

ПРАВО

Prospects for the Development of Electronic Justice in the Republic of Armenia

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ՀՏԳ 347 քաղաքացիական դատավարություն

Key words: e-Justice, unified electronic platform for criminal justice, right to a fair trial, "DataLex" judicial information system, court documents, remote court hearing.

Հայաստանի Հանրապետությունում էլեկտրոնային արդարադատության զարգացման հեռանկարները

Հակոբջանյան Արման Վ.

«ՎԱՐԴԱՆՅԱՆ ԵՎ ԳՈՐԾԸՆԿԵՐՆԵՐ» ՍՊԸ, իրավաբան (Երևան, ՀՀ)

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Ամփոփագիր. Աշխարհում և Հայաստանի Հանրապետությունում 2020 թվականին տարածված «COVID-19» կորոնավիրուսային հիվանդության պանդեմիան լուրջ մարտահրավեր էր Հայաստանի Հանրապետությունում գործող էլեկտրոնային արդարադատության համակարգի համար: Հայաստանի Հանրապետության դատական իշխանության արձագանքը համավարակին, կիրառված միջոցները մի շարք դեպքերում հակասեցին գործող իրավակարգավորումներին, կիրառված լուծումների շրջանակներում հնարավոր չէր սպասել համապատասխանությունը մի շարք իրավական սկզբունքների և արդար դատական քննության իրավունքի բաղադրատարրերի (տվյալ խնդիրները առավել մանրամասն կներկայացվեն սույն աշխատանքի երկրորդ գլխի շրջանակներում): Համավարակը ցույց տվեց, որ կարող են առաջանալ իրավիճակներ, երբ էլեկտրոնային արդարադատության պատշաճ համակարգի առկայությունը կունենա կենսական նշանակություն անձի՝ արդար դատական քննության իրավունքի երաշխավորման համար: Սույն գիտահետազոտական աշխատանքում անդրադարձ է կատարվել էլեկտրոնային արդարադատության ներկայումս առկա տեսագործական հիմնախնդիրներին, մարտահրավերներին, ինչպես նաև ներկայացվել են մի շարք առաջարկներ կապված Հայաստանի Հանրապետությունում էլեկտրոնային արդարադատության ներդրման հետ:

Աշխատանքում ներկայացվել է էլեկտրոնային արդարադատության ներդրման առնչությամբ առկա միջազգային փորձը, վեր են հանվել մի շարք խնդիրներ, որոնք առկա են Հայաստանի Հանրապետությունում ներկայումս գործարկված՝ էլեկտրոնային արդարադատության համակարգի շրջանակներում, առաջարկվել են մի շարք լուծումներ առկա խնդիրների առնչությամբ:

Աշխատանքի շրջանակներում ներկայացվել են Հայաստանի Հանրապետությունում քրեական, քաղաքացիական և վարչական արդարադատության համակարգերում թվային տեխնոլոգիաների էվոլյուցիայի հնարավոր ուղղությունների ուղվագծումը, էլեկտրոնային արդարադատության զարգացման հնարավոր հեռանկարները, մի շարք ուղղություններ, որոնց պահպանումը, գտնում ենք, առաջնային նշանակություն ունի Հայաստանի Հանրապետությունում էլեկտրոնային արդարադատության պատշաճ համակարգի ներդրման համար:

Հանգուցաբառեր՝ էլեկտրոնային արդարադատություն, քրեական արդարադատության միասնական էլեկտրոնային հարթակ, արդար դատական քննության իրավունք, «DataLex» դատական տեղեկատվական համակարգ, դատավարական փաստաթղթեր, հեռավար դատական նիստ:

Перспективы развития электронного правосудия в Республике Армения

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Аннотация. В Мире и в Республике Армении распространение коронавируса (COVID-19) в 2020 году стало серьезным испытанием для системы электронного правосудия в Республике Армения. Реакция судебной власти РА на пандемию инфекции, применяемые в ряде случаев меры противоречили действующим правовым нормам, в рамках применяемых решений не удалось обеспечить соблюдение ряда правовых норм - принципы и компоненты справедливого судебного разбирательства (эти вопросы будут представлены более подробно) Пандемия показала, что могут возникать ситуации, когда наличие надлежущей системы электронного правосудия будет иметь жизненно важное значение для обеспечения права человека на справедливое судебное разбирательство. В данной исследовательской работе рассматриваются текущие видеопрактические проблемы и вызовы электронного правосудия, а также ряд предложений, связанных с внедрением электронного правосудия в Республике Армения.

В статье представлен существующий международный опыт внедрения электронного правосудия, выявлен ряд проблем, существующих в рамках действующей системы электронного правосудия в Республике Армения, и предложен ряд решений существующих проблем.

В рамках работы намечаются возможные направления развития цифровых технологий в системах уголовного, гражданского и административного правосудия в Республике Армения, возможные перспективы развития электронного правосудия, ряд направлений, сохранение которых мы считаем, имеют первостепенное значение для внедрения надлежащей системы электронного правосудия.

Ключевые слова: электронное правосудие, единая электронная платформа для уголовного правосудия, право на справедливое судебное разбирательство, судебная информационная система «DataLex», судебные документы, удаленное судебное слушание

Introduction. In the context of modern developments in the introduction of information technologies in public and political life, the need for the penetration of e-government in the system of public power is openly outlined. From this point of view, the justice system at least cannot be isolated and not to be part of the overall process. The judiciary of the Republic of Armenia has not made the transition to a proper e-justice system. According to the annual report of the Supreme Judicial Council, published in 2019 within: "There is an awareness that in the current level of human digitalization and the development of information technologies, it is impossible to ensure the efficiency and accessibility of the judiciary without the introduction of modern e-justice, automated judicial management programs. Radical and systemic transformation is an urgent need in that regard. The creation of a unified e-justice platform, the provision of access to electronic databases, the modernization of the framework of the judicial-legal reform strategy of the Republic of Armenia for 2019-2023 are defined as a strategic direction.

Within the framework of this work, various theoretical sources were studied; Armenian and foreign literature, and the RA Criminal Procedure, Civil Procedure and Administrative Procedure Codes were analyzed.

The purpose of this research is to put forward systematic guidelines for the implementation of e-justice in the Republic of Armenia, to bring e-justice to life as well as solve current issues related to the scientific-practical orientation and outline the prospects for the development of e-justice in the Republic of Armenia.

Content. The definition of "e-Justice" is given in the Council of Europe recommendation CM/Rec (2009) about "e-Democracy". In the framework of Recommendation CM / Rec (2009), in particular, e-Justice, in the framework of the administration of justice, the use of communication and information technologies by all stakeholders in the judiciary are aimed to improving the quality of public service, especially for individuals and organizations. It includes electronic communication, data exchange, as well as access to court information.

As the judiciary is a key component of democracy, e-justice is a significant factor in e-democracy. The main purpose of it is to improve the efficiency of the judiciary for the quality of justice. Access to justice is one of the factors to ensure accessibility of democratic institutions and processes [8].

In terms of the introduction of e-government in the judiciary - the establishment of e-justice, the Republic of Armenia significantly yields not only European but also regional countries. As noted by lawyer G. Ghazinyan. "It simply came to our notice that one of the most conservative and stable branches of Soviet law, the criminal trial, has ceased to exist because of new objective circumstances and it needs a lot of flexibility" [13]. Agreeing with the above-mentioned opinion, we believe that the current level of development of digital technologies has created trends in the gradual introduction of digital technologies within civil justice. In this context, criminal justice cannot refrain from the introduction and use of digital technologies, so we consider it necessary to address firstly the prospects for the introduction of digital technologies in criminal justice.

We consider that by studying the international experience of the introduction of digital technologies within the framework of criminal justice, revealing the existing problems of the system of criminal justice of the Republic of Armenia that can be solved by introducing appropriate e-justice tools, we can outline the prospects for the introduction of digital technologies in the Republic of Armenia and submit a number of proposals.

The Republic of Singapore operates the "ICMS" electronic system, which is connected to all state bodies of the Republic of Singapore involved in the criminal justice system [3]. The state authorities can use this system to investigate the case without going to court or sending letters by mail. With the help of the system, it is possible to submit applications to the court, to receive originals of court decisions [1]. We consider that such a procedure of document circulation within the framework of criminal justice is especially useful, as criminal justice is where all the state bodies are

required to be most operative in order to ensure the constitutional rights of individuals.

We believe that the introduction of such systems is possible not only in developed countries like the Republic of Singapore, but also in developing countries, which is confirmed by the example of the Republic of Rwanda. The Judicial System of the Republic of Rwanda has been using the Integrated Electronic Case Management System (IECMS) since 2015-2016, which currently serves as a single center for all bodies involved in the justice system of the Republic of Rwanda. Under criminal justice, the system stores all the information related to the case from the moment a person is arrested until the sentence is served, making that information available to all authorities involved [6]. Using the system, the bodies involved in criminal justice have the opportunity to circulate documents electronically which we believe is of primary importance within the framework of criminal justice to ensure the efficiency of the bodies involved.

We believe that the introduction of a unified electronic platform within the framework of criminal justice in the Republic of Armenia can be a solution to a number of problems, making the work of both state bodies and justice beneficiaries easier. We propose to introduce a unified electronic platform of criminal justice in the Republic of Armenia, within the framework of which all relevant state bodies will be involved: courts, law enforcement bodies. The parties of judicial cases and their representatives will have access to the platform as well. The system should enable the submission of applications, motions and other types of documents in criminal cases electronically, which will significantly contribute to the efficiency of criminal justice.

The search investigation can be an evident example of the above-mentioned, as the promptness of this proceeding has paramount importance for the whole criminal case. Delays in the process of search investigation are inadmissible as they can make this operation meaningless. According to Article 225, Part 3 of the RA Criminal Procedure Code, the search of the apartment is carried out only by a court decision [9]. However, even though the nature of this investigational operation demands immediate actions, there is no possibility to submit the motion electronically. Submitting a petition by hand or by mail is very time consuming, while promptness is paramount importance in this case. With the introduction of a unified electronic system, it will be possible to submit a petition to the court electronically, to receive the relevant decision from the court in the same way, which will significantly reduce the time of the court decision-making

process for conducting a search. With the introduction of a unified system, it will be possible to carry out all document circulation electronically within the framework of criminal justice, which will obviously have a positive impact on guaranteeing a person's right for a fair trial and ensuring the efficiency and accessibility of criminal justice.

As for the civil-administrative justice systems, we find that the main perspective for the development of e-justice is the introduction of common electronic platforms for communication and document circulation, which should carry out the following functions:

1. Ensuring document circulation within the framework of the court case. RA Civil Procedure Code and The RA Administrative Procedure Code provide for the possibility of submitting documents electronically within the framework of a court case [10; 11]. However, this opportunity is not guaranteed and realized in practice, as the relevant sections on the Datalex.am website do not function. We propose to introduce a so-called data room for each civil-administrative court case, as a result of which it will be possible to circulate documents in a single data center within each court case, which will include all the information related to the case. Regarding the security of such a system, we believe that access to the mentioned data rooms should be given only through using of the identification card and the appropriate reader. The system can also have an additional positive impact on security of judicial documents by providing cloud storage, which eliminates the risk of accidental loss or damage to physical copies of documents (if there are any).

We consider that the procedure of electronic submission of documents should be mandatory for the representatives of the state and local self-government bodies, legal entities, individual entrepreneurs, and the advocate-representatives of the parties of the case, based on the presumption that the latter should be ready to use digital technologies. As envisaged in the Republic of Singapore [14], the submission of documents on paper can be permitted in exceptional cases -based on a relevant petition. Moreover when dealing with the case of physical entities, the possibility of electronic submission of documents should be presented within the framework of the court session or with the relevant notification - with an offer to switch to the given system. In cases where the documents will be submitted to the court in paper form, they must be scanned and entered in the appropriate data room.

Such procedure of document circulation will undoubtedly increase the efficiency of the courts within the framework of civil-administrative justice,

which is of primary importance in such proceedings as family cases, cases on return of a child illegally transferred or detained in the Republic of Armenia, cases on protection of suffrage, etc.

2. Conducting remote court hearings using video and audio telecommunications. We believe that the remote conduct of court hearings should be used as a permanent opportunity, saving the time and resources of the participants in the case.

Currently, the procedure for conducting remote court hearings within the framework of the RA Civil Procedure Code does not define the software through which remote court hearings should be conducted. We consider that the possibility of remote court hearings should be technically provided in the data room created for each court case, which will be a solution to a number of problems arising in connection to remote court hearings.

Thus, first of all, the security of video and audio communication will be ensured. Currently, video and audio communication within the framework of court hearings in the Republic of Armenia is carried out through private platforms - "Skype", "Zoom", etc [12]. At present, the authorities of a number of states - private organizations - prohibit the use of such platforms in official relations for security reasons [2; 4; 5; 7]. Agreeing with the existing concerns, we believe that the best solution to this problem is the implementation of video-communication through a state-developed system, which will be embedded in the existing data room for each case.

On the other hand, during the remote court hearings within the data room, the rights of the parties related to the submission of written documents must be and can be ensured. Based on the fact that the data room should provide the opportunity to submit documents, court participants will have the opportunity to submit motions, evidence, and other written documents during the remote court hearing. This, however, is not possible during the remote court hearings currently conducted through private platforms.

The introduction of the mentioned system will also be the final solution to the problem of identifying the person within the framework of the remote court session, as the person can present the identity document during the court session through the data room. An additional security measure for identification is the fact that it will be possible to access the system only through the identification card and the appropriate reader.

3. Data archive. The proposed platform will also be an archive of court cases, providing an opportunity to get acquainted with the materials of the case without the need to go to court. While at

present the person has to submit a relevant motion to get acquainted with the case file, wait for the motion to be granted and to get acquainted with the case file in the administrative building of the court only after that, in case of launching a data room, the person entitled to access the data room of a specific case will have the opportunity to get acquainted with the available documents and the whole history of the court case within the framework of the electronic submission platform.

The court records will be stored in the database, the person will be able to download the records of the court hearings by making an electronic payment, while currently the person must make a corresponding payment, visit the court building and receive the court minutes on a CD-ROM. When some modern computers do not even have the ability to read such obsolete disks.

Based on all the above, we think that taking into account the current level of development of digital technologies, the implementation of the submitted proposals will significantly contribute to the efficiency, convenience and accessibility of justice - helping to guarantee the right to a fair trial.

Conclusion. Thus, we offer:

1. Requirement of the possibility of holding remote court hearings within the framework of the RA Administrative Procedure Code and the RA Criminal Procedure Code.

2. Introduce a unified system for the criminal justice system, which will include all the state bodies involved in criminal justice, through which, among other things, it will be possible to carry out electronic document circulation, which will significantly reduce the duration of criminal justice.

3. Introduction of a "data room" system in civil-administrative justice systems, which will enable electronic document circulation, will be a platform for video-audio communication and data archive.

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