Digital Transformation of Advocacy Activity in Modern Russia

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Abstract. The author analyzes the circumstances that caused these changes, which include the state’s measures to combat coronavirus infection (COVID-19), novelties of procedural legislation on the use of digital technologies in judicial disputes, as well as the practice of applying this legislation. The purpose of the study is to establish the validity and expediency of applying certain legislative measures aimed at digitalization of activities related to the implementation of legal assistance by a lawyer to citizens and legal entities. During the research, the following methods were used: general scientific, such as analysis, synthesis, comparison, generalization, historical method; private-scientific: formal-legal, comparative-legal, allowing to consider the digitization issues of advocacy activity. The result of the research is to establish the applicable law to relations concerning the conclusion of a foreign economic contract, the grounds and conditions for recognizing the contract as concluded, and the consequences of not recognizing the fact of concluding an international commercial contract.

Keywords: Advocacy activity · Digitalization · Information technology · Lawyer · Legal aid

1 Introduction

A lawyer, as a person who provides professional legal assistance, must have a certain education, qualification and experience in the field of law. Observance of these terms, as well as the procedure for obtaining the status of a lawyer (successful completion of the qualification exam and a positive conclusion of the qualification commission of the lawyer’s education in the Russian Federation) is sufficient to obtain the status of a lawyer. Throughout the entire period of advocacy activity, it is necessary to obtain knowledge in the field of law in the form of professional development. This means that the list of knowledge and skills that a lawyer should have, does not include those related to working with information and legal systems, Internet resources, including the Commercial Case File, and GAS-Pravosudie. Failure to work with these resources does not allow the lawyer to be as effective and informed as the people who use them, and most importantly-increases the risk of clients receiving poor-quality and ineffective legal assistance. This is especially important in connection with the restriction of access to the courts to comply with protection measures against the spread of COVID-2019 coronavirus infection, the introduction of remote procedural actions in the practice of
courts (familiarization with the case materials, obtaining audio clips of court sessions) and even holding online sessions.

2 Methodology

During the research, the following methods were used: general scientific, such as analysis, synthesis, comparison, generalization, historical method; private-scientific: formal-legal, comparative-legal, allowing to consider the digitization issues of advocacy activity. The result of the research is to establish the applicable law to relations concerning the conclusion of a foreign economic contract, the grounds and conditions for recognizing the contract as concluded, and the consequences of not recognizing the fact of concluding an international commercial contract.

3 Results

Providing legal assistance is a complex and multifaceted process that requires a high level of professional qualifications. Therefore, only people who have received a higher legal education in a state-accredited educational program or a degree in law, as well as those who have two years of experience in the legal field or have completed an internship in advocacy education (part 1 of article 9 Of the law on the bar) have access to the practice of law [10]. A person who meets the above requirements must also pass the qualification exam for the lawyer status [15]. These conditions, after passing the Qualifications Commission, make it possible for the applicant to obtain the status of a lawyer.

Education requirements for people wishing to have the status of a lawyer are established not only in the Russian Federation, but also in other states. For example, to be eligible to practice law in the United States, you must have a bachelor’s degree, in an educational institution approved by the American Bar Association (ABA), you must obtain a Jurisprudence Doctor (JD), Master of Laws (LLM), Doctor of Philosophy (PhD), Doctor of Juristic Science (JSD), or Doctor of Comparative Law (DCL), and pass the State Bar Examination [11].

In Germany, the possibility of obtaining the status of a lawyer is associated with the need to pass two state exams - Erste Juristische Staatsprüfung, after which students are called certified lawyers (Diplom-Jurist) and have the right to continue their studies in the so-called Referendariat. The referendariat is a two-year practical training of lawyers at one of the 24 Higher land courts (Oberlandesgericht) of Germany, at the end of which the second state exam (Zweite Juristische Staatsprüfung) is passed [7]. Subject to appropriate levels of education, in accordance with §4 of the Federal law on the advocate of the Republic of Germany, only people who have the right to conduct activities in court, according to the German Court Law (Deutschen Richtergesetz), fulfilled the integration requirements in accordance with part 3 of the Law on the activities of European lawyers in Germany, has a certificate according to § 16A paragraph 5 of the Law on the activities of European lawyers in Germany, can obtain a lawyer status [1].
The requirements for the qualification of people who have the right to provide legal assistance to the population by performing legal activities are also established by the legislation of other states. Restrictions on access to the status of a lawyer is not surprising. The professionalism of the person, providing legal assistance, often determines the future behavior of civil turnover and business activities participants, since before the occurrence of a legal fact that may become the basis for a legal dispute (before the transaction, creation of a legal entity, divorce, etc.), the subjects involved in such relations often seek legal assistance from a lawyer who is able to eliminate possible conflicts in the formed relationships.

The lawyer protects citizens and organizations from imputing to them offenses that were not committed, or committed under circumstances that exclude or reduce the amount of responsibility of the offender. Thus, the task of the advocacy to protect the rights and interests of citizens (subjects) of the state, the implementation of the law functions (preventive, human rights) by the legal community, entails increased attention of the state to the conditions for admission to the advocacy, regulatory consolidation of requirements for lawyers candidates and verification of the qualification level of applicants for the status of a lawyer and requirements for maintaining such status, including in the form of professional development.

However, it is the lawyer’s professional (legal) knowledge and experience in applying knowledge in the legal sphere that is subject to verification and confirmation in accordance with the procedure established by law. The skills of a candidate in advocacy, a current lawyer in the field of computer technology, Internet resources that allow for professional legal assistance and are not included in the scope of the knowledge control of people who acquire or carry out legal activities.

The lack of legal requirements for information technologies knowledge for providing legal assistance to members of the legal community and people applying for the status of a lawyer, is explained by the large volume of legal information required for high-quality legal assistance, the need to structure and analyze such information. Indeed, the very possibility of obtaining the status of a lawyer is directly related to the possession of a diploma confirming professional education, as well as obtaining sufficient legal practice. But today this knowledge is clearly not enough.

The lawyer’s ability to work with reference legal systems that combine legal norms, including by-laws and departmental acts, legal positions of the judiciary and individual judicial acts issued in specific cases, give him an advantage over those who do not have the ability to work with such systems or the necessary skills to use reference legal systems. Of course, this inequality of two lawyers gives one of them the opportunity to provide better and more effective legal assistance to their principal. This may affect the results of the legal dispute consideration, the possibility of its prevention, or even deprive the principal of the possibility of obtaining judicial protection, for example, if the lawyer incorrectly calculates the statute of limitations for the raised claims. But the consequence of the lawyer’s information and legal inexperience is not only his personal professional failures. First of all, this is a negative, property and possibly penal consequences of receiving poor legal assistance for the lawyer’s client, the decline in the overall level of legal protection of the population, that is, failure to perform non-advocacy functions assigned to it by the state. Someone may say that this argument cannot be used as a counterweight to the requirement of the legal competence level of
the lawyer, since the possession of the necessary knowledge is a part of the professional requirements for a lawyer. We cannot disagree with this, since having a lawyer’s degree and the necessary work experience does not guarantee the ability of a lawyer to obtain the latest knowledge and information from existing reference legal systems, which is especially relevant for Russia, where the practice of applying the law is formed based on the legal positions of courts that tend to change over time.

The provisions of the legislation of the Russian Federation on the loan agreement could be the example. Part 1 of article 807 of the Civil Code of the Russian Federation defined the content of the money loan between citizens: the lender transfers or undertakes to transfer it to the borrower ownership, and the borrower shall return to the lender the loan on the terms and conditions specified in the contract, and the contract shall be considered concluded from the moment of transfer the loan to the borrower or the specified person [3]. Statutory requirements for lender or borrower, such as income, sufficient for granting the loan or purpose of the loan, do not exist, but these circumstances are to be proved in the collection of the loan or the inclusion of creditor requirements in the register of requirements of competitive creditors of the debtor in the legal positions of the Supreme Court, current regulatory enforcement. In the refusal justification of the recovered loan, courts have argued impecuniousness of the loan agreement, but a special entity (the borrower) is often absent (loan disputes arbitration official receiver, the competitive creditor), and the prohibition of challenge of lack of money of the contract, made in writing (part 2 of article 812 of the civil code) is ignored. The basis for challenging the loan agreement is also the provisions of paragraph 2 of article 61.2 of the bankruptcy law, which provides for the possibility of invalidating a transaction made by the debtor in order to harm the property rights of creditors (suspicious transaction), but often the restrictions established by law (including the suspicious period) are not taken into account by the courts when considering a dispute on recovery of borrowed funds from the debtor [9]. As a result, the claims of the lender, who provided the court with a receipt in order to support the claim for recovery of the loan and loan agreement, are refused even if the debtor admits the fact of receiving money from the lender if the lender does not prove that it has sufficient funds to issue the loan and that the borrower actually incurred some expenses by applying the borrowed funds (for economic disputes, see, for example, the Ruling of the Supreme Court of the Russian Federation of June 11, 2020 No. 306-ES18-10093(2) in case no.A55-10923/2017 [16], for cases considered by courts of General jurisdiction, see, for example, the decision of the Soviet district court of the city of Samara of 25.05.2017 in case No. 2-917/2017 [6], the decision of the Samara regional court of 31.07.2017 in case No. 33-9616/2017 [4]).

Digitalization as a process that has covered all areas of social life has also affected the work of lawyers as people engaged in professional representation and protection of the rights and interests of parties and participants in legal proceedings. Already used to participating in the process via video conferencing systems, lawyers were able to remotely access the activities of the courts. The electronic Commercial Case File (CCF) reflects all information on the existence of a court dispute, the course of its consideration, judicial acts, including interim (definitions) issued in a particular case. You can also see the composition of the people involved in the case, the judges who are analyzing the dispute, and the period of its consideration. Information on the progress
of the case can be obtained in the form of cards, a calendar, it is possible to get acquainted with the electronic case and a tab for participation in online meetings, which contains information about the filing of relevant petitions and their applicants [5] and to participate in the meeting during its holding online. The convenience of working with the Commercial Case File is supplemented by the ability to classify various information: on the participation of specific individuals in court proceedings, categories of such cases (civil, administrative, bankruptcy), etc. In addition, there are services “Strazh” (tracking the progress of consideration of a specific dispute), “Calendar” allows you to track the dates of disputes consideration by individual courts, judges, and participants in the dispute, and you can also contact the Bank of judicial decisions and work in the “My Arbitrator” system, which allows you to remotely post scanned copies of procedural documents in a case in which it provides representation, informing it of changes in cases to which it has subscribed. The transparency, completeness and availability of arbitration court services allows the lawyer to be informed, quickly and reliably deliver procedural evidence to the court, even during the period when restrictions are imposed on the reception of documents by the court’s office. In addition, by June of this year, almost all arbitration courts of the Russian Federation have provided the opportunity to hear audio recordings of court sessions online for participants in the process and their representatives.

It is difficult to overestimate the comfort and convenience of a lawyer who uses the Commercial Case File. The speed and efficiency of providing legal assistance, as well as the guarantee of its quality due to awareness of the progress of the case, quick access to the case, including by receiving an audio protocol of the court session, is now supplemented by the possibility of remote participation in an online court session or in a meeting held via videoconferencing. Ignorance of these features, inability to use them not only creates obstacles to the normal conduct of the process with the use of modern technologies for participation in court proceedings, but also leads to the costs of the principal for expenses that can be avoided (postage for sending documents to the court, which can be sent in scanned copies via the “My arbitrator” service, travel costs for familiarization with the case, for participation in court sessions, etc.), and may also cause improper conduct of the case by the lawyer due to insufficient information.

The services of arbitration courts of the Russian Federation differ significantly from those used by courts of general jurisdiction. In addition, in the system of GAS-Pravosudie is only visible part of judicial acts (not intermediate, but on the merits), a similar problem of non-publication of information on cases and judicial acts at courts, where, among other things, there is no vision of the movement of the case on various instances. The essence of the dispute from the published information is impossible to understand, the amount of the claim, the parties to the proceedings are hidden with reference to the protection of personal data. Probably for the same purpose in the courts of appeal and cassation instances the judges considering the case are not indicated until the court session. This, of course, complicates the work of a lawyer in a court of general jurisdiction, and for the principal creates a greater likelihood than when the case is considered by an arbitration court, the lack of proper awareness and increase in the amount of court costs. However, the electronic services of general jurisdiction courts allow you to submit documents in electronic form, learn about the registration of claims, applications, and complaints filed by the court, as well as, except in certain
cases, find information about the date and place of consideration of the dispute by the court of general jurisdiction. These data, along with the service Sudact.ru, allow lawyers to provide clients with legal assistance at a high professional level.

4 Discussion

The discussion of digitalization in advocacy activity is widely presented in publications of Russian authors [12, 14], including those published abroad [8, 17], and in scientific works on the implementation of legal assistance by a lawyer of foreign authors [2, 13]. The work analyzes the impact of digitalization on processes of advocacy activity in the organization and implementation of activities of the legal profession, covering various aspects of the research topic (attorney’s request, improving the quality of legal aid, legal aspects of the use of digital technologies in the activities of a lawyer, etc.), and the goal of each study is the analysis of the impact and importance of digitalization for the advocacy.

5 Conclusion

Digitalization processes invariably affect all aspects of social interaction, as well as individual public institutions, including the Institute of advocacy. In order to achieve the goals set by the law and society, the lawyer, legal education and the community of lawyers have to develop skills related to the possibility of providing legal assistance through the latest information technologies. Recent events related to the adoption of measures by many states to protect the population from the danger of coronavirus infection (COVID-2019) have confirmed the need to develop the involvement of the legal community and each of the lawyers individually in the process of digitalization. The ability to work with tools for obtaining information and participating in court proceedings, provided through special electronic files, databases, is necessary for a modern lawyer to provide effective and high-quality, that is, qualified legal assistance.

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