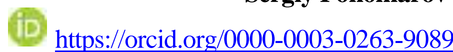
DOI: https://doi.org/10.34069/AI/2024.76.04.10
How to Cite:
Najafli, E., Ponomarov, S., Koverznev, V., & Ivanov, A. (2024). European legal standards of digitalization of the judiciary. *Amazonia Investiga*, *13*(76), 113-127. https://doi.org/10.34069/AI/2024.76.04.10

European legal standards of digitalization of the judiciary

ЄВРОПЕЙСКІ ПРАВОВІ СТАНДАРТИ ДИГІТАЛІЗАЦІЇ СУДОВОЇ ВЛАДИ

Received: February 3, 2024 Accepted: March 27, 2024

Written by:
Emin Najafli[1]

https://orcid.org/0000-0003-2551-5871
Sergiy Ponomarov[2]

https://orcid.org/0000-0003-0263-9089
Vadym Koverznev[3]

https://orcid.org/0000-0003-4228-1368
Andrii Ivanov[4]

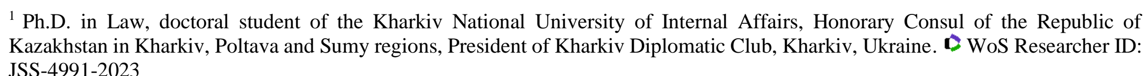
https://orcid.org/0000-0001-8066-7734

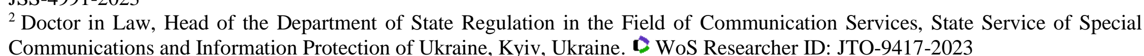
Abstract

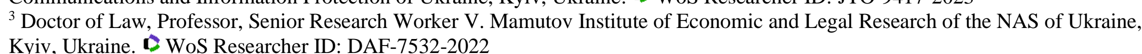
The article reveals the content of the concept of European legal standards in the area of digitalization of the judiciary adopted as mandatory or as recommendatory typical legal principles and norms fixed (contained) in common sources of law (acquis communautaire) of the European legal system. They are the minimum legal requirements for the organization and implementation of e-justice for the EU member states. The application of these standards takes place in the course of their implementation by national laws of both the EU member states and states that are guided by the legal values of the EU and/or seek to acquire EU membership, like Ukraine.
The normative basis, goals and principles of e-justice in the EU are thoroughly analysed. The key positions on the digitalization of the judiciary, which are set out in the EU legal documents containing the relevant legal standards, are defined. Attention is drawn to the fact that the main elements of e-justice, implemented in Ukraine under the influence of

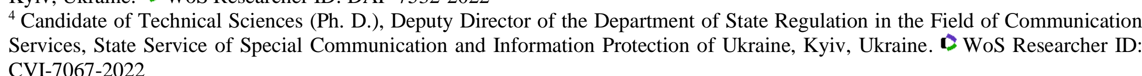
Анотація

У статті розкривається зміст поняття «європейські правові стандарти у сфері дигіталізації судової влади (ухвалені як обов'язкові або як рекомендаційні типові правові принципи й норми, зафіксовані (вміщені) у спільних джерелах права (acquis communautaire) європейської правової системи, що є мінімальними правовими вимогами щодо організації і здійснення електронного правосуддя для держав-учасниць ЄС). Втілення цих стандартів відбувається в ході їх імплементації національними законодавствами як держав-учасниць ЄС, так і держав, що орієнтуються на правові цінності ЄС та/або прагнуть набути членства в ЄС, як Україна.
У дослідженні використовуються загальнофілософські, загальнонаукові і спеціально-наукові(приватно-наукових) методи пізнання.
Ґрунтовно проаналізовано нормативну основу, цілі та принципи електронного правосуддя в ЄС. Визначено ключові позиції щодо дигіталізації судової влади, які викладені в


[1] Ph.D. in Law, doctoral student of the Kharkiv National University of Internal Affairs, Honorary Consul of the Republic of Kazakhstan in Kharkiv, Poltava and Sumy regions, President of Kharkiv Diplomatic Club, Kharkiv, Ukraine. WoS Researcher ID: JSS-4991-2023


[2] Doctor in Law, Head of the Department of State Regulation in the Field of Communication Services, State Service of Special Communications and Information Protection of Ukraine, Kyiv, Ukraine. WoS Researcher ID: JTO-9417-2023


[3] Doctor of Law, Professor, Senior Research Worker V. Mamutov Institute of Economic and Legal Research of the NAS of Ukraine, Kyiv, Ukraine. WoS Researcher ID: DAF-7532-2022


[4] Candidate of Technical Sciences (Ph. D.), Deputy Director of the Department of State Regulation in the Field of Communication Services, State Service of Special Communication and Information Protection of Ukraine, Kyiv, Ukraine. WoS Researcher ID: CVI-7067-2022

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European standards, can be considered the following: (i) conducting electronic office work, centralized storage of cases and other procedural documents in a single database; (ii) exchange of documents and information; (iii) electronic method of determining a judge (judge-rapporteur) to consider a particular case; (iv) using information and communication technologies to investigate electronic evidence; (v) trial participation in the hearing via videoconference; (vi) adoption and publication of judicial acts in electronic form.

Keywords: digitalization, judiciary, e-court, e-justice, rule of law, implementation, legal standards.

правових документах ЄС, що містять відповідні правові стандарти. Звертається увага на те, що основними елементами електронного правосуддя, імплементованими в Україні під впливом європейських стандартів, можна вважати такі: 1) ведення електронного діловодства, збереження справ і централізоване зберігання процесуальних та інших документів в єдиній базі даних; 2) обмін документами та інформацією; 4) електронний спосіб визначення судді (судді-доповідача) для розгляду конкретної справи; 5) використання ІКТ для дослідження електронних доказів; 6) участь учасників судового процесу у судовому засіданні в режимі відеоконференції; 7) ухвалення та оприлюднення судових актів в електронному вигляді.

Ключові слова: дигіталізація, судова влада, електронний суд, електронне правосуддя, верховенство права, імплементація, правові стандарти.

Introduction

Expanding the boundaries of the availability of justice to the population, as well as combining the availability of justice with openness in the activities of the judiciary, overcoming the problem of unjust decisions of the court, increasing the level of public confidence in the court as an institution of state power and reducing the burden on the courts are becoming increasingly obvious, universal and influential factors that encourage different states to take large-scale steps to digitalize the judiciary, considering digitalization almost a panacea in adapting the judiciary to the challenges of the digital age.

Solving complex and multifaceted problems of digitalization of the judiciary is seen as possible and necessary in Ukraine due to such direction of modernization of its organization and activities as implementation of European standards of judiciary digitalization, which gradually acquire the importance of legal standards in connection with the activities of the relevant European institutions in this direction. Moreover, such implementation is not optional, but imperative direction of reforming the judicial system of Ukraine in the direction of its in-depth digitalization in connection with the constitutionally proclaimed in Ukraine strategic course towards European integration (Law of Ukraine No. 2680-VIII, 2019). So, the strategic course of the Ukrainian state to join the European Union requires further development of the judicial system, "taking into account the best international standards and practices" with the "implementation of international standards and best practices of the Council of Europe and the European Union". And, therefore, it determines the "development of electronic legal proceedings taking into account world standards in the area of information technology" (Decree of the President of Ukraine No. 231/2021, 2021) to ensure that the Ukrainian judicial system acquires signs of independence, fairness, transparency and efficiency of its functioning.

Theoretical Framework

The interaction of information and communication technologies (ICT) with the judicial system naturally led to an urgent need for "new legal concepts, standards, procedures, legislative strategies and system design and planning" (Council of the European Union, 1992). It is no coincidence that in European jurisprudence approaches to analysing the actions of the its institutions, aimed at using artificial intelligence in the area of justice in all its potential, are becoming increasingly common (Covelo de Abreu, 2019, p. 3-48; Kengyel, Nemessányi, 2012; Silveira, & Abreu, 2018; Storskrubb, 2017, p. 271-302). And e-justice is positioned not just as a certain set of public services provided by courts to citizens and legal entities in digital format, but as a specific set of legal values that represent, support and implement the judicial authorities in practical interaction with other subjects of law during the

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jurisdictional process (Lupo, 2019, p. 77-113). At the same time a kind of consensus has developed in the European scientific literature on the existence of a controversial impact of e-justice on the rights of the parties, as well as on the effectiveness of judicial proceedings (Koshman, 2022, p. 74). Thus, along with the significant advantages of e-justice, there are numerous risks of excessive "digitalization" of the judiciary. It may encroach on the right of everyone to judicial protection, lead to a restriction of citizens' access to justice as a result of belonging to socially vulnerable segments of the population, digital illiteracy or limiting the availability of new ICT. The technical unpreparedness of courts and judges to implement and use ICT for the administration of justice have risks of disruption of access to courts electronic systems by unauthorized persons. Also it may cause the emergence of numerous other problems: organizational, security and with human rights.

Methodology

The study of European standards for the digitalization of the judiciary determines the use of a methodology that involves a combination of general-philosophical, general-scientific, and special-scientific methods.

The dialectical method was also used to analyse doctrinal approaches to the definition of the term "European standards of digitalization of the judiciary" as the primary, starting concept in this study.

The general-scientific methods used in this study were methods of analysis and synthesis, as well as a system-structural method. The method of analysis made it possible to fit the digitalization of the judiciary into the pan-European trend of building a digital democracy based on the model of good governance, correlate this digitalization with the requirements of ensuring access to justice, transparency of the judiciary, ensuring the effectiveness of the rule of law in the area of justice. Using the method of synthesis, the authors managed to formulate conclusions about the interdependence of the Ukrainian experience of digitalization of the judiciary from the consideration and application of European standards of such digitalization; to identify the constructive elements of such standards that require implementation in the Ukrainian law-making and law enforcement practice.

The special-scientific methods were formal-legal, hermeneutical, historical-legal and comparative. In particular, the formal-legal method made it possible to find out the substantive characteristics of European legal standards for the digitalization of the judiciary, the content and orientation of regulatory legal acts in the area of judicial digitalization in Ukraine. The hermeneutical method used in the interpretation of scientific concepts and normative terms from the area of digitalization of the judiciary (e-justice, standards of the judiciary and legal proceedings, standards of digitalization of the judiciary, etc.). The historical-legal method made it possible to show the digitalization of the judiciary as a continuing legal process in real time, which has an unfinished character, structure, features, its own dynamics in Ukraine and in the EU. This process is marked by its own specifics of the emergence and deployment in the current time and space. The use of the comparative method is determined by the specifics of the subject of this research. It involves a large-scale comparison of European legal standards with the relevant legislative efforts in the area of digitalization of the judiciary in Ukraine. This method made it possible to find out the basic, model nature of European legal standards in this area, to prove the relevance of bringing them in line with the rapidly developing Ukrainian legislation on e-justice over the past 10–15 years.

Results and Discussion

Understanding the essence of European legal standards for the digitalization of the judiciary

Recently, in Ukrainian jurisprudence, theses on the urgent need for the implementation of European standards of the judicial system and legal proceedings in the judicial system are increasingly being substantiated (Atamanchuk, 2019, p 109-116; Holubieva, Andronov, & But, 2021; Izarova, 2018, p. 55-61). It is also noted that in the process of implementation of European standards in the sphere of procedural and legal regulation of judicial proceedings of Ukraine, it is necessary to take into account the peculiarities of system connections of the Ukrainian procedural legislation, the dynamics of changes in European models of procedural regulation of judicial proceedings (Dehtiar, Pechena, 2022, p. 107). These scientific conclusions reflect the objective needs of the development of the Ukrainian judicial system in organic unity with the key trends and patterns of development of the EU judicial systems.

First of all, European legal standards are minimum legal requirements formulated

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sufficiently generally. They act as principles of legal regulation of relevant spheres of public life (Kliuchkovskyi, 2020, p. 37).

European legal standards are a kind of regional international legal standards (Stemkovska, 2021, p. 45-46). They include elements such as the general principles of EU law and EU common values related to human rights, the environment, economic issues, etc. A classic example of their consolidation is the European Convention on Human Rights 1950, where they are formulates as principles (Khaustova, 2016, p. 34).

It is clear that the content of these standards is differentiated depending on the scope of application. In particular, it can be argued about European legal standards in the area of judicial system and legal proceedings. First of all, the scientific literature has formed the following opinion about these standards. They appear as common, typical principles and norms that are fixed in the main sources of law of the European legal system and they are the minimum legal requirements for the judicial systems of the EU member states (Luts, 2004, p. 175). These standards are binding or advisory i.e. correspond to the paradigm of coexistence of "hard" and "soft" law in the EU legal system (Khaustova, 2016, p. 34). Their implementation provides for consolidation in national legislation, development and improvement of the judicial system, taking into account their application in the practice of the judicial authorities of the state (Paskar, 2021, p. 118-121). Starting standards are: (i) an access to justice; (ii) a fair trial covering the right to an adversarial process; the right to equality of parties; the right to be represented in court; the right to oral hearing; the right to fair proof; the right to a reasoned court decision; (iii) a public trial, including a public announcement of the judgment; (iv) a trial within a reasonable time; (v) a trial by an independent and impartial court established on the basis of the law (Izarova, 2015, p. 12).

In the course of the formation and development of e-justice within the EU, a system of certain legal standards for the digitalization of the judiciary has been developed. It is significant both in terms of the further development of e-justice within the EU member states and in the states implementing European integration in order to gain full membership.

It is important that for Ukraine the implementation of European legal standards is not a matter of free discretion of its state institutions, despite the fact that Ukraine is not formally a member of the EU. Instead, the obligation of such implementation follows both from the point of view of a number of international legal obligations assumed by Ukraine: in accordance with the Association Agreement with the EU, 2014 and constitutional fixation of the strategic state course, 2019, aimed at Ukraine's full membership in the EU. In addition, their implementation in court proceedings is relevant, since in this way the democratic development of Ukraine and the construction of a rule of law state are ensured (Babenko, 2021, p. 353). It includes a national model of e-justice relevant to European legal experience.

If we analyse the European legal standards in the area of digitalization of the judiciary from the point of view of the ratio of mandatory and recommendation standards, we should take into account that in general the whole system of European standards of the judiciary and the status of judges consists of two groups: (i) generally recognized European standards, i.e. mandatory European standards; (ii) special European standards in the area of the judicial system and the status of judges (advisory standards) (Babenko, 2021, p. 353).

If we analyse the meaningful and formal-legal consolidation of European standards of digitalization of justice, we will come to the following conclusions. Firstly, these standards have a predominantly advisory nature. It follows from the names of the documents where they are contained – conclusions, recommendations, resolutions, etc., as well as directly formulated in the legal documents of the EU institutions, in particular, as "general guidelines" (Council of the European Union, 1995; Council of the European Union, 2001a), "principles and guidelines" (Council of the European Union, 2001b; Council of the European Union, 2003a; Council of the European Union, 2003b), "guidelines" (Council of the European Union, 2001b). Secondly, European standards of digitalization of justice in contrast to the minimum standards of civil procedure in the European Union approved by the Resolution of the European Parliament (2015/2084 (INL) of July 4, 2017 (Council of the European Union, 2018), do not have a single, unified source of consolidation (they are contained in the conclusions of the Consultative Council of European Judges, resolutions of the Parliamentary Assembly of the Council of Europe, the Committee of Ministers, documents of the European Commission for the Efficiency of Justice, as well as in some other acts that laid

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the foundations for the formation and development of European policy in this area. Thirdly, the standards tend to combine the definition of the principles of ICT application in judicial activity with the elements of policy planning in the area of digitalization of the judiciary (approved by the European e-justice Strategies and Action Plans 2008 (Council of the European Union, 2008), 2014–2018 (Council of the European Union, 2013), 2019–2023 (Council of the European Union, 2019b), 2009–2013 (Council of the European Union, 2009a), 2014–2018 (Council of the European Union, 2014), 2019–2023 (Council of the European Union, 2019a).

Regulatory framework for e-justice in the EU

As of today, a number of normative legal acts of the Council of Europe that contribute to the formation of e-justice in the EU have been adopted. They are[5]:

Recommendation No. R (84) 5 of the Committee of Ministers to member states on the principles of civil procedure designed to improve the functioning of justice (adopted by the Committee of Ministers on 28 February 1984 (Council of the European Union, 1984);

Recommendation No. R (92) 15 of the Committee of Ministers to member states concerning training, research and training in the area of law and information technology on 19 October 1992 (Council of the European Union, 1992);

Recommendation No. R (95) 11 of the Committee of Ministers to member states concerning the selection, processing, presentation and archiving of court decisions in legal information retrieval systems (adopted by the Committee of Ministers on 11 September 1995) (Council of the European Union, 1995);

Recommendation Rec (2001)2 of the Committee of Ministers to member states concerning the design and re-design of court systems and legal information in a cost-effective manner (adopted by the Committee of Ministers on 28 February 2001) (Council of the European Union, 2001a);

Recommendation Rec (2001)3 of the Committee of Ministers to member states on the delivery of court and other legal services to the citizen through the use of new technologies (adopted by the Committee of Ministers on 28 February 2001) (Council of the European Union, 2001b);

Opinion No. 2(2001) of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on the funding and management of courts with reference to the efficiency of the judiciary and to Article 6 of the European Convention on Human Rights on 23 November 2001 (CCJE, 2001);

Recommendation Rec (2003)14 of the Committee of Ministers to member states on the interoperability of information systems in the justice sector (adopted by the Committee of Ministers on 9 September 2003) (Council of the European Union, 2003a);

Recommendation Rec (2003)15 of the Committee of Ministers to member states archiving of electronic documents in the legal sector (adopted by the Committee of Ministers on 9 September 2003) (Council of the European Union, 2003b);

Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities (adopted by the Committee of Ministers on 17 November 2010) (Council of the European Union, 2010);

Opinion No. (2011)14 of the CCJE "Justice and information technology (IT)" (on 7–9 November 2011) (CCJE, 2011);

Guidelines on how to drive change towards Cyberjustice of the European Commission for the Efficiency of Justice (CEPEJ) (adopted by CEPEJ on 7 December 2016) (CEPEJ, 2017);

European ethical Charter on the use of Artificial Intelligence in the judicial systems and their environment (adopted by European Commission for the Efficiency of Justice (CEPEJ) on 3–4 December, 2018) (CEPEJ, 2018);

Guidelines of the Committee of Ministers of the Council of Europe on electronic evidence in civil and administrative proceedings (adopted by the Committee of Ministers on 30 January 2019) (Council of the European Union, 2019c);

[5] Below is an approximate, but not complete list of legal documents in the area of digitization of the judiciary issued by the EU institutions. At the same time, we have singled out documents according to the criterion of their strategic importance for the development of the principles of e-justice in Europe and Ukraine.

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Toolkit for supporting the implementation of the Guidelines on how to drive change towards Cyberjustice (adopted by CEPEJ on 13–14 June 2019) (CEPEJ, 2019);

European Commission for the Efficiency of Justice (CEPEJ) Declaration "Lessons Learned and Challenges Faced by the Judiciary During and After the COVID-19 Pandemic" on 10 June 2020 (CEPEJ, 2020);

Council of the European Union Conclusions "Access to justice – seizing of opportunities for digitalization" (adopted on 14 October, 2020) (Council of the European Union, 2020);

Guidelines of the Committee of Ministers of the Council of Europe on online dispute resolution mechanisms in civil and administrative court proceedings (adopted on 16 June 2021) (Council of the European Union, 2021);

Regulation (EU)2022/850 of the European Parliament and of the Council of 30 May 2022 on a computerized system for cross-border electronic exchange of data in the area of judicial cooperation in civil and criminal matters (e-CODEX system) (Council of the European Union, 2022), etc.

A separate group of documents containing legal standards in the area of digitalization of the judiciary are acts of a strategic (both judicial and procedural) nature, namely, European e-justice Strategies and Action Plans approved by the European Commission in 2008 (Council of the European Union, 2008), 2014–2018 (Council of the European Union, 2013), 2019–2023 (Council of the European Union, 2019b), 2009–2013 (Council of the European Union, 2009a), 2014–2018 (Council of the European Union, 2014), and 2019–2023 (Council of the European Union, 2019a).

Without pretending to be exhaustive, we will consider some key positions on the digitalization of the judiciary set out in EU legal documents with relevant legal standards.

In accordance with Appendix I to Recommendation No. R (95) 11 of the Committee of Ministers to member states concerning the selection, processing, presentation and archiving of court decisions in legal information retrieval systems (Council of the European Union, 1995), along with expanding access to justice, it is said about (i) qualitative improvement of the justice system itself by ensuring the unity of judicial practice; (ii) removing the elements of stiffness, that is, giving it the dynamism and flexibility necessary for the current pace of social and legal development; (iii) expanding the scope of informing society about judicial activities.

In the Appendix to Recommendation Rec (2001)2 of the Committee of Ministers to member states concerning the design and re-design of court systems and legal information in a cost-effective manner (Council of the European Union, 2001a) the issue of the ICT development strategy in courts was first raised. Thus, it was essentially recognized for the first time that the process of digitalization of the judicial system is of strategic importance for its further development.

The guidelines contained in Recommendation Rec(2001)3 of the Committee of Ministers to member states on the delivery of court and other legal services to the citizen through the use of new technologies were important for the human orientation of the use of ICT in judicial procedures: (i) it should be as easy as possible to communicate with the courts and other legal organisations (registries, etc.) by means of new technologies; (ii) electronic information about the court procedures should be available to the public and disseminated using the most widely available technologies (currently the Internet), the state should, whenever possible, guarantee the authenticity and integrity of the information disseminated by it to the public or to private sector suppliers; (iii) all legal information systems should be constructed in a user-friendly manner including effective assistance components in order to allow even the occasional user to achieve sufficient retrieval results; the user is entitled to expect that officially printed legal materials are also available in an electronic form (Council of the European Union, 2001b).

Recommendation Rec (2003)14 of the Committee of Ministers to member states on the interoperability of information systems in the justice sector recognized "that information technology has become indispensable for efficient functioning of the justice system, especially in the light of the increasing workload of the courts and other justice sector organisations" (Council of the European Union, 2003a). It contained general requirements for the content of the strategy of digitalization in the area of justice. Such a strategy should, among other things, provide: stage-by-stage computerisation of the justice system; the establishment of communications infrastructure, including e-mail facilities; the development of an integration

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strategy to allow for system-to-system communication; the harmonisation of information to the extent needed; the establishment of an integrated system for data collection and statistical analysis; the introduction of a common management information system; the establishment of common internal information registers; the development of standard software for databases.

In accordance with Recommendation CM/Rec (2009)1 of the Committee of Ministers to member states on electronic democracy (e-democracy) (Council of the European Union, 2009b), adopted on 18 February 2009, the elements of e-justice are informative court websites, national and international portals, the development of online "case tracking" systems, the use of videoconferencing techniques and standards for the electronic exchange of information. E-justice is an important aspect of e-democracy and its main aim is to improve the efficiency of the judiciary and the quality of justice. E-justice performs the following functions: (i) to improve the quality of judicial services for people and businesses by using ICT; (ii) to speed up court proceedings, enhance general service quality and improve transparency; (iii) to provide access to legal and judicial information for the public.

Aims of e-justice in the EU

Opinion No (2011)14 of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on justice and information technology (IT) indicates that the introduction of ICT in courts should not harm the authority and staffing of the judicial system; ICT must be suitable for the judicial process, and for all aspects of a judge's work; judges should not be subject, for reasons solely of efficiency, to the imperatives of technology and those who control it. The introduction of e-justice should be subject to human-oriented goals: (i) such justice should not be perceived by users as a purely technical process without its fundamental function of protecting human rights; (ii) the administration of justice cannot become fully automated without the participation of the human factor; (iii) legal proceedings, first of all, should contain the human factor, since here we are talking about real people and their disputes resolution; (iv) the human factor is most important in assessing the behaviour of the parties and their witnesses in the hearing, which is the component of the judge's work; (v) the role of ICT should remain confined to substituting and simplifying procedural steps leading to an individualised decision of a case on the merits; (vi) ICT cannot replace the judge's role in hearing and weighing the factual evidence in the case, determining the law applicable and taking a decision with no restrictions other than those prescribed by law (CCJE, 2011).

In Resolution "Equality and non-discrimination in the access to justice" the Parliamentary Assembly of the Council of Europe expressed the view that judicial reforms implemented in a number of EU member states, accompanied by a reduction in the number of judicial bodies, should be compensated by the development of e-justice. This trend should not be used to the detriment of people who do not have access to the Internet (Parliamentary Assembly of the Council of Europe, 2015a).

The Parliamentary Assembly of the Council of Europe Report "Access to justice and the Internet: potential and challenges", 2015, stated that Member States should continue to invest in the development of safer, more effective and more accessible online dispute resolution and ICT application. At the same time, they should continue to assess the successes and potential risks of online dispute resolution and ICT in terms of access to justice, and keep an eye on developing technologies and their use in online dispute resolution and courtroom procedures (Parliamentary Assembly of the Council of Europe, 2015b).

Principles of digitalization of the judiciary in the EU and their importance for the development of the judiciary in Ukraine

Based on an analysis of the practice of European states in the digitalization of the judiciary, the European Commission for the Efficiency of Justice adopted the Guidelines on how to drive change towards Cyberjustice (adopted by CEPEJ on 7 December 2016). The following guidelines are important: (i) the modernization of the justice system should begin with the establishment of clear goals (improving the quality of justice); (ii) ICT should be seen as a means and not as a goal of judicial reform; (iii) the introduction of cyberjustice and its tools should be guided by the court, not by technology; (iv) technology developers should strive to better understand justice and cooperate with judges and court staff; (v) ICT should promote judicial values (impartiality, independence, legal certainty, accessibility), not violate guarantees and procedural rights, in particular, such as the right to a fair trial (Paskar, 2020, p. 100-101;

 ISSN 2322- 6307

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South-Eastern Interregional Department of the Ministry of Justice (Dnipro), n.d.).

A key act in establishing and consolidating the principles of cyberjustice was the European ethical Charter on the use of Artificial Intelligence in the judicial systems and their environment (CEPEJ, 2018), "which was the first step of the European Commission on the effectiveness of justice to promote the responsible use of artificial intelligence in the European judicial system in accordance with the values of the Council of Europe" (Order of the Cabinet of Ministers of Ukraine No. 1556-p, 2020). Based on its analysis, the following principles can be attributed to the basic principles of artificial intelligence in legal proceedings: (i) respect for fundamental human rights (the introduction of artificial intelligence within, in a manner and in order not to violate fundamental human rights guaranteed at the international and national levels); (ii) non-discrimination (preventing the development or intensification of any discrimination between people or groups of people); (iii) quality and safety (court decisions and the data used in them must be protected and in a safe technological environment); (iv) transparency, impartiality and fairness (in the case of using artificial intelligence to ensure the absence of the human factor (to prevent human intervention)); (v) user control (guarantees a high level of autonomy, user awareness, etc.) (Karmaza, Fedorenko, 2021, p. 22). As the first international document that at the European level settled the issue of introducing ethical principles for the use of artificial intelligence in legal proceedings, this Charter has acquired historical significance and points to global transformations in all spheres of public life and the final transition of mankind to the information and digital era (Paskar, 2020, p. 101).

In 2019, the Committee of Ministers of the Council of Europe adopted an important document on the application of electronic evidence in court proceedings – Guidelines of the Committee of Ministers to member states on electronic evidence in civil and administrative proceedings (Council of the European Union, 2019c). This document defines electronic evidence as any evidence derived from data contained in or produced by any device, the functioning of which depends on a software program or data stored on or transmitted over a computer system or network. The basic principles of using electronic evidence are also defined (Chvankin, 2021, p. 66-68).

In 2019, the European Commission for the Efficiency of Justice approved the Toolkit for supporting the implementation of the Guidelines on how to drive change towards Cyberjustice (CEPEJ, 2017), which contains an executive summary of the key guidelines and principles on how to drive change towards cyberjustice; a roadmap to support the design and the management of an IT strategy in a justice system; an executive outline to support the building of a Case Management System (CMS) with a user perspective; a checklist on the different steps and actions to be taken while designing, developing and implementing an IT project within a justice system; a grid for evaluating the different dimensions of an IT project. These documents were prepared in order to fully support the judicial authorities of the Council of Europe member states in the effective management of digital transformation processes in the area of justice. Their main goal is to facilitate the understanding of the main principles and steps for the introduction of e-justice in the judicial system, described in more detail in the Guidelines on how to drive change towards cyberjustice, as well as to clearly define the measures necessary for the implementation of various IT projects of this kind and to help government agencies in solving problems related to the implementation of e-justice (Yurydychna Hazeta, 2019).

Important for deepening the processes of digitalization of the judiciary were the Council of the European Union Conclusions "Access to justice – Seizing of Opportunities for Digitalization" (Council of the European Union, 2020). Noting that the further digitalization of the judicial systems of member states has enormous potential to continue to facilitate and improve citizens' access to justice throughout the EU, the Council of Europe proposes to encourage EU member states to make greater use of digital tools for promoting swift, convenient, secure, trusted and widespread access to the justice system; digital solutions should, where possible, be developed for the entire course of judicial proceedings. The Council of Europe stresses nevertheless that employing digital technologies and means of electronic communication should not undermine the right to a fair hearing, in particular the right to equality of arms and the right to adversarial proceedings, the right to a public hearing, including in certain cases the right to an oral hearing in the physical presence of the affected party, as well as the right to appeal. The Council of Europe recognises nonetheless that it is necessary to retain traditional non-digital processes and, where

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available, physical helpdesks, alongside the new digital forms so as to provide citizens who cannot yet fully participate in technological developments with effective legal protection and access to justice. The use of digital technologies in the justice sector must meet with the latest standards for information and cyber security and fully comply with privacy and data protection legislation. The use of artificial intelligence tools should not interfere with the powers of judges to make decisions or the independence of judges (a court decision should always be made by a person and cannot be delegated to an artificial intelligence tool).

The set of tools for the digitalization of the judiciary is defined in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Digitalization of Justice in the European Union. A toolbox of opportunities" (European Commission, 2020). It is emphasized that in order to achieve a fully-fledged area of freedom, security and justice, it is important that all member states work towards reducing the existing digitalisation gaps, fragmentation between national justice systems and leverage the opportunities available under the relevant EU funding mechanisms. The tools of the proposed toolbox are categorised as follows: (i) financial support for member states to use the potential for creating long-term impact; (ii) legislative initiatives to set the requirements for digitalisation in order to promote better access to justice and improved cross-border cooperation, including in the field of artificial intelligence; (iii) IT tools which can be built upon in the short to medium term and used in all member states; (iv) promotion of national coordination and monitoring instruments which would allow regular monitoring, coordination, evaluation and exchange of experiences and best practices.

Guidelines of the Committee of Ministers of the Council of Europe on online dispute resolution mechanisms in civil and administrative court proceedings

The Guidelines of the Committee of Ministers of the Council of Europe on online dispute resolution mechanisms in civil and administrative court proceedings (16 June, 2021) are of great importance for the digitalization of the judiciary in terms of online dispute resolution. They provide the following principles: online dispute resolution mechanisms (ODR) should be accompanied by reliable guarantees of human rights; ODR should be easily understood, affordable and user friendly so that it can be used comfortably by as many people as possible; parties should be informed about how ODR operates, how to file an application, how to monitor progress of the proceedings and how to access decisions; use of ODR should not be disadvantageous to the parties or give unfair advantage to one of the parties; ODR should be designed and implemented in accordance with internationally recognised technical standards, in order to allow its use by as many people as possible with as much autonomy as possible; participation in ODR proceedings should not prejudice an individual's right to participate effectively in the proceedings or their right to an effective remedy; ODR proceedings should ensure an independent and impartial adjudicative process; parties to proceedings involving ODR should have knowledge of the materials in the case file, including those submitted by the other parties; they should have access to these materials and sufficient time and means to acquaint themselves with their contents (Council of the European Union, 2021).

Some features of the introduction of European legal standards in the area of digitalization of the judiciary in Ukraine

Comprehensive implementation of European legal standards in the area of digitalization of the judiciary in Ukraine is an important and urgent task at the present stage of Ukrainian judicial reform.

Such implementation took place in Ukraine in the context of two dominant courses of legal policy that replaced one another. According to the first course, that lasted until 2014 (before the ratification of the Association Agreement between Ukraine and the EU), European standards of digitalization of the judiciary in Ukraine were used chaotically and haphazardly, without implementation at the strategic legal level. After 2014, especially after 2019, when the course towards European integration of Ukraine was fixed at the constitutional level, these standards acquired a legally binding meaning and began to be implemented systematically. It was confirmed by their fixation at the level of two key strategic documents in the area of judicial reform – the Strategy for Reforming the Judiciary, justice and related legal institutions for 2015–2020 (Decree of the President of Ukraine No. 276/2015, 2015), and the Strategy for the Development of the Justice System and Constitutional Justice for 2021–2023 (Decree of the President of Ukraine, No. 231/2021, 2021).

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The latter directly involves the implementation of international standards and best practices of the Council of Europe and the European Union in the area of the judiciary and legal proceedings. For sure it extends to the concept of an e-court, which is mentioned in both strategies among the key legal innovations.

For the implementation of the Strategy for the Development of the Justice System and Constitutional Justice for 2021–2023, the Concept of the Informatization Program for Local and Appellate Courts and the Project for Building a Unified Judicial Information and Telecommunication System for 2022–2024 (UJITS) (Order of the State Judicial Administration of Ukraine No. 178, 2022) were also adopted. This Program identified the main directions for improving access to justice: creation of conditions for intensifying the introduction of information technologies in the courts' activities, bodies and institutions of the justice system; ensuring the automation of their work; the development of e-justice according to the world standards in the area of information technology; e-justice integration into the national e-governance infrastructure.

Digitalization of the judiciary in Ukraine occurs with a certain delay compared to the EU as the starting point is the adoption of the Law of Ukraine "On Access to Court Decisions" (Law of Ukraine No. 3262-IV, 2005). For the implementation of its provisions the Decree of the President of Ukraine "On the Concept of Improving the Judiciary to Establish a Fair Trial in Ukraine in Accordance with European Standards" (Decree of the President of Ukraine No. 361/2006, 2006) was adopted where the issues of forming an e-court in Ukraine were raised for the first time (Smokovych, 2020, p. 44; Shcherbliuk, 2021, p. 157). In accordance with the Decree, the State Judicial Administration in 2005 developed and approved the Concept of the Unified Judicial Information and Telecommunication System. The main purpose of its creation and functioning is information and technological support of justice on the principles of balance between the need of citizens, society and the state in the free exchange of information and the necessary restrictions on its dissemination (Politanskyi, 2020, p. 37-38; State Judicial Administration of Ukraine, 2022).

In addition, in Ukraine such digitalization unfolded without fixing its essence, goals, tasks, directions, etc. at the strategic legal level. The Concept of the Unified Judicial Information and Telecommunication System was not able to provide legal level, as it concerned only a fragmentary issue and did not consider the digitalization of the judiciary as a complex legal process. Even the adoption of the Strategy for Reforming the Judiciary, justice and related legal institutions for 2015–2020 and the Strategy for the Development of the Justice System and Constitutional Justice for 2021–2023 did not significantly change the situation. In these acts the issues of digitalization of the judiciary were mentioned in passing, in the context of other issues of judicial reform and the development of judicial institutions. Thus, the lack of a strategic level of legal planning for the digitalization of the judiciary in Ukraine, which persists until now, contradicts the European standards of judicial digitalization and provokes chaotic and unsystematic legal decisions in this area. It testifies to frequent adjustment of judicial and procedural legislation by the Verkhovna Rada of Ukraine and does not provide predictability and gradual process of organizational and legal changes that occur during the digitalization of the judiciary in Ukraine.

Conclusions

European legal standards for the digitalization of the judiciary are typical principles and norms that are fixed in the main sources of law of the European legal system and are the minimum legal requirements for the judicial systems of the EU member states. They are divided into those that are binding and those that are advisory in nature. It corresponds to the paradigm of coexistence of "hard" and "soft" law in the EU legal system.

European standards of digitalization of the judiciary are guidelines for the national legislator, which are aimed at qualitative improvement of the justice system itself by ensuring the unity of judicial practice; removing the elements of stiffness, that is, giving it the dynamism and flexibility necessary for the current pace of social and legal development; expanding the scope of informing society about judicial activities.

The direct benefit of the European standards of digitalization of the judiciary for the improvement of the judiciary and the judicial system of Ukraine is that they guide the national legislator on the regulation of judicial procedures that take into account the importance and necessity of (i) arrangement of different jurisdictions courts with the latest means of communication (both with other judicial institutions and parties in the trial); (ii) providing

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of available and reliable information on litigation in electronic form; (iii) designing all legal information systems of the court in a user-friendly way, including effective components of assistance, so that a random user can receive sufficient search results; the user has the right to expect that officially published legal materials are also available in electronic form.

At the same time, European standards of digitalization of the judiciary through the Guidelines on electronic evidence in civil and administrative proceedings guide the national legislator in Ukraine to formalize the concept of "electronic evidence", relying on its definition introduced in the EU, as well as the principles of using electronic evidence.

Equally important and useful for the development of legal proceedings and the judicial system in Ukraine is the definition in the European basic principles of artificial intelligence in legal proceedings, which should be incorporated into the relevant procedural codes of Ukraine that determine certain forms of judicial proceedings.

The main elements of e-justice, implemented in Ukraine under the influence of European standards, can be considered as follows: (i) conducting electronic office work, preserving cases and centralized storage of procedural and other documents in a single database; (ii) exchange of documents and information (sending and receiving documents and information, joint work with documents) in electronic form between the courts, participants in the trial; (iii) receipt of court summons, notices, decisions, information on the date and place of consideration of the case by electronic means of communication; (iv) electronic method of determining the judge (judge-rapporteur) to consider a particular case; (v) using ICT to investigate electronic evidence; (vi) participation of trial parties in the hearing via videoconference; (vii) audio and video recording of court hearings; (viii) adoption and publication of judicial acts in electronic form; (ix) transfer for execution and enforcement of court decisions in electronic form; (x) electronic system of personnel management, financial and accounting in courts; (xi) electronic system of judicial statistics; (xii) electronic archives and e-court library. Therefore, on the formal side, there may be an impression of consistent implementation of European standards of digitalization of the judiciary in Ukraine. However, careful analysis shows that this conclusion is premature, despite significant normative and organizational work in this direction. Thus, until now, Ukraine has not formed a unified information space for courts, bodies and institutions in the justice system. The existing information and communication infrastructure of courts, bodies and institutions in the justice system requires significant improvement and optimization, reducing budget expenditures for its maintenance. The key task of ensuring the availability of information for trial parties and the maximum transparency and openness of the justice system for society has not been solved for the digitization of the judiciary.

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