2. Components of the Right to a Fair Trial and Their Relationship with the Implementation of E-justice. – 3. Current Situation of E-justice Implementation in Ukraine through the Prism of Recent Legislative Changes and Wartime. – 4. Problems and Prospects of the Actual Implementation of E-justice in Ukraine. – 5. Proposals for Solving the Problems of E-justice Implementation in Ukraine. – 6. Concluding Remarks.

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ABSTRACT

Problems and prospects for the implementation of the concept of e-justice within the framework of the right to a fair trial in Ukraine are especially relevant today due to the digitalisation of

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state and legal relations. The components of the right to a fair trial and their relationship to the implementation of e-justice; a system of legal regulation, recent legislative changes, current conditions, and prospects for the development of e-justice in Ukraine require further research.

The author used the following methods to solve the relevant tasks: dialectical – problems in the functioning of e-justice in Ukraine; historical analysis – the evolution of the legal regulation and the scientific, legal doctrine of e-justice; analysis and synthesis – analysis of legal regulation, recent legislative changes, the current state of and prospects for the development of e-justice in Ukraine; deduction – allowed the author to move from the general provisions of legal theory to the application of these postulates in the study of e-justice; system analysis – suggesting ways to overcome the problems in the functioning of e-justice in Ukraine; formal and dogmatic – providing an analysis of the norms of current legislation; theoretical modelling – formulating the draft of legislative changes; comparative – a study of foreign experience in the legal regulation of e-governance, taking into account the practice of justice in Ukraine.

The author has identified problems in the functioning of e-justice in Ukraine and normative, legal, material, technical, and organisational problems in realising the principles of the right to a fair trial for citizens of Ukraine, taking into account the concept of e-justice as a component of e-governance. To solve these problems, the following are proposed: normative regulation of the procedure for submission and examination of e-evidence; certification and standardisation of computer equipment and software in the field of e-justice; legal education activities of the state in terms of promoting e-governance; improving the computer literacy of citizens and civil servants.

1 INTRODUCTION

Modern Ukraine, like the world's leading countries, is rapidly moving in the direction of building a new information society, the key feature of which is the transferring of communications into digital and electronic forms. This digitalisation of public life and communications includes the sphere of public administration.

The requirement of time, at the request of society, is the organisation of public administration through information networks, which ensures the functioning of public authorities in online modes and makes it possible for the subjects of legal relations to communicate with them. This organisation of public administration is commonly called 'e-governance'.²

Transferring the legal relationship between man and the state into an electronic format saves significant time and material and human resources and redirects them from the public to the private sphere.

K. Yefremova defines the e-justice system as an integral element of e-governance, which is implemented in order to ensure accessibility, accountability, effective feedback, inclusiveness, and transparency in the activities of public authorities.³ Indeed, a fair, transparent, and impartial judicial authority is one of the elements of democracy, so e-justice guarantees the protection of individual rights and interests not only through the resolution of specific disputes but also via a lawful and clear procedure. The conglomeration of current social, legal, political, and technological trends in the field of mass communication creates new challenges and new opportunities, including in the direction of implementing changes in the procedure of justice. One of the key areas of reforming justice in Ukraine, which requires urgency in the context of the COVID-19 pandemic, is the realisation of the e-justice principle.

2 OV Bryntsev, E-court in Ukraine. Experience and prospects (Pravo 2016) 72.

3 KV Yefremova, E-court - the current state and prospects for improvement (Pravo 2016) 296.

According to O. Bryntsev, e-justice will help solve existing problems in the justice system, namely: ensuring access to justice through the exchange of electronic documents between all participants in the trial; reducing court costs on mail and paper documents; improving and speeding up the transfer of court documents between courts, etc.⁴ E-justice is aimed at ensuring transparency and accessibility of justice, which will improve the quality of court work and result in significant savings in public funds.

Analysis of the results of the Strategy for the Development of the Judicial System in Ukraine for 2015-2020 allows us to conclude that some steps have already been taken to improve e-justice, including the transition to an automated distribution system, electronic communications, automated distribution of cases between judges, audio and video recording of meetings, the creation of software packages with search tools that allow connections to be found between certain rules of law and relevant court practice, and automated access of judges to state registers.⁵

While the automated distribution of court cases, the publication of court decisions, and online information on the time and location of judicial case considerations have become commonplace, the effects of the pandemic and the digitalisation of society have given impetus to apply the latest information technology in justice. In particular, there is a need to create alternative ways to go to court, remotely present evidence and review the case materials, and participate in court hearings without physically visiting the courtroom.

Practicing lawyers agree that information technology is a key tool for improving access to justice, increasing the efficiency of courts, and managing court cases.⁶ At the same time, there are a significant number of opponents of the total digitalisation of public life, including those who analyse the problems of e-governance at the doctrinal level, the most important of which is excessive interference in private life.

O. Danylian emphasises the need to determine the limits of the informatisation of human life while noting that the informatisation of relations in the field of governance will not mean additional interference of the state and society in the private life of a person, as public administration has always caused such interference.⁷

Recently, more and more researchers have also been paying attention to the issue of e-justice as a separate area of e-governance. However, it should be noted that the study of the use of advanced achievements of information technology in e-justice is fragmentary and devoted mainly to certain aspects of this problem. Such circumstances indicate the lack of a comprehensive approach to the development and problems of electronic information technologies in judicial activity.

Moreover, the generalisation of scientific opinions expressed in monographs and other works on this topic shows that all the problems of the current state of e-justice in Ukraine are ultimately derived from one common issue– the insufficient scientific development of this topic.⁸ The need to study e-justice as a component of e-governance and democracy thus determines the relevance and inexhaustibility of scientific research into the digitalisation

4 OV Bryntsev, E-court in Ukraine. Experience and prospects (Pravo 2016) 72.

5 The Strategy for the Development of the Judicial System in Ukraine for 2015-2020 (2014) <<http://nsj.gov.ua/files/1467884108%D0%A1%D1%82%D1%80%D0%B0%D1%82%D0%B5%D0%B3%D1%96%D1%8F%20%D1%80%D0%BE%D0%B7%D0%B2%D0%B8%D1%82%D0%BA%D1%83%20%D1%81%D1%83%D0%B407.pdf>> accessed 20 January 2022.

6 A Khodakivska, 'E-justice: Problems and Prospects' (businesslaw.org.ua, 13 May 2021) <<https://www.businesslaw.org.ua/e-justice/>> accessed 20 January 2022.

7 OH Danylian, 'Moral dilemmas of the information society' (2012) *Informatsiine suspilstvo i derzhava: problemy vzaiemodii na suchasnomu etapi*: Zbirnyk naukovykh statei 21–24.

8 KV Yefremova, E-court - the current state and prospects for improvement (Pravo 2016) 296.

of trials in Ukraine and the world. Based on the above, there is a need for a comprehensive study of the problems and prospects for the implementation of the 'e-justice' concept in terms of the right to a fair trial in Ukraine.

The tasks of this research article are the following: analysis of the components of the right to a fair trial and their relationship with the implementation of e-justice; the study of legal regulation, recent legislative changes, and prospects for the development of e-justice in Ukraine; an outline and characteristics of the problems of e-justice functions in Ukraine and the formation of ways to solve these problems.

2 COMPONENTS OF THE RIGHT TO A FAIR TRIAL AND THEIR RELATIONSHIP WITH THE IMPLEMENTATION OF E-JUSTICE

Based on the construction of para. 1 of Art. 6 of the European Convention of Human Rights and Fundamental Freedoms (ECHR), as well as an analysis of the European Court of Human Rights (ECtHR) practice, it can be concluded that the ECtHR enshrines the following elements of the right to a fair trial: 1) the right to a court; 2) fairness of the trial; 3) the right to a public hearing; 4) reasonable time of a trial; 5) consideration of the case by the tribunal established by law; 6) independence and impartiality of the tribunal.⁹

H. Berezhanskyi notes that the right to a fair trial is a multifaceted and complex category, the understanding of which is revealed through the prism of the following aspects: 1) essential; 2) institutional; 3) material; 4) procedural.¹⁰

The author defines the components of e-justice as follows: the ability to go to court and communicate with the court through electronic means of communication; submission and research of e-evidence; use of assistive information technologies and artificial intelligence for court decisions. These aspects of e-justice should be evaluated in terms of the right to a fair trial.

K. Yefremova determines the dissonance of information technology and procedural rules as one of the problems of justice digitalisation since now, a trend of the integration of new information technology into the existing system of procedural rules of different branches of court jurisdictions is dominant. Even if the rules of the judicial process change, it is only fragmentary and the minimum amount necessary for a particular innovation. The judicial process in general – the age of the basic norms of which is tens of years, and the age of the basic principles, tens of centuries – remains unchanged. As it is known, justice is one of the most conservative areas of human activity. The age of most basic principles of the judicial process is hundreds of years.¹¹

O. Uhrynovska notes that the advantages of electronic exchange of documents between the court and the participants in the trial save money and time. In addition to significantly reducing the time required to serve a court summons, the introduction of electronic document management will save time for court staff in writing the summons, packing letters, printing, and sending procedural documents. The advantage of the electronic exchange of

9 Guide on Article 6 of the Convention – Right to a fair trial (civil limb) (2021) <https://www.echr.coe.int/documents/guide_art_6_eng.pdf> accessed 05 June 2022.

10 HI Berezhanskyi, 'Peculiarities of understanding the right to a fair trial' (2017) 3 *Visnyk Kryminalnoho sudochynstva* 191-196.

11 KV Yefremova, E-court - the current state and prospects for improvement (Pravo 2016) 296.

documents is also the proper confirmation of the fact that the party to a trial received a court summons or procedural document.¹²

Agreeing with the opinion of K. V. Yefremova and O. Uhrynovska, it should be noted that e-justice will promote the realisation of almost all components of the right to a fair trial, such as fairness of the trial, the right to a public hearing, and reasonable time of a trial. In particular, the access to court improves if it is possible to submit procedural documents to initiate a lawsuit using electronic resources online, the fairness and publicity of the trial will be guaranteed through the possibility of broadcasting court hearings on the Internet, and the reasonable time of a trial will be realised by reducing the time losses while submitting, sending, and processing evidence and ensuring the appearance of the parties to a trial in court. Other components of the right to a fair trial (such as consideration of the case by the tribunal established by law, independence, and impartiality of the tribunal) are exercised by providing access to automated court distribution of the cases system and public information about judges.

Researching the use of information technology in civil proceedings, A. Kalamaiko notes that the mandatory introduction of e-justice is currently impossible due to the lack of Internet, the computer literacy of the population of Ukraine, and other factors. Such actions may, in fact, deprive a significant part of the population of access to justice, which will negatively affect the observance of human rights, the implementation of administrative tasks, and the basic principles of civil justice.¹³

It is difficult to disagree with the conclusion of this scholar, given the current realities of Ukrainian society, because many citizens are still not provided with high-speed Internet, do not have electronic digital signatures, and do not participate in the implementation of e-democracy projects.¹⁴

This kind of situation is typical not only for Ukraine but for the world community as a whole. According to modern research, more than a third of the world's population has never used the Internet.¹⁵

Given the above, in order to implement the principle of equality of citizens before the law and the courts, without interrupting the state course on the digitalisation of public administration, a transitional period should be introduced at the legislative level, which will ensure a non-discriminatory approach to citizens, who for one reason or another do not use the latest technical means. This transitional period should provide an alternative to submitting documents to the court in writing and in person. The duration of such a period should take into account the age characteristics of the demographic segments of the population, the level of material security, religious confessions, and other characteristics.

The use of an exclusively electronic procedure for communicating with the court may obviously create some restrictions on going to court for subjects with a low level of computer literacy. Such restrictions, along with the observance of the principles of non-discrimination, impartiality, and transparency, must ensure the exercise of the right of access to court and

12 O Uhrynovska, 'Electronic document management in the civil process of Ukraine' (2017) 64 *Visnyk Lvivskoho Universytetu* 144–150.

13 AYu Kalamaiko, 'Introduction of information technologies and ensuring the principles of civil proceedings' (2021) 43 *Chasopys Tsyvilystyky* 58–65.

14 'Almost 6 million Ukrainians do not have access to high-speed Internet' (*suspilne.media*, 30 July 2020) <<https://suspilne.media/51887-majze-6-miljoniv-ukrainciv-ne-maut-dostupu-do-svidkisknogo-internetu-mincifra/>> accessed 20 January 2022.

15 'More than a third of the world's population has never used the Internet' (*ukrinform.ua*, 1 December 2021) <<https://www.ukrinform.ua/rubric-world/3360595-ponad-tretina-naseleenna-svitu-nikoli-ne-koristuvalisa-internetom-oon.html>> accessed 20 January 2022.

participation in court proceedings for all sections of the population without exception. The question is: should these restrictions apply to businesses, legal entities, and public authorities?

According to the author, the state should encourage businesses and legal entities of private law to use electronic technologies in justice and optimise and simplify the procedure of bringing the matter before the court and judicial proceedings. Such incentives can be achieved by reducing court fees and justice costs and alleviating the tax burden on the salaries of IT professionals. However, the lack of modern technology in business must not be an obstacle to the exercise of the right of access to court. With regard to public authorities, given the focus of the state on e-governance, their participation in judicial proceedings through the e-justice technologies is a logical continuation of the state's digitalisation course.

Examining the foreign experience of e-justice implementation, A. Bezhevets analyses the mechanisms of creation and operation of e-courts and their use of e-evidence (including those created by means of blockchain technologies) using the example of the People's Republic of China (PRC), where three Internet courts have been operating for several years in Hangzhou, Beijing, and Guangzhou. Judicial proceedings through the court platform of the Internet court have the legal force of an ordinary judicial proceeding, despite the fact that the Internet court makes decisions online. It has been determined that the Internet courts have jurisdiction over disputes related to online sales of goods and services, lending, copyright and related rights, infringement of personal non-property rights and/or property rights via the Internet, infringement of domain name rights, liability claims for product quality, etc.¹⁶ An analysis of this case gives ground to affirm that judicial institutions, which are accessed exclusively through the Internet, are created for cases arising from the IT relationship, which presupposes the computer literacy of subjects.

T. Tsvina argues that online courts enable individuals to settle disputes before the trial itself, relieving the strain on the judicial system and increasing citizens' satisfaction, as well as confidence in courts as an institution in a democratic society.¹⁷ Given the above, in our opinion, the exercise of the right to a fair trial, taking into account the peculiarities of e-justice, should be based on the principles of reasonableness and fairness.

European Ethical Charter on the use of Artificial Intelligence in judicial systems and their environment sets out the basic principles that must be observed when using artificial intelligence as a means of justice administration. They include the principle of respect for fundamental rights, non-discrimination, quality and security, transparency, impartiality, good faith, and user control.¹⁸

We consider that these principles can be extended to the institution of e-justice. In particular, respect for fundamental rights must be guaranteed by the quality, predictability, and flexibility of the legislation governing e-justice; the implementation of non-discrimination should be expressed in a single non-differentiated attitude and accessibility of judicial procedures for entities with different levels of digital literacy; quality and safety must be guaranteed by certification and standardisation of software and criminal law protection of legal relations in the field of violations of the rules of access and use of these software packages; transparency and impartiality in the field of e-justice should include public examination of pilot online

16 AM Bezhevets, 'E-justice as a necessary element of digital transformation of society' (2020) 4 (35) *Informatsia i Pravo* 142-146.

17 TA Tsvina, 'Online courts and online dispute resolution in the context of the international standard of access to justice: international experience' (2020) 149 *Problemy Zakonnosti* 62-79.

18 European Ethical Charter on the use of Artificial Intelligence in judicial systems and their environment (2018) 8 <<https://rm.coe.int/ru-ethical-charter-en-version-17-12-2018-mdl-06092019-2-/16809860f4>> accessed 19 January 2022.

justice projects; user control should eliminate technical, logical inconsistencies and errors in system settings.

On 9 December 2021, the European Commission for the Efficiency of Justice (CEPEJ) approved the Action Plan for 2022-2025 to improve the quality of justice through digitalisation. In order to accompany the ongoing digitalisation of the judicial systems (always ensuring that justice is efficient and high quality), it must take into account the following principles: support for the digitalisation and efficiency of the justice, transparency, human orientation, awareness, and responsibility. The following directions have been identified for improving the judicial system: the establishment of data exchange networks, the possibility of informing about the violation of the right of access to court, and the cooperation on the introduction of artificial intelligence in justice.¹⁹ These declarative principles of e-justice functions indicate the need to take into account fundamental legal principles during the introduction of information technology in the judicial system of the state.

D. Reiling and F. Contini note that the introduction of e-justice and information technology in the justice procedure narrows the scope for judicial discretion²⁰ This statement is correct. At the same time, the narrowing of the judicial discretion and the formalisation of the decision-making procedure can have both negative and positive effects on the exercise of the right to a fair trial. Thus, e-justice is an element of the modern system of relations between the court and the participants in the trial, which is designed to save resources in the administration of justice and improve the efficiency of the trial. To ensure the realisation of the right to a fair trial, e-justice, as a concept of judicial system development, should be based on norms that would prevent violations of the elements of this right, including access to court, fairness of the trial, public hearing, reasonable time of a trial, and the independence and impartiality of the tribunal established by law.

3 CURRENT SITUATION OF E-JUSTICE IMPLEMENTATION IN UKRAINE THROUGH THE PRISM OF RECENT LEGISLATIVE CHANGES AND WARTIME

N. Kushakova-Kostytska notes that the e-justice system is one of the elements of e-governance, which is now seen as a way of organising government through information networks ensuring the functioning of government in real-time, and making daily communication with citizens, legal entities, and non-governmental organisations as simple and accessible as possible.²¹ In this context, e-justice can be defined as the use of modern information technology in justice. This includes the automation and implementation of online functions such as filing a complaint, annexes to it, and providing responses to complaints in electronic form, access to court documents, providing 'electronic' evidence, the online hearing of a case, sending participants to the process information on the current case via the Internet or text messages, and the operation of court sites, where one can find information on particular cases.

New procedural legislation, adopted in the 2017 revised version of the Civil Procedural Code, the Code of Commercial Procedure of Ukraine, and the Code of Administrative Procedure, in combination with the impact of the Covid-19 pandemic (2020-2022), gave

19 CEPEJ Action plan 2022 – 2025: 'Digitalisation for a better justice' (2021) <<https://vkksu.gov.ua/userfiles/doc/cepej-link-1.pdf>> accessed 19 January 2022.

20 D Reiling, F Contini, 'E-Justice Platforms: Challenges for Judicial Governance' (2022) 13 (1) International Journal for Court Administration <https://www.academia.edu/77339424/E_Justice_Platforms_Challenges_for_Judicial_Governance> accessed 03 June 2022.

21 NV Kushakova-Kostytska, 'E-justice: Ukrainian realities and foreign experience' (2013) 1 Yurydychny Chasopys Natsionalnoi Akademii Vnutrishnih Sprav 103-109.

impetus to public demand for easier access to court, including the use of modern information technology.²²

Yu. Hryhorenko notes that the current procedural codes provide for the establishment and operation of the *Unified Judiciary Informational Telecommunication System* (hereinafter UJITS), which should ensure the exchange of documents (sending and receiving) in electronic form between courts, court and trial participants, trial participants themselves, etc.²³ The result of these legislative innovations was the approval by the Decision of Vyscha Rada Pravosuddia (High Council of Justice, hereinafter HCJ) of Regulations on the functioning of certain subsystems of the UJITS of 17 August 2021 No 1845/0/15-21.²⁴ The UJITS is based on cloud technologies that ensure remote data processing and storage and provide Internet users with access to software and computing resources. Special software has also been developed for out-of-court hearings.

N. Kushakova-Kostytska notes that the electronic judicial system has several obvious advantages: timeliness of informing lawyers; saving working time of court employees; saving costs for printing documents, etc. Today, it is necessary to note key features such as electronic filling out of claim documents, online consultation on information and documents used in the justice process, holding an online meeting, electronic requests and provision of electronic copies, and the possibility to use certain electronic mail addresses to which users of the system can receive information from the court office or lawyers.²⁵

Based on the author's own practical experience, as of today, in Ukraine, the e-court provides the parties with opportunities such as payment of court fees online, obtaining information on the stages of the judicial proceeding, obtaining information from the Unified State Register of Court Decisions²⁶ (which is an automated system for collecting, storing, protecting, accounting, searching, and providing electronic copies of court decisions), sending procedural documents to the parties to a trial by electronic means, sending a court summons in the form of SMS-messages, obtaining information on the presence of business entities (counterparties, debtors, guarantors, etc.) in the bankruptcy procedure, electronic acquaintance with court case materials and generation of powers of attorney, online participation in court hearings, electronic commencement of an action and submission of documents, and electronic communication about the consideration of the case through the 'DIIA' application.²⁷ The use of electronic technologies in justice procedures is confirmed by case law. In particular, the ruling of the Chernihiv Court of Appeal in case No 749/368/19 states that the court inspected the website and used data from the Internet as e-evidence.²⁸

22 Law of Ukraine No 460-IX 'On amendments to the Code of Commercial Procedure of Ukraine, the CPC, the CAP concerning the improvement of the procedure for consideration of court cases' [2020] Vidomosti of the Verkhovna Rada 29/194 <<https://zakon.rada.gov.ua/laws/show/460-20#Text>> accessed 20 March 2020.

23 Yu Hryhorenko, 'The development of e-justice involves the further integration of electronic services for lawyers' (*unba.org.ua*, 8 September 2021) <unba.org.ua/news/6914-rozvitok-elektronnogo-pravosuddya-peredbachae-podal-shu-integraciyu-elektronnih-servisiv-dlya-advokativ.html> accessed 20 September 2021.

24 V Obukh, 'How e-justice works' (*ukrinform.ua*, 30 April 2020) <<https://www.ukrinform.ua/rubric-society/3016937-ak-pracue-elektronne-sudocinstvo-abo-vstati-sud-na-zvazku.html>> accessed 30 July 2021.

25 NV Kushakova-Kostytska, 'E-justice: Ukrainian realities and foreign experience' (2013) 1 Yurydychnyi Chasopys Natsionalnoi Akademii Vnutrishnih Sprav 103-109.

26 Unified State Register of Court Decisions is an automated system for collecting, storing, protecting, accounting, searching and providing electronic copies of court decisions.

27 'DIIA' application is a mobile application, a web portal that provides electronic communication between authorities and citizens as well as the provision of public services.

28 Case No 749/368/19 [2019] Chernihiv Court of Appeal <<http://www.reyestr.court.gov.ua>> accessed 20 March 2021.

The e-justice system in Ukraine has faced difficulties due to the introduction of martial law. In particular, the electronic communication of citizens with the courts has become difficult (several courts have not yet been connected to the UJITS system). To ensure the security of personal data, the government has restricted the use of the Unified State Register of Court Decisions and the resources that can be used to find out the condition of the proceedings online. In addition, some judicial resources have been hacked. These circumstances necessitate the creation of safe conditions for the operation of electronic systems and the preservation of the personal data of their users.

Thus, we state that currently, there is proper legal regulation of the mechanism of e-justice in Ukraine, which allows the exercising of the right of access to court for the general population while not excluding the possibility of law enforcement problems in the use of e-justice means. At the same time, it is also expedient to analyse the reasons and preconditions that do not allow the e-justice system to function to the full extent.

4 PROBLEMS AND PROSPECTS OF THE ACTUAL IMPLEMENTATION OF E-JUSTICE IN UKRAINE

E-justice in Ukraine has significantly improved with the introduction of the Unified Judicial Information and Telecommunication System (UJITS) – a set of information and telecommunication subsystems (modules) that automate the processes of courts, bodies, and institutions in the justice system, including document management, automated distribution of cases, automated distribution between the court and participants in the trial, recording the trial and participation of participants in the hearing by videoconference, operational and analytical reporting, providing information assistance to judges, and the automation of processes that provide financial, property, organisational, and personnel information and telecommunication, as well as other needs of UJITS users.

Along with the normative definition of the work beginning of the UJITS, in the process of the UJITS functions, there are a lot of questions and logical inconsistencies in its application. The introduction of new technologies creates new challenges for the state that violates the principle of legal certainty and therefore negatively affects the exercise of the right to a fair trial. In particular, there was the issue of material support for courts with high-speed Internet connections and modern computer equipment that would meet the requirements of the software. A problem of making paper duplicates of electronic cases and the need to transfer documents submitted through the UJITS system in hard copy form arose.²⁹

Among the gaps in the functioning of electronic systems in the field of justice, N. Kushakova-Kostytska indicates the imperfection of the software and non-compliance with current legislation requirements by authorities regarding registration in it.³⁰ In fact, despite the receipt of case materials by the court through the UJITS system, there is a need to transfer this case for consideration to a specific court, which entails the need to transfer the materials in hard copy form because, during the judicial proceeding, the judge has a duty to directly examine evidence and documents, and not all courtrooms are equipped with modern computers, the technical characteristics of which allow judges to easily use the UJITS software. This problem

29 'The courts have run out of money on the Internet: what it actually means' (*jurliga.ligazakon.net*, 11 December 2020) <https://jurliga.ligazakon.net/news/200254_v-sudakh-zaknchilis-grosh-nanternet-shcho-tse-faktichno-oznacha> accessed 20 January 2022.

30 NV Kushakova-Kostytska, 'E-justice: Ukrainian realities and foreign experience' (2013) 1 *Yurydychny Chasopys Natsionalnoi Akademii Vnutrishnih Sprav* 103-109.

can be solved by providing courts with modern tablets or laptops with proper technical characteristics.

Among the problems of e-justice implementation, N. Kushakova-Kostytska notes a high risk of losing legally important information, computer illiterate judges and court staff at the level of qualified users (which is a serious problem for people, especially the older generation), and the development and commissioning (which in our conditions is even more difficult) of the relevant software, necessary technical equipment of courts, psychological aspect, because most of our citizens still prefer traditional 'paper' justice.³¹

Agreeing with the opinion of N. Kushakova-Kostytska, we note that the implementation of the UJITS, having relieved judges of routine technical work and having provided parties to a case with convenient opportunities to participate in the judicial proceeding, entailed an increase in the workload on the court staff (clerks, secretaries, assistants) because the procedure for registering case materials, the distribution of procedural documents, the formation of cases, and the issuance of procedural documents require modern skills in using computer equipment and significant time losses. This circumstance caused a massive outflow of personnel from the court staff, along with minimising the material incentives for court staff.³²

Regarding the psychological aspects of the public's transition to electronic communication with the court, the author has already noted the low level of computer literacy of the general population, the so-called 'technical illiteracy' of citizens. Along with the escalation of security threats and hacker attacks, this psychological barrier is growing.

According to R. Oliynchuk, the organisational problems that hinder the reform of justice related to the provision of technical support for e-justice are obvious. To unload the Information Judicial Systems State Enterprise, which is responsible for the operation of the entire multifunctional UJITS, the State Judicial Administration has decided to establish the Judicial Services Centre State Enterprise, which is responsible for implementing innovations in domestic courts. Some subdivisions of the Information Judicial Systems State Enterprise were transferred to the Judicial Services Centre State Enterprise. The Information Judicial Systems State Enterprise provides services to two groups of users. On the one hand, there are 38,000 judges and court employees, and on the other hand, there are the trial participants. And such a conflict of interest hinders the development of the system.³³ After the task sharing, the Judicial Services Centre State Enterprise will maintain and operate the system and the open environment – i.e., provide services to the trial participants, legal entities, and individuals – while the Information Judicial Systems State Enterprise will continue servicing the courts, developing new versions of document flow, providing communication channels, and maintaining equipment and engineering services that will carry out technical control on site.

The scholar's opinion that the increased load on this software package will not be able to meet the needs of users is justified. Therefore, to create technical capabilities to serve a significant number of users, it is advisable to either allow time for the technical optimisation of the system or allow the partial devolution of resource administration to another entity.

According to R. Oliynchuk, such a division is justified because, in accordance with European practice, it is necessary to 'separate' the functions of servicing the trial participants and the technical support of the courts that consider their cases.³⁴

31 Ibid.

32 'Employees of Ukrainian courts are being dismissed en masse' (*zib.com.ua*, 1 February 2021) <<https://zib.com.ua/ua/146561.html>> accessed 19 January 2022.

33 R Oliynchuk, 'E-justice as an element of the modern judicial system' (2021) 3 (27) *Aktualni Problemy Pravoznavstva* 141-147.

34 Ibid.

The problem of e-evidence research, the submission of which is provided by the new procedural legislation, is also urgent. In particular, in accordance with Parts 7 and 8 of Art. 85 of the CPC, the court, at the request of the party to a case or on its own initiative, may inspect the website (page) or other places of data storage on the Internet in order to establish and record their content. If necessary, the court may engage a specialist to conduct such an inspection.³⁵ Note that the use of such an inspection of the evidence at its location is possible provided that the e-evidence has not been removed from the place of data storage, which happens quite often.

D. Pernykoza doubts the admissibility of e-evidence, which, for instance, could be copied to disk or other data storage devices because the evidence can be regarded only as an electronic copy and not as the original. In practice, for example, a situation can happen in which a Facebook post can be deleted by the author at any time, and messages in Messenger, Telegram, Viber, or WhatsApp can be deleted by one of the interlocutors, resulting in their deletion for all chat participants. In particular, the Telegram messenger permanently deletes both the content of messages and the traces of their sending; WhatsApp deletes only the content but also permanently. Similar technology is used in Viber, although the technical support of the service can provide information only about the fact of sending messages or making calls, stating the date and time, but not their content.³⁶

For instance, in its Judgement, the Supreme Court agreed with the assessment of the lower courts that there was no evidence that copies of the contract, invoice, and electronic mail, screenshots of which were available in the case file, were electronically signed by the authorised person, which made it impossible to identify the sender of the message, and the content of such a document is not protected from changes.³⁷

Thus, the implementation of a normatively defined model of e-justice in Ukrainian realities faces an indefinite number of problems, including the material and technical support of judicial institutions and citizens, the computer literacy of users of electronic resources and networks, and the imperfect identification of executors of e-evidence and integrity of such evidence.

These problems, together with the possibility of future hearings without the use of paper counterparts, can create significant obstacles to the implementation of e-justice, which will further negatively affect the right to a fair trial as lack of material, technical, and security support for justice authorities will make it impossible to consider the case within a reasonable time and create obstacles for citizens to access the court. In the modern realities of the state, these problems need to be solved immediately.

5 PROPOSALS FOR SOLVING THE PROBLEMS OF E-JUSTICE IMPLEMENTATION IN UKRAINE

In its decision of 4 December 1995 in the case *Bellet v. France*, the ECtHR stated that Art. 6 of the Convention contains guarantees of a fair trial, one aspect of which is access to court. The level of access provided by national legislation must be sufficient to ensure a person's right to

35 Law of Ukraine No 460-IX 'On amendments to the Code of Commercial Procedure of Ukraine, the CPC, the CAP concerning the improvement of the procedure for consideration of court cases' [2020] Vidomosti of the Verkhovna Rada 29/194 <<https://zakon.rada.gov.ua/laws/show/460-20#Text>> accessed 20 March 2020.

36 D Pernykoza, 'E-evidence - the norm for Ukrainian justice' (*yur-gazeta.com*, 14 July 2020) <<https://yur-gazeta.com/publications/practice/sudova-praktika/elektronni-dokazi--norma-dlya-ukrayinskogo-sudochinstva-ale-e-nyuansi.html>> accessed 20 March 2020.

37 Case No 910/1162/19 [2020] Supreme Court of Ukraine <<http://www.reyestr.court.gov.ua>> accessed 20 March 2020.

a trial, given the rule of law in a democratic society. For access to be effective, a person must have a clear, practical opportunity to appeal against the actions that constitute an interference with his or her rights.³⁸ In today's digital age, the problems of providing electronic access to justice need to be solved as soon as possible. The implementation of e-technologies in justice and their application through the prism of Art. 6 of the ECHR is currently not reflected in the practice of the ECtHR, as the formation of practice in most cases takes a long time, but the problems described by the author related to the use of e-technology in judicial procedure may be the subject of arguments in the applicants' complaints in the near future in the context of a violation of the right to a fair trial.

Issues related to the material and technical support of courts, as well as other public authorities, are to be resolved by additional funding for the judicial branch, which will allow the courts to have the proper equipment with high-speed Internet connections and modern computer technology, as well as an increase in the salaries of court staff. Problems in the field of low levels of computer literacy should be solved through the introduction of training courses for court staff and persons involved in justice (lawyers, public officials, notaries, arbitrators). Risks of losing legally relevant information and intentional or negligent software failures should be resolved through the certification and standardisation of hardware and software. In order to overcome the psychological barrier of e-justice, it is advisable to strengthen legal educational work in this area.

Comparing the experience of Ukraine and Austria on the implementation of e-justice, R. Khanyk-Pospolitik identified the security of personal data, the possibility of hacker attacks on electronic systems, and the need to protect information storage systems as the shortcomings of e-technologies in justice.³⁹ The problem of identifying the authors of e-evidence and the court's methods of examining this evidence needs a systemic solution. To do this, according to the author of this article, it is necessary to improve the relevant modules of the UJITS and equip them with means of conducting preliminary examinations of electronic documents.

It is also expedient to take into account the position of V. Bondarenko and N. Pustova that for the creation of effective e-justice as a method of ensuring justice based on the use of information technology, we need further information and technical modernisation of the judicial system, improvement in the level of work culture with electronic means of the court staff, and the introduction of electronic record keeping in the judicial system, as well as the adoption of legal norms that allow us to unambiguously identify the institution of e-justice and standardise the concept and status of electronic documents.⁴⁰

Continuing these statements, we emphasise the need for adequate financial support for the transition to e-justice that will take into account the interests of both traditional means of communication with the judicial authorities and the use of modern information technology, thus ensuring the right to a fair trial.

38 *Bellet v France* App no 23805/94 (ECHR, 4 December 1995) <<http://www.echr.coe.int/echr>> accessed 20 March 2020.

39 H Boscheinen-Duursma, R Khanyk-Pospolitik, 'Austrian and Ukrainian comparative study of e-justice: towards confidence of judicial rights protection' (2019) 4 (5) *Access to Justice in Eastern Europe* 42-59.

40 VA Bondarenko, NO Pustova, 'Foreign experience of legislative regulation of corruption prevention in the public service system and implementation of international law norms in the legal framework of Ukraine' (2016) 2 *Naukovyi Visnyk Lvivskoho Derzhavnogo Universytetu Vnutrishnih Sprav* 177-186.

5 CONCLUDING REMARKS

On the path to the digitalisation of public administration in general and the judicial system in particular, the modern legal system of Ukraine must combine today's information and technical challenges as well as centuries-old public demands for a fair trial that is accessible to everyone. At the same time, e-justice should be mediated through the principles of the ECtHR relating to judicial proceedings and implemented through electronic means of interaction between the court and the trial participants, based on the democratic principles of their equality. It is possible that in the near future, the ECtHR will evaluate legal proceedings carried out with the use of e-technologies in contracting states in terms of compliance with the right to a fair trial.

In creating software and regulatory prerequisites for the use of e-justice, Ukraine has faced a wide range of problems related to the implementation of the right to a fair trial, which significantly complicate the digitalisation of justice, including: a) the problem of evaluating e-evidence (which may create obstacles to the exercise of the right to a fair trial); b) inaccessibility of justice (providing a zero option transition to digital technology) for citizens with low levels of computer literacy and technical equipment (which may create obstacles to the exercise of the right of access to court); c) material and technical support of judicial authorities (which may create obstacles to the exercise of the right to a trial within a reasonable time); d) guarantees of security of information transfer in information systems (which may create obstacles to the exercise of the right to an independent and impartial tribunal); e) the general population's low level of understanding of digitalisation due to the psychological barrier of electronic communication (which may create obstacles to the exercise of the right of access to court).

At the same time, the possibility of electronic access to court is an urgent imperative of our time, which requires the optimisation of legislation and the creation of material, technical, and organisational prerequisites, which the author determines to be as follows: a) the regulation of the procedure for submission and examination of e-evidence; b) the certification and standardisation of computer equipment and software in the field of e-justice; c) the legal education of the state in terms of promoting e-governance; d) improving the computer literacy of citizens and civil servants.

The present research into e-justice, as a component of e-governance and democracy, shows the relevance and inexhaustibility of scientific developments in the field of digitalisation of judicial proceedings in Ukraine and the world, forming new areas for further research.

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