

INTERNATIONAL

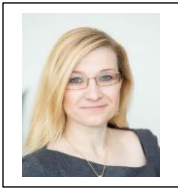
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IN THIS ISSUE

Implementation of the “Electronic Court” system, introduced in 2017 in Ukraine, as well as the introduction of online court hearings as an additional tool to organize court proceedings remotely, have allowed guaranteed access to justice for everyone during the pandemic and the war in Ukraine.

Development, Implementation and Use of the “Electronic Court” in Ukraine

ABOUT THE AUTHORS



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ABOUT THE COMMITTEE

The International Committee is the core international group in IADC and serves those members who have an interest in transnational or international legal matters including transactions, litigation, and arbitration. Thus any member, whether in the USA or abroad, who does cases with a foreign element (inbound or outbound) will find involvement in this committee extremely useful. Many of the members of the committee are from outside the USA, and this provides a rich mix of experiences and expertise as well as great networking opportunities. The International Committee also organizes European, South American, and Asian Regional Meetings and contributes to the International Corporate Counsel College. Learn more about the Committee at www.iadclaw.org. To contribute a newsletter article, contact:



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The International Association of Defense Counsel serves a distinguished, invitation-only membership of corporate and insurance defense lawyers. The IADC dedicates itself to enhancing the development of skills, professionalism and camaraderie in the practice of law in order to serve and benefit the civil justice system, the legal profession, society and our members.

Modern technologies are developing at an extremely high speed. These technologies are being applied in various spheres of our lives, with the legal sphere not being an exception. Their application is vast: from various online registries and information systems to the complete digitalization of court proceedings.

COVID-19 significantly changed the world and the lives of millions of people, mostly for the worse. However, with regard to digitalization, it was positively impacted. In particular, it stimulated digitalization of court proceedings in Ukraine.

In fact, “judicial digitalization” in Ukraine started in 2017, but that start was on paper only. New procedural codes that entered into force in December 2017 included provisions related to a platform called “Electronic Court.” Prior to these changes various useful legal digital tools were already in place, (e.g., search platforms, court decisions registry, platform for monitoring and obtaining information regarding court proceedings, etc.) However, this was truly a big step forward into the technological future, even though several conditions were put on its implementation.

Unfortunately, the implementation of the system was noticeably slowed down due to the lack of proactivity from the respective government bodies and institutions in charge. For more than two years this platform has been operating in a trial mode. There was no clarity about whether the

documents submitted via this platform will be considered by a specific judge as paper ones are, i.e. as admissible evidence in the court room. Thus, participants of court proceedings were reluctant to use the Electronic Court and basically ignored it, preferring to submit everything in a regular manner.

Once we were faced with the global pandemic crisis and put into a quarantine, the necessity for means and tools to ensure health security while not violating the right to fair trial arose. This is where the “newly” introduced Electronic Court platform came in handy. The health crisis and measures related thereto forced the government officials in charge to act upon its actual implementation and triggered its wide use across the courts of Ukraine. The State Judicial Administration even issued its decision on implementation of the system in a very short time frame. And the system started to work.

The initial purpose of the platform, however, was not related to health threats. The ultimate goal of the system was to make the court proceedings paperless and to put each and every document into electronic form. It was designed to ensure the possibility to obtain and submit documents in electronic form for all participants of the case (including the court.) At the same time, provisions allowing the parties to submit documents in paper form remained in the procedural legislation. But if a party submitted an initial claim in electronic form,

it was only allowed to submit paper documents upon the court's permission.

To have the opportunity to submit documents in electronic form, a participant of the proceedings must be registered in the system. Such registration requires providing an email, to which all notifications and documents related to the case will be sent.

In addition, registration was subject to an electronic signature, as this is crucial to identify the person who is registering and further, to sign the documents submitted to the court. Considering the overall spread of the electronic services in Ukraine, this was not the problem as almost everyone has such a signature certified by the tax office, or a bank ID. Also, attorneys, notaries, insolvency and enforcement officers, experts and governmental bodies were obliged to register their emails within the system while all other participants of the court proceedings may have done it on a voluntary basis.

The start of the Electronic Court's full operation was conditional upon certain regulations being adopted, and the courts having the technical capability to switch to an electronic document flow. However, even though the quarantine, and after that the war, forced the parties, the courts, and the government to act faster and in a more proactive manner regarding the usage of the platform, it is still not fully implemented, and courts are not obligated to admit and accept the documents filed via the system. The courts are also reluctant to let the parties of

the case familiarize and obtain access to case materials through the platform, as they are simply not sure how to do this to ensure they meet all the regulatory requirements and adherence to the standard procedural rules and rights of case participants. Since they are not yet obliged to do with the platform still in the trial mode, they may refuse the respective motions submitted to them.

Another important part of the digitalization of court proceedings is participation in court hearings remotely by means of videoconference tools. Once the quarantine began and access to the courts was restricted, the issue of how to allow parties to participate in the court hearings remotely was the crucial one in relation to the judiciary. As a result, the Parliament of Ukraine passed amendments to the procedural codes allowing participants of the court proceedings to take part in the hearings using their own technical devices. Participating remotely was allowed previously, but only from a court room of another court, while now a party may participate from anywhere given that it meets all procedural requirements.

Further regulations regarding remote participation in the hearings were issued. According to these regulations, the party should notify the court five days prior to the hearing that it will take part in the hearing via videoconference. Also, it was defined that a court hearing may be carried out in a videoconference regime only with the use of special software called "EasyCon". Other messengers are not allowed.

Now this tool is quite widely used by the courts, but there are still certain issues related to its implementation. These are mostly related to technical issues that may arise while establishing connection during the videoconference hearing. The legal issue here is that according to the mentioned regulations, the party that filed a motion on remote participation in the hearing takes all the risks related to issues with the quality of the connection. This means that if the connection fails, the case may be considered in the absence of this party, which is very risky as the case may be of high importance.

Regarding the ability to participate in the court hearing remotely, it should be noted that due to the war in Ukraine there are obvious safety issues related to visiting court hearings in the regions being permanently attacked by the Russian Federation (e.g., Zaporizhzhya, Kharkiv, Mykolayiv, etc.). Thus, the possibility to submit evidence via email and to participate in a court hearing remotely guarantees the access to justice and the ability to protect the rights of every party.

Overall, the Electronic Court was introduced and implemented just in time to face the issues raised before the Ukrainian legal society. It is very hard to imagine how the proceedings could have been run without this system and how much time it would take for injured parties to protect their rights. Implementation and wide usage of the Electronic Court assured the protection of the rights of every injured party and access to justice for everyone.

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