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Digitalization of the activities of the ECtHR in civil and commercial proceedings and the problems of their enforcement: international legal experience

Цифровізація діяльності ЄСПЛ у справах цивільного та господарського провадження та проблеми їх примусового виконання: міжнародно-правовий досвід

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Abstract

The article is devoted to the study of the foreign experience of digitalization of the activities of judicial bodies in civil and commercial proceedings and the digitalization of the activities of the ECtHR. The researchers analyzed the role played by digital technologies in the context of the implementation of judicial proceedings and enforcement of law decisions. The purpose of the work is the study of the new technological reality, including the functioning of the ECtHR and the consideration of cases in the field of economic and civil proceedings by such a court in conditions of digitalization, the analysis of problematic issues of the implementation of decisions of jurisdictional bodies, as well as a detailed examination of the international legal experience of digitalization of the judiciary and execution services. The object of the study is the social relations related to the digitalization of the activities of judicial bodies and enforcement bodies. The subject of the study

Анотація

Стаття присвячена дослідженню зарубіжного досвіду цифровізації діяльності судових органів у справах цивільного та господарського провадження та діджиталізації діяльності ЄСПЛ. Дослідники проаналізували роль, яку виконують цифрові технології в контексті здійснення судочинства та виконання рішень судів. Метою роботи є дослідження нової технологічної реальності, в тому числі функціонування ЄСПЛ та розгляду справ у сфері господарського та цивільного провадження таким судом в умовах діджиталізації, аналіз проблемних питань виконання рішень юрисдикційних органів, а також детальний розгляд міжнародно-правового досвіду цифровізації судочинства та виконавчих служб. Об'єктом дослідження є суспільні відносини, пов'язані з цифровізацією діяльності судових органів та органів примусового виконання рішень. Предметом дослідження є міжнародно-правовий досвід

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is the international legal experience of digitalization of the activity of the ECtHR in civil and commercial proceedings, as well as problematic issues of enforcement. The research methodology consists of such methods as formal-logical, analysis, synthesis, abstraction, induction and deduction, historical, systemic, sociological-legal, and comparative-legal. As a result of the conducted research, it has been proven that the further digitalization of the ECtHR will allow to significantly improve the consideration of cases and ensure access to justice for a wider range of people.

Keywords: European Court of Human Rights, digitalization, civil proceedings, commercial proceedings, international cooperation.

Introduction

The introduction of the latest technologies is a long process, which carries many unknown challenges and questions for society. Digital technologies have provided unlimited opportunities for governmental and non-governmental structures to control and manage people's consciousness and behavior through informational influences. State bodies use digitalization to facilitate work, reduce administrative apparatus, and improve the level, speed, and overall efficiency of service provision and implementation of their activities.

In turn, the implementation of digital technologies has a number of risks and threats, which can affect the level of information security and human rights on the Internet. Therefore, the digitalization process involves an institutional transformation, which covers both the proper legal regulation of the introduction of digital tools and the proper protection of information and human rights on the Internet from possible cyber threats.

The conditions of the Covid-19 pandemic and global digitalization have opened up new opportunities for interaction, for online communication, including in the field of justice. On the one hand, the quarantine affected the sphere of justice by disrupting the normal work of courts and decision enforcement bodies, and on the other hand, it created a field for innovation in this sphere. Thus, despite the quarantine, the number of court cases did not decrease, and in some categories - even increased. In particular, the number of civil (divorce or marriage) and economic cases (debt collection, termination of contracts) has increased.

цифровізації діяльності ЄСПЛ у справах цивільного та господарського провадження, а також проблемні питання примусового виконання. Методологію дослідження складають такі методи, як: формально-логічний, аналіз, синтез, абстрагування, індукції та дедукції, історичний, системний, соціолого-правовий, порівняльно-правовий. В результаті проведеного дослідження доведено, що подальша цифровізація діяльності ЄСПЛ дозволить істотно вдосконалити розгляд справ та забезпечити доступ до правосуддя ширшому колу осіб.

Ключові слова: Європейський суд з прав людини, цифровізація, цивільне провадження, господарське провадження, міжнародна співпраця.

The above-mentioned circumstances created all the conditions for the introduction of digital tools for the administration of justice and access to justice for people and organizations. Therefore, the states faced the issue of reforming the judicial system by introducing digital tools, recording court sessions, and online participation. This also applies to international courts. For example, the ECtHR is also forced to change its activities in accordance with the new reality. At the same time, the ECtHR must clearly take into account the provisions of the Convention on the Protection of Human Rights and Fundamental Freedoms (Council of Europe, 1950).

Therefore, without the introduction of digital technologies, sustainable socioeconomic growth is impossible, and therefore it is important to analyze the already existing tools, risks, and effects arising from the digital transformation of the judicial system and the execution of decisions in foreign countries, in order to introduce better and expedient experience, based on internal prerequisites in Ukraine and in international courts.

Theoretical Framework or Literature Review

The issue of digitalization of judicial proceedings and enforcement of decisions was considered by a number of scientists.

The basic aspects of digitalization and their legal support are analyzed in detail in a group monograph edited by Yefremova (2021). Thus, the monograph highlights separate studies on current areas of legal support for digital

sovereignty, identified aspects of intellectual property law in the context of digital competence, legal regulation of digital platforms and current issues of data processing and circulation in digital infrastructures, the latest approaches to the regulation of digital information services, reveals competitive advantages and competitiveness of digital enterprises.

Makushev investigates the peculiarities of enforcement proceedings in foreign countries (Makushev, 2022). The work concludes that the system of enforcement bodies has its own characteristics from country to country depending on a combination of various factors, the main place among which is the degree of influence of the state on the system of enforcement proceedings. At the same time, in general, three types of systems are distinguished: public, private and combined. However, regardless of the subject composition, the main goal of any executive proceeding remains the restoration of violated human rights and the implementation of state policy in the field of justice. The author summarizes that in every country, regardless of which of the above types it belongs to, there must be an effective system of enforcement of court decisions, without which justice cannot be achieved, and court decisions will remain declarative.

The decision in the Regent 47 case against Ukraine and its significance for the development and independence of arbitration in Ukraine in the era of digitalization was analyzed by V.I. Nahnybida and A.V. Nahnybida (2021). The ECtHR decided whether there is a possibility to enforce the decision of the International Commercial Arbitration at the Chamber of Commerce and Industry of Ukraine. Some important conclusions concerning the fundamental principles of the organization and operation of international commercial arbitration and arbitral proceedings were formulated by the ECtHR.

Nikiforova (2021) investigated a number of problematic aspects of the implementation of ECtHR decisions in Ukraine, analyzing the «Petukhov v. Ukraine» case. In particular, she noted the issue that in the decision «Petukhov v. Ukraine No. 2» dated March 19, 2019, the Court established a violation of Article 3 of the Convention due to the fact that in Ukraine there are no real grounds and mechanisms for reviewing the sentences of those sentenced to life imprisonment deprivation of liberty and recognized that Ukraine, given the systemic

nature of the problem, should reform its life sentence review system, examining on a case-by-case basis whether long detention was justified and allowing lifers to know what they need to do, that their petitions for release be considered and under what conditions.

Osarchuk (2021) drew attention to the main problems of proper implementation of decisions of the European Court of Human Rights in Ukraine. Including the need to establish the location of the debt collector and to establish this provision normatively, in the aspect of paying compensation to the debt collector, which currently does not meet European requirements, thereby depriving citizens of Ukraine of receiving compensation.

The role and place of ECtHR decisions in the Ukrainian judicial system were analyzed by Pavlyukovets (2020). Chumak (2016) investigated the foreign experience of legal regulation of certain issues of enforcement of decisions of jurisdictional bodies. The role of the EU court in the formation of European law enforcement practice is considered by Shabalin (2020).

Zorzi (2020) explored the new possibilities of the post-modern world for the administration of justice. The researcher notes that now, more than ever is the time for justice system leaders to reach out to each other across borders to share experiences, best practices, and capacity, and collaborate on innovation.

The experience of the digitalization of justice in Azerbaijan was analyzed by Melis (2022). The author noted that the digital transformation of the functions of the judiciary over the past few years has allowed for increase productivity - it is possible to process approximately three times more cases compared to courts that rely on paper documents; increase efficiency – judges not only consider more cases but also do it faster, saving time on each case by about two months; increase transparency - court sessions are recorded. In turn, equipment and programs, necessary to increase transparency allowed for remote hearings, a game-changer during the COVID-19 pandemic as it allowed courts to continue operating.

In his work, Voorhoof (2022) analyzes the practice of the ECtHR in the context of the application of Article 10 of the ECHR (freedom of expression). The author concludes that the judicial practice of the ECtHR allowed to

increase the degree of protection of the right to freedom of expression online.

The impact of another article of the Convention for the Protection of Rights and Fundamental Freedoms on the digitalization process was further explored by Özgür Heval Çınar (2021). The author examined Article 8 of the European Convention on Human Rights, its historical origins, definition, and scope, and the current practice of the ECtHR in light of current events in the digital world.

Equally important is the study of Bachelet (2022). The author draws attention to the fact that the protection of human rights and democratic space in the era of digital technologies has become extremely important. At the same time, the protection of the right to participate is central to the protection of democracy.

As we can see from the above analysis of the literature, the issue of digitalization of the judicial system and the problem of execution of decisions arouse interest among scientists and practicing lawyers. However, unfortunately, the international legal experience of digitalization of the activity of the ECtHR in civil and commercial proceedings, as well as during the execution of decisions, remains insufficiently researched, although it is quite relevant. This necessitates a more detailed study and research of the relevant issues.

Methodology

By using the formal-logical method, digitalization in the field of civil and commercial proceedings and the execution of decisions are determined by a formally justified, logically structured, and clearly fixed system of rules, which is built using the principle of subordination and non-contradiction of norms. The purpose of this method is to determine the content and essence of digitalization, by systematizing provisions and ideas that determine the features of this process and, in general, the order of its implementation.

The use of the analysis method consists of the fact that the subject of research is divided into parts, each of which is investigated separately. However, the analysis does not make it possible to know the object in general. For this, a synthesis is used, with the help of which the connections and interaction of the structural elements of legal responsibility are renewed. Therefore analysis and synthesis helped to comprehensively investigate the international legal experience of the digitalization of the

ECtHR in civil and commercial proceedings and the problems of their enforcement as a legal, systemic phenomenon and to study the relationship of its structural elements.

Abstraction as a formal-logical method is one of the main and important for the study of the international legal experience of the legal regulation of digitalization, which involves delimiting general features and properties from a specific subject and separating them from all other features. Thus, abstraction makes it possible to isolate the experience of a single country from others, as well as to find out its essence.

The methods of induction and deduction were used in the process of scientific knowledge of the features of digitalization in the field of judicial proceedings and enforcement of decisions. Induction made it possible to learn from individual facts to general statements about digitalization, and with the help of deduction, its research was carried out by going from the abstract to the concrete, from the general to the particular.

It is impossible to study the stages of development of digitalization and its legal regulation without using the historical method of cognition. Thus, it is important to study legal phenomena in close connection with the history of the country, since the current state of legal phenomena directly depends on the legal past. The historical method of cognition made it possible to reveal the meaning of phenomena on the basis of available facts and analogies to form broad generalizations and draw historical parallels. Therefore, with the help of the historical method, it became possible to investigate digitalization in the field of judicial proceedings and the execution of decisions of various countries through the prism of its origin and development, which characterizes its essence.

An important method of the conducted research is the systematic method, with the help of which it is possible to carry out a comprehensive study of digitalization, taking into account the fact that it exists in a system of a state-legal nature. With the help of the system method, the relationship between digitalization and other processes affecting the judicial system and the system of execution of decisions was clarified.

A sociological and legal method was also used for a comprehensive study of the international legal experience of digitalization of the ECtHR's

activities in commercial and civil cases since any social phenomenon is important to determine by analyzing the specific features of other, similar phenomena. Therefore, the key to a thorough understanding of digitalization is taking into account the sociological and legal context of the specified problem.

In addition to the methods mentioned above, this research used the comparative legal method, which is one of the general scientific comparative methods. Thanks to the application of this method, the processes, and phenomena that affect digitalization were understood, and a comparison of the practical use of digitalization in various spheres of social life was made.

Results and Discussion

In the modern conditions of the development of social relations, the justice system and the execution of decisions of jurisdictional bodies face new challenges related to the digitalization of proceedings both at the national and international levels.

The heads of the justice bodies must effectively implement access to justice activities, using collaboration with various actors to ensure that

they quickly adapt to the situation, meeting the needs of the people. Justice leaders must effectively implement access to justice, using multi-stakeholder collaboration to adapt quickly to a situation, such as Covid-19 or martial law, to meet people's needs.

In particular, the European Commission proposed key principles of digital transformation: placing people and their rights at the center of digital transformation; support of solidarity and inclusiveness; ensuring freedom of choice online; promoting participation in the digital public space; increasing security, protection and empowerment of people; promoting a sustainable digital future (European Commission, 2022). This also indicates the need for the courts to take into account the general principles of the transformation of digital technologies.

International experience shows that courts with digital technologies and open justice are able to respond to challenges faster and more efficiently, turning crisis phenomena into an opportunity to increase their accountability and evaluate their effectiveness. Let's consider the international experience of digitalization of court activities in civil and commercial processes in more detail.

Table 1.
Digitalization in some countries of the world. Comparative characteristic.

Country	Experience in implementing digital elements
United Kingdom	1) Implemented HMCTS in the era of modernization of courts and tribunals and conducting hearings online. One of the main functions of this program is to ensure the automation of court cases and online consideration of certain categories of court cases. 2) Legislative simplification of formal procedures in civil proceedings, which made it possible to introduce online services in the court system and, thus, to simplify and speed up the consideration of relevant categories of cases (European Bank, 2020).
Canada	The British Columbia Civil Dispute Resolution Tribunal (CRT) has been established. The peculiarity of this organization is that it is not a state body, consists of specialists who do not have the status of a judge and considers minor disputes worth up to 5 thousand dollars. Disputes are processed online with a shortened procedure (European Bank, 2020).
Australia	Provides for the operation of two services - an online registry and an online court. The registry allows you to submit more than 80 application forms for civil cases, receive court documents by email, check documents submitted for a specific case and pay court costs online. In turn, the online court provides a concrete solution for legal practitioners and professional litigants to conduct cases online. This allows users to make a specific request or agree or oppose a request made by another party after the case is listed. Users can also attach documents or send messages through the system (European Bank, 2020)
Estonia	Estonia introduced a single automated system for judicial document management back in 2005. It was created for use by all participants in the trial and provides opportunities for consideration of any category of cases. In fact,

	Estonia was one of the first in the world to introduce a system of automating court procedures. (European Bank, 2020)
Malta	Malta's strategy envisages digitalization in the provision of services, including in the field of justice. In particular, the launch of the Gustizzja portal is foreseen, which will serve as a transition portal for integration with various national portals through a single sign-on system, as well as with European portals. The portal will serve as the front window of Justice online, where all information about digital services and their interrelationships will be available. In addition, it is envisaged to improve the means of electronic search of court practice, to provide lawyers with full access to case materials (Ministry for Justice and Governance, 2022)
Singapore	Singapore became one of the first countries in the world to introduce online services in the judiciary (Zorzi, 2020).
Romania	Romania is not one of the leading countries in the world in terms of the introduction of automated systems in the field of justice, however, the recently granted opportunity for courts to audio-record court sessions also helps the participants in the process to properly exercise their rights in the field of justice (Zorzi, 2020).
Croatia	Audio recordings and audio/video recordings are available, but not yet fully implemented in daily court practice (Zorzi, 2020).
Malaysia	Courts in Malaysia are obliged to make audio and video recordings of the court proceedings and also to transcribe them (Zorzi, 2020).

It is also worth noting that due to the conservatism of the judicial system, during the last decade, the Scandinavian courts have gradually modernized and introduced digital technologies. Denmark is a leader among other Scandinavian countries in matters of court automation, however, the Baltic countries, first of all Estonia, which was mentioned earlier, are significantly ahead of even Denmark in terms of digitalization (The Nordic Council and the Nordic Council of Ministers, 2022).

Thus, despite the fact that the courts remain to a certain extent conservative in their procedures, it is evident that today's challenges force more and more countries to introduce various technological solutions in the field of justice in order to simplify court procedures, enhance the judicial process and improve the state of protection of rights and freedoms its citizens (The Pew Charitable Trusts, 2021).

The same applies to the digitalization of the ECtHR's activities to ensure human rights. For example, recently the ECtHR is paying more and more attention to the digital rights of citizens and the need to protect information on the Internet as a necessary component of human rights (EDRI, 2022).

We will conduct an analysis of foreign experience to generalize the positive and negative aspects of enforcement systems of other states and consider the feasibility of using positive experience in the conditions of the modern development of the system of

enforcement of decisions in Ukraine with the aim of improving it.

Taking into account the characteristic features and forms of redistribution of power in the field of enforcement, it is advisable to distinguish between centralized and decentralized systems of executive proceedings. Accordingly, centralization and decentralization affect both the possibilities of digitalization and the efficiency of decision-making. Centralized systems of executive proceedings were formed in the Republics of Armenia, Belarus, and Kyrgyzstan, as well as in Sweden, Finland, Spain, and others. Under this model of executive proceedings, an organizationally independent body authorized in the field of enforcement, with a vertically integrated management structure, is created. Decentralized systems of executive proceedings provide that certain functions of the state regarding the execution of court decisions can be transferred to private persons. Such systems operate, for example, in the USA, Canada, France, and other countries. The decentralized enforcement systems have different departmental subordination of bodies and officials who carry out enforcement, and differentiation of departments that perform licensing, control, and supervisory functions. In such countries as Lithuania and Estonia, the institute of private bailiffs was introduced instead of the institute of state executors, which turned out to be ineffective. In Estonia, the status of a bailiff is defined as an independent person who holds a public legal position and performs his official duties as a person of a free profession on his own

behalf and under his own responsibility (Osarchuk, 2021).

If we compare the effectiveness of the mechanisms of the enforcement systems that are used in the world, it should be noted that the most effective of them are those that function in countries where the population has a high level of legal culture, respect for the law, where complex systems of interaction between state and self-regulatory organizations (state, banks, and collective agencies) are founded. In addition, a high level of legal culture promotes openness to the latest technologies and their use in the execution of decisions (forwarding of documents and attachment of accounts).

Thus, as can be seen from the above analysis of the literature and experience of foreign countries, digitalization is an important component of ensuring human rights, especially in conditions of the technical impossibility of access to justice and execution of decisions.

Conclusions

Thus the research of the international legal experience of digitalization of the activity of the ECtHR in civil and commercial processes and the problems of their enforcement, the following conclusions can be drawn:

1. Digitalization in courts is aimed at increasing legal certainty, strict compliance with deadlines, reducing costs, and using automation when performing complex procedures.
2. Countries introducing tools for the automation and digitization of the judicial process should rely on those models that have proven themselves well in the world. First of all, this concerns the clear work of processing the entire array of documentation that enters the automated system, as well as compliance with the norms of procedural legislation during online hearings. Therefore, jurisdictions with advanced online court systems have strengthened their evidence-based functions for thorough statistical reporting and changed their model accordingly.
3. Adopting digital technologies not only helps keep courts open but also improves participation and helps users resolve disputes more effectively.
4. Based on the results of the examination of the systems of enforcement agencies of foreign countries, it should be summarized, that in every country, regardless of which of

the above types it belongs to, there must be an effective system of enforcement of court decisions, without which justice cannot be achieved, and court decisions will remain declarative.

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