

E-JUSTICE: EUROPEAN STANDARDS AND THE STATE OF IMPLEMENTATION IN UKRAINE

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ABSTRACT

The authors study the issues of European standards for the implementation, functioning and improvement of the e-justice system, as well as the current state of legislative support and effectiveness of e-court in Ukraine in the light of European integration processes. The main stages of the implementation and improvement of the e-justice system in the European Union are highlighted by considering the main provisions of the E-Justice Strategies 2008, 2009-2013, 2014-2018 and 2019-2023. Special attention is paid to the special features of the functioning of the existing European e-Justice Portal. The historical aspects of the implementation of the concept of “e-court” in Ukraine are outlined. The main focus is on the main goals of improving the judicial system in accordance with the Strategy for the Development of the Judiciary of Ukraine 2015-2019 in general and on e-Justice in particular. The issues of implementation of the Unified Court Information and Telecommunication System are considered with the purpose of promptness, predictability and convenience of interaction between the court and participants of the trial.

Keywords: E-justice, E-court, European e-Justice Portal, Unified Judicial Information, Telecommunication System.

INTRODUCTION

The strategic course of the Ukrainian state to join the European Union requires the further development of the judicial system, which should be characterized by independence, fairness, transparency and efficiency of functioning. On the way to the above goal these tasks are important:

1. Strengthen the guarantees of the independence of judges and courts;
2. Consolidate the efforts of the court staff and the judiciary;
3. Bring national Ukrainian legislation in line with European standards etc.

The use of information and communication technologies (ICT) in the Ukrainian judiciary is reflected in the Strategy on the development of the judicial system in Ukraine for 2015–2019. The introduction of ICT in the justice system is conditioned by relevant factors including informatization of society and development of new forms of interaction involving the use of the

Internet, electronic communications, mobile and satellite communication systems, etc. in the socio-economic sphere.

Due to the transition from the industrial to the information society in the member-states of the European Union the integration of national automated information systems is gradually taking place in accordance with the projects of the electronic state. As of today, Ukraine has already implemented an e-justice system. At the same time, research on the issues related to the legislative support, functioning and effectiveness of the e-court in the light of European integration processes remains relevant.

LITERATURE REVIEW

It is important to note that corruption remains one of the current global problems, which requires the state to develop effective measures to counteract this negative phenomenon (Reznik et al., 2019). In spite of important changes in the anti-corruption legislation of Ukraine, public trust in the judicial proceedings and the judiciary remains a serious state and public problem. Given this, the development of e-justice in Ukraine in the context of interaction between the judiciary and civil society is one of the priority directions on the way to improving the judicial system in the country (Drobyazko et al., 2019).

Access to justice is an urgent issue in many justice systems around the world (Lupo & Bailey, 2014).

Due to the spread of information systems, ICT applications have expanded in almost every direction. Electronic government in general and e-justice in particular are no exception, and these areas have undergone significant changes over the last decades. Today democracy requires a system of prompt and transparent justice. Thus, the introduction of information systems in the courts can reduce both the time and the number of pending processes, increasing the efficiency of services provided to citizens and society in general (Rosa et al., 2016).

METHODOLOGY

The issues of European standards for the implementation and improvement of the e-justice system, as well as the current state of its functioning in Ukraine, were studied using historical, systemic-structural and comparative legal methods. The historical method allowed to highlight the main stages of the implementation and improvement of the e-justice system in the European Union by examining the main provisions of the Strategies for e-Justice 2008, 2009-2013, 2014-2018 and 2019-2023, as well as the concept of the electronic court in Ukraine. The systemic-structural method was used to analyze scientific publications devoted to the study of issues of implementation of the e-justice system, its essence and special features of functioning. The comparative legal method was used to study the implementation, functioning and improvement of e-justice in accordance with the legal framework of the European Union and the regulation of these issues in Ukraine.

FINDINGS AND DISCUSSIONS

The study of the issue of special features of e-justice requires a reference to the European experience in this sphere. It should be noted that over the last decade's most countries of the

European Union have taken the course of introducing changes to the communication and documents sharing system among litigants and the use of e-court capabilities.

Recommendation No. R(95)11 of the Committee of Ministers of the Council of Europe concerning the selection, processing, presentation and archiving of court decisions in legal information retrieval systems dated September 11, 1995 has become an important legal instrument of the European Union, which has identified priorities for the development and operation of automated judicial systems. The said Recommendation contains the main tasks related to the development and operation of automated justice systems, which are as follows:

1. Facilitate the work of the legal profession by providing prompt, complete and up-to-date information;
2. Provide information to anyone who is directly or indirectly interested in the issue of judicial practice;
3. Promptly publish new court decisions, especially in the emerging legal fields;
4. Publish larger number of court decisions relating to both legal and factual issues (for example, amount of compensation, deduction, term of sentence, etc.);
5. Contribute to consistency of judicial practice;
6. Enable legislators to analyze the application of laws;
7. Promote the study of jurisprudence;
8. Provide information for statistical purposes in certain cases; Recommendation No. R (95)11 of the Committee of Ministers (Legislations, 1995).

The course of implementing and improving the e-justice system in the European Union has been completed in several stages. The European e-Justice Strategy was first presented by the European Commission on May 30, 2008 (hereinafter-the Strategy 2008). The main purpose of its implementation was to improve judicial cooperation at both national and European levels. The Strategy 2008 identified that e-justice concerns the use of ICT court systems in administrative procedures, which enhances the functional and financial efficiency of these systems, cooperation between legal bodies, and access to justice for citizens. With the help of the Strategy 2008, the European Commission aimed to implement priority projects, decentralize the ICT architecture and introduce existing legal instruments (European Union Law, 2008).

The next step in improving e-justice was the adoption of the E-Justice Strategy for 2009-2013 (hereinafter-the Strategy 2009-2013). The new Strategy 2009-2013 emphasized the growing importance of ICT as a way to increase the effectiveness of legal processes and government agencies among EU countries. The Strategy 2009-2013 was based on the already completed work including the e-Justice portal. It is important to emphasize that the new plan concerning e-Justice had its advantages over the Strategy 2008. These included:

1. Increased access to justice and judicial information for all;
2. Better cooperation between judicial bodies in EU countries;
3. Respect for the independence and diversity of the judicial systems of countries and fundamental rights (European Union Law, 2009).

On June 14, 2014, a new European e-Justice Action Plan for 2014-2018 was adopted replacing the Strategy 2009-2013 (hereinafter-the Strategy 2014-2018). It was indicated in the Strategy 2014-2018 that the development of European e-Justice should include actions at both European and national levels in the field of e-justice. It was stressed that new projects developed within the framework of European e-Justice should have the potential to involve all EU member-states and that all member-states should be encouraged to participate in all projects on a public basis. It was also indicated that the European e-Justice Portal should provide a single point of

access through interconnection with information in national registers, which is relevant to the field of justice, managed by national public or professional bodies facilitating the administration and access to justice, provided that the necessary technical and legal prerequisites for such interconnections exist in the member-states (European Union Law, 2014).

The final step on the way to improving the e-justice system in the European Union was the approval of the e-Justice Strategy for 2019-2023 on March 13, 2019 (hereinafter-the Strategy 2019-2023). In particular, it is indicated in the Strategy 2019-2023 that European e-Justice aims to improve access to justice in a pan-European context, as well as develops and integrates information and communication technologies into access to legal information and the operation of the judicial systems. Court proceedings have become an important component of the effective functioning of the judiciary in the member-states. At the same time it is emphasized that the Council, the Commission and the European Parliament have demonstrated their commitment to the development of e-justice (European Union Law, 2019).

In order to be aware of the main aspects of improving the e-justice system of the European Union, it is important to reveal the objectives of the Strategy 2019-2023. These are the following:

1. Develop new functions for the e-Justice portal, such as a central request tool;
2. Expand the scope of the dynamic functions of the portal;
3. Install software facilitating and simplifying access to a small claims court;
4. Enrich the static content of the portal.

In turn, achieving the objectives of the Strategy 2019-2023 requires some actions, including:

1. Analysis and implementation of new tools on the e-Justice Portal;
2. Defining the volume of new useful content and information collection;
3. Expanding the scope of existing instruments;
4. Development of a common search interface allowing users to address interconnected registers and databases (central request tool) (European Union Law, 2019).

The existing European e-Justice Portal is currently a single point of access to interconnected national registers related to the field of justice. These registers are maintained by national state bodies or professional bodies. Their purpose is to promote the implementation and access to justice. The interconnected registers are provided and supported by responsible local organizations, either state bodies or practitioners associations (European Justice, 2019).

The state enterprise “*Information Judicial Systems*” was a developer of the concept of electronic court in Ukraine in 2012. The need to introduce e-justice was explained by the implementation of the provisions of the Laws of Ukraine “*On Judiciary and Status of Judges*” (2010, old version), “*On Access to Court Decisions*” (2005), “*On the National Program for Informatization*” (1998), and the implementation of the Concept of the sectorial program of informatization of the courts of general jurisdiction, other bodies and institutions of the judicial system, the Strategic plan for the development of the judicial system in Ukraine for 2015–2019.

By decision of the XII Extraordinary Congress of Judges of Ukraine of September 29, 2014, the Strategy on the development of the judicial system in Ukraine for 2015–2019 (hereinafter-the Strategy 2015-2019) was approved. Taking into account the strategic issues of the Strategy 2015-2019 regarding:

1. Strengthening the independence and autonomy of judges and the judiciary;
2. Increasing the funding and improving resource use efficiency;
3. Restoring public confidence, the improvement of the e-justice system in Ukraine was one of the priority directions.

The strategic objectives for the e-justice system were identified as follows:

1. Access to justice;
2. The use of innovative technologies and the improvement of court proceedings.

At the same time, as a result of the implementation of the objectives of the Strategy 2015-2019, the main results of improving e-justice are:

1. Full transition to an electronic case management system, electronic communications, arbitrary distribution of cases between judges, audio and video recording of meetings;
2. Transition to cloud-based software solutions, analysis of big data sets and search engine optimization;
3. Creation of an internal network (intranet server for internal and external communications with judicial systems);
4. Creation of user-friendly courts with search tools allowing to find links between certain norms of law and the relevant practice of the Constitutional Court of Ukraine, the Supreme Court of Ukraine and other courts;
5. Interoperability between the court information system and other national institutions (state and non-state), automated access of judges to all state registers;
6. Application of cloud technologies (remote data storage);
7. Interaction between the court information system and EU institutions, as well as other international institutions, in order to enhance international judicial cooperation, etc. (The legislation of Ukraine, 2014).

The Concept of the Unified Judicial Information and Telecommunication System (ESITS), which defines the structure, organization and principles for the building of ESITS using modern software and hardware, was approved by the Order of the Head of the State Judicial Administration of Ukraine dated April 13, 2018. The building of ESITS envisages the automation of business processes, including general and procedural work flow, litigation, preparation of operational and analytical reports, providing information assistance to judges, as well as processes meeting financial, property, organizational, staffing and information and telecommunication needs of judiciary bodies (The Legislation of Ukraine, 2018).

At the same time, it is important to emphasize that despite all efforts to implement ESITS since the beginning of 2019, the system is not working today. The so-called ESITS subsystems continue to operate separately. They are: the Unified contact center of the Ukrainian judiciary; the Unified subsystem of finance and economic process management; the official e-mail address (user account); the official website of the judiciary of Ukraine; the Unified state register of court decisions; the Electronic court; the Automated distribution; the Forensic statistics.

RECOMMENDATIONS

In spite of the steps already taken to improve the e-justice system in Ukraine, there remains the issues of developing and commissioning relevant software; necessary technical equipment of courts; inaccessibility of certain categories of citizens due to age or property characteristics, etc. The introduction of the Unified Judicial Information and Telecommunication System in Ukraine is explained by the need for promptness, predictability and convenience of

interaction between the court and the participants of the trial, which will allow to improve the justice system in Ukraine by increasing the efficiency of the work carried out in this direction.

CONCLUSION

The introduction of such a new advanced product as e-justice was an important requirement for informatization of the judiciary of many European countries. Considering the European experience in the implementation, functioning and improvement of e-justice, it can be stated that today the e-court system is one of the tools for the development of the information society, because it provides a mechanism for civil society to exercise its rights and protect its legitimate interests. In spite of the already existing experience of the Ukrainian state in the functioning of the e-justice system, the need to improve the legal framework for the regulation of this issue in order to bring it in line with European standards remains urgent.

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