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SOME ASPECTS OF LEGAL REGULATION OF THE PROJECT “ELECTRONIC COURT” DURING ITS IMPLEMENTATION IN THE LEGAL PROCEDURE OF UKRAINE

The article deals with the process of legal regulation of introduction of advanced achievements in the field of modern information technologies in the Ukrainian judicial system. Some legal acts regulating process of using “E-court” proceedings in Ukraine are chronologically analyzed. The concept of the “E-court” is given in terms of its content. Taking into account the novelty of the issue, having studied the problems of legal regulation of the pilot project of the “E-court”, the author concludes the need for changes and amendments to the procedural legislation of Ukraine.

Key words: Electronic court, information technologies, reforming, Ukraine, legal regulation, project, legal procedure, Information court systems, Fiscal service, Executive service, Customs authorities, implementation, USAID, courts of Ukraine, national Justice.

The information technologies more and more actively at this time are integrated in Ukrainian business environment, becoming single unit with it, not leaving without attention modern information technologies and legal community of Ukraine. During recent years the practitioners of legal procedure sphere and scientists more often talk about the necessity of implementation of modern information technologies into the activity of the courts, by means of increase of the level of computerization and efficiency of the computers’ use in the activity of the courts; creation of the information systems and resources, which ensure the increase of the efficiency of records management in courts, as well as expansion of the list and improvement of the quality of interactive services, which are rendered to the sole proprietors and population; increasing the level of computer literacy and improvement of practical skills of judges and court employees as to the use in the work of modern computers engineering and informational technologies; ensuring information safety, safe documents circulation in the courts system.

On May 20, 2015 by the Decree of the President of Ukraine No. 276/2015 “The strategy of reforming judicial system, legal procedure and related legal institutions for 2015 – 2020”¹ was approved.

The purpose of the given strategy is the determination of the priorities of reforming the judicial system, legal procedure and related legal institutions for practical realization of the supremacy of law principle and ensuring the functioning of judicial power. At that, main tasks of the strategy are fixed, namely: determination of the circle of problems and determination of their reasons, which should be eliminated by means of reforming the judicial system, legal procedure and related legal institutions; determination of the directions, measures and stages of reforming the judicial system, legal procedure and related legal institutions; ensuring due level of coordination and strategic planning of the reforming process; determination of the guidelines for the elaboration of corresponding plan of actions for the realization of the strategy, as well as expected results and indicators of realization of the judicial system’s reform, legal procedure and related legal institutions; increase of the degree of confidence of the society to the judicial authorities.

Taking into account the topicality of approved strategy and its vital necessity for the whole civil society of Ukraine, it is worth to mention the necessity of implementation of modern information technologies in the Ukrainian legal procedure taking into account already available best practices. Efficient activity of the courts of Ukraine in protection of rights, interests and liberties of citizens becomes the present requirement, taking into account existing possibilities and achievements in the field of application of information technologies, which permit in on-line mode at any convenient time for a participant of

¹ Указ о Стратегии реформирования судостроительства, судопроизводства и смежных правовых институтов на 2015 – 2020 гг. 2015 (Президент Украины). *Официальный сайт Президента Украины*.
<<http://www.president.gov.ua/ru/documents/2762015-19002>> (2015, September, 04).

judicial process to observe certain case.

In this direction the national Justice jointly with the scientists has certain achievements. Elaborations, proposals by Zheltukhin Ye., Posheliuzhna Zh., Protsenko M., Sakharova Yu.¹ are widely known in the circle of the specialists of legal procedure and discussed in Ukraine. Today Ukrainian legal procedure from theoretical vest practices, pilot projects and electronic document circulation passes to the implementation of the innovations in the field of information technologies.

The application of technical means of recording court sessions beginning from 2005², the use of the Automated system of court paper work and Automated system of court documents circulations in the work of courts, beginning from 1998, the Single register of court decisions, new method of participation in a court session in videoconference mode, introduced by the Law of Ukraine dated 04.07.2012 No. 5041-VI "On amendments to some legislative acts of Ukraine regarding the participation in a court session in videoconference mode"³ became practically the start for the introduction of modern information technologies in Ukrainian legislation. The next important and responsible stage has to be wide implementation into practice of the Ukrainian legal procedure of the best practices within the project "Electronic court".

The process of establishment and fulfilment of the "Electronic court" project in Ukraine is closely associated with the Law of Ukraine "On judicial system and status of judges"⁴, the Provision on the State Court Administration of Ukraine, approved by the decision of the Council of Judges of Ukraine dated October 22, 2010 No. 12⁵, by the Decision of the Council of Judges of Ukraine dated February 29, 2008 No. 38 as to the creation of the Single court information system⁶, being guided by the norms of which the State Court Administration of Ukraine introduced pilot projects as to the exchange of electronic documents between the court and participants of the judicial process.

The "The Electronic court" project developed by the State Court Administration of Ukraine jointly with the State Enterprise "Information Court Systems" gradually is being introduced in practice of the courts since the end of 2011⁷.

The most popular and already widely studied stage of this project is SMS. Its realization was facilitated by the absence in the procedural legislation of Ukraine of the obstacles, namely: in the Code of

¹ Желтухин, Е. Электронный суд становится доступнее. *Судебно-юридическая газета*.

<<http://sud.ua/newspaper/2013/07/05/51423-elektronnij-syd-stanovitsya-dostupnej>> (2015, September, 01);

Пошелюжная, Ж. (2014). Суд на «мыло». *Юридическая практика*, 4; Проценко, М. «Электронный суд» в Украине – скоро ли? <http://economics.lb.ua/state/2012/08/22/166804_elektronniy_sud_ukraine-skoro.html> (2015, September, 01); Сахарова, Ю. Все дела станут электронными, правосудие – круглосуточным, а участники процесса наконец забудут об очередях. <http://ZIB.COM.UA/RU/39442-YSE_SUDEBNIJE_DELA_TANUT_ELEKTRONNIMI_DISKI_NENUZHNIAMI_PRA> (2015, September, 01).

² *Наказ Про затвердження Інструкції про порядок фіксування судового процесу технічними засобами 2004* (Державна судова адміністрація України); *Наказ Про внесення змін до Інструкції про порядок фіксування судового процесу технічними засобами 2005* (Державна судова адміністрація України); *Наказ Про затвердження Інструкції про порядок фіксування судового процесу технічними засобами 2005* (Державна судова адміністрація України); *Наказ Про затвердження Інструкції про порядок роботи з технічними засобами фіксування судового процесу 2012* (Державна судова адміністрація України). *Офіційний сайт Державної судової адміністрації України*. <<http://dsa.court.gov.ua>> (2015, September, 04).

³ *Закон про внесення змін до деяких законодавчих актів України щодо участі у судовому засіданні в режимі відеоконференції 2013* (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon5.rada.gov.ua/laws/show/5041-17>> (2015, September, 04).

⁴ *Закон про судоустрій і статус суддів*, ст.ст. 145, 146, 147 (2010) (Верховна Рада України). *Відомості Верховної Ради України*, 41-42, 43, 44-45, 529; *Рішення щодо створення Єдиної судової інформаційної системи 2008* (Рада суддів України). *Офіційний веб-портал Судова влада України*. <<http://court.gov.ua/969076/45742658258>> (2015, September, 01).

⁵ *Положення про Державну судову адміністрацію України 2010* (Рада суддів України). *«Ліга:Закон» — всеукраїнський правовий портал*. <http://search.ligazakon.ua/l_doc2.nsf/link1/MUS14394.html> (2015, September, 02).

⁶ *Рішення щодо створення Єдиної судової інформаційної системи 2008* (Рада суддів України). *Офіційний веб-портал Судова влада України*. <<http://court.gov.ua/969076/45742658258>> (2015, September, 02).

⁷ Желтухин, Е. Электронный суд становится доступнее. *Судебно-юридическая газета*.

<<http://sud.ua/newspaper/2013/07/05/51423-elektronnij-syd-stanovitsya-dostupnej>> (2015, September, 02).

Criminal Procedure and the Code of Civil Procedure of Ukraine¹. Since October 1, 2013 with the purpose of timely informing of the participants of judicial process on the time and place of examination of a case in local courts and general courts of appeal the order of sending by the courts to the participants of the process of the texts of judicial summons in form of SMS has been introduced. According to the information of the State Court Administration of Ukraine, now technical possibility of sending SMS is realized in all local courts and general courts of appeal. But it is used not by all, taking into account the absence of the declaration from the participants of the processes, taking into consideration for SMS to be sent to the participants of the process from the court, it is necessary to write in advance a declaration on the intention of receiving judicial summons in electronic form by means of SMS. For the analysis of the effectiveness of this stage of project the State Enterprise "Information Court Systems"² was engaged.

In pursuance of the order of the State Court Administration of Ukraine dated September 7, 2012 No. 105 "On realization of pilot project as to the exchange of electronic documents between the court and participants of judicial process"³ the work of the project "Electronic court" was commenced in Ukraine in such courts as Sviatoshynskiy district court of the city of Kyiv and Court of Appeal of Dnipropetrovsk region since October 15, 2012; the Economic Court of Vinnytsia region, Sevastopol Economic Court of Appeal, Kharkiv District Administrative Court, Kharkiv Administrative Court of Appeal since November 26, 2012. Besides, by this order Temporary regulations of exchange of electronic documents between the court and participants of judicial process were approved and it was noted that electronic documents shall be sent to the court simultaneously with the documents in paper form (hard copy), the list of which and order of sending is determined by corresponding procedural legislation of Ukraine.

Since January 10, 2013 on the basis of the order of the State Court Administration of Ukraine dated January 4, 2013 No. 3 "On amendments to the order of the State Court Administration of Ukraine dated 07.09.2012 No. 105"⁴ the list of the courts that participate in the project "Electronic court" was expanded. For the participation in the project the following courts joined: Holosiivskiy district court of the city of Kyiv, Darnytskyi district court of the city of Kyiv, Desnianskyi district court of the city of Kyiv, Dniprovskiy district court of the city of Kyiv, Obolonskyi district court of the city of Kyiv, Pecherskyi district court of the city of Kyiv, Podilskyi district court of the city of Kyiv, Solomianskyi district court of the city of Kyiv, Shevchenkivskiy district court of the city of Kyiv.

Since June 17, 2013 in accordance with the order of the State Court Administration of Ukraine dated May 31, 2013 No. 72 "On realization of the project as to the exchange of electronic documents between the court and participants of judicial process"⁵ as amended by the order of the State Court Administration of Ukraine dated June 14, 2013 No. 81, in all local courts and courts of appeal of general jurisdiction the order was introduced as to the exchange of electronic documents between the court and participants of judicial process in the part of sending by the court to such participants of procedural documents in electronic form, simultaneously with the hard copies of the documents. Publication on courts websites as well as information stands in the premises of courts of information notifications on the beginning of the action of project concerning the sending of electronic documents by the court to the participants of judicial process took place.

By June 17, 2013 the mentioned order was introduced in 15 courts of general jurisdiction. Since September 2015 two courts in Odesa region – Kyiv district court of the city of Odesa and Ovidiopol district court with material support of the US Agency for International Development (USAID) began introducing the system of electronic exchange of procedural documents in judicial procedure. The activity of the courts

¹ Кримінально-процесуальний кодекс України, ст. 135 ч. 1 (2013) (Верховна Рада України). *Відомості Верховної Ради України*, 9-10, 11-12, 13, 88; Цивільно-процесуальний кодекс України 2004 (Верховна Рада України). *Відомості Верховної Ради України*, 40-41, 42, 492.

² Пошелюжная, Ж. (2014). Суд на «мыло». *Юридическая практика*, 4, 23-29.

³ Наказ про реалізацію пілотного проекту щодо обміну електронними документами між судом та учасниками судового процесу 2012 (Державна судова адміністрація України). *Офіційний сайт Державної судової адміністрації України*. <<http://dsa.court.gov.ua/dsa/14/N1052012>> (2015, September, 02).

⁴ Наказ про внесення змін до наказу ДСА України від 07.09.2012 № 105 (2013) (Державна судова адміністрація України). *Офіційний сайт Державної судової адміністрації України*. <<http://dsa.court.gov.ua/dsa/14/N32013>> (2015, September, 02).

⁵ Наказ про реалізацію проекту щодо обміну електронними документами між судом та учасниками судового процесу 2013 (Державна судова адміністрація України). *Офіційний сайт Державної судової адміністрації України*. <<http://dsa.court.gov.ua/dsa/14/N722013>> (2015, September, 02).

within the pilot project “Electronic court” is regulated by the norms of Temporary regulations of exchange of electronic documents between the court and participants of judicial process¹.

By their structure the Regulations determine the order of registration in the System “Electronic court”, work of the User in the System, submission by the User of electronic documents to the court, receiving electronic documents by the court; sending electronic documents by the court to the User.

The Regulations fix the notion of such terms as: e-mail; system of exchange of electronic documents between the court and participants of judicial process; participants of judicial process; System database; personal cabinet of the User; owner and administrator of the System.

The Regulations indicate that the submission of documents by the participants of judicial process to the court shall be carried out in electronic form, as well as sent to such participants of procedural documents in electronic form, simultaneously with the hard copies of the documents in accordance with the procedural legislation.

According to the Regulations the documents can be submitted to the court by the User and be sent to him by the court in electronic form only upon registration in the System, located on official website of the judicial authority of Ukraine. During the registration in the System the User shall obligatorily fill in special registration form. In the registration form the User shall obligatorily submit the specimen of electronic digital signature, which will be used during the correspondence with the courts in the System using e-mail. The System verifies the correspondence of the specimen of electronic digital signature submitted by the User, by means of sending automatic request to corresponding centre of certification of electronic digital signatures. The results of registration are added to the System database on the website of judicial authority and can be used by the Users and courts for sending procedural and other documents to each other.

The texts of procedural documents addressed to the court should be created by the Users by means of the template form placed in the System or by means of other text editor with subsequent transfer of created document in the template form and shall be signed by electronic digital signature.

Documents that are submitted as the proofs or other written materials, submitted by the User on his own or at the request of the court, should be converted in electronic form by means of scanning devices, taking into account the requirements thereto, namely that the documents should be scanned in black-and-white colour in Adobe PDF format (quality – 200 dots per inch (dpi) in order to preserve all authentic signs of validity, namely, graphical signature of the person, seal, angular stamp of the letterhead, other signs). The file size may not exceed 10 Mb. At the request of the court, documents and materials submitted in electronic form should be submitted by the persons, which participate in the case, in original.

Obligatory requirement fixed in the Regulations is that all procedural documents, which are sent to the court by e-mail, should be certified by electronic digital signature, in accordance with the Law of Ukraine "On electronic digital signature"².

Simultaneously with submitted electronic documents the User shall fill in electronic form of registration card of incoming correspondence, which will contain the information on the document requisites and will be registered in automated document circulation system of the court.

An employee of the court paperwork management service, responsible for receiving the documents in electronic form, reviews the documents that arrive to the court in electronic form, who has to make sure of the fact that the documents, which arrived to the documents submission system, are available for reading, addressed to the court, drawn up according to the Regulations, and makes the actions for drawing up and sending corresponding notification to the User. The rights of access to electronic documents, which arrived to the address of the court, shall be given to the judges, who conduct corresponding legal cases.

The court after drawing up and signing procedural document simultaneously shall send electronic copies of procedural document, certified by electronic digital signature of a judge, by e-mail to e-mail box of the participant of judicial process, if such a participant is registered in the System as a User. At that the receipt of electronic confirmation of the delivery of e-mail message to User's e-mail box is textual confirmation of the fact of due notification of the User by the court.

Thus, analyzing the content of Temporary regulations of exchange of electronic documents between the court and participants of judicial process, its generality and necessity of improvement with insertion of

¹ *Тимчасовий регламент обміну електронними документами між судом та учасниками судового процесу 2015* (Державна судова адміністрація України). *Офіційний сайт Державної судової адміністрації України*. <<http://dsa.court.gov.ua/dsa/14/N1052012>> (2015, September, 02).

² *Закон про електронний цифровий підпис 2003* (Верховна Рада України). *Відомості Верховної Ради України*, 36, 276.

additions should be noted. This explains the fact that taking into account already existing Automated system of court paper work and Automated system of court document circulation¹ which are used by the courts since 2011 to promising elaborations for the future State Enterprise “Information Court Systems” together with State Court Administration of Ukraine notes:

- sending statistical reports through Automated system of court document circulation upon signing with electronic digital signature;
- forming by the means of the State Court Administration of Ukraine and by the means of Automated system of court document circulation of bulletins and other consolidated reports;
- indexation of documents/cases and quick search by context;
- possibility of obtaining documents from the parties to the process in electronic form;
- payment for printout of text pages of materials received;
- codes concerning the necessity of receiving by the courts of electronic cases, which are signed with electronic digital signature;
- scanning all materials of the case during the registration;
- insertion of all procedural documents to electronic case;
- access of the parties of the case to the case through website;
- use of one program for all types of courts;
- centralized data storage.

By means of insertion of certain changes and improvement of the Provisions on automated system of court document circulation in the wording of 2010 the State Court Administration of Ukraine together with State Enterprise “Information Court Systems” certain mechanisms were partially implemented as to the use of information technologies, which to some extent are still in the process of improvement and are fixed in the Provisions on automated system of court document circulation, approved by the decision of the Council of Judges of Ukraine dated April 2, 2015². Especially, a series of important issues remain without necessary legal regulation, for example, those connected with the responsibility of the users of this system in the aspect of their consciousness; interconnection of the System with databases of state authorities and institutions, such like Fiscal Service, Registration authorities, Executive service, Customs authorities, etc...

The tendencies of the development of modern Ukrainian society and swift changes in Ukrainian procedural legislation testify that making the justice more accessible for citizens, accelerate the process of submission of documents and their receiving from the court, make cheaper judicial process both for the parties and for the state, is possible by means of introduction of modern information technologies, namely: introduction of the elements of the project “Electronic court”, which should be acknowledged as its purpose. A party in the case should not only be registered in judicial website and together with the suit to submit an application to the court on the wish to receive procedural documents in electronic form, as it is represented now on the sites of the State Court Administration of Ukraine and courts, but also to have the possibility of access, generally to all documents, which are in the court proceeding within specific case. As it seems to me, the exception are those documents, which contain the limitations of access thereto regulated by the current Ukrainian legislation, for example, contain the security classification “Classified information” or “Top secret”; materials of the cases, which are examined at closed judicial sessions.

Analyzing the possibilities of implementation of modern information technologies in Ukrainian legal procedure taking into account the best practice of the State Court Administration of Ukraine together with State Enterprise “Information Court Systems”, it is necessary also to determine the content of the notion “electronic court”, as the totality of elements of electronic information technologies used in judicial proceeding in addition to the document circulation system on hard copies, which permit to:

- accelerate the examination of the cases;
- make available to all participants of the judicial procedure legal procedures, documents and information;
- participate in the fulfilment of the process of documents movement both inside the court and from one court to another within the court proceeding;

¹ Рішення про затвердження Положення про автоматизовану систему документообігу суду 2010 (Рада суддів України). Офіційний веб-портал Судова влада України. <http://search.ligazakon.ua/l_doc2.nsf/link1/MUS14346.html>(2015, September,02).

² Рішення про затвердження Положення про автоматизовану систему документообігу суду 2015 (Рада суддів України). Офіційний веб-портал Судова влада України. <<http://rsu.court.gov.ua/rsu/rishennya/rishennyaupdate>>(2015, September, 02).

- promptly notify and inform the participants of judicial processes on all changes in the production of a specific case;
- reduce time consumption for the transfer of information both by the judicial machinery, participants of judicial processes, and directly by the judge;
- on timely basis insert the information to electronic registers of court decisions;
- save the funds for the documents printout, their sending by mail service;
- limit abuses of various kinds on the part of courts officials;
- maximally use databases of state authorities and institutions.

The fulfilment of the mentioned tasks will help to carry out the control of the courts work, on the whole, and the activity of the judges, assistants and secretaries of judges, employees of courts offices, in particular.

It should be mentioned that the realization of the project "Electronic court" is the innovation, the results of which can really prove and contribute to its legislative regulation, in order to avoid inappropriate expenditures of time and funds, both during the examination of legal cases and during their preparation for examination. Therefore "Electronic court" should be considered not only within the limits of the relationship that exists between the court and participants of legal process, but more widely – this requires legislative regulation of the process of use of modern information technologies in the court work. The Provisions of the Laws of Ukraine "On Electronic digital signature", "On electronic documents and electronic documents circulation", Instructions for paper work in courts, Provisions on automated system of court document circulation and a series of other contain the regulation only of a part of legal aspects of the activity of "Electronic court". Simultaneously with the realization of the project "Electronic court" it is necessary to carry out the work for the elaboration of the project of the Law of Ukraine "On Electronic court".

Given the great number of positive aspects of the project "Electronic court" it is necessary to understand that it is impossible to substitute judicial process for "electronic" one, since only direct examination and study of original documents, evidences in the case, with equal participation of the parties gives the court the possibility to determine the legality or illegality of the claims of parties, the legality of the actions or inactivity of the defendant. At that only oral judicial process can permit the court to listen and estimate impartially and objectively the evidences and arguments of the parties. Therefore "electronic court", by now, taking into account the demand of successful functioning in such countries like Italy, Australia, Germany, Azerbaijan and Russia, at least, can still be only additional, convenient for all participants of the judicial process means of communication and getting information.

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