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Prospects for the implementation of the system of electronic criminal proceedings in Ukraine

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Abstract

Using the dialectical method, the article is devoted to the study of the impact of digitization on the implementation of pre-trial criminal proceedings and court proceedings in Ukraine. Based on the study of the positive international experience of electronic criminal proceedings, the good features of the introduction and further development of electronic criminal proceedings have been identified, such as: optimization of the investigation and trial procedure; improvement of supervision and control; saving budget funds; reducing the number of employees; elimination of red tape and corruption risks; automation of communication processes and others. In the conclusions, the authors argue that it is desirable to determine in the procedural legislation the possibility of introducing a special regime of court proceedings, in the form of videoconferencing and procedures for signing court judgments, etc., during the period of war or state of emergency.

Keywords: electronic criminal proceedings; pre-trial investigation; information technologies; digitalization; digital evidence.

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Perspectivas de la implementación del sistema de procesos penales electrónicos en Ucrania

Resumen

Mediante el método dialectico, el artículo está dedicado al estudio del impacto de la digitalización en la implementación de procedimientos penales previos al juicio y procesos judiciales en Ucrania. Sobre la base del estudio de la experiencia internacional positiva de los procesos penales electrónicos, se han identificado las características buenas de la introducción y el desarrollo ulterior de los procesos penales electrónicos, tales como: optimización del procedimiento de investigación y juicio; mejora de la supervisión y el control; ahorrar fondos del presupuesto; reducir el número de empleados; eliminación de trámites burocráticos y riesgos de corrupción; automatización de procesos de comunicación y otros. En las conclusiones los autores fundamentan la conveniencia de determinar en la legislación procesal la posibilidad de introducir un régimen especial de actuaciones judiciales, en la modalidad de videoconferencia y procedimientos de firma de sentencias judiciales, etc., durante el período de guerra o estado de excepción.

Palabras clave: proceso penal electrónico; investigación previa al juicio; tecnologías de la información; digitalización; prueba digital.

Introduction

An integral part of modern society is the presence of information and communication technologies that provide access to new knowledge and information. Without the use of technical means and scientific discoveries in the field of informatics related to the collection, processing, storage and processing of information, investigation, disclosure and prevention of criminal offenses, systematic analysis of the received information about the committed criminal offense is impossible.

The development of modern information technologies makes it possible to significantly improve the exchange and storage of information, the use of procedural document templates, which greatly facilitates the work of prosecutors and investigators, however, in national legal practice, electronic document circulation within the criminal process is duplicated by the corresponding paper document circulation, which leads to significant costs in terms of working time, and material and technical resources. At the same time, modern systems of multi-level information protection and cloud technologies allow subjects of authority to be sure of the preservation and

security of information resources, confidential data and the possibility of their restoration in case of accidental or intentional destruction (Mazuryk, 2022).

The need for high-quality processing of information obtained through the official activities of criminal justice officials is due to a number of reasons, in particular: timely notification of pre-trial investigation bodies with information obtained in the course of official activities; the possibility of obtaining reliable information for the relevant situation upon request to the database of the network of law enforcement agencies; prompt use of the full volume of verified information, which makes it possible to quickly make a decision in the conditions of the official environment; organization and preservation of collected materials (Popovich, 2022).

Therefore, the issue of introducing the concept of electronic criminal proceedings into the practical activities of criminal justice system bodies is urgent, and the gradual digitalization of all forms of activity of public authorities is a necessary condition for the creation of an effective state mechanism and legal regulation of social relations, aimed at protecting human rights and freedoms and general interests society and the state. In view of this, it is urgent to create the most effective system of electronic cooperation, which will allow to activate the process of investigation of criminal offenses and reduce the workload of the authorized subjects of the criminal process, to ensure a high-quality and comprehensive investigation and effective trial of each criminal case.

1. Methodology of the study

In order to achieve the set goal and ensure the scientific objectivity of the obtained research results, a set of modern general scientific and special methods used in legal science was chosen. All methods were applied in a relationship, which in the end contributed to ensuring comprehensiveness, completeness and objectivity of the results of scientific research, correctness and consistency of conclusions. The dialectical method of scientific knowledge became the methodological basis of the scientific article, it was used to obtain substantiated conclusions and provide recommendations regarding the introduction of the electronic criminal proceedings system in Ukraine. Using the historical method, a study of the genesis of the electronic criminal process in Ukraine was conducted.

The statistical method was applied during the analysis of investigative and judicial statistics. The formal-logical method was used to define the concept of electronic criminal proceedings and clarify its essence. Using the comparative method, the provisions of the current Criminal Procedure Code of Ukraine (hereinafter – CPC of Ukraine) and the CPC of foreign

countries were compared, which made it possible to use positive experience in the development of proposals for improving the norms of the current legislation. The system-structural method, which is based on the comparison of various provisions of criminology and criminal procedural law, made it possible to provide a comprehensive interpretation of the essential features of criminal procedural institutions and to determine the main ways of improving the criminal procedural legislation of Ukraine regarding the use of it. The generalization method made it possible to formulate scientifically based conclusions and provide recommendations of an applied nature.

2. Analysis of recent research

A significant number of scientific works related to the study of technical support for the investigation of criminal offenses are covered in scientific studies to one degree or another. At the same time, it should be noted that scientists considered the use of technical means mainly as a means of recording the progress and results of procedural actions, investigated the possibilities of conducting investigative (search) actions and judicial review of criminal proceedings in the mode of remote access using video conference telecommunication technologies.

Despite the significant number of scientific works devoted to the application and use of the electronic criminal proceedings system in Ukraine, it should be noted that not all aspects of the specified problem have been comprehensively researched and normatively regulated. The purpose of the article is to determine the prospects for the implementation and development of the electronic criminal proceedings system in Ukraine by solving the following tasks: to investigate the foreign experience of digitization of criminal procedural legislation and the features of its application; outline the general concept of electronic criminal proceedings; to carry out an analysis of the organizational, technical and procedural aspects of the development of electronic criminal justice in Ukraine; to determine amendments to the legislation in the conditions of martial law in Ukraine.

3. Results and discussion

Electronic criminal proceedings can be characterized as a mode of criminal procedural activity based on composite algorithms of automated criminal procedural procedures of the Unified Register of Pretrial Investigations (hereinafter – URPI) and electronic information systems integrated with it.

Today, Ukraine is in new realities related to European integration and the bringing of criminal procedural legislation to the requirements of international legal acts, which make it necessary to rethink many provisions of the criminal process. It is natural that the execution of the tasks of criminal proceedings in modern conditions cannot be ensured without effective consideration of the European and international experience of criminal proceedings (Lutsyk & Samariy, 2018, p. 139). Electronic proceedings have a positive practice of application in many countries of the world, and the study of their criminal procedural legislation is necessary to obtain a positive experience of digitalization of criminal process procedures.

Digitization of the judicial system is actively developing in the United States of America (hereinafter – USA), Great Britain, Germany, Canada, Italy and others. For example, in the USA, the judicial system provides for the possibility of free access to information about court documents, registers of applications accepted for consideration, history of decisions, etc.

In Canada, the parties themselves determine the format of the proceedings, upon the application of the interested person, the court may decide to hold the hearing online. At the same time, there have been no paper cases in any instance for a long time. All documents are submitted, accepted and reviewed in electronic form. Therefore, there are no problems with storing voluminous printed files, which only take up space and time for their registration (E-litigation: international experience and benefits of implementation, 2019).

Some e-procedure initiatives implemented by other countries are quite creative and at the same time effective. In particular, the Criminal Procedure Code of Estonia provides for: conducting court proceedings in an electronic and digital format; transfer of requests, statements, complaints directly through the electronic case system (Kalancha, 2019, p. 214215). The criminal justice system of the Republic of Moldova offers for consideration such recommendations as an ad-hoc procedure, which provides for the appointment of a forensic expert in the specialization necessary for the examination; the possibility of making public during the trial the video testimony of a minor witness so as not to involve him again (Kalancha, 2020, p. 137).

It should be pointed out the positive experience of the electronic interaction successfully implemented in the Czech Republic between the bodies of the pre-trial investigation and other subjects of the process. A clear example for imitation is the electronic system of the Czech Republic, E-Case Management System (hereinafter – eCMS), which began to function in 2006 in the police authorities. Its specificity consists in the material provision of law enforcement agencies with gadgets connected to eCMS, which allows checking persons, vehicles, registering proceedings, taking fingerprints, etc. The main advantage of such a system is the possibility

of accounting for the performed search actions and obtaining access to all electronic documents. It is this system that is taken as a basis in Ukraine (Zhuchenko, 2021, p. 43).

We believe that certain technological solutions can be used by Ukraine as well, in particular: automatic notification of the prosecutor about the start of a pre-trial investigation in the ERDR; automation of electronic interaction between the investigator and the prosecutor in the ERDR; formation of templates of electronic procedural documents in the register; full integration of paper criminal proceedings into electronic ones based on the specified system; introduction of interaction of pre-trial investigation bodies with other subjects of criminal proceedings by analogy with the data box; creation of a special electronic system that will interact with state registers and databases necessary for criminal proceedings (Stolitniy, 2017).

Positive foreign experience during the introduction and implementation of the electronic and digital form of criminal cases only confirms the expediency of further modernization of criminal procedural activities. Among such provisions, it is worth noting: interaction with electronic registers; transfer of petitions, statements, complaints directly through the electronic case system; conducting court proceedings in electronic and digital format.

At the same time, it should be emphasized the perspective of further research of the specified problem, which is caused by the need to analyze the positive foreign practice of administrative-legal regulation of the functioning of the information and telecommunication system of pre-trial investigation and determine the possibility and expediency of its borrowing for the purpose of implementation into national legislation and the practice of its application.

In Ukraine, the specifics of the further development of electronic criminal justice are defined in the Strategy for the Development of the Justice System and Constitutional Justice for 2021–2023, in clause 4.1.4. which indicated the need for «the introduction of modern electronic record keeping in the court, electronic case management, electronic communications with the court, the judge’s office and the office of the participant in the process» (STRATEGY FOR THE DEVELOPMENT OF THE JUSTICE SYSTEM AND CONSTITUTIONAL JUSTICE FOR 2021-2023). At the same time, the issue of adoption of the Unified State Concept for the Implementation of Electronic Criminal Justice still remains open and requires immediate scientific study and legislative resolution.

In accordance with the requirements of Part 6 of Art. 371 of the CPC of Ukraine, «all court decisions are presented in writing in paper and electronic forms» (CRIMINAL PROCEDURE CODE OF UKRAINE, 2012). Court decisions are issued in electronic form in accordance with the requirements of the legislation in the field of electronic documents and electronic document

circulation, as well as electronic digital signature». The functioning of electronic record keeping is ensured by the existence of the Unified Judicial Information and Telecommunication System, which determines the transfer of criminal proceedings to e-format.

The gradual transfer of criminal proceedings to electronic form is evidenced by legislative changes that have recently been made to the CPC of Ukraine. Thus, the Law of Ukraine «On Amendments to the CPC of Ukraine Regarding the Introduction of an Information and Telecommunication System of Pretrial Investigation» dated June 1, 2021 (CRIMINAL PROCEDURE CODE OF UKRAINE, 2012). In particular, the addition of Section XI «Transitional Provisions» of the CPC of Ukraine, paragraph 20-6 of the following content is important: «In case of lack of integration of the system that functions in the court in accordance with Art. 35 of this Code, with the information and telecommunications system of the pre-trial investigation, the investigator, inquirer, prosecutor submits materials to the court in paper form and in electronic form using a qualified electronic signature» (ON AMENDMENTS TO THE CRIMINAL PROCEDURE CODE OF UKRAINE REGARDING THE INTRODUCTION OF AN INFORMATION AND TELECOMMUNICATION SYSTEM OF PRE-TRIAL INVESTIGATION. LAW OF UKRAINE, 2021).

At the same time, it must be stated that the CPC of Ukraine has not yet defined at the legislative level the concept and task of conducting electronic criminal proceedings, although the code contains a number of provisions that partially regulate the implementation of electronic procedural procedures and their recording, which indicates a certain informatization of the criminal process. Yes, part 2 of Art. 99 of the CPC of Ukraine stipulates that documents, provided they contain information provided by law, may include photographic materials, sound recordings, video recordings, and other information carriers (including electronic ones).

According to Art. 103 of the CPC of Ukraine, one of the forms of recording criminal proceedings is an information carrier on which procedural actions are recorded using technical means. Article 107 of the Criminal Code of Ukraine provides for the possibility of using technical means of recording criminal proceedings. According to Art. 135 of the CPC of Ukraine, one of the methods of subpoena in criminal proceedings is to send a subpoena by e-mail, fax or telephone. Article 232 of the CPC of Ukraine provides for the possibility of interrogation, identification in videoconference mode during pre-trial investigation (CRIMINAL PROCEDURE CODE OF UKRAINE, 2012).

It should also be pointed out the positive provisions regarding the use of video recording technical means during court proceedings. Thus, during the trial and in the cases provided for by the Code of Criminal Procedure of Ukraine, during the pre-trial investigation, the full recording of the court session and procedural actions is ensured with the help of sound and

video recording technical means. The official record of the court session is only the technical record made by the court (Part 5 of Article 27 of the CPC of Ukraine) (CRIMINAL PROCEDURE CODE OF UKRAINE, 2012). Recording the course of procedural actions with the help of a video recording is currently the most effective proof of its indisputability, because this way information is transmitted in full, provides the opportunity to objectively perceive the source of information by all participants in the process, and also creates conditions for a comprehensive and complete collection of such information.

The CPC of Ukraine was supplemented by Art. 106-1, part 1 of which defines that «the information and telecommunications system of pretrial investigation is a system that ensures the creation, collection, storage, search, processing and transmission of materials and information (information) in criminal proceedings (ON AMENDMENTS TO THE CPC OF UKRAINE REGARDING THE INTRODUCTION OF AN INFORMATION AND TELECOMMUNICATION SYSTEM OF PRE-TRIAL INVESTIGATION. LAW OF UKRAINE, 2021).

Documents signed, approved in the information and telecommunications system of the pre-trial investigation using a qualified electronic signature, their copies in electronic and paper forms are recognized as original documents (Part 4 of Article 106-1 of the Criminal Procedure Code). The information and telecommunications system of the pre-trial investigation is subject to protection using a comprehensive information protection system with confirmed compliance» (Part 6 of Article 106-1 of the Criminal Procedure Code)» (ON AMENDMENTS TO THE CPC OF UKRAINE REGARDING THE INTRODUCTION OF AN INFORMATION AND TELECOMMUNICATION SYSTEM OF PRE-TRIAL INVESTIGATION. LAW OF UKRAINE, 2021).

In accordance with the requirements of the legislation, on August 17, 2021, the Supreme Council of Justice approved the Regulation on the procedure for the functioning of individual subsystems (modules) of the Unified Judicial Information and Telecommunication System (hereinafter – EJITS). Prior to the start of operation of the EJITS, the legislation provides for the creation and operation of separate subsystems (modules) of this system, i.e. the phased implementation of the entire system, which will ensure the activities of the judiciary. The adopted Regulation defines the applicable terms and concepts.

The procedure for functioning in courts and judicial bodies of individual EJITS modules is provided for. Such subsystems are «Electronic cabinet», «Electronic court», as well as the functioning of video conferencing as a separate subsystem. The procedure for taking procedural actions in electronic form with the use of the specified subsystems of EJITS has been determined. The peculiarities of the use of software in courts and justice

bodies during the transition period before the start of the operation of EUTS in its full composition of subsystems or modules were regulated (ON APPROVAL OF THE REGULATION ON THE PROCEDURE FOR THE FUNCTIONING OF INDIVIDUAL SUBSYSTEMS OF THE UNIFIED JUDICIAL INFORMATION AND TELECOMMUNICATION SYSTEM. DECISION OF THE HIGH COUNCIL OF JUSTICE, 2021).

In view of the expediency of implementing the concept of electronic justice, it is important to recognize the provision that the «Electronic Court» subsystem allows participants in the legal process to submit documents to the court in electronic form, as well as to send procedural documents to such participants in electronic form, in parallel with documents in paper form in accordance with procedural legislation.

Thus, the Verkhovna Rada of Ukraine created the legal basis for the introduction of the concept of electronic criminal proceedings into real legal practice, and it is stipulated that the procedure for the functioning of the information and telecommunications system of pre-trial investigation should be determined by a provision jointly approved by the Office of the Prosecutor General, the body that includes the pre-trial investigation body investigation, as well as the body approving the provisions on the system that functions in the court.

At the same time, in the conditions of war on the territory of Ukraine, certain organizational and technical issues remain unresolved, in particular, the holding of court hearings directly in the courtroom. After all, a significant number of court premises have been destroyed, heavily damaged, looted, sirens sound almost every day, which makes it necessary to remove the entire court staff to a safe place, and this creates difficulties in organizational aspects, interrupts and delays the consideration of the case. Therefore, during the martial law, the working conditions of justice bodies have changed significantly and require adaptation to new conditions and ensuring the effective functioning of the judicial system, maximum access to justice and bringing the work of the court to stable functioning.

The introduction of remote work of courts under martial law requires the most effective use of electronic document circulation and access to court cases in electronic form. Provided by the procedural legislation, EJITS should ensure the exchange of documents in electronic form between courts, between the court and the participants in the legal process, between the participants in the legal process, as well as the recording of the legal process and the participation of the participants in the legal process in the court session in the mode of video conference.

Therefore, there is no objection to the fact that the procedural legislation should provide for the possibility of introducing by the courts during a period of war or a state of emergency a special regime of court work, which

would regulate the features of the remote form of work, which would provide for the participation in the court session of judges and/or the secretary of the court session remotely in video conference mode, remote participation of judges in court proceedings in the order of written proceedings, features of signing court decisions and procedural documents, including qualified electronic signatures without drawing up or with a delay in drawing up their paper originals.

In general, we can state that the issue of introducing remote forms of court work, transition to an electronic form of judicial proceedings, access to the judge's electronic office is extremely important, and the war only made these issues more urgent. Without an urgent widespread transition by the courts to a remote and electronic form of judicial proceedings, it will be extremely difficult or practically impossible to really ensure the right to a fair trial with security guarantees in the conditions of martial law. The specified changes, on the one hand, are necessary to preserve the lives and health of judges, employees of court apparatuses, participants in court cases, will be the basis for making timely decisions on the evacuation of court employees, and on the other hand, they will contribute to the fulfillment of the requirements of the Constitution of Ukraine regarding the administration of justice in conditions of martial law state (Svoyak, 2020).

Considering all of the above, it can be stated that, despite a number of risks and miscalculations that need to be regulated by law and worked out in practice, the very concept of judicial reform in the direction of its digitalization is progressive and relevant.

Conclusions

The introduction and further development of electronic criminal proceedings has the following positive features: optimization of the pre-trial investigation procedure; improvement of supervision and control over the activities of authorized entities; saving budget funds; reducing the number of employees involved in the investigation process; elimination of bureaucratic procedures and corruption risks; increasing trust in law enforcement agencies; automation of processes and effective methods of electronic communication. The disadvantages include: variability of technological resources and lack of proper technical support of law enforcement agencies; risk of falsification of materials; unstable cyber security.

Positive foreign experience during the introduction and implementation of the electronic and digital form of criminal proceedings confirms the expediency of further modernization of the activities of the pre-trial investigation bodies and the court. These provisions include the optimization

of: interaction with electronic registers; transfer of requests, statements, complaints directly through the electronic case system; conducting court proceedings in electronic and digital format.

At the legislative level, Ukraine should provide for the possibility of introducing, during the period of war or a state of emergency, a special mode of operation of the court, which would regulate the features of the remote form of judicial proceedings in video conference mode, the participation of judges remotely in court proceedings in the order of written proceedings, the procedure for signing court decisions and procedural documents, including a qualified electronic signature without drawing up or with a delay in drawing up their original in paper form.

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