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Legal Regulation of E-courts in Ukraine as an Element of Access to Justice for the Protection of Individual Rights

Artur Gordienko[1], Emin Najafli[2], Yevhen Kobko[3], Viktoria Savenko[4], Iryna Korostashova[5]

[1]Zaporizhia National University Ukraine. Email: gordienko@gmail.com
[2]Kharkiv National University of Internal Affairs, Ukraine. Email: najaflihnuvs@gmail.com,
[3]National Academy of Internal Affairs. Ukraine. Email: evgeniykobko@gmail.com
[4]Dnipropetrovsk State University of Internal Affairs, Ukraine. Email: vik090479@ukr.net
[5]University of Customs and Finance, Ukraine, E-mail : irynakorostashova@ukr.net

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Abstract

The purpose of the research is to consider electronic judicial procedure as an element of access to justice regarding protection of rights of individuals. The assessment of the effectiveness of the judicial system in Ukraine in 2023 was 2.73 points on a 5-point scale. The judicial index consists of three equivalent components: the assessment of the level of trust in the judicial system of the CEOs of the EVA member companies, which this year was 2.17 points, the assessment of the impartiality of the judicial system - 2.88, and the average assessment of seven factors of the organization and operation of the judicial system - 3, 13 points. It has been established that that certain elements of digitalization of social processes change the social space and, in particular, the mechanisms of judicial proceedings. In the process of the development of society, certain factors came to life and these factors led to the growth of the role of information, and therefore to a clearer allocation of the information function in the field of jurisprudence. The following conclusion was made that the need to use information technologies in the judiciary is due to the global informatization of the modern society, the development of new forms of interaction in the civil sphere with the use of electronic means of communication: the global Internet, mobile and satellite communication systems, etc. "E-court" involves the use of information and communication technologies in the process of implementing procedural legislation. The novelties of the judicial system are aimed at expanding accessibility of justice in conditions of territorial peculiarities of the Ukrainian state, improving the quality of the process and efficiency, achieving transparency and openness of the judicial system.

Keywords: Electronic Judicial Procedure, Access, Justice, Protection, And Rights of Individuals.

1. INTRODUCTION

Since the beginning of Russia's invasive war against Ukraine, electronic evidence has become even more important because affected people will prove damages caused to them by providing electronic evidence, namely photos and videos reflecting their damaged property, and in the future, officials of the relevant authorities and courts will evaluate the specified evidence and recognize or reject it as evidence.

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Today, electronic devices are an integral part of our lives. With the penetration of technologies into our lives, increased dependence on gadgets, the development of technologies, etc., electronic devices store a large amount of sensitive data about the person who owns the device. This makes electronic devices an important piece of evidence, much more so than any breathing witness that helps law enforcement officers in solving cases or individuals in establishing their case. However, electronic evidence is sensitive and prone to falsification and manipulation, which can significantly change the course of the case. Therefore, it becomes important to handle this evidence with care. For the same reason, courts are hesitant to accept and declare electronic evidence admissible.[1]

Electronic justice in Ukraine is at a stage of active development, thanks not least to the new leadership of the judicial system. The significant growth of new users confirms that the judicial system in Ukraine is open to innovation and ready for modern challenges. The integration of electronic technologies into the judiciary facilitates access to justice for citizens and makes the judicial system more transparent and efficient. The continuation of the development of electronic justice is an important step in strengthening trust in the judiciary in Ukraine.

For your attention, statistical data for the period from 2019 to the first quarter of 2023. The number of registered new users in the Electronic Court: in 2019-2020 - 49,196 new users; in 2021-2023 (I quarter) - 116,465 new users.[2] As you can see, electronic justice in Ukraine is becoming more and more popular among users, which ensures the efficiency and speed of consideration of court cases and reduces the burden on the courts. In addition, the use of e-judiciary helps to save time and money since users do not need to visit the judicial institution in person but can perform all the necessary actions online.

The legislative consolidation of electronic evidence at the national level is certainly a positive step that defines a new stage in the evidence process and provides additional opportunities for litigants to defend their rights in court. The collection, storage, transmission, and presentation of computer-generated evidence must comply with legal requirements for admissibility of evidence. Electronic evidence collected in a way that does not comply with the law will be considered inadmissible and will be rejected in court.

In recent years, the issue of electronic justice has become more active in connection with judicial reform and the intensity of the processes concerning the introduction of electronic justice into judicial practice. However, this issue is characterized by a peculiar problem. Currently, there is a need for a comprehensive scientific study of the information processes that take place in civil judicial proceedings and their methodological and legal foundations.

1 The effectiveness of the judicial system in Ukraine improved in 2023 - European Business Association. (2023). https://hcj.gov.ua/news/efektyvnist-sudovoyi-systemy-v-ukrayini-u-2023-roci-pokrashchylasya-yevropeys-ka-biznes

2 The judicial system of Ukraine is open to innovation and is ready for the challenges of modernity - SE "CSS". (2023). https://dp.arbitr.gov.ua/archive/1413505/

First, we note that no court of general jurisdiction is connected to the centralized auto-distribution module.

Chapter IV, "Regulations on the Procedure of Functioning of Individual Subsystems (Modules) of the Unified Judicial Information and Telecommunication System," provides for the features of the automated distribution of cases, the essence of which consists in the implementation of automated distribution of court cases through the new centralized self-distribution module and which establishes rules for the distribution of court cases between judges and powers of meetings of judges regarding implementation automated distribution, etc.[3]

The norms of the specified regulation in the part of the automated distribution of court cases were to enter into force on March 1, 2023; however, due to the notification of the courts regarding the presence of personnel and technical reasons that make it impossible to carry out automated distribution litigation software, the automated document circulation system of the court is being finalized.

In order to improve the current subsystem of the automated distribution of court cases in order to avoid unauthorized interference in the distribution of court cases, we consider the expedient development and implementation of the unified subsystem of the centralized auto-distribution of ECITS between the courts of all instances at the centralized level instead of the local automated distribution of court cases.

Secondly, the Kyiv Court of Appeal is a single court that is not connected to the "Electronic Court" subsystem. This phenomenon limits the exchange of documents and information in electronic form between the Kyiv Court of Appeal, courts of first instance, and the Supreme Court. The court, other bodies of the justice system, and participants in the legal process.

It is used by the Kyiv Court of Appeal. Automated electronic document management system "Appeal" (hereinafter, ASED "Appeal") [13]. In contrast to the Kyiv Court of Appeal, the computer program "D-3" (hereinafter referred to as KP "D-3") is used in local general and appellate general courts, while the computer program "D-SS" (hereinafter referred to as KP "D-SS") is used in local and appellate administrative courts. In turn, the Supreme Court uses the computer program "Clerkship Support Service" (hereinafter KP "SPD"). Property rights of intellectual property for KP "D-3,"KP "DSS," and KP "SPD" belong exclusively to the State Enterprise "Information Court Systems." Intellectual property rights for ASED "Apelatsiya" are owned by SE "Centre of Judicial Services.".

The sphere of administration of the State Judicial Administration of Ukraine (hereinafter referred to as the "SDA of Ukraine") includes the state enterprise "Centre of Court Services" and the state enterprise "Information Court Systems." The main difference between them is that the state enterprise "Information Court Systems" is responsible for the information and technical support of the internal user (employees of the court apparatus), and the state enterprise "Judicial Services Center" aims to provide information technology services to external users (participants in the legal process).

3 Regulation on the procedure for the functioning of individual subsystems (modules) of the Unified Judicial Information and Telecommunication System, approved by the decision of the High Council of Justice dated August 17, 2021 No. 1845/0/15-21. https://zakon.rada.gov.ua/rada/show/v1845910-21#Text

In order to eliminate the above-mentioned gap, we propose to develop and implement the unified subsystem document flow of EUITS, which, thanks to the use of modern cloud technologies, will be able to connect between a simultaneous process of arrangement, coordination, and combining structures and functions in a holistic use of KP "D-3," KP "DSS," KP "SPD," and ASED "Appeal.".

Thus, by creating the Unified Document Management Subsystem of EUITS, it will be possible to connect the functionality of the Kyiv Court of Appeals to EUITS, which in turn will solve the third problematic issue of unification of all judicial document processing programs in the Unified Subsystem document flow of the courts of Ukraine.

The purpose of the research is to consider electronic judicial procedures as an element of access to justice regarding the protection of the rights of individuals.

Every year, increasing attention is focused on the "State in a Smartphone" concept. It includes many different aspects, with electronic judicial procedure being one of these aspects that has gained particular importance. It is difficult to imagine modern life without progress—that is, without the desire for maximum improvement. The rapid development of information technologies and modern ways of recording and transmitting information affect all spheres of human activity, also affecting the evidence base in the civil process. There are many types of digital and electronic media that differ from the paper media we are used to. Justice and the judicial procedure, as forces ensuring the protection of the rights and freedoms of a person and a citizen, are obliged to keep up with the times, and therefore these forces are not exceptions. It should be noted that at the moment, a large number of courts, both in Ukraine and abroad, actively use such elements of electronic justice as SMS notification of process participants, video conference communication, electronic submission of documents, and mobile witness protection complexes. On the basis of the State Judicial Administration of Ukraine, the mobile application «eSud» was presented, thanks to which you can use court services with the help of a smartphone. The «eCourt» mobile application is a mobile version of the «Electronic Court» subsystem, which repeats the functionality of the subsystem but is adapted for mobile devices (smartphones and tablets). The electronic court «becomes even more mobile, even more accessible, provides access to justice, and is more relevant, especially for those citizens who are in the zone of armed conflict in the east of Ukraine, namely, in the territories of Donetsk and Luhansk regions, which increases access to justice and in some cases does not oblige or force people to cross the demarcation line with those territories that are not under the control of the government of Ukraine. The user of the «eCourt» application can view all documents in cases in which he is a participant, starting with his claim and ending with the court's decision on the merits.

The legal nature of electronic evidence has characteristic features that primarily distinguish it from written evidence or any other evidence. For example, A. Kalamayko singles out the following signs of electronic evidence: "1) the impossibility of direct perception of information, which necessitates the use of technical and software tools to obtain information; 2) the availability of a technical medium of information that can be used multiple times; 3) a specific process of creating and storing information,

which makes it possible to easily change the medium without losing the content and, conversely, makes it possible to make changes to the content without leaving traces on the medium; 4) the absence of the concept of "original" electronic sources of evidence due to the complete identity of electronic copies; 5) the presence of specific "requisites," so-called metadata—information of a technical nature that is encoded inside files".[4]

Today, the problem of the high risk of forgery of electronic evidence remains important. We agree with the opinion of A. Kalamayko that when assessing reliability of information it is necessary to take into account shortcomings of the electronic form , however, it is inappropriate to consider information in electronic form as unacceptable due to its possible forgery. Signatures and seals used to certify "traditional" documents cannot also be a guarantee of immutability of documents in today's conditions[5].

In addition to that, separate issues related to the problems of implementing the right to education are covered in the scientific works by such present-day Ukrainian scientists as Ishkhanian *et al*.[6]. These works constitute a scientific basis for further research of the specified instruments and actually initiate a scientific discussion regarding prospects for their legislative improvement.

At the same time, it is worth noting that at the current stage electronic judicial procedure is quite relevant as an element of access to justice regarding protection of rights of individuals.

The research is based on works of foreign and Ukrainian researchers on electronic judicial procedure as an element of access to justice regarding protection of rights of individuals.

With the help of the epistemological method, features of electronic judicial procedure as an element of access to justice regarding protection of rights of individuals, etc. were clarified; thanks to the logical-semantic method, the conceptual apparatus was deepened, features of electronic judicial procedure as an element of access to justice regarding protection of rights of individuals, etc. were determined. Thanks to the existing methods of law, we managed to analyze features of electronic judicial procedure as an element of access to justice regarding protection of rights of individuals, etc.

2. ANALYSIS AND DISCUSSION

Foreign experience has become an example of introducing electronic judicial procedures. So, for example, currently, the "Electronic Court" systems are successfully operating in Australia, Switzerland, the USA, and many other countries around the world. It is thanks to these systems that models of the judicial process can be implemented, including models that provide an opportunity to consider cases in court without performing unnecessary physical actions.

4 Kalamaiko, Andrii Yuriiovych. "The place of electronic means of proof and specific issues of their use in the civil process". Law and innovation. 2(10). (2015). 127-132.

5 Kalamaiko, Andrii Yuriiovych. "Electronic means of proof in the civil process". diss.. candidate. law of science Kharkiv, Ukraine. (2016).

6 Ishkhanian, Andrii. Leheza,Yevhen. "Legal regulation to obobiganny to correct risis pid hour receiving electronic services. ScienceRise: Juridical Science, 3 (9), (2019). 27–31. https://doi.org/10.15587/2523-4153.2019.179915

This is exactly the goal that the judicial authorities in Ukraine strive to achieve. Currently, during the coronavirus pandemic, remote justice is quite relevant. After all, despite the quarantine restrictions, the courts continue to work, trying to consider as many cases as possible. This corresponds to the Constitution of Ukraine, which stipulates that the right of a person to protection is not subject to restrictions even in conditions of a state of emergency or martial law. Therefore, digital technologies began to penetrate all spheres of social life, including justice, much faster. It has become necessary to ensure the possibility for the parties to participate in court sessions outside the boundaries of the judicial institution with the help of technical means. The practice of conducting court hearings via video conference has become widespread.

The coronavirus pandemic has accelerated the process of judicial digitization. In conditions of the quarantine, there was a significant boost in the implementation of the "Electronic Court" program, which is a subsystem of the Unified Judicial Information and Telecommunication System. The launch of this program was planned long before the pandemic, but there were various obstacles in the implementation process. And only with the introduction of the quarantine did the situation demand the quick and effective actions of the Supreme Council of Justice, which partially launched the program in the sphere of justice.

Electronic court is a special subsystem that enables the parties in a court process to submit documents to the court electronically, gives an opportunity to send documents to these parties in electronic form together with documents in paper form.

The Regulation on the Court's Automated Document Management System, approved by the decision of the Council of Judges of Ukraine dated 26 November, 2019 No. 30, as amended by the Decision of the Council of Judges of Ukraine dated 02 March, 2017 No. 17 with amendments (hereinafter referred to as the Regulation on the CADMS), provides for the possibility of launching the Unified Judicial Information and Telecommunication System, presupposing test mode use of individual electronic justice tools in courts, including the "Electronic Court" subsystem.

The order of the State Judicial Administration of Ukraine dated December 22, 2018 No. 628, "On Conducting Testing of the "E-Court" Subsystem," introduced a test mode of operation of the "Electronic Court" subsystem in all local and appellate courts of Ukraine (pilot courts).

Therefore, starting from 22 December, 2018, it is possible for local and appellate courts to accept applications and other procedural documents submitted by individuals through the "Electronic Court" subsystem.

In addition, the panel of judges also draws attention to the fact that the possibility of using electronic documents and the organizational and legal principles of electronic document circulation are also provided for by the Law of Ukraine "On Electronic Documents and Electronic Document Circulation."[7].

7 Law of Ukraine. "On electronic documents and electronic document circulation: Law of Ukraine dated May 22, 2003 No. 851-IV". (2003). https://zakon.rada.gov.ua/laws/show/851-15#Text

According to part 2 of Article 9 of the Law of Ukraine "On Electronic Documents and Electronic Document Circulation", the procedure of electronic document circulation shall be determined by state bodies, local self-government bodies, enterprises, institutions and organizations of all forms of ownership in accordance with the legislation[8].

The Regulation on the CADEMS is such an order of electronic document circulation, defined for courts in the sense of Article 9 of the above-mentioned Law.

In accordance with Article 8 of this Law of Ukraine "On Electronic Documents and Electronic Document Circulation" the legal force of an electronic document cannot be denied solely because this document is in electronic form. Admissibility of an electronic document as an evidence cannot be challenged solely on the basis of the fact that it is in electronic form.

According to parts 3, 4 of Article 18 of the Law of Ukraine "On Electronic Trust Services", an electronic signature or seal cannot be recognized as invalid and deprived of the opportunity to be considered as evidence in court cases solely on the grounds that they are presented in an electronic form or do not meet the requirements for a qualified electronic signature or seal[9].

A qualified electronic signature has the same legal force as a handwritten signature and is presumed to correspond to a handwritten signature.

That is, the mentioned norms of the Law also provide for recognition of the legal force of electronic documents signed with an electronic signature.

Clause 2 of Chapter XI of the Provision on the CADEMS provides that participants in a legal process can send copies of electronic documents to other participants in the court case (except when the other participant does not have a registered electronic account) submit claims and other procedural documents provided for by law (claims and documents that are submitted to court and may be the subject of legal proceedings) as well as receive court decisions and other electronic documents.

According to clauses 3-5 of the Provision on CADEMS, with the help of a registered electronic office, persons can form projects (they create by filling in the appropriate forms, edit, attach), sign and submit to the court and transmission system operator electronic requests, complaints, proposals and other non-procedural appeals concerning activities of such bodies, and they can also receive a response to such submitted documents.

To create drafts of electronic documents, individuals use general forms created by the administrator or create their own forms using their electronic cabinet with the possibility of saving them in the electronic court subsystem and reusing them. The administrator can set additional technical restrictions regarding forms and content of electronic documents (size, format, etc.).

For draft of any electronic document created in the electronic court subsystem at all stages of its formation, confidentiality of its content shall be ensured by means of encryption using the electronic digital signature of the author of the draft. Persons

8 Law of Ukraine. "On electronic documents and electronic document circulation: Law of Ukraine dated May 22, 2003 No. 851-IV". (2003). https://zakon.rada.gov.ua/laws/show/851-15#Text

9 Law of Ukraine. "On electronic trust services: Law of Ukraine dated October 5, 2017. No. 2155-VIII". (2017). https://zakon.rada.gov.ua/laws/ show/2155-19#Text

admitted to the protected information shall be defined by the author of the document. From the moment a document is transferred to the "Original" state, this document loses its confidential status and the list of persons admitted to its content shall be determined by the administrator in accordance with the requirements of the law.

Therefore, sending procedural documents in electronic form requires the use of the "Electronic Court" service, in accordance with the prior registration of an official email address (Electronic Cabinet) and with the mandatory use of personal electronic signature.

That is, with the help of this program, the parties to a court process can pay the court fee online, they can track the status and progress of the document consideration by the court, draw up and submit an electronic power of attorney, receive information related to the status of the case consideration, etc.[10]

That is, exchange of electronic documentation between a participant in the process and the court is one of the most important mechanisms of digitalization of justice. As it is rightly pointed out by O. Uhrynovska "this procedure for document exchange between process participants and the court can be used under the conditions that:

- the participant in the respective civil process has been registered in the electronic documentation exchange system;
- he/she submitted to the court an application for receiving electronic documents in electronic form on the specified case"[11].

However, the most important progress in the development of the judiciary consists in the possibility for the parties to participate in the judicial process remotely. According to the report of the state enterprise "Information Court Systems", at the request of the courts, since the beginning of 2021, about 54 sessions of video conferencing have been held. Thanks to special systems (such as Zoom, EasyCon etc., it has become possible to perform remote communications between large and small groups. Participants in a legal process share information, databases, documentation, and make decisions collegially[12].

However, at the given stage of law-making activity, active work is being done on adoption of a draft law that would regulate the organization of electronic justice. The main proposals of this normative act are:

- submission of documents only in electronic form;
- access to the court from the lawyer's office in a video conference mode;
- cancellation of the condition of a mandatory face-to-face meeting;
- automatic distribution of cases between all judges throughout Ukraine according to their specialization;
- using any messengers to communicate with the court;

10 Leheza, Ye. Yerofieienko, L. Komashko, V. 'Peculiarities of legal regulation of intellectual property protection in Ukraine under martial law: administrative and civil aspects', Law of Justice Journal, 37 (3) (2023). 157-172 http://doi.org/10.5335/rjd.v37i3.15233.

11 Uhrynovska, Oksana Ivanivna. "Electronic document flow in the civil process of Ukraine". Bulletin of Lviv University. Vol. 64. (2017). 144–150.

12 Leheza, Yevhen. Pisotska, Karina. Dubenko, Oleksandr. Dakhno, Oleksandr. Sotskyi, Artur "The Essence of the Principles of Ukrainian Law in Modern Jurisprudence". Revista Jurídica Portucalense, December, (2022). 342-363. DOI: https://doi.org/10.34625/issn.2183-2705(32)2022.ic-15

- compulsory work with the use of an electronic cabinet[13].

The above-mentioned proposals should significantly facilitate and make the justice system in Ukraine more convenient. For example, abolition of territorial jurisdiction will reduce cases of corruption. After all, at present, nothing prevents lawyers from entering into secret illegal agreements with judges, since for the most part such connections are already permanent in one region. It will also give an opportunity to significantly save money, contribute to the openness of the court process, reduce the number of delayed cases due to the non-appearance of participants, save their time, etc.[14]

Use of the "Electronic court" service in the court of cassation is another rather controversial issue of applying information technologies during consideration of cases in court[15].

Thus, in accordance with the Ruling of the Civil Court of Cassation dated September 17, 2019 in case No. 344/16649/16c it is noted that applications submitted in electronic form via e-mail on behalf of the plaintiff do not meet the requirements of the Civil Code of Ukraine regarding the written paper form of the application. Motions submitted by a person in electronic form, without an electronic digital signature, are not signed by the person they are submitted by. The court of cassation notes that it is necessary to take into account that the "Electronic Court" subsystem was introduced by the order of the State Judicial Administration of Ukraine dated 22 December, 2018 No. 628 "On Testing the "Electronic Court" Subsystem in Local and Appellate Courts" in test mode in all local courts and courts of appeal of Ukraine (pilot courts).

In accordance with Article 388 of the Civil Code of Ukraine, the Supreme Court is a court of cassation, and therefore it does not belong to the courts where the "Electronic Court" system has been implemented; and this fact indicates the impossibility of submitting procedural documents to the court of cassation through this system, since the "Electronic Court" system has not been implemented in the Supreme Court"[16].

Analyzing judicial practice, one can come to logical conclusions that in some cases courts allow violations of the current legislation and their decisions do not correspond to the current practice of the European Court of Human Rights.[17] It should be noted that in accordance with Part 4 of Article 10 of the Civil Code of Ukraine, the court shall apply the Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

13 Manzhula, Andrii. Leheza,Yevhen. "Foreign experience and public services through the implementation in national legislation Ukraine". ScienceRise: Juridical Science, (2 (2), (2017). 45–49. https://doi.org/10.15587/2523-4153.2017.118829

14 Volobuieva, O. Leheza, Ye. Pervii, V. Plokhuta, Ye. Pichko, R. "Criminal and Administrative Legal Characteristics of Offenses in The Field of Countering Drug Trafficking: Insights from Ukraine", Yustisia, 12 (3) (2023), 262-277 http://doi.org/10.20961/yustisia.v12i3.79443.

15 Leheza, Yevhen. Shablystyi, Volodymyr. Aristova, Irina V. Kravchenko, Ivan O. Korniakova, Tatiana. "Foreign Experience in Legal Regulation of Combating Crime in the Sphere of Trafficking of Narcotic Drugs, Psychotropic Substances, their Analogues and Precursors: Administrative and Criminal Aspect". Journal of Drug and Alcohol Research. (2023). 12, 4, 1-8. DOI: https://doi.org/10.4303/JDAR/236240

16 Leheza, Yevhen. Shcherbyna, Bogdan. Leheza, Yulia. Pushkina, Olena. Marchenko Olesia. "Features of Applying the Right to Suspension or Complete/ Partial Refusal to Fulfill a Duty in Case of Non-Fulfilment of the Counter Duty by the Other Party According to the Civil Legislation of Ukraine". Revista Jurídica Portucalense, (2023). 340–359. Retrieved from https://revistas.rcaap.pt/juridica/article/view/29662

17 Saputra, R., Setiodjati, J. P., & Barkhuizen, J. (2023). Under-Legislation in Electronic Trials and Renewing Criminal Law Enforcement in Indonesia (Comparison with United States). Journal of Indonesian Legal Studies, 8(1), 243-288. https://doi.org/10.15294/jils.v8i1.67632

and its protocols, which have been approved to be binding according to the consent of the Verkhovna Rada of Ukraine (hereinafter the Convention), as well as practice of the European Court of Human Rights (hereinafter referred to as the ECtHR) as sources of law.[18]

According to clause 1 of Article 6 of the Convention the state guarantees that everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial court established by law, which will resolve a dispute regarding his/her civil rights and obligations or establish the validity of any criminal charge brought against him/her.

When considering cases, the ECtHR proceeds on the basis that, when implementing the provisions of the Convention, it is necessary to avoid a too formal attitude to the requirements provided for by law, since access to justice must be not only factual, but also real. Excessive formality when deciding the issue of accepting a claim or complaint is a violation of the right to fair legal protection[19].

In particular, in the decision of 04 December, 1995 in the case "Bellet v. France", the ECtHR noted that Article 6 of the Convention contains guarantees of a fair trial with access to court being one of aspects of these guarantees. The level of access provided by national legislation should be sufficient to ensure a person's right to a court, taking into account the principle of the rule of law in a democratic society. In order for access to be effective, an individual must have a clear practical opportunity to challenge actions that constitute an interference with his/her rights.

Analysis of the above-mentioned issue regarding implementation of the "Electronic Court" subsystem in the activity of the judiciary allows us to conclude about imperfect software, material and technical capabilities of courts, the need to improve qualifications of judges regarding the issue of digitalization, ignorance of participants in processes regarding possibilities and advantages of electronic judicial procedure and many other nuances which need to be improved in order to implement an effective judicial system in Ukraine, which would develop together with the development of our society.

Another innovation that the Ukrainian authorities plan to implement is the so-called "Court in a smartphone", the purpose of which is to prevent abuses and ensure transparency of judicial activity. According to Volodymyr Zelenskyi, "the majority of bureaucratic procedures should go online, which will speed up the processing of cases, minimize corruption and the possibility of abuse of power"[20].

As of today, it is possible to single out such problems typical for the judicial process which if not solved will make development of electronic justice impossible. First of all, the problem is presented as the problem of information inequality, which consists in limiting possibilities of using electronic justice for those categories of the population

18 Latifiani, D. (2021). Human Attitude and Technology: Analyzing a Legal Culture on Electronic Court System in Indonesia (Case of Religious Court). Journal of Indonesian Legal Studies, 6(1), 157-184. https://doi.org/10.15294/jils.v6i1.44450

19 Korneyev, Maxim. Zolotukhina, Liliya. Hryhorash, Tetiana. Leheza, Yevhen. Hryhorash, Olha. "The development of small business as a source of formation of local budget revenues in Ukraine. Investment. Management and Financial Innovations". 15 (1), (2018). 132-140. DOI:10.21511/imfi.15(1).2018.12

20 Zelenskyi, Volodymyr. "Court in a smartphone". (2021). https://www.ukrinform.ua/rubric-polytics/3199503-zelenskij-anonsuvav-sud-u-smartfoni.html.

that have limited access to means of communication. We believe that the solution to this problem can be presented as installation of specialized automated devices that would give an opportunity to fully realize all the possibilities of electronic justice[21].

Second, the focus on the digital sphere increasingly causes the need to abandon "paper documents" traditional for our legislation. Currently, "paper documents" are an outdated form of securing information due to the availability of an electronic form of documents. Third, the technical component is the most important condition for correct and efficient functioning of electronic justice. No one is immune from possible equipment failures and hacker attacks. Fourth, another problem consists in technical illiteracy of a certain percentage of the population. In order to solve this problem, it is necessary to conduct state and regional informatization programs, implement and develop certain educational standards in this field.[22]

On the basis of the above, it can be concluded that there are many different problems associated with the use of electronic justice. However, presence of these problems is determined by generation of this institution improvement of which has just been started by legislators.

Recently, electronic documents have become increasingly common in civil proceedings as evidence. This type of evidence has been used not so long ago, but it has already got certain problems when being applied. The article deals with the concept of electronic document as evidence, its legal nature is analyzed and the form of submitting electronic information to courts is disclosed. Highlighted are also problems concerning the fact that the legislation of Ukraine does not include specific criteria for reliability of data contained in electronic documents, admissibility of these data, and use of electronic documents in connection with electronic digital signatures. Ways to solve the problems of legal regulation in this area are proposed.

3. CONCLUSION

On the basis of the above, it can be concluded that there are many different problems associated with the use of electronic justice. Considering the concept of modernization of the existing model electronic court, in order to improve the modules ESITS, it is possible to outline unresolved problematic issues concerning the implementation of the electronic court: the functioning of the centralized self-distribution module; the introduction of "Electronic Court" subsystems and "Electronic Cabinet" in appeal courts; and the and the unification of all judicial document management programs in the Unified Document Management Subsystem.

However, their presence is determined by the generation of this institution, whose improvement has just been started by legislators. Thus, the development of electronic

21 Leheza, Yevhen. Filatov, Viktor. Varava, Volodymyr. Halunko, Vira. Kartsyhin, Dmytr□. "Scientific and practical analysis of administrative jurisdiction in the light of adoption of the new code of administrative procedure of Ukraine. Journal of Legal, Ethical and Regulatory Issues". Vol. 22, Issue 5, (2019). 1-8. Available online: https://www.abacademies.org/articles/scientific-and-practical-analysis-of-administrative-jurisdiction-in-the-light-of-adoption-of-the-new-code-of-administrative-proced-8634.html

22 Latifiani, D., Yusriyadi, Y., Sarono, A., Al Fikry, A. H., & Cholis, M. N. (2022). Reconstruction of E-Court Legal Culture in Civil Law Enforcement. Journal of Indonesian Legal Studies, 7(2), 441-448. https://doi.org/10.15294/jils.v7i2.59993

technologies is one of the priority areas of Ukrainian legal policy. Improvement of digital technologies also requires improvement of electronic document flow in the judicial system.

The war has created an even greater demand for remote justice, as it is possible to remain safe, reduce financial and time costs, and improve access to court since there is an opportunity to participate in a court hearing outside the court. We believe that under martial law conditions, the missed deadlines should be renewed by administrative courts, also in view of the fact that disputes arise with subjects of authority. Therefore, the protection of the rights of individuals and legal entities should be effective if these rights are violated due to illegal decisions, actions, or inaction of officials.

So, the article discusses new electronic mechanisms for the implementation of the democratic principles of the Ukrainian justice system in accordance with the needs of modern society. Having analyzed the main directions of the development of "electronic justice," we can draw the unequivocal conclusion that the specified topic occupies one of the leading positions in the system of measures for the implementation of the information function by the state. Further development of the justice system is carried out through the prism of new information technologies that ensure openness, transparency, and accessibility for citizens of Ukraine. Herewith, the problems consist of an insufficiently formed normative and legal framework for considering such evidence and determining its reliability.

Unfortunately, the current law does not provide efficient regulation of social relations that arise in the process of creating and using information and communication technologies in public administration. Existing normative legal acts are not coordinated with each other and regulate only certain aspects of information exchange between state authorities, business entities, and citizens.

REFERENCES

Dymko, Iegor. Muradian, Arsen. Leheza, Yevhen. Manzhula, Andrii. Rudkovskyi. Oleksandr. "Integrated approach to the development of the effectiveness function of quality control of metal products". *Eastern European Journal of Enterprise Technologies.* 6/3 (90). (2017). 26-34. DOI: 10.15587/1729-4061.2017.119500.

Ishkhanian, Andrii. Leheza,Yevhen. "Legal regulation to obobiganny to correct risis pid hour receiving electronic services. *ScienceRise: Juridical Science*, 3 (9), (2019). 27–31. https://doi.org/10.15587/2523-4153.2019.179915

Kalamaiko, Andrii Yuriiovych. "Electronic means of proof in the civil process". diss.. candidate. law of science Kharkiv, Ukraine. (2016).

Kalamaiko, Andrii Yuriiovych. "The place of electronic means of proof and specific issues of their use in the civil process". *Law and innovation.* 2(10). (2015). 127-132.

Korneyev, Maxim. Zolotukhina, Liliya. Hryhorash, Tetiana. Leheza, Yevhen. Hryhorash, Olha. "The development of small business as a source of formation of local budget revenues in Ukraine. Investment. Management and Financial Innovations". 15

(1), (2018). 132-140. DOI:10.21511/imfi.15(1).2018.12

Latifiani, D. (2021). Human Attitude and Technology: Analyzing a Legal Culture on Electronic Court System in Indonesia (Case of Religious Court). *Journal of Indonesian Legal Studies*, *6*(1), 157-184. https://doi.org/10.15294/jils.v6i1.44450

Latifiani, D., Yusriyadi, Y., Sarono, A., Al Fikry, A. H., & Cholis, M. N. (2022). Reconstruction of E-Court Legal Culture in Civil Law Enforcement. *Journal of Indonesian Legal Studies*, *7*(2), 441-448. https://doi.org/10.15294/jils.v7i2.59993

Law of Ukraine. "On electronic documents and electronic document circulation: Law of Ukraine dated May 22, 2003 No. 851-IV". (2003). https://zakon.rada.gov.ua/laws/show/851-15#Text

Law of Ukraine. "On electronic trust services: Law of Ukraine dated October 5, 2017. No. 2155-VIII". (2017). https://zakon.rada.gov.ua/laws/ show/2155-19#Text

Law of Ukraine. Constitution of Ukraine: Law of 28.06.1996 No. 254k/96-□□. Database "Legislation of Ukraine. (1996). https://zakon.rada.gov.ua/laws/show/254 % D0 % BA/96- % D0 % B2 % D1 % 80#Text

Leheza, Ye. Yerofieienko, L. Komashko, V. 'Peculiarities of legal regulation of intellectual property protection in Ukraine under martial law: administrative and civil aspects', Law of Justice Journal, 37 (3) (2023). 157-172 http://doi.org/10.5335/rjd.v37i3.15233.

Leheza, Yevhen. Filatov, Viktor. Varava, Volodymyr. Halunko, Vira**.** Kartsyhin, Dmytr□**.** "Scientific and practical analysis of administrative jurisdiction in the light of adoption of the new code of administrative procedure of Ukraine. *Journal of Legal, Ethical and Regulatory Issues*". Vol. 22, Issue 5, (2019). 1-8. Available online: https://www.abacademies.org/articles/scientific-and-practical-analysis-of-administrative-jurisdiction-in-the-light-of-adoption-of-the-new-code-of-administrative-proced-8634.html

Leheza, Yevhen. Pisotska, Karina. Dubenko, Oleksandr. Dakhno, Oleksandr. Sotskyi, Artur "The Essence of the Principles of Ukrainian Law in Modern Jurisprudence". *Revista Jurídica Portucalense*, December, (2022). 342-363. DOI: https://doi.org/10.34625/issn.2183-2705(32)2022.ic-15

Leheza, Yevhen. Shablystyi, Volodymyr. Aristova, Irina V. Kravchenko, Ivan O. Korniakova, Tatiana. "Foreign Experience in Legal Regulation of Combating Crime in the Sphere of Trafficking of Narcotic Drugs, Psychotropic Substances, their Analogues and Precursors: Administrative and Criminal Aspect". *Journal of Drug and Alcohol Research.* (2023). 12, 4, 1-8. DOI: https://doi.org/10.4303/JDAR/236240

Leheza, Yevhen. Shcherbyna, Bogdan. Leheza, Yulia. Pushkina, Olena. Marchenko Olesia. "Features of Applying the Right to Suspension or Complete/ Partial Refusal to Fulfill a Duty in Case of Non-Fulfilment of the Counter Duty by the Other Party According to the Civil Legislation of Ukraine". *Revista Jurídica Portucalense,* (2023). 340–359. Retrieved from https://revistas.rcaap.pt/

juridica/article/view/29662

Manzhula, Andrii. Leheza,Yevhen**.** "Foreign experience and public services through the implementation in national legislation Ukraine". *ScienceRise: Juridical Science*, (2 (2), (2017). 45–49. https://doi.org/10.15587/2523-4153.2017.118829

Saputra, R., Setiodjati, J. P., & Barkhuizen, J. (2023). Under-Legislation in Electronic Trials and Renewing Criminal Law Enforcement in Indonesia (Comparison with United States). *Journal of Indonesian Legal Studies*, *8*(1), 243-288. https://doi.org/10.15294/jils.v8i1.67632

The effectiveness of the judicial system in Ukraine improved in 2023 - European Business Association. (2023). https://hcj.gov.ua/news/efektyvnist-sudovoyi-systemy-v-ukrayini-u-2023-roci-pokrashchylasya-yevropeyska-biznes

The judicial system of Ukraine is open to innovation and is ready for the challenges of modernity - SE "CSS". (2023). https://dp.arbitr.gov.ua/archive/1413505/

Uhrynovska, Oksana Ivanivna. "Electronic document flow in the civil process of Ukraine". Bulletin of Lviv University. Vol. 64. (2017). 144–150.

Volobuieva, O. Leheza, Ye. Pervii, V. Plokhuta, Ye. Pichko, R. 'Criminal and Administrative Legal Characteristics of Offenses in The Field of Countering Drug Trafficking: Insights from Ukraine', Yustisia, 12 (3) (2023), 262-277 http://doi.org/10.20961/yustisia.v12i3.79443.

Zelenskyi, Volodymyr. "Court in a smartphone". (2021).: https://www.ukrinform.ua/rubric-polytics/3199503-zelenskij-anonsuvav-sud-u-smartfoni.html.