




Pandemic: A Catalyst for Innovation and Digitalization in Criminal Justice

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Keywords: Digitalization of Criminal Justice, Legal Proceedings in a Pandemic, and Innovative Technologies in the Criminal Process, Covid 19 Pandemic and Innovation, Legal Consequences of a Pandemic.

Abstract: The COVID-19 pandemic is an impetus for digitalization and informatization of the entire state system and criminal justice, in particular. State authorities urgently had to switch to digitalization, increasing the electronic document flow. However, civil servants faced many challenges. The legislation was not ready for such force majeure circumstances. The issue of the safety of storing personal information during the transition to digitalization of the criminal process remains problematic. Currently, an urgent need has arisen, based on the experience gained and the experience of foreign countries, in the creation of an effective, systematic legislative framework for digitalization, the introduction of innovative technologies at all stages of the criminal process. Despite the conservatism of the Russian criminal process, today one cannot do without modern achievements of scientific technology, with the help of which it is necessary to develop the possibility of remote production of investigative actions, while observing the guarantees of the rights of participants in criminal proceedings. Avoiding the huge flow of computerized information in the production of criminal cases, and at the same time ensuring the transparency of the criminal process, will help the creation of a single database of criminal cases on the blockchain principle.


1 INTRODUCTION


The COVID-19 pandemic, which has swept the whole world as an unexpected test of statehood in all its manifestations, has not spared criminal proceedings either. Practice has shown that the readiness of criminal proceedings for widespread digitalization in Russia is at an insufficient level. Under the threat of the spread of infection, judicial and law enforcement agencies were forced to hastily move to a different level of interaction in a remote format. There was an urgent need for the formation and recognition of the digital justice system, under which L.V. Bertovsky offers to understand “the activities of the court, the persons involved in the case and other participants in the process, as well as the enforcement bodies of judicial decisions, regulated by


the norms of procedural law, in resolving legal cases, where the key factor is digital data, their processing and use of the analysis results, which are compared with traditional forms of legal proceedings, they can significantly increase its efficiency” (L.V. Bertovsky, 2021).

Human values are being modified, filled with new meaning. It is very difficult to comply with international norms governing human rights in a pandemic, some rights contradict others. At present, the right to freedom comes into conflict with the right of everyone to health. Everyone has to sacrifice their comfort for the sake of general safety in the face of force majeure.

International rules allow restrictions on some human rights and freedoms for the sake of the safety of the life of the nation, however, such restrictions

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shall not be arbitrary, they are introduced in accordance with the law, and must be justified.

There is no doubt that the COVID-19 pandemic poses a large-scale threat to the health of the population of the whole world, which justifies the restriction of certain rights and freedoms: restriction of freedom of movement, quarantine, isolation. However, restrictions shall not contradict the rights to respect for honor and dignity, to privacy, and to access to information. Criminal proceedings must be transparent.

On March 16, 2020, a UN group of experts "urged states not to abuse security measures in response to the coronavirus outbreak". Experts warned that for some government and law enforcement agencies, emergency powers could be very attractive. "To prevent such over-empowerment from becoming entrenched in legal and political systems, health restrictions must be narrowly targeted and as light as possible". (COVID-19: UN Experts said States shall not abuse emergency measures to restrict human rights, 2020)

2 PURPOSE

To consider the theoretical aspects of digitalization of Russian criminal justice and the practical possibilities of using modern technical means in the context of the COVID-19 pandemic and, based on the findings, develop theoretical provisions aimed at improving criminal justice by introducing modern technical advances.

3 METHODOLOGICAL BASIS

As the main research methods, a set of general scientific research methods were used: analysis of theory and practice, synthesis, dialectical method and special scientific methods: comparative legal, statistical, specific sociological methods, interviewing.

4 RESULTS

Based on the accumulated global and domestic experience, it is necessary to introduce digitalization at all stages of the criminal process in order to reduce the time frame and increase efficiency.

However, the digitalization of criminal proceedings shall be regulated by the Code of

Criminal Procedure of the Russian Federation; not to violate constitutional and criminal procedure principles; ensure the transparency and accessibility of the criminal process. The state is obliged to guarantee the prevention of leakage of information about the private life of a person by providing legal remedies. The procedure for use of electronic documents in criminal proceedings, regulated by Art. 474.1 of the Code of Criminal Procedure of the Russian Federation concerns judicial proceedings only. It is necessary that the preliminary investigation also be accessible - it is not so difficult to create the official websites of the preliminary investigation bodies in the information and telecommunication network "Internet". Certain steps in this direction have already been taken. It is necessary, especially in the conditions of a pandemic, that a petition, application, complaint can be submitted in the form of an electronic document signed by a person, with an electronic signature. At the request of the participants, it is possible to conduct a preliminary investigation in a face-to-face and remote format.

5 DISCUSSION OF THE RESULTS

During a pandemic, there is a direct dependence of the availability of legal proceedings on modern technologies. At the beginning of the pandemic, legal proceedings in Russia were in question, a gap in the legislation was discovered in the event of force majeure, as a result of which citizens could not get into government institutions and courts, due to quarantine measures. Post offices were not available either. Digital services came to the rescue.

Difficulties arose not only in the domestic proceedings, but also with the applications submitted to the European Court, since the borders were closed. In many countries, most of the court proceedings have been converted to videoconferencing, otherwise there is no way to organize social distance indoors.

Despite the decline in crime noted by experts at the beginning of the pandemic, crime has now changed its "vector". Criminal groups are using the coronavirus to scale up their activities. Technologically advanced criminals are seizing new zones of influence, including producing counterfeit ventilators or coronavirus tests (T.N. Mosalkova, 2021). The protection against criminal encroachment of the critical information infrastructure of the state raises special concerns. One of the ways to solve the problem is to introduce high technologies into modern legal proceedings (L.V Bertovsky, 2021).

Online crime is on the rise amid the pandemic. The pandemic is a test of the effectiveness of power at all levels. In many countries, police officers not only maintain order, but are also the only ones who come into contact with members of the community. As a result, trust in law enforcement agencies turns out to be significant for the effectiveness of the state. It is important that state control over the private life of citizens in a pandemic shall not develop into total control after its end. Citizens do not feel safe.

Using digital technology to combat the spread of Covid-19, states are enforcing quarantine measures. However, initiatives to track the location of mobile phone users are of particular concern as privacy information is not sufficiently secure.

T.N. Moskalkova notes that in order to improve legal regulation and strengthen guarantees for the protection of human rights and freedoms, it is necessary to pay attention to the issues of digitalization of justice, conducting "electronic criminal cases", and etc. (T.N. Moskalkova, 2020). The criminal process is often associated with measures of coercion (search, examination), invasion of privacy, thus affecting fundamental human rights. Therefore, the criminal procedure is constantly in need of improvement and the introduction of innovative technologies (Report of the Ombudsman in the Russian Federation for 2019)

It seems that the fear of total surveillance pushes citizens not to seek medical help, due to the transfer of data to law enforcement agencies and not wanting to get into the police base.

In the context of digitalization of criminal proceedings, it is necessary to fulfill a number of conditions:

- digitalization of criminal procedural actions should be regulated by the Criminal Procedure Code of the Russian Federation;
- constitutional and criminal procedural principles shall not be violated;
- it is necessary to ensure the transparency of the criminal process;
- digital litigation shall be available to all participants in a particular process and, under normal conditions, be conducted with the consent of the interested parties;
- the state is obliged to guarantee the prevention of leakage of information about the private life of a person, a ban on illegal surveillance;
- digital technologies shall be applied under the supervision of the competent authorities and in the event of human rights violations, remedies are required.

The digitalization of criminal proceedings is also necessary for the more "vulnerable" participants in the process: persons who are in custody. In prisons and detention centers, viruses spread instantly, as there is a large crowd of people in a confined space, and food and medical care leaves much to be desired. In many states, during the pandemic, measures were taken to free prisoners who did not pose a danger. Therefore, the king of Bahrain, Hamad bin Isa al-Khalifa, pardoned 901 prisoners "for humanitarian reasons and against the background of the current situation". In Italy, authorities have allowed inmates to use e-mail and Skype for family contact and educational purposes, and have announced plans to place prisoners under house arrest for less than a year and a half (Human Rights Watch materials on COVID-19, 2020). The Russian Supreme Court has recommended that courts consider parole applications without delay.

The pandemic has become an impetus for the informatization of the justice system. The courts in a hurry had to switch to digitalization, increasing the electronic document flow. For the first time, the Supreme Court held a meeting of the Plenum in an online format (official website of the Supreme Court of the Russian Federation).

During the COVID-19 pandemic, the number of cases considered by Russian courts in 2020 increased compared to last year. The need for electronic resources has grown, and the number of requests in the SAS "Justice" portal has exceeded 3 billion requests. More than 2 million documents have been electronically filed with federal courts of general jurisdiction, more than doubling the indicators of 2019 (The Year since COVID-19: How the Judiciary and State Overcome the Challenges of the Pandemic, 2021).

Video conferencing within the framework of the GAS "Justice" system involves connecting the participants to the meeting remotely, but from other state institutions — courts, pre-trial detention centers, prisons and colonies, since being in them allows to identify a person.

Remote participation in the court session is also possible from other places, but the process of participation must be accompanied by the introduction of biometric authentication technology of the participant in the court session in the face and voice through the portal of state services into judicial activity. As practice has shown, the district courts were not ready for remote consideration of cases. Since the end of March, some meetings begin to be held using instant messengers, such as Whatsapp or Skype, in which it is impossible to identify the

participants in the process and guarantee the security of data transmission (Baeva, Smirnova, Shedov, 2020).

Some human rights defenders oppose the use of modern technologies, who believe that legal proceedings through video conferencing are carried out with serious shortcomings: unstable communication, poor sound and image quality, and also deprive the confidentiality of the lawyer's communication with the client (Marakulin, 2020).

If the courts were able to adapt to the conditions of the pandemic, taking into account the legislative consolidation of videoconferencing, the production of investigative actions in these conditions was called into question. From an anonymous conversation with representatives of the investigating authorities, it became clear that the investigators had to face many problems. The investigators were charged with ensuring the "anti-covid" safety of the participants in investigative actions with the help of personal protective equipment. Investigators were given gloves and masks; at the entrance to the building, the temperature of employees and visitors is checked. However, absence of witnesses for fear of becoming infected complicates the conduct of investigative actions. The solution to some of the problems of citizens' appeal was the possibility of contacting the department remotely, through websites. It became more difficult for investigators to conduct investigative actions with defendants in custody. The prosecutor's office gave instructions on the speedy transfer of criminal cases to the court, the persons involved in the investigation were taken into custody. However, in the current conditions, it becomes more and more difficult to do this, due to the restrictions in pre-trial detention centers. From a conversation with representatives of the investigating authorities, it became known that all investigative actions are carried out through glass, lawyers and investigators are allowed at different times, according to the schedule. The biggest problem for investigators was the observance of procedural deadlines.

In the recommendations of the Supreme Court of the Russian Federation to suspend proceedings in cases that do not belong to the category of urgent cases, there is no list of categories of cases, which led to different interpretations of the Resolution of the Supreme Court of the Russian Federation of March 18, 2020. Some courts began to hold court sessions by video call in WhatsApp, Skype, but there are no such rules in the RF Criminal Procedure Code (Information Bulletin of the Criminal Law Practice and Procedure of the Infralex Law Firm, 2020).

L.M. Volodina in her research notes that the procedural terms at the preliminary investigation are extended with a "reserve", and the terms for consideration of complaints and petitions are violated. Wherein, the preliminary investigation authorities refer to the responses of the Supreme Court of the Russian Federation in the Review on certain issues of judicial practice related to the application of legislation and measures to counter the spread of a new coronavirus infection (COVID-19) in the territory of the Russian Federation, No. 1, published on April 21, 2020 (Volodina, 2020).

There is also a lack of a single international legal act regulating the mechanism of interstate relations in a pandemic (Moskalkova, 2021). A unified international approach to the execution of requests for legal assistance with the use of modern technologies will not only reduce the time frame, but will raise international cooperation in the field of criminal proceedings to a new qualitative level (Gladysheva, 2019).

The positive practice of introducing innovations into the criminal process of other countries is described by N.V. Spesivov and A.A. Titov. They note that Kazakhstan maintains an electronic register of digitized criminal cases; in the USA and Germany, an electronic document circulation is also conducted, in Germany the defender receives digitized materials of the criminal case for early acquaintance (Spesivov, Titov, 2020). In China, in Beijing since 2019, artificial intelligence, as a judge of the virtual court of the city, is considering some categories of civil cases (Bertovsky, 2021).

Other authors also see the expediency of the transition of Russian legal proceedings from a simple written form to an electronic one, as well as the implementation of interaction of all participants in the criminal process in a remote format (Andreeva, Zaitsev, Kudryavtseva, 2020).

P.S. Pastukhov offers to completely abandon paper-based recording of investigative actions and use only records of progress and results made with the help of special equipment. (Pastukhov, 2015). To implement the task of digitalizing legal proceedings, several conditions must be met: solving the problem of staffing and organizing the education system; conducting scientific research, changing current legislation, modernizing infrastructure and strengthening information security (Bertovsky, 2021).

At present, an information and analytical system for ensuring the activities (ISOD) of the Ministry of Internal Affairs of Russia has been created, which united most of the divisions, a system of electronic

passports of a criminal case has been experimentally introduced, provided the possibility of entering scanned and other copies of procedural documents in criminal cases and materials of checks of reports of crimes into the electronic database (Electronic passports of criminal cases, 2021).

According to the provisions of the state program "Digital Economy of the Russian Federation", it is planned that by 2024 the number of state authorities that have broadband access to the Internet (at least 100 Mbit/s) shall become 100 percent (National program adopted in accordance with the Decree of the President of the Russian Federation of May 7, 2018 No. 204 "On National Goals and Strategic Objectives of the Development of the Russian Federation for the Period up to 2024" and approved on December 24, 2018 at a meeting of the Presidium of the Council under the President of Russia for Strategic Development and National Projects).

Execution of investigative actions using information and technical advances can lead to a large amount of information accumulated on media. Absence of bureaucracy and transparency of the criminal process can be ensured by creating a single database of criminal cases on the blockchain principle. "Blockchain is a distributed database with no storage devices connected to a common server. The main principles of this technology for collecting and storing information is the transparency of operations, with the impossibility of changing by persons who do not have access" (L.V. Bertovskij, 2017).

In 2016, the Code of Criminal Procedure of the Russian Federation was supplemented with a number of provisions regulating the design of procedural actions in a typographic, electronic or other way (Article 474 of the Code of Criminal Procedure of the Russian Federation). However, the procedure for using electronic documents in criminal proceedings, regulated by Art. 474.1 of the Code of Criminal Procedure of the Russian Federation concerns only judicial proceedings. It is essential that the preliminary investigation also be available. A petition, application, complaint can be submitted in the form of an electronic document signed by a person with an electronic signature. At the request of the participants, it is possible to conduct a preliminary investigation in a face-to-face and remote format.

6 CONCLUSIONS

The pandemic accelerated the digitalization of legal proceedings, for which the system was not fully

prepared, no regulations were developed that would regulate in detail the "safe" transition of criminal proceedings to the electronic environment, which would not violate the constitutional rights of the individual. The study identified the problems of preliminary investigation and trial in a pandemic, which allow remote participation of any participants in the process; the analysis of the activities of the Supreme Court of the Russian Federation and its impact on legal proceedings in the country has been carried out.

On the basis of the investigated positions of procedural scientists on the problem under study, recommendations are offered for improving the theory and law enforcement practice in emergency conditions, which will help to guarantee the constitutional rights of participants in criminal procedural relations.

Analyzing criminal proceedings in a pandemic, we can conclude that the judicial stage is more "advanced" in comparison with the pre-trial stage of the criminal process. The courts did not immediately, but gradually were able to adapt in the conditions of force majeure associated with the pandemic and began to use modern digital technologies in their activities.

The pandemic has accelerated events, but the accumulated experience requires careful analysis in order to correct shortcomings in the work and for further practical use in the conditions of "security" of human rights, the level of information protection,

It was recommended to create official websites of the preliminary investigation bodies on the Internet, through which you can quickly submit a petition, application or complaint. At the request of the participants, it is possible to conduct a preliminary investigation in a face-to-face and remote format.

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