

Development of Digital Relations as a Leading Factor Providing Access to Justice

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Abstract Our paper considers the analysis of international legal and constitutional legal interpretation of the concepts of access to justice and justice availability, as well as definition of the importance of digital relations development to ensure access to justice. The objective of the paper is to determine the content of the concept of access to justice on the basis of generalization of international legal sources and decisions of the Constitutional Court of the Russian Federation, and to identify how development of digital relations affects access to justice, justice availability. The analysis of Russian and foreign legal and doctrinal sources showed that the concepts of access to justice, justice availability, ensuring access to justice are interpreted very ambiguously; the problems of access to justice are identified; it is proved that development of digital relations in the society inevitably affects digitalization of judicial procedures. It is demonstrated that the task of ensuring access to justice and justice availability is vested in the state in the form of constitutional and legal responsibilities; under development of digital relations the new approach to pre-trial proceedings as a public service to ensure access to justice for citizens is rationalized; the paradigm of pre-trial as the initial stage of a judicial procedure ensuring access to justice is proposed.

Keywords: *digital relations, justice, leadership, rule of law, judicial systems*

1 Introduction

Current state of the scientific and technological progress provides real opportunities for improvements in all areas of human life. In justice, the task of modern science is to obtain new knowledge on patterns of legal advancement along with regularities of the state's, society's and personal development, within the framework of new conditions of technological progress, creation on their basis of an idea of constructing a procedure that provides justice in the conditions of digitalization justification of possibility, methods and limits of digitalization to which they can contribute to provide the access to justice— an essential right, guaranteed to all the people, ensuring the protection of rights and liabilities thereof.

Ensuring access to justice is not conceivable without a theoretical understanding of its term and concept. Meanwhile, international legislation often determines the above-stated concept in various ways and provides different guarantees for its provision.

In the interim, nowadays, the mechanism of enabling the access to justice may undergo changes due to technological breakthrough and the inevitable impact of the digital relations' development in society on the digitalization of legal proceedings.

A technological breakthrough provides the basis for rethinking theoretical concepts and practical recommendations in all areas of knowledge reflecting these changes. For example, change in the quality of trial procedures can relate to implementing of interactive communication of its participants in real time on the basis of recent communication and information technologies. The need for scientific evidence for access to justice in the new digital reality stands at the very core of this present study.

This study aims to define the meaning of the term “access to justice”, as well as to identify how the digital relations' development affects the court. Moreover, it strives to determine the foundation of the term under the synthesis of international legal sources and the actions taken by The Constitutional Court of the Russian Federation. The following tasks should be as follows, in order to achieve the goal of interest:

- to analyse the constitutions of different countries in order to pinpoint how and to what extent access to justice is guaranteed; which guarantees are provided for this right;
- summarize the legal positions of The Constitutional Court of the Russian Federation within the framework of “access to justice” concept;
- identify how digital development effects the right of accessing the justice;
- show the specifics of how access to justice is applied in criminal proceedings and the possible future for establishing its guarantee with the advancement of digital current technologies.

2. Literature review

The foundation of this research lies in modern works of scientists on the content and guarantees of access to justice in the era of digital relations.

A. Access to justice as well as its guarantees are consistently investigated in many scientific papers

Whereas the significance of access to justice as one of the most crucial warrants of human rights and freedoms, interests of collective entities, the state and society is undoubted, the very content of this right remains controversial.

Researchers also point out various aspects of access to justice among which there is obtaining of qualified legal advice by the applicants for judicial protection (Flynn and Hodgson 2017). This is especially relevant for the socially disadvantaged and vulnerable categories of citizens: minors, persons who suffer from mental and physical disabilities, financially insolvent, persons not fluent in the language of court proceedings etc. (Arstein-Kerslake et al. 2017; Soo 2016). These problems are recognized as not fully resolved: despite the consolidation of this right within international acts and at the constitutional level, the patchwork system of public defense for the poor remains largely (Backus and Marcus 2018).

The work studies the meaning/value of access to justice’s free nature (in particular, the absence or low value of a state duty), restrictions on appeal against procedural decisions, the territorial proximity of courts to the population, the provision of a translator for participants in judicial proceedings, and even the proper architecture of court buildings, especially family and juvenile ones (Branco 2016; Smolkova et al. 2018).

Researchers turn to the activities of individual States, such as Australia, the Commissioner of Victims' Rights and the development of their capabilities to protect the rights of crime victims (Kirchengast et al. 2019).

One aspect of access to justice, namely the transparency of court sessions and the opportunity for everyone to get acquainted with court decisions does not go unnoticed. Although the transparency of judicial proceedings is a universally recognized value in a democratic state, some questions concerning the correlation between public court hearings and the preservation of the parties’ rights are still up for debate (Cooper 2019).

B. Thanks to the process of digital technologies’ development along with implementation thereof in legal proceedings, new technical opportunities are arising for access to justice. This led to the need for scientific understanding of both the technological side of ensuring this right and changing legal relations. Digitalization of the judicial process requires legal science to resolve the following issues:

- a) by which legal instruments the application of digital technologies should be governed and to which extent, and, moreover where these rules are to be contained (procedure code, digital law etc.);
- b) whether digital law is an independent area of law, what is the subject of its regulation, or is it part of traditional branches of law;
- c) on the forms and limits of the digital technologies use in law enforcement, in particular, the various forms of trial;
- d) on what guarantees should be established for participants in legal proceedings when using digital technologies.

Researchers' attention is drawn towards the implementation of digital (computer) justice (Marks et al. 2015), the utilization of big data in justice (Završnik 2019), decision making using artificial intelligence, various aspects of digital evidence use (Billard and Bartolomei 2019; Ning and Zhi-Jun 2018), establishing additional guarantees of access to justice using digital technology, for example the utilization of information and communication technologies (ICT) in order to notify the parties of the day of the hearing in developing countries with transitional justice, where citizens don’t have a mailing address where they can be contacted (Benyekhlef et al. 2015; Kastner 2017), probable risks of paradoxical restrictions implied on the proceedings participants’ rights along with the rights of other individuals within the context of digitalization of legal proceedings (Donoghue 2017; Vilkova and Maslennikova 2019).

3. Methods of assessment

The following methods were used in the study: under the phenomenological approach access to justice and digital relations in the judicial process are considered as phenomena, that is, events that have content, meaning, revealed during the study. Using the normative and value-based approach the significance of access to justice is unveiled both for society at large and, notably, for individuals; moreover, the ways to introduce digitalization in legal proceedings are determined.

The structural-functional approach underlies the consideration of legal proceedings as a certain integrity, and the primary step thereof aims at fulfilling specific goals that provide and assure the access to justice. Furthermore, it is also applied to define the place and main ways of applying digital technologies in legal proceedings with the aim of ensuring the right of accessing the justice.

The Comparative approach consists of analysis of the constitutions of different states, while comparing the norms aimed at ensuring access to justice, and identifying its contents and its constitutional guarantees, conducting a comparative legal analysis of the digitalization of legal proceedings in order to ensure access to justice.

General logical methods have been applied: analysis and synthesis, induction and deduction, abstraction and ascent from the abstract to the specific, etc.

4. International legal interpretation of the “access to justice” concept

In International acts, the enhancement of the relevant right of accessing the justice is predominantly linked to the 10th Universal Declaration of Human Rights (1948), Art. 14 of the International Covenant on Civil and Political Rights (1966) (hereinafter “Covenant”) and Clause 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (hereinafter called “Convention”). Meanwhile, the legal positions of The Human Rights Committee paired with the European Court of Human Rights play a big role in disclosing what the right of accessing the justice implies.

Many decisions regarding the nature and capacity of access to justice, the principles of its provision can be found within the precedents set by The European Court of Human Rights. This is vital, given the concern that the Convention on its own does not textually enforce the right to access to justice.

The European Court of Human Rights in its decisions connects access to justice (access to a court, access to justice) primarily with par. 1 of Art. 6 of the Convention. The European Court of Human Rights holds within itself several components in the “access to justice” concept: the right to appeal to a courthouse, that is, the right to start a trial process by means of court, moreover, the right to seek consideration and resolution of a legal dispute of a case is to be ensured in civil, as well as criminal cases, not solely for the participants on the prosecution side, but also for the defendants; the right to revise and resolve a case in compliance with the standards of a lawful hearing, established by Art. 6 of the Convention; the prompt implementation of the judgment a set of various guarantees that allow a person to effectively exercise these rights, in other words, the accessibility of justice (mechanisms for obtaining qualified legal assistance, assistance of an interpreter to persons who do not speak or do not have sufficient knowledge of the language of court proceedings, etc.); proceedings in higher (appeal, cassation) courts. Moreover, ensuring access to justice in higher courts depends on the features of this stage of the process. In particular, the conditions for admissibility of a cassation appeal may be more stringent than in an appeal.

In the case-law of The European Court of Human Rights, not only the components of the right to access to justice are determined but also the core guidelines thereof are developed, among which there are the practicability and overall effectiveness of the stated right, the opportunity of establishing limitations thereto, for instance, for minors or people with mental disorders, convicts in prison, with these restrictions not affecting the very core of the right scope etc.

Regarding criminal law, the general conclusion of The European Court of Justice on the fundamental possibility of access limitations to justice is specified in legal attitudes towards the admissibility, under certain conditions, of refusal to initiate criminal prosecution, suspension of proceedings and termination of criminal proceedings. Decisions that hinder the right of access to justice in pre-trial procedure may, under some circumstances, be appealed to a court. The right of access to justice is to also be ensured when judicial decisions on criminal matters are reviewed by higher courts, however, states retain the right to determine the conditions underlying the conduct of the right to review and may limit the depth of the latter; in some states, this review is limited by law.

5. Implementation of the right to access to justice

A. Enforcement the right to access to justice in national constitutions.

The right to access to judicial system (Enforcement of access to justice) is directly established in constitutions of the majority of the 193 UNO member states. Moreover, the wording of law rules on access to justice is different.

The prevailing provision is the consolidation of the right to litigation on the level of constitutions [Part four of Art. 19 of the Fundamental Law of the FRG; Art. 20 of the Constitution of Sao Tome and Principe (1975); Art. 65 of the Constitution of the Republic of Maldives 2008, etc.). Furthermore, there exist the following norms on the rights of:

- "right to resort to justice" (Ecuador);
- "the right to easy, convenient, quick and non-discriminatory access to the trial" (Constitution of the Kingdom of Thailand 2007);
- "right to litigation" Constitution of the Syrian Arab Republic 2012);
- citizens to "be tried in compliance with the law" (Constitution of the Republic of Korea 1988);
- an individual accused of a crime commitment "to an immediate trial" (Constitution of the People's Republic of Bangladesh 1972);
- "to be heard in the court to which he is entitled to apply in accordance with the law" (Constitution of the Kingdom of the Netherlands 1815);
- "judicial way to restore violated freedoms or rights" (Constitution of the Republic of Poland 1997);

Thus, the majority of foreign constitutions associate the term "access to justice" with going to court or consider it as an element of due process or fair trial.

B. The circle of subjects guaranteed access to justice.

In general, constitutional norms enforce access to justice for "every person". For instance, the Constitution of the Slovak Republic (1992) in part 1 of Art. 46 states that every person is entitled by the law to assert his/her right in a self-contained and unbiased court.

Meanwhile, in some instances, the constitutions contain narrower formulation that guarantees access to justice only for a victim of a related case (Article 52 of the Constitution of the Russian Federation 1993). These norms do not reflect the intersectoral nature of the principle of access to justice and cover only part of it both in terms of persons and types of legal proceedings. For instance, in the Russia the "victim" category is applicable only to criminal litigations (Article 42 of the Code of Criminal Procedure of Russia 1996) and proceedings on administrative offenses (Article 25.2 of the Administrative Offences Code of Russia (2011)).

The specified feature of the formulation of Art. 52 of the Constitution of Russia can't be compensated neither by Art.46 of the Constitution of the Russian Federation, that consolidates the right to legal defence, given the differences of these principles, nor by p. 3 Art. 50 of the Constitution of the Russia, enshrining the right of a convicted person to review a sentence, since access to justice is much wider than this provision. However, they are levelled by the norms of industry legislation that establish guarantees of accessing the justice for all the physical persons and in all categories of cases (with restrictions ascertained by law).

C. The rights of accessing the justice and to legal protection.

Access to justice is closely related and even in many respects coincides with the right to legal protection. The constitutions of many states do not have norms guaranteeing access to justice in any of the above-stated formulations, but there are provisions on the right to judicial protection. So, according to Art. 20 of Constitution of the Hellenic Republic (1975), everyone is entitled to law protection by the court of justice. A person can express in front of it his/her views with respect to own interests and rights, as envisaged by the law.

Unavailability of the rule controlling the access to justice in constitutions does not allow us to conclude that it is absorbed by or coincides with the right of an individual to lawful protection. Rather, this can be explained by the individual characteristics of a constitution, each of which consolidates, although in many respects similar, but different provisions.

In the meantime, the discrepancy between access to justice and the right of a person to lawful protection is pointed out by the matter that in constitutions of most states the provisions regarding the right of an individual to lawful protection are consolidated alongside the norms of the right of an individual to appeal to court justice. For instance, the Constitution of the Republic of Guinea-Bissau (1996) in Art. 32 envisages the right of each citizen to apply to the judiciary and appeal against actions that violate his rights recognized by law and Constitution, and in Art. 34 - the right of every individual to lawful protection under the law.

D. Access to the law, the rights to an equitable trial and to appropriate legal procedure.

Many foreign constitutions contain rules on fair trial or due process. Although these norms (and terms) are inherent in different states with different legal traditions, they generally mean a set of characteristics of legal proceedings, the observance of which allows us to assert that it was conducted properly, meets the requirements of justice and ensured the adoption and timely execution of the lawful, informed and fair decision.

An analysis performed relative to Russian and foreign constitutions shows that in the prevailing cases, justice access, the right of an individual to a fair and lawful trial and due legal process are intimately linked, however far not identical concepts.

In foreign constitutions, often (however, not as a rule), along with securing the right of accessing the law and/ or judicial protection, constitutions simultaneously safeguard the right to a lawful/fair trial or due legal process and establish the characteristics which they must meet. For example, according to Art. 115 of the Constitution of the Plurinational State of Bolivia (2009), the State safeguards the right to due process and defence, as well as to multiple, speedy, relevant, free and transparent justice without delay.

The constitutions of a number of states do not have norms on access to justice. Wherein includes regulations on the right of everyone to a lawful trial. For instance, the Constitution of Bosnia and Herzegovina guarantees to all those who inhabit the land of the respective country the right to a lawful/fair trial in civil and criminal matters, as well as other rights with respect to criminal cases (subsection “e” paragraph 3 of article II (Constitution of Bosnia and Herzegovina (1995)).

The right to due process is provided for in Art. 69 of the Constitution of the Dominican Republic (2015), Art. 76 Constitution of the Republic of Ecuador (2008) and others.

E. Establishing at the constitutional level the right to appeal court decisions.

Access to justice should be ensured not only regarding the court of first instance but higher courts as well. In many constitutions, the right to challenge court decisions is also often enshrined at the level of constitutions themselves, often in separate rules. For instance, the right of a person to challenge or appeal against a sentence is safeguarded by Art. 25 of the Constitution of the Sultanate of Oman (1996) and Part 11 of Art.19 of the Constitution of the Republic of Seychelles (1993).

An exception is the Constitution of the State of Brunei Darussalam (1959) which generally establishes a ban on judicial review of decisions (Article 84C).

F. Strengthening of the mandatory timely performance of court orders at the level of constitutions.

The obligatory timely execution of court decisions is a key component of the right to judicial defence and the right to access to law, since if it is lacking, access to justice loses its significance and becomes illusory.

In many constitutions this provision is reflected, sometimes - in an independent norm. So, Art. 71 of the Constitution of the Sultanate of Oman provides that sentences are accepted and carried out on behalf of His Majesty the Sultan; refusal or delaying the execution of sentences by public servants is considered a criminal offense, the measure of responsibility for which is determined by law; in similar cases, the party who won the trial is entitled to file a complaint directly in the court, in conformity with a sentence.

G. Guarantees of access to law.

Besides securing the entitlement to access to law and / or the entitlement to lawful protection, the constitutions of Russia and foreign states provide safeguarding for their unhindered implementation (accessibility) — the entitlement to competent legal aid, state indemnity for harm and damages caused by a judicial error, a ban on limiting availability of justice based on the applicant’s poverty, gratuitousness of justice or its economic affordability, the territorial proximity between the courthouse and the subjects of the litigation, in line with the speed of the trial process, access to judicial acts, uninterrupted justice, equal justice for everyone.

The foregoing allows us to conclude that access to justice is enshrined in national constitutions. As a rule, access to justice means the right to appeal to court.

6. Developing digital relationships and establishing guarantees of access to justice

The introduction of digital technologies in all spheres of society is an objective characteristic of the modern stage of its development. The penetration of digital technologies in government activities, in justice, in various types of legal proceedings is part of this more general process.

Digitalization of justice can create new mechanisms for access to justice. But if concerning constitutional, civil, and partly administrative legal proceedings, new decisions lie mostly in the technical field, then in criminal proceedings we can also talk about a meaningful transformation of its specific initial stage, at which access to justice is provided. It is in criminal proceedings that the victim and the accused do not have the opportunity to independently appeal to the court (not taking into account appealing against interim decisions and actions of the preliminary investigation bodies and the prosecutor), and access to justice is ensured by the activities and decisions of state officials authorized by the state (aside from a small number of private prosecution cases). This specificity poses a challenge

for the legal community to provide legal support for the criminal justice process in the new conditions for the development of digital relations.

- A. With this regard, foreign experience is of great interest since this trend - the application of digital technology in criminal cases – is inherent in all states and is limited only by technical and economic capabilities. Digitalization allows us to speed up and simplify the process in conjunction with the establishment of additional guarantees of individual rights of participants, however, macro changes in criminal proceedings do not entail in themselves, but can help bring the initial stage of legal proceedings of the continental and Anglo-American legal systems closer.

An analysis of the legislation of Russia and 20 countries of the near and far abroad has shown that the main elements of digital technologies application in prior to trial criminal prosecution at the current stage are:

- acceptance of a statement of crime using technical equipment. If in Russia this technique is just beginning to develop, then, for example, in Hungary, part 4 of Art. 172 of the Code of Criminal Procedure expressly envisages the opportunity of initiating criminal prosecution against applications sent by means of phone or other technical equipment;
- electronic document management and electronic communication in criminal proceedings. Hence, the German Criminal Procedure Code (1877) (§ 32 b - 32 f, § 496, etc.) sets out in detail the procedure for creating an electronic criminal case, determines its relationship with paper documents, the procedure for electronic communication of law enforcement and judicial authorities with each other, processing and use conditions personal data in an electronic file on a criminal case;
- notification and calls using digital technologies are also widespread in many nations (Article 131 of the Code of Criminal Procedure of Poland (1997), paragraph d of Article 81, part 2 of Article 92, part 5 of Article 257 of the Code of Criminal Procedure of Romania 2010);
- electronic evidence. The legislation of many countries is still missing single concept of electronic evidence, the rules of the collection, verification and evaluation of such evidence.

In the same time these issues are regulated by law in some states. For example, in Canada, the national standards for the admissibility of electronic evidence are established by the Canada Evidence Act (1985);

- remote engagement of an interpreter is widely used abroad, however, the legal regulation of such participation primarily concerns a court session and much less often - pre-trial proceedings. For example, according to Paragraph 5, Part 6, Article 468 and Paragraph 4. h. 3 t. 489.41 Code of Criminal Procedure of the Republic of Estonia (2003) during remote interrogation using audiovisual technical solutions of a witness, suspect, accused, located in a foreign country, the competent legal authority, if necessary, ensures the participation of an interpreter;
- audio protection of investigative actions is already mandatory today when interrogating juvenile witnesses and victims who are not subsequently summoned to court (for example, paragraph 1 of Article 147 of the CPC of Poland);

- B. All of these forms of digitalization directly or indirectly contribute to access to justice. The development of digitalization of Russian legal proceedings should consider the existing positive and applicable experience of other states.

Over and above the indicated methods of applying digital technologies in criminal proceedings, effective granting of access to justice within the framework of criminal cases in modern conditions requires analysis of development and implementation of:

- possibility of filing a crime through a special form on a website on the Internet;
- establishment of a uniform digital platform aimed at interaction of public authorities, officials and citizens in criminal prosecutions with simultaneous generation of criminal case materials in e-form;
- creation of a unified database for recording movement of criminal cases from registration of a claim to the completion of criminal proceedings so that it is possible to track the flow of the case and control the procedural time frame;
- opportunity to bring a complaint (about the actions and decisions of the investigator, interrogator, prosecutor, court), petitions through a special form on the Internet site;
- possibility of drawing up an expert opinion in electronic form with an electronic signature and transmitting it to the investigator, interrogating officer, the court through communication channels using the Internet;

- further advancement of the utilization of audio and video protocols, video conferencing; application of "template design" method, while preparing the investigative report.

C. However, the introduction of digital technology is not enough. Pre-trial criminal proceedings should be meaningfully transformed into a stage that effectively provides access to justice. This transformation should include:

- a new approach to pre-trial proceedings as a public service for providing participants not empowered with authority with access to justice in criminal proceedings;
- transformation of judicial control in pre-trial proceedings so that the court, on equal terms with the preliminary investigation authorities, could apply for petitions (and not just complaints) and other participants in criminal proceedings, for example, petitions for the deposit of evidence, use of means to ensure civil claim for the abolition of measures of procedural coercion, etc.;
- transformation of preliminary judicial control into an organizationally independent judicial body providing access to justice by considering appeals at the initial stage of criminal proceedings;
- amendments of a prosecutor's authority in pre-trials so that he is charged with nominating, substantiating the charge and subsequently supporting him prior to the court;
- electronic interaction of public authorities and their officials among themselves, along with electronic interaction of the state and individuals (population) while ensuring all participants digital equality.

These changes are capable of granting the access to justice within criminal proceedings at a qualitatively new level.

7. An overview of results

The foregoing allows us to conclude that access to justice is guaranteed by the most important legal and national constitutions. As a rule, access to justice means the right to appeal to court. Several constitutions establish guarantees of this right in the form of creating a judicial system, establishing requirements for judges, enshrining the principles of justice and the characteristics of a fair trial. Of great importance are the possibility of verifying a court decision by a higher court and guaranteeing the timely execution of a court decision. In addition, various guarantees are provided for the accessibility of justice, designed to facilitate the implementation of this right, to make it effective rather than illusory, providing the applicant with the opportunity to appeal to the court without hindrance.

The right to access to justice coincides with the right to judicial protection in many elements, but not completely: ensuring the right to access to justice implies extensive participation of an individual, who needs the above-mentioned access, while the legal protection builds upon the activities of courts.

Access to justice can be ensured at a qualitatively different level owing to rapid advancement of digital technologies and implementation thereof in legal proceedings. That is a matter of specific importance in terms of criminal cases, where pre-trial proceedings exist, when a victim or an accused person can have only a slight influence.

Ensuring access to justice in the implementation of digital technologies should by no means be limited to its technical optimization, rationalization and acceleration.

8. Conclusions

Overall, it becomes apparent that in the criminal proceedings, as is customary, the problem of ensuring access to justice and access to justice is entrusted to the state as a constitutional legal obligation. In a digital environment one should turn to the new concept of pre-trial proceedings as the initial stage of criminal proceedings, providing access to justice. At the same time, pre-trial proceedings is a state service to provide access to justice.

The most important areas of transformation of this stage are: the creation of a single digital online platform for communication of government bodies and officials among themselves and with citizens, while ensuring digital parity for all participants; granting participants not empowered with authority the right to plea to the court, including through modern technologies, with petitions for depositing evidence, taking measures to secure a civil lawsuit, etc.; vesting the prosecutor with the authority to bring forward, substantiate the charge and subsequently maintain it before the court.

Mutual communication in the digital world should be recognized as a factor providing access to justice in the modern world (an essential circumstance in the process of ensuring access to justice). It is necessary to realize that legal regulation is undergoing and will undergo significant changes, because it will affect the virtual state of a person. Criminal procedural and technical norms will penetrate each other, which is due to the need to regulate digital virtual communication of participants in criminal proceedings.

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