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Digitalization of the ECtHR activities in inheritance cases and in compulsory enforcement of jurisdictional decisions: International-legal aspect

Цифровізація діяльності ЄСПЛ у справах про спадкування та в ході примусового виконання рішень юрисдикційних органів: міжнародно-правовий аспект

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Abstract

Global challenges and the change in people's usual way of life during the pandemic have shown that it is digital technologies that can expand the possibilities of humanity. Their improvement and expansion of their scope is a priority for many states of the world. Therefore, global digitalization has covered all spheres of social life, including justice and the activities of decision-enforcement bodies. In particular, at the 37th plenary meeting of the European Commission on the Efficiency of Justice of the Council of Europe (CEPEJ), unity was demonstrated on the need for further development of tools concerning the digitalization of justice. Due to this, it is important to analyze the features of the digitalization of justice on the example of the activities of the European Court of Human Rights (hereinafter referred to as the ECtHR) regarding inheritance cases and pay attention to the international legal aspect of this issue. The purpose of the work is to study the international

Анотація

Глобальні виклики та зміна звичного способу життя людей під час пандемії показали, що саме цифрові технології можуть розширити можливості людства. Їх удосконалення та розширення сфери застосування є пріоритетним завданням для багатьох держав світу. Таким чином, глобальна цифровізація охопила всі сфери суспільного життя, в тому числі правосуддя та діяльність органів примусового виконання рішень. Зокрема, на 37-му пленарному засіданні Європейської комісії з питань ефективності правосуддя Ради Європи (СЕПЕЖ) було продемонстровано єдність щодо необхідності подальшого розвитку інструментів у сфері цифровізації правосуддя. У зв'язку з цим, важливо проаналізувати особливості цифровізації правосуддя на прикладі діяльності Європейського суду з прав людини щодо спадкових справ та звернути увагу на міжнародно-правовий аспект зазначеної проблематики. Метою роботи є дослідження

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legal aspect of digitalization of the activity of the ECtHR in inheritance cases and in the course of enforcement of decisions of jurisdictional bodies. The research methodology includes the dialectical method, historical-logical, comparative-legal, formal-legal, statistical, systemic-structural, modeling, and sociological methods. The authors summarized that the digitalization of justice is reflected in the activities of the ECtHR, including inheritance cases. The authors also highlighted the problematic issues of regulation of the implementation of digitalization tools for the administration of justice in some countries and problematic issues of digitalization of enforcement of court decisions.

Keywords: digitalization, European Court of Human Rights, enforcement of court decisions, jurisdictional bodies, judicial proceedings.

Introduction

In modern conditions of the development of social relations, more and more spheres of social life are moving online. Internet banking, investments, communication with family and friends, work communication - more and more everyday things are solved with the help of information technologies and the use of the Internet. The administration of justice using information technologies is no exception. Such transformations are taking place both at the national level - the digitalization of proceedings at the level of national courts, and at the international level - the digitalization of the activities of international judicial bodies, for example, such as the ECtHR.

The decree of the President of Ukraine "On the Strategy for the Development of the Justice System and Constitutional Judiciary for 2021-2023" defines the problem as the insufficient level of implementation of digital technologies in the administration of justice (Decree 231/2021, 2021). In order to implement the specified strategy and solve problematic issues, digital tools are being implemented in Ukraine, in particular, in inheritance cases. In particular, an electronic notary system is being implemented (notarial documents with a QR code, the authenticity of which can be checked using a QR scanner in the Diya application) (Ministry of Justice of Ukraine, 2022). Also, a number of changes affected the digitization of inheritance (Chernivtsi Regional Military Administration, 2022).

міжнародно-правового аспекту цифровізації діяльності ЄСПЛ у спадкових справах та під час примусового виконання рішень юрисдикційних органів. Методологія дослідження включає діалектичний метод, історико-логічний, порівняльно-правовий, формально-юридичний, статистичний, системно-структурний, моделювання, соціологічний методи. Автори резюмували, що цифровізація правосуддя відображена в діяльності ЄСПЛ, зокрема при розгляді спадкових справ. Автори також висвітлили проблемні питання регулювання впровадження інструментів цифровізації для відправлення правосуддя в окремих країнах та проблемні питання цифровізації виконання судових рішень.

Ключові слова: цифровізація, Європейський суд з прав людини, виконання судових рішень, юрисдикційні органи, судочинство.

At the same time, digitization is also taking place in the international legal system, the ECHR, and in the course of enforcement of decisions. Thus, the modern era of enormous technological development, especially digital, confronts legal systems with rapid and colossal changes. Among the challenges faced by legal systems is that technological development is faster than the development of the regulatory framework; the rules are different in different states; not all consequences can be predicted; international jurisprudence is developing, but not fast enough; for the most part, the highest European judicial system sets minimum standards; a phased approach should be used; the issues differ in the relationship between authorities and individuals and yet often overlap (European Court of Human Right, 2021a).

During the pandemic, electronic communication has allowed the judicial and enforcement systems to continue operating largely as normal. Digital justice offers real opportunities to improve the quality and efficiency of justice, but it can also pose a potential risk to the rule of law and the protection of human rights. Non-human elements in judicial decision-making can create opportunities for efficiency, but also certain risks. For this purpose, the Council of Europe started working on the topic of artificial intelligence and started issuing a number of program documents, recommendations, declarations, guidelines, and other legal documents on this topic (Council of Europe, 2021). In addition, the ECtHR is working on the

digitization of its activities in the era of digitalization, including identifying problematic issues through the discussion of different points of view and the exchange of opinions on ways to overcome the complexity that the protection of human rights on the Internet represents for the judicial system (Council of Europe, 2019b).

In view of the above, the study of the international legal aspect of digitization of the activity of the ECtHR in inheritance cases and in the course of enforcement of decisions of jurisdictional bodies are relevant and necessary.

Theoretical Framework or Literature Review

In the article Kovbas and Krayniy (2020) considered the problematic points of the imperfection of the mechanism of execution of court decisions. The authors draw attention to the fact that at the current stage of Ukraine's development, the quality of enforcement of decisions demonstrates the level of effectiveness of the legal regulation mechanism. The level of education of citizens in the spirit of respect for the law, and the legal value of decisions made on behalf of the state directly depends on such activity. Amendments to the legislation by introducing coercive measures to ensure the execution of court decisions will contribute to the implementation of decisions of jurisdictional bodies and increase citizens' trust in the institution of the execution of court decision.

Chepurny (2022) analyzed the issue of digitalization of executive proceedings. Digitization in probate cases in the context of digital existence after death is reviewed by Agarwal and Nath (2021). The authors analyzed the concept of digital inheritance and pointed out that in the process of digital inheritance, digital media are transferred to beneficiaries in the form of rights and digital assets, understanding the rights that exist in the beneficiaries after the death of the person. As the concept of digital inheritance is quite new, substantial legal frameworks have yet to be established to address post-death issues. It is for this reason that websites drive user actions. The authors believe that a comprehensive legal agreement is needed to address this important issue of digital heritage. In the work of Zhurkina, Filippova, and Bochkareva (2021), based on the example of the analysis of the legislation of the USA, Great Britain, Japan, Singapore, and some other countries, conclusions were drawn about the main principles and features of the use of information technologies in the civil process and their correlation with the principles of traditional

civil justice. Based on the results of the study, the authors put forward several theoretical and practical proposals for improving legislation in the field of the use of information technologies in civil proceedings.

Some features of digital heritage litigation were explored by Giada Russo and Giovanni Gigliotti (2021). The authors analyzed court practices regarding digital heritage.

Aniței (2017) discusses concepts such as the 5G Revolution, Robolution, Fintech, Insurtech, BitCoin, VR (Virtual Reality), Blockchain, and Digital Heritage, which are the topic of almost every international congress, seminar, and debate, but it is not entirely clear that what will happen to these digital products in the event of death. If a collection of books or a collection of vinyl records can be inherited by someone's heirs, it is not so clear and obvious when it comes to digital products and services.

Donald, Gordon and Leach (2012) also studied the digitalization of the ECHR. Individual inheritance cases considered by the ECtHR are examined in the work of Tsavousoglou (2019). Clemens J. (2022) analyzed the features of the impact of digitalization on the legal system.

The role of the ECHR in the development of international human rights is considered in the work of Viljanen (2005). The European Court of Human Rights plays various roles in the international network of human rights instruments, but it has not always been at the forefront of these developments. In some cases, a conservative approach to new trends was observed, and the Court tried to find a compromise, rather than new radical and complex turns. It depends on whether there are new treaties or whether a different emphasis should be placed on the material of international and comparative law.

Digital tools in inheritance in the European Union were studied by Nemeth, and Carvalho (2017). Thus, the authors emphasize that the law of inheritance is an integral part of civil law since it is the way by which the property, rights, and obligations of the testator pass to one or more persons by will or by operation of law and today, the law of inheritance continues to deny evolving phenomena and family structures that have given rise to probate substitutes. Today, a new set of challenges has come to the fore due to legal issues related to digital and electronic data that almost all citizens, regardless of age and place of residence, leave behind after death.

Digital heritage in the context of legislative reform in Italy was reviewed by Patti, and Bartolini (2019). Inheritance issues in the Netherlands were analyzed by Berlee (2017). Further, the features of digitization in inheritance cases in Estonia were analyzed by Mikk and Sein (2018). Moreover, Maurits S. Berger (2020) analyzes the decision in *Molla Sali v. Greece*.

From the above analysis of the literature, it can be concluded that the issue of digitalization of justice and enforcement of decisions arouses interest among scientists, as well as research on the digitalization of the inheritance process. However, the issue of the international legal aspect of digitization of the ECtHR's activity in inheritance cases and the course of enforcement of decisions remains insufficiently researched and requires a deeper analysis.

Methodology

The dialectical method is the basis for the conducted study of the international legal aspect of digitization of the activity of the ECtHR in inheritance cases and in the course of enforcement of decisions. This method made it possible to form the philosophical essence of the research object. Through the dialectical method of learning the study of digitalization of the activity of the ECtHR in inheritance cases, the objective regularities of judicial activity, as well as the international legal regulation of the implementation of digital tools for the administration of justice and in the course of enforcement of decisions, are revealed. The dialectical method determines the approach to the researched objects, phenomena, and factors as a certain element of a complex system of using special knowledge, substantiating the methodological basis for the application of other general scientific and branch research methods.

To analyze the historical development of digitalization of the activities of the ECtHR in inheritance cases and in the course of enforcement of decisions, the historical-logical method was used. The specified method made it possible to understand how historical conditions affect the implementation of information technologies in the field of justice, as well as what legislative regulation is necessary for effective regulation of the implementation of digital tools for the administration of justice.

To compare the provisions of the legislation, normative legal acts, and guiding provisions of the legislation of Ukraine and foreign countries, the comparative legal method was used. In a

general sense, the comparative legal method is the study of the legal systems of different states by comparing the legal norms, institutions, principles, etc. of the same name and the practice of their application. The use of the comparative legal method is necessary during the study of world experience, and knowledge of digital-constitutional-legal phenomena in the context of existing concepts of legal understanding. At the current stage of domestic development, the method is particularly relevant at the beginning of legal reforms. And it is achieved primarily by comparing the regulatory system of different countries. With the help of the specified method, an objective assessment of the place and role of the experience of each country in the development of the digitalization of justice and in the course of enforcement of decisions is also simplified.

The formation of the conceptual apparatus and conceptual approaches to the digitalization of the activity of the ECtHR in inheritance cases and in the course of enforcement of decisions took place with the help of a formal legal method. Thus, this method helped define digitization in the field of justice, the concept of inheritance and cases, and the concept of enforcement of decisions of jurisdictional bodies.

The statistical method was used to analyze the quantitative and qualitative indicators regarding the digitization of the ECtHR's activity in inheritance cases and in the execution of decisions.

Determining the structure of the process and tactics of digitalization of the ECtHR's activities in cases of inheritance, in case of compulsory execution of decisions, as well as the ratio of their elements became possible with the help of the system-structural method.

The modeling method was used to develop, forecast, and identify situations that arise during the digitalization of the activities of the ECtHR in inheritance cases and during the execution of decisions of jurisdictional bodies. In particular, this method helped to understand what problematic issues may arise in the digitalization of justice.

Results and Discussion

The European Court of Human Rights plays an important role as a developer of legal doctrines of human rights. Moreover, the ECtHR has repeatedly noted the need to take into account the special nature of the court's activity, taking into

account the agreement on the collective protection of rights and fundamental freedoms and its general spirit. The activities of the ECtHR are related to the maintenance and promotion of the ideals and values of a democratic society.

Digitization permeates all spheres of a person's life, reflecting on his position. Digitization also affected the activities of the European Court of Human Rights in such a category of cases as inheritance.

With this in mind, we will, first of all, consider the international legal regulation of digitization in inheritance cases in foreign countries.

The Netherlands:

According to Dutch civil law, any property can be inherited. Digital assets are no exception to this rule (Berlee, 2017).

Italy:

Italy has begun the process of introducing digitization tools at the legislative level to address heritage issues and address digital heritage issues, taking into account the provisions of the EU General Data Protection Regulation (GDPR) (Berger, 2020).

Poland:

Polish legislation focuses on the regulation of inheritance relations, mainly those digital assets that have economic value or contain personal information.

Estonia:

The Estonian Law on Inheritance and the provisions of the Civil Code governing law do not make any exceptions for digital assets, so they are inherited according to the general rules (Mikk & Sein, 2018).

Considering the peculiarities of digitization and the introduction of digital tools during inheritance in foreign countries, it is worth paying attention to how this procedure is carried out in the activities of the ECtHR.

The use of digital technologies creates serious issues such as risks to privacy due to massive and uncontrolled data processing, the uncontrolled spread of hate messages and other offensive forms of expression online, new forms of cybercrime and sexual violence against children, or the use of the Internet for terrorist purposes

and to sow mistrust and fear (Council of Europe, 2019b).

The European Court of Human Rights draws attention to the fact that more and more cases contain digital elements, and therefore there are peculiarities regarding the consideration of such cases (European Court of Human Rights, 2022). Moreover, on March 16, 2022 Convention 108+ and the related work of the Council of Europe on data protection were presented as one element that can contribute to solving the problems of human rights related to digital developments. In partnership with the Ministry of State responsible for human rights and relations with the Parliament of Morocco. ICESCO works to provide innovative solutions to human rights challenges related to digital technologies and to develop a legal framework to protect these rights in the digital space (Council of Europe, 2021). The main issues of digitization of the ECtHR's activities are mainly focused on three main topics: the protection of freedom of speech and privacy in the digital environment, as well as the consequences of big data and the determination of jurisdiction in the World Wide Web (Council of Europe, 2019a). The Council of Europe started working on the topic of artificial intelligence ten years ago and has intensified its efforts in the last five years. During this period, various bodies or committees of the Council of Europe issued several policy documents, recommendations, declarations, guidelines, and other legal documents on this topic (European Court of Human Rights, 2021b).

Thus, it can be argued that the digitalization of the activity of the ECtHR in inheritance cases plays an important role on the agenda, and the international community seeks to form a unified approach to the digitalization of the justice system and the consideration of cases in the field of inheritance, including digital heritage.

Let's consider in more detail the features of digitalization in the course of the enforcement of decisions.

The era of digital technologies requires the integration of electronic digital tools into the activities of bodies and persons who carry out enforcement of court decisions and decisions of other bodies, the scope, and capabilities of which do not stand still. Over the past 10 years, Ukraine has made significant progress in the field of digitization and automation of processes, in particular, electronic registers have been created - the Automated System of Enforcement Proceedings (ASEP), the Unified Register of

Debtors, the "Action" service and the "Electronic Court" portal. The parties to enforcement proceedings can familiarize themselves with the materials of enforcement proceedings and pay the debt thanks to the DIA application, and the ASEP itself has innovative capabilities, in particular, it carries out the automatic distribution of funds.

It seems that the prospects for the further modernization of the executive process in the field of information technology should be determined taking into account the trends in the development of European enforcement standards, adaptation to which may affect the domestic executive process because digitization as a global phenomenon cannot but transform executive procedures at a time when the right to of executive documents is recognized all over the world as a factor in the development of a social and sustainable economy and a guarantee of legal security.

This is the Global Code of Digital Enforcement presented by the International Union of Judicial Officers (UIHJ) at the 24th International Congress in Dubai in November 2021 (International Union of Judicial Officers, 2021). For Ukraine, the provisions of the Global Code of Digital Enforcement need to be studied, because it provides not only for the dematerialization of enforcement procedures but also for the use of methods and methods of enforcement concerning digital assets, including the mechanisms of enforcement against debtors' cryptocurrency. At the same time, it should be noted that the national legislation already provides for some mechanisms used during the enforcement of decisions, such as the automated seizure of the debtor's funds, electronic auctions, etc.

The Code also contains best practices to be applied in the enforcement process, such as the use of artificial intelligence or blockchain technology. Thus, artificial intelligence should help public and private executors evaluate the proposed algorithm or sequence of executive actions for a certain type of executive document or executive proceeding and enforcement measures against the debtor. It is also planned to establish a procedure for passing resolutions on a step-by-step basis in the ASEP. ASEP will prompt the procedure for issuing resolutions, and prohibit the issuance of those resolutions that are procedurally prohibited. In certain categories of penalty, it will be prohibited to issue resolutions that are not procedurally provided for by such a category. The use of blockchain technology is

also key for both public enforcement agencies and private enforcement agencies, as well as for the debt collector and debtor, to set up an automated enforcement process, especially when payments are made in cryptocurrency. Even more recent is the seizure of crypto-assets, the search for access to them, and the procedure for the seizure of crypto-assets.

The latest digital technologies are aimed at improving executive procedures and increasing the efficiency of execution, contactlessness and social orientation, which are currently the challenges of the time. At the same time, their application must be carried out in compliance with the guarantees of human rights in the executive process, as well as in compliance with the "ethical principles of the use of digital technologies", such as respect for human dignity, non-discrimination, and respect for personal data.

One of the goals for the restoration of Ukraine, which was announced in Lugano, is the digitization of executive proceedings. At present, some steps have been taken in Ukraine to digitize the enforcement of decisions of jurisdictional bodies, but unfortunately, they are not enough. In particular, it is important to take measures for the electronic seizure of funds in the debtors' bank accounts, because this will significantly affect the ability to execute decisions. On the one hand, relevant legislative changes were adopted in 2018, but, unfortunately, they turned out to be insufficient. In today's realities, in the system of executive proceedings, there is "electronic correspondence" instead of the real functioning of the system of automated electronic seizure of funds. Yes, the decision to write off the blocking of funds is made by a responsible employee of the bank, and its internal information system only informs about the need to do so. Automatic debiting of funds from the seized account occurs when a bank employee sends a payment request in paper form with a stamp and signature. Moreover, the inconvenience of the system of confiscation of funds affects the citizen as well. In particular, an effective automated system should provide for the urgent debiting from the debtor's accounts of the number of funds indicated in the document, after which the debtor could use the remaining money without any blocking or restrictions. And in case of illegal withdrawal of funds – to appeal such withdrawal. However, in today's realities, the executor blocks all the debtor's accounts, and the debtor will be able to use them only after a long procedure of unblocking the accounts. To date, to resolve this issue, the Verkhovna Rada of Ukraine is

considering a draft law, which provides for mandatory for all banks, the automatic debiting of funds simultaneously with the seizure of the account and the exclusion of the human factor to avoid abuses, however, the seized account of the debtor - an individual will be kept unblocked the number of funds in the amount determined by the legislator, based on one calendar month (Chepurny, 2022).

Such a digital system of enforcement of decisions is effective. This is confirmed by international experience.

1. Portugal. A mechanism of electronic seizure of funds was introduced, as a result of which the efficiency of the execution of decisions increased 20 times.
2. Croatia Electronic seizure of funds introduced. The Financial Agency (FINA) deals with the blocking and write-off of seized debtors' funds. All outstanding paper documents were processed and entered into the electronic system (Chepurny, 2022).

The issue of automation of executive proceedings should be resolved by the Ministry of Justice of Ukraine, through the regulatory settlement of the issue of mandatory connection and participation of banks, as well as through their real participation in a full-fledged automated system. At the same time, it is necessary to adopt several regulatory and legal acts and actively connect banks to participate in such digitalization. And, of course, to avoid situations of abuse by private and state actors in this area, it is necessary to ensure the mechanism of the actors' responsibility for the abuse of rights.

Summarizing the above, it is worth noting that in the EU countries, the digitalization of the justice system and in the course of enforcement of the decisions of jurisdictional bodies is aimed at increasing the uniformity of legal issues in the EU member states. Therefore, for example, in the ECLI system, any document must contain several mandatory elements, such as the country code, reference to the legal act, the name of the court that made the decision, the serial number, and also contains a set of metadata for accessibility and accurate citation decisions of European and national courts of EU member states (Zhurkina, Filippova & Bochkareva, 2021).

Conclusions

As a result of the conducted study of the international legal aspect of digitization of the

activities of the ECtHR in inheritance cases and the course of enforcement of decisions of jurisdictional bodies, the following conclusions were drawn.

1. Digitization of the activities of the ECtHR and in the course of the enforcement of decisions is on the agenda of the international community, and the task of the ECtHR is to form a unified approach to the digitization of the justice system and the consideration of cases in the field of inheritance, including digital heritage.
2. The use of digital technologies creates serious problems, such as risks to privacy due to massive and uncontrolled data processing, the uncontrolled spread of hate messages and other offensive forms of expression online, new forms of cybercrime and sexual violence against children or the use of the Internet for terrorist purposes and to sow distrust and fear.
3. Digitization of ECtHR activities and during the enforcement of decisions aims to reduce costs (on the one hand, digitization is a rather expensive process due to the costs associated with the acquisition of modern scanning and digitization technologies, but it saves thousands of hours of search time and also reduces the need for storage space and a lot of personnel); improve image quality; control of confidential information.
4. Issues related to digitalization during the enforcement of decisions are solved by the automation of executive proceedings, including the regulation of the seizure of debtors' funds and the full participation of banks in the automated system of executive proceedings. In addition, to avoid situations of abuse by private and state actors in this area, it is necessary to ensure an effective mechanism of accountability of actors for abuse of rights.

Concerning further scientific directions of research, it is important to analyze in more detail the features of the digitalization of justice and the system of enforcement of decisions in European countries, as well as to single out the problematic issues of this transformation.

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