Challenges of the Judicial Systems of the Russian Federation and People’s Republic of China in the Era of the Pandemic

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Abstract. The current situation has demonstrated the weak and strong sides of the spheres of life of society in the world. One of the weakest in the Russian Federation was the activity of the judiciary. The procedural legislation of the Russian Federation is based on the main basic principles, such as: legality, directness and oral proceedings, transparency, equality of the parties and others, the implementation of online dispute resolution to practice.

Despite the adoption of various targeted programs to reform and modernize the judicial system of the Russian Federation, it is impossible to speak about their success, since the situation with the pandemic demonstrated the shortcomings of legal regulation, technical equipment and the unwillingness of most of the population to switch to a new digital format of life.

Currently, the activity of the courts is aimed at stabilizing the entire judicial system by switching to an electronic form of interaction between all participants in court proceedings. The judicial community has realized the need to adapt new modern information and telecommunications technologies.

China is a successful foreign experience of switching to an electronic judicial platform, which since 2017 has already created three Internet courts, and during the pandemic, so far we can talk about creating a new judicial system under the name of the Internet judicial system of the People’s Republic of China.

Keywords: Supreme court · Online · Video conference · Web conference · «smart» · Internet court · Electronic platform · Virtual reality · Litigation · Russia · China

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1 Introduction

The strategy of implementing artificial intelligence in various spheres of public life is one of the guarantees of protecting the rights of citizens. Many States are actively integrating this technology into the economy, industry, social sphere and others (Gaivoronskaya and Miroshnichenko 2019). At present, we can state the onset of a new revolution in the “Society 5.0”, in which all areas of activity are transformed into a digital format, where the largest amount of labor is spent on new innovative technologies (Inshakova et al. 2020).

One of the most advanced technologies is artificial intelligence, however, it is necessary to take into account the various risks associated with their implementation: first of all, ensuring security; secondly, ensuring constant monitoring and transparency.

So-called “smart” technologies have long been firmly embedded in the life of society, and we are not talking about the presence of a computer or mobile phone, but about the digital transformation of the social paradigm. Huge amounts of data obtained from various sources are stored on servers, which are then processed and analyzed using artificial intelligence. These technologies have long been used in social, transport, information, industrial, military, trade, environmental, and engineering infrastructures.

Society itself has become so digitalized that many people can't imagine their life without the Internet and gadgets. A huge number of mobile apps are not just a convenient, presentable service, but for many, a vital necessity. However, in many countries, the volume of e-services provided differs significantly, and the methods of obtaining them also differ.

The situation related to coronavirus has seriously demonstrated in all countries areas that are not prepared for remote operation. Such an important function of the state as justice in the Russian Federation has shown that it is not ready to meet the challenges set before it. The judicial system simply stopped performing its assigned functions for a while. The negative thing is that people who did not have a registered qualified electronic signature were not able to apply to the court for protection of their rights.

The removal of the first restrictive measures slightly improved the situation with the judicial form of protection of rights and legitimate interests, as shown by judicial practice, the parties simply do not have the opportunity to attend the court session if they come from the so-called epidemiologically “unfavorable” regions of Russia, because they are immediately sent to a fourteen-day quarantine. The courts, receiving a huge number of requests for online court sessions, simply consider the case in the absence of the persons involved in the case.

2 Methods and Materials

The doctrinal positions that formed the theoretical basis of the study were studied thanks to scientific works Guodong Du, Rusakova E., 2020.

The impact of the digital economy on the state of civil society has been reflected in the works of such authors as: Khabrieva (2018); Tarakanov et al. (2019); Popkova and Gulzat (2020); Inshakova et al. (2020).
The procedural basis of litigation was investigated by the authors, in the works of the authors: Rusakova et al. (2019a); Rusakova et al. (2019b).

The theoretical and methodological basis of the research is the dialectical method of scientific knowledge of legal and social phenomena. The use of analysis and synthesis methods allowed us to carefully consider and study the litigation and judicial practice in China and Russia during pandemic. The legal regulation internet courts in China, and to study the trends the development online litigation Russia. Features of the research object - relations arising in the implementation online litigation in China and video conferences and web conferences in Russia. The use of the private scientific method, in particular, the formal dogmatic method, allowed us to determine the specifics of legal regulation the competence of internet courts in China and litigation by video conferences in Russia.

Analysis of normative legal acts and judicial practice, such as: The decree of the President of the Russian Federation from 02.04.2020 N 239 “About measures on ensuring sanitary and epidemiological welfare of the population on the territory of the Russian Federation in connection with the spread of novel coronavirus infection (COVID-19)”; Resolution of the Presidium of the Supreme Court, the Presidium of the Council of judges of the Russian Federation No. 821 from 08.04.2020 (ed. by 29.04.2020); Information of the Supreme Court of 24.04.2020 “Web conference in the Supreme Court of the Russian Federation”; resolution of the Government of the Russian Federation of 27.12.2012 No. 1406 (ed. From 25.12.2019) “On the Federal target program” development of the Russian judicial system for 2013–2020” allowed to identify the strengths and weaknesses of justice during the pandemic.

3 Results

Collapse of the Judicial System in the Era of the Pandemic

The situation with the pandemic has put before the entire world community the need to move to a new qualitative level, namely, the integration of various devices in the economy, industry, health and other areas, to ensure constitutional guarantees of state protection of rights and freedoms (Tarakanov et al. 2019).

The most serious factor for many parties was unable to protect their rights to judicial and other methods, and cases accepted by the courts, since it was just delayed or the case processing time was extended if the court found that proceedings in a particular case is impossible (difficult); suspended if the participants are unable to attend the hearing; and in some subjects was considered in light of the circumstances of the case, the views of the parties and conditions imposed in the subject of the Russian Federation (Popkova and Gulzat 2020).

The main role in procedural regulations have become clarification of the Supreme court in the Review of the armed forces from 21.04.20 No. 1, which was clearly defined procedural deadlines, petitions for interim measures proceedings in the courts.

In case of missing deadlines, due to the adoption of restrictive measures in the subject of the Russian Federation or changes in the work of state and other institutions, the court is obliged to restore the terms of the procedural actions. This is very
important, since the procedural legislation provides for clear procedural deadlines, and
in some cases, a party may lose their right if they miss them.

Very important procedural institutions in criminal proceedings are the seizure of
property and the extension of the term of seizure of this property, which primarily
protect the rights and interests of the parties in the judicial process, as they guarantee
the enforceability of the court's sentence. The Supreme court of the Russian Federation
explained that decisions regarding the seizure of property will not be delayed, but must
be made immediately.

A more predictable situation has developed in civil cases that are considered in the
order of simplified and writ proceedings, this is due to the fact that the parties to the
process should not be present at the court session. The court makes its own decision,
without calling the parties, based on the submitted documents.

In the case of a pandemic, many participants in court proceedings have requested
that the dispute be considered in their absence, if they are not required to participate in
the process. In addition, most of the procedural documents submitted to the courts were
considered out of court, if such a possibility existed.

Despite these explanations, most of the cases were suspended due to the absence of
requests from the parties to consider the case in their absence, or the dispute itself could
not be considered without the participation of the parties. But the jurisprudence in each
region were excellent, so the Arbitration court of Astrakhan region on business
No. A06-9664/2018 from 20.04.2020 examined the case, despite the fact that the case
was not to be considered in a simplified or writ proceedings, and petitions for con-
ideration of the case in the absence of all members of the case went to court. It appears
that this decision violates the rights of those persons whose right to professional
representation has not been exercised.

The controversial practice has developed on the question of adjournment of the
trial, the Supreme court explained held that the court will extend the deposition pro-
cedings, if the last day of the period falls on a declared in connection with the
pandemic and may also increase the period of time fixed in the Arbitration procedure
code of the Russian Federation.

Commercial court of Moscow in case no. 211380/19-51-1768 from 20.03.2020 did
not satisfy the request of the party to postpone the court session due to the inability to
come from another city and the inability to come from another region, and to ensure the
appearance of the representative on the basis of a complex epidemiological situation.
The court considered these arguments not justified, since the presence of a represen-
tative for the consideration of this dispute is not necessary, and (or) the impossibility of
replacing the representative is not justified. As a result, the court considered the case on
its merits and issued a decision. According to the procedural law, the judge makes any
judicial act based on his inner conviction, and no one will argue with this, however, the
right to have a representative is one of the main procedural rights of the participant in
the process.

Professional representation ensures the implementation of the persons involved in
the case, the right to effective judicial protection especially because we are talking
about the proceedings in the arbitration process, which originally refers to the repre-
sentatives or counsel, as the dispute is economic in nature or related to business
activity. The success of the trial largely depends on the competent defense of the party,
which costs quite a lot of money. Therefore, in addition to protecting their rights and legitimate interests, persons participating in the case are also deprived of funds that were paid to the representative for the provision of services.

In addition, some courts considered applications for adjournment of proceedings in their definitions distinguished between quarantine and high-readiness mode, in the latter case, these applications were declared invalid, since all vehicles and arbitration courts were operating normally under this mode. On the contrary, the Arbitration court of the Bryansk region in case no. 10524/2019 of 25.03.2020 granted a request to ban business trips due to the spread of coronavirus.

If we analyze the current situation, then for the persons involved in the case, the most acceptable option was to suspend the proceedings or postpone the trial. The acts issued by the court will be further subject to appeal or review by the party that considers that its rights have been violated, which will mean that higher courts will deal with a huge array of cases related to the violation of the procedural rights of participants in addition to the cases already accepted for consideration.

One of the ways to overcome this situation is the active introduction of videoconferencing for court sessions. According to the Ordinance of the Supreme court of the Russian Federation, the courts were recommended, if technically possible, to conduct court proceedings using videoconferencing or a web conference system in cases of urgent, writ and simplified proceedings, as well as those in which all participants filed a request for consideration of cases in their absence, if their participation is not required in other cases. One of the conditions was the submission of electronic applications with the attachment of electronic images of identity documents and confirming authority.

The difference between videoconferencing and web conferences is in the security of the two channels, the latter is less secure, since it is conducted in real time via the Internet.

However, it was not possible to consider cases in this order in most cases due to the restriction of access of individuals to the courts in the period from 8 to 30 April 2020. Thus, according to the ruling of the Arbitration court of the East Siberian district in case no. A78-11269/2017 of 15.04.2020, the court granted the petitions for consideration of the case using videoconferencing, but found it impossible to execute this order due to the restriction of access of persons to the courts and suspended the proceedings in the case.

The most innovative approach was the approach of the court of Nevyansk, Sverdlovsk region, which considered the case using a video call in the WhatsApp messenger and issued a Ruling on the case N 5-40/2020 from 30.04.2020. If we consider this situation from the point of view of legislation, then consideration of the case in this way also violates the procedural rights of the persons participating in the case. No one can guarantee the security of such communication, as the issue arises with the identification and authentication of persons involved in the case (Frolova et al. 2018).

According to the procedural legislation of the Russian Federation, holding a court session via videoconferencing involves finding all the persons involved in the case in the court, which is located at the location of each. This production is recorded and the record of the hearing by each court, carrying out the organization video conferencing.
There are only two grounds for refusal: 1) the lack of technical capacity of the court; 2) the case is considered in closed court.

However, some courts can set an example for others in organizing work in the era of pandemics, such as the intellectual property rights Court, which will start on May 12, 2020. It resumed its work and recommended that persons participating in the case use the information system “file of arbitration cases” for conducting court sessions, which proved the effectiveness of conducting online sessions. To participate in the court session, participants in the process must have an account confirmed in the Federal state information system “Unified identification system and authentication in the infrastructure that provides information and technological interaction of information systems used to provide state and municipal services in electronic form”.

Requests for online proceedings are submitted in electronic form via the “My arbitrator” information system, it must be accompanied by a copy of your passport and a document of higher legal education or a degree in law, as well as a copy of a power of attorney or other document confirming your authority. If the request is granted by the court, a record of the online court session will appear in the “file of arbitration cases”. At the appointed time, all participants will be able to join the court session, which is carried out in a General manner. If it is impossible to participate in the online session, a party may submit a motion to consider the case without their participation or a reasoned motion to postpone the court session.

The work of the courts should be adjusted starting from May 12, 2020, and the Supreme court of the Russian Federation stressed that the spread of coronavirus infection may be the basis for extending the period for consideration of the dispute.

A lot of debate related to whether the situation with coronavirus circumstance of force majeure, the Supreme court explained that the spread of coronavirus is not a universal circumstance of force majeure, and must proceed from the circumstances in each case.

The situation in the judicial system of the Russian Federation due to the lack of regulatory regulation of online proceedings in courts and other dispute resolution methods has once again raised the issue of the judicial system's inability to provide an adequate response in the era of the spread of coronavirus infection (Rusakova et al. 2019a, b).

The Supreme Court of the Russian Federation held six court sessions via the winter web conference, all of them were successful, although some technical difficulties arose, but they managed to cope with them. The first remote court session was held in 2000, but it was only in 2018 that the active introduction of modern information and telecommunications technologies to the judicial authorities began.

According to the information letter on the work of domestic courts in the context of the pandemic, the Supreme court of the Russian Federation cited statistics according to which the electronic turnover of procedural documents increased, and in the period from 18.03.2020 for 20.04.2020 G. 8,000 court sessions were held via videoconferencing, which is a very small number compared to the same period outside of the pandemic and the consideration of the case in a General manner.

Moreover, videoconferencing involves the presence of participants in the courts, and when their work has been suspended, this production is simply impossible to conduct. The increase in the electronic turnover of procedural documents was due to
the inability to submit documents in the usual manner. A serious problem is that this right was not used by all participants in the trial, but only by those who had previously issued a strengthened qualified electronic signature or registration on the website of public Services.

In a pandemic it is necessary to note the role of the Supreme court, which in many aspects the procedural and substantive nature of the questions, received explanations, which should lead to uniformity of judicial practice, and also stressed the need to take steps to develop remote production to protect the constitutional rights of citizens (Khabrieva 2018).

“Internet Judicial System” in China

An example of the functioning of courts in the era of pandemic can be demonstrated by the example of China’s Internet courts, where all production is conducted remotely. From 2017 to 2018, China set up Internet courts in Hangzhou, Beijing and Guangzhou. In addition, the simplest cases are considered by computer programs, and not by a person. As practice shows, the population does not mind that the case is considered by a robot, not a person. Online platforms have fully implemented the rights of Chinese citizens to obtain judicial protection. Interaction between the parties and the court was conducted in a video chat.

The Beijing Internet court launched an online litigation service center on June 27, 2018, which includes a “smart judge”, a mobile micro-court, and an official Weitao court account, as well as a microblogging service for participants. This service was used by those who do not have laptops or personal computers.

Vice-President of the Internet court in Beijing Li Jingwei said that the first “smart judge” has a female image with a voice, facial expressions and human actions, based on intelligent synthesizing speech and image technologies, such a judge will perform the repetitive work of real judges, including initiating legal proceedings, which will allow them to focus on their judicial work.

Online court proceedings are now the norm for the Chinese judicial system. Millions of court cases are resolved by “Internet courts” that do not require citizens to appear in court. Most actions are performed by artificial intelligence technologies (Amiantova et al. 2019).

In the era of the pandemic, the Supreme people's court of the People's Republic of China, in its explanation, called on all courts to switch to an online mode, including proceedings, including conciliation procedures, as well as sentencing and obtaining judicial acts, in order to ensure the smooth and regulated operation of courts in China.

Courts at various levels reviewed nearly 550,000 cases online across the country, conducted more than 110,000 online court sessions, and conducted online mediation more than 200,000 times from February 3 to March 20, 2020.

Chairman of the Beijing Internet court Zhang Wen stressed that the main goal is to integrate the Internet, cloud technologies and artificial intelligence into the judicial process and the system of providing judicial services, so that society can benefit more from scientific and technical innovations.

The Beijing Internet court released the country’s first Protocol for conducting an online court session on 26 procedural issues, which sets out all the procedural points from online identity authentication to the dress code of all parties in the courtroom.
One of the advantages is that these courts are available 24 h a day, and for countries whose territories are located in different time zones, this is of great importance. The growth of online production is growing every year.

The situation with the pandemic, according to many Chinese scientists, has led to the fact that all courts have been transformed into Internet courts, that is, since the spread of coronavirus infection, the entire set of proceedings has been transferred to remote mode (Du and Yu 2020). The main feature is that persons participating in the case and their representatives in online court proceedings can stay at home, and not apply to nearby courts to exercise their right to conduct a trial via videoconferencing, as stipulated in the procedural legislation of the Russian Federation.

4 Conclusion

Justice must always remain independent of any circumstances, including performing its function smoothly, ensuring the basic guarantees of the rule of law.

The ongoing changes in public life have given the judicial community and the state the task of switching to a new interaction with society in a digital format, which will require changes in legislation and significant financial costs.

The system of providing public services, including the judicial system, should undergo a major change in order to simplify the procedure for obtaining them.

It is necessary to refer to the foreign experience of implementing digital technologies in legal proceedings, where there is already an accumulated judicial practice. One example is China, whose judicial system has been completely transformed into a digital one. Moreover, for some Chinese citizens, it has become mobile, since many only have smartphones, through which you can get judicial and legal services.

The latest digital technologies will not only guarantee the basic rights and freedoms of citizens, but also make the judicial system effective. It is necessary to change the basic principles of legal proceedings, make them more flexible, but observing the public order of the state.

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