

## PROBLEMS of LEGAL REGULATION of ELEMENTS of E-JUSTICE IN THE REPUBLIC of BELARUS

*MAXIM KISEL*

Polotsk State University, Novopolotsk, Republic of Belarus

*The article examines the problems of legal regulation of the main elements of e-justice, which occupy an important place in procedural legislation. The attention is focused on the existing shortcomings in the implementation of the elements of e-justice, as well as on those solutions that will help to overcome the existing shortcomings.*

**Introduction.** At the present stage of development of procedural law, more and more attention is paid to the elements of e-justice and their legal regulation. The significance of this study lies in the rapid development of the idea of e-justice, digitalization of courts, which requires the evolution of traditional procedural institutions into full-fledged elements of e-justice.

**Task formulation.** The purpose of the study is to identify the main problems of legal regulation of elements of e-justice in the Republic of Belarus, as well as to propose ways to solve them.

**Methods of research.** Analysis, synthesis, comparative method, method of interpretation of law.

The elements of e-justice should be understood as "procedural tools" that allow all participants in the proceedings to exercise their procedural rights and perform their procedural duties using information and communication technologies (ICT).

Since the beginning of laying the legal foundation for the development of e-justice to date, the procedural legislation of the Republic of Belarus has been able to acquire the following elements of e-justice:

1. **Going to court in electronic form.** The right to go to court is a constitutional right of every person in the territory of the Republic of Belarus. According to Art. 22 of the Constitution of the Republic of Belarus, all are equal before the law and have the right, without any discrimination, to equal protection of rights and legitimate interests [1].

The first and most important element of e-justice is electronic filing of applications to the court. In the Republic of Belarus, the submission of applications to the courts was clearly limited to only one type of application – written on paper. Since 2011, for the first time, a norm appears at the legislative level that establishes, along with the written form of appeal, "electronic appeal". In Art. 7 of the Economic Procedural Code of the Republic of Belarus (hereinafter - the EPD) was added to Part 2, which indicated that the appeal in the forms specified in Part 1 of Art. 7 EPD, can be filed with the court considering economic cases, in electronic form in the manner prescribed by law [2].

Regulation h. 2 of Art. 7 EPD was a breakthrough in national legislation. This norm became the first norm of procedural law, which regulated the most important element of e-justice - an electronic appeal to the court. However, the most fundamental element of e-justice exists only in EPD, which presents many challenges. One of these problems is the lack of regulation of electronic submission of petitions to courts of general jurisdiction, considering civil, administrative and criminal cases.

In practice, there are cases when the courts of general jurisdiction do not accept applications or reject applications filed by the parties in electronic form and do not consider them on the merits, citing the absence of norms in the procedural codes (civil, administrative and criminal) governing the submission of applications in electronic form. From a theoretical point of view, this is explained by the lack of legal regulation, and from a practical point of view, by the insufficient level of work of the Supreme Court of the Republic of Belarus, the purpose of which is to create a uniform judicial practice on the application of legislation by courts of general jurisdiction.

When applying in electronic form to courts of general jurisdiction, considering civil, administrative and criminal cases, the analogy of law should be used. Since the procedural codes governing civil, administrative and criminal processes do not contain norms declaring the right of individuals to apply to the court in electronic form, then one should refer to Part 2 of Art. 7 EPD as a norm that regulates similar legal relations.

2. **Electronic services and databank of court orders.** Along with the legal consolidation of the possibility of applying to economic courts in electronic form, mention should also be made of the creation of services of the "E-COURT electronic court proceedings" system on the basis of the website of the Supreme Court of the Republic of Belarus, allowing participants in court proceedings to submit electronic documents to economic courts [2].

The services of the E-COURT electronic court system help to submit procedural documents to the economic court in electronic form. Here you can also study the schedule of court sessions, a file of cases and appeals. a useful service in the form of a state duty calculator is also integrated into the E-COURT electronic court system, which allows you to automatically calculate the amount of state duty for applying to courts of all types and at any level. To enter the service, you need to register, and if you have registration, you need to log in.

The system "E-COURT electronic court proceedings" also allows you to search the databank of court orders (their operative part). It should be noted that this is a databank of only the decisions of the economic courts of the regions (Minsk) and the judicial collegium for economic cases of the Supreme Court of the Republic of Belarus. The orientation of the databank of court decisions of the "E-COURT electronic justice" system on economic courts does not allow the system to be fully disclosed. The Supreme Court of the Republic of Belarus should expand the database of court decisions and include court decisions of courts of general jurisdiction. Also, the data bank should publish a court decision that is complete in its content, and not only the operative part.

3. **Use of video conferencing during court proceedings.** In the EPD, before all other procedural codes, a separate article was introduced to regulate the use of videoconferencing in the business process. In 2014, Art. 176-1 securing participation in a court session by using videoconferencing systems [2]. At the moment, every procedural code of the Republic of Belarus contains provisions regulating participation in a court session by using videoconferencing systems.

Not always the right to participate in a trial using videoconferencing can be realized. Each procedural code has restrictions on the use of the videoconferencing system in the conduct of court proceedings. For example, an economic court considering a case may refuse to use videoconferencing systems when considering a case in cases where the court does not have the technical ability to participate in a court session using videoconferencing systems, as well as if the proceedings are carried out in a closed court session. [2]. Also, the court considering economic cases may postpone the trial in the event of technical malfunctions in the operation of videoconferencing systems [2]. The same restrictions are found in the civil, criminal and administrative procedural codes.

An important aspect that Art. 176-1 EPD, is the evidence in the trial. In connection with the established procedure for proving in the economic process, in order to authenticate the evidence in the case, when considering the case using the videoconferencing system, the parties must send their evidence to the court considering economic cases no later than the day following the day of the court session. In order to legalize evidence that is provided through the use of the videoconferencing system, the legislator has amended Art. 83 EPD, supplementing it with a part of the following content: "As evidence, explanations of persons participating in the case and other participants in the economic process obtained by using videoconferencing systems are allowed" [2].

Conducting a trial using the videoconferencing system allows you to reduce the procedural costs of the parties, however, this method of remote consideration of the case is imperfect. There is a serious problem of providing evidence and procedural documents during the consideration of a case using the videoconferencing system.

The Supreme Court of the Republic of Belarus should develop a digital streaming platform, the functionality of which would make it possible to broadcast the course of the trial over a secure communication channel. This service should provide an opportunity for the parties involved in the case to provide the court in electronic form with petitions and evidence in real time. The legal force of such petitions and evidence in electronic form should be regulated in the procedural codes.

4. **Provision of evidence in electronic form.** One of the controversial issues is the possibility of using documents received by e-mail as evidence, as well as the possibility of submitting printouts of such electronic evidence. Let's consider the example of procedural norms of the same EPD.

The list of means of proof fixed by Part 2 of Art. 83 EPD is open, therefore, any materials that meet the criteria of relevance, admissibility and reliability can be used as evidence. Such evidence may include electronic documents (their written copies).

The main type of evidence that the parties usually refer to is written evidence. According to Part 1 of Art. 84 EPD, written evidence is acts, contracts, certificates, consignment notes, business correspondence, publicly available information written in letters or made in the form of a digital, graphic record, posted on the global computer network Internet, received in the manner prescribed by law, other documents and materials containing information about the circumstances relevant to the case, including made in the form of a digital, graphic record, received by facsimile, electronic or other communication or in any other way that allows you to establish the authenticity of the document [2].

The legal force of electronic documents provided as evidence is governed by Part 2 of Art. 84 EPD [2]. The legislator has established that documents received through facsimile, electronic or other communication, including using the global computer network Internet, as well as documents signed with an electronic digital signature or other analogue of a handwritten signature, are allowed as written evidence in compliance with the requirements established by the EPD, other legislation or agreement, to this type of evidence.

It should be recognized that, taking into account the established judicial practice, the economic courts accept as evidence the printouts of electronic evidence certified by the applicants. At the same time, if there are objections from other participants in the process regarding the reliability of such provided evidence, the assessment of the admissibility of the evidence presented will be given by the court directly at the hearing. In this case, each of the parties that provide the court with copies of electronic evidence will be obliged to prove that, for example, the email was actually sent by one of the parties via email from the party's (employee of the party, etc.) email address.

As for the norms of the Civil Procedure Code of the Republic of Belarus (hereinafter – the CCP), here the legal regulation of electronic evidence is not set out in such detail as in the EPD. Part 2 of Art. 178 of the CCP, the legislator determined that the means of proof include explanations of the parties and other persons legally interested in the outcome of the case, testimony of witnesses, including those obtained through the use of videoconferencing systems, written and material evidence, expert opinions, as well as other information carriers, if from their help you can get information about the facts that are important for the correct resolution of the case [4]. As we can see, the list of means of proof in the CCP is open and in practice there is quite a lot of scope for choosing evidence of one's position thanks to the wording in Part 2 of Art. 178 CCP "as well as other media, if they can be used to obtain information about the facts that are important for the correct resolution of the case."

The situation is similar in the Procedural and Executive Code of the Republic of Belarus on Administrative Offenses and the Criminal Procedure Code of the Republic of Belarus [5, 6], in the procedural rules of which there is also no regulation of electronic evidence, but an open list of evidence is provided, which is also reflected in the practice of application the above norms.

**Conclusion.** It should be summed up that the procedural legislation of the Republic of Belarus has a good legal basis for regulating elements of electronic justice, but not perfect. Problems arising in the implementation of elements of e-justice in practice require the completion of some procedural rules. In the near future, procedural legislation should evolve towards digitalization, which will allow the judicial process to rise to a new high-tech level.

#### REFERENCES

1. Конституция Республики Беларусь, 15 марта 1994 г., № 2875-XII (с изм. и доп., принятыми на республиканских референдумах 24.11.1996 г., 17.10.2004 г.: Решение от 17.11.2004 г., № 1 // Консультант Плюс: Беларусь. Технология 3000 / ООО «ЮрСпектр», Нац. центр правовой информ. Респ. Беларусь. – Минск, 2021.
2. Хозяйственный процессуальный кодекс Республики Беларусь: Кодекс Респ. Беларусь, 15 декабря 1998 г.: с изм. и доп. от 17 июля. 2018 г. // Эталон-Беларусь / Нац. центр правовой информ. Респ. Беларусь. – Минск, 2021.
3. «E-COURT электронное судопроизводство» // Верховный Суд Республики Беларусь: интернет-портал судов общей юрисдикции Республики Беларусь [Электронный ресурс]. – 2021. – Режим доступа : <http://service.court.by/>. – Дата доступа : 08.01.2021.
4. Гражданский процессуальный кодекс Республики Беларусь: Кодекс Респ. Беларусь, 11 января 1999 г.: с изм. и доп. от 01 авг. 2020 г. // Эталон-Беларусь / Нац. центр правовой информ. Респ. Беларусь. – Минск, 2021.
5. Процессуально-исполнительный кодекс Республики Беларусь об административных правонарушениях: Кодекс Респ. Беларусь, 20 декабря 2006 г.: с изм. и доп. от 29 янв. 2020 г. // Эталон-Беларусь / Нац. центр правовой информ. Респ. Беларусь. – Минск, 2021.
6. Уголовно-процессуальный кодекс Республики Беларусь: Кодекс Респ. Беларусь, 16 июля 1999 г.: с изм. и доп. от 06 янв. 2021 г. // Эталон-Беларусь / Нац. центр правовой информ. Респ. Беларусь. – Минск, 2021.