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Theoretical and Semantic Determination of the Term "Electronic Justice"

У статті здійснено семантичний аналіз терміну «електронне правосуддя» з позицій науки теорії держави і права. Вказується, що існують відмінності в підходах до розуміння сутності електронного правосуддя у вітчизняних та закордонних трактуваннях. Сформульовано визначення терміну «електронне правосуддя».

Ключові слова: *взаємодія суду та громадянського суспільства, електронне правосуддя, електронне судочинство, електронний уряд, електронна держава.*

В статье осуществлен семантический анализ термина «электронное правосудие» с позиций науки теории государства и права. Указывается, что существуют различия в подходах к пониманию сущности электронного правосудия в отечественных и зарубежных трактовках. Сформулировано определение термина «электронное правосудие».

Ключевые слова: *взаимодействие суда и гражданского общества, электронное правосудие, электронное судопроизводство, электронное правительство, электронное государство.*

The article deals with the semantic analysis of the term "electronic justice" from the standpoint of the theory of state and law. It is pointed out that the concept of "e-justice" should be considered rather in relation to the notion of e-government or e-state since the triad of the most widely used terms – electronic justice, electronic judiciary and electronic court – can be interpreted as coordinate phenomena from the semantic and functional point of view. The notion which is meant by the term "e-justice" has not yet got its legal definition in domestic law. In scientific circles, where concepts such as "electronic justice" and "electronic court" are used as well, there is also no unity about the unification and content of these coordinate terms, which further complicates the understanding of the essence of the term "electronic justice" and how they relate to each other.

Attention is drawn to the fact that there are some differences in approaches to understanding the essence of e-justice in various interpretations. Domestic interpretation, in contrast to foreign ones, does not emphasise the obligatory nature of expression in the electronic form of all procedural actions, but speaks of such a possibility only for those procedural actions for which there is a corresponding regulatory framework.

The paper formulates the definition of the term "electronic justice", which suggests understanding the totality of various automated information systems (services) that enable the court and other participants in the judicial process to carry out actions prescribed by the regulatory acts which are mediated by the electronic form of expression of procedural information and interaction between the participants of legal proceedings.

Keywords: *court and civil society interaction, e-justice, electronic judiciary, e-government, e-state.*

Issue. The formation of e-justice in Ukraine in the context of the interaction of the court and civil society institutions promotes the strengthening and effective implementation of the independent information function of the state. However, clear legislative work at the international and national levels regarding e-justice as an international legal phenomenon is conditioned by its terminological certainty. On this occasion, there must be a certain consensus in Ukraine that is to be found among domestic theorists and lawmakers. However, analysing the work of authors who studied the issues

of e-justice from different angles it is impossible not to notice the use of notions, other than electronic justice, such as "electronic judiciary" and "electronic court", in the scientific expert environment and some normative legal acts. There is one important caveat. Such differences should in no way affect the quality of e-justice indicators and, moreover, should not be an obstacle to the introduction of this extremely important high-tech phenomenon in national management process.

The concept of e-justice should be considered rather in relation to the notion of e-government or e-state, since the triad of the most widely used terms – electronic justice, electronic judiciary and electronic court – can be interpreted as coordinate phenomena from the semantic and functional point of view.

Analysis of recent research and publications. Different aspects of the issues of e-justice, in particular its terminological certainty, were considered by A.V. Bryntseva, A.Yu. Kalamayko, M. B. Kravchyk, N.V. Kushkov-Kostytska, N.I. Loginova, I.A. Kalancha, L. R. Serdiuk, M.V. Bondarenko, S.G. Pogranychnyi, V.V. Bilous, O.S. Fonova, A.L. Paskar, I.O. Izarova, O.V. Golovchenko, R.O. Kyryliuk, I.O. Bogoliubskyi, O.O. Prysiazhniuk, O.P. Evseev, I.V. Bulgakov and others. In view of the current technological state of law enforcement in developed countries, electronic justice should be considered not only as a separate form of more general notion of "justice", but also one way of implementing it. It is precisely the need for the theoretical and semantic determinacy of the term "electronic justice" and the technological development of the court service to determine the parameters for finding answers to these questions, which is currently being addressed by lawyers, theoreticians and practitioners in the world, and in particular in Ukraine.

The notion which is meant by the term "electronic justice" has not yet received a legal definition in domestic law. In scientific circles, where concepts such as "electronic judiciary" and "electronic court" are used, there is also no unity about the unification and content of these coordinate terms, which further complicates the understanding of the essence of the term "electronic justice" and how they relate to each other.

Again, the determinism of the technical factor and the theoretical and legal certainty of e-justice should be emphasized. On one hand, the widespread introduction of new information technologies in the judiciary is intended to increase the efficiency of the administration of justice, improve its quality and timing, increase its accessibility, provide transparency, etc. And on the other hand, this inevitably leads to the emergence of a new meaning of its basic principles, their wider interpretation appears. In turn, the emergence of new procedural institutes in legal proceedings entails the emergence of new principles that underlie them and supplement the basic principles.

In domestic and foreign legal literature on this topic an approach based on a simple recount of its constituent elements is widely used to explain what e-justice is. This suggests that speaking about e-justice as a single, integrated system is not possible at the moment. This is indirectly confirmed by the lack of integrated research, where electronic justice is seen as a separate, integrated system with relevant elements. At present, the formation of the terminological and conceptual apparatus of this legal phenomenon takes place, which is reflected in the current, first and foremost, procedural legislation of Ukraine. All this once again speaks of the relevance of the study of e-justice, especially in its interaction with civil society institutes.

In Western science school there is a debate about the differences in the understanding of the essence of such new legal concepts as "electronic government", "electronic parliament" and "electronic justice", which resulted from the process of introduction of new information technologies into the activity of state authorities, and also informatization of society as a whole. Currently, these concepts are in the process of their comprehensive analysis by scientists and practicing lawyers in order to accurately identify their essence for further consolidation in the law. The key to the above concepts is a more general notion of *electronic state*. Under the e-state it is necessary to understand the form of organization of the activity of state authorities in the virtual space which provides the optimization of public administration, the strengthening of openness of the state and the realization of constitutional rights and freedoms of citizens through the widespread use of ICT.

The theory of the transformation of the state machinery in a globalized world appeared as long ago as 1978 in the work by professors of the New York University P. Bradley and A. Hool "Transformation of the forms of the state system: public (state) coercion and administrative

jurisdiction". And the term "electronic government" began to be widely used at the time of US President Bill Clinton [1, p. 6]. The construction of a global open information society has led to the implementation of the concept of an electronic state based on the transformation of public administration with the widespread use of information technology in the process of public activity and the provision of public services in the developed world. However, there is often a substitution of the concepts when using the term "e-government", the more expanded concept of "electronic state" is virtually meant.

In foreign and domestic scientific schools the term "electronic state" is considered in a narrow and broad sense. In the narrow sense, it is viewed only as an electronic government, that is the modernization of the executive. In the broad sense, we are talking about the interaction of all three branches of power – the legislative branch, the executive branch and the judicial branch. This term means a new way of organizing and developing public administration, a way of transforming it and improving it, focusing on a fundamentally closer relationship with citizens, dramatically improving the indicators of obtaining concrete, useful results, greater efficiency and responsibility of state bodies. This method focuses on the purposeful and coordinated application of new information and communication technologies for the implementation of state functions, in particular, the judicial function.

One of the main features of an electronic state is virtualization (duplication) of objects of reality, that is the transfer of their analogs into an electronic form (for example, filing declarations, litigation, fines, etc. in electronic form). An electronic state consists of e-government, e-parliament and e-justice. The latter is an actual subject of theoretical and legal analysis.

First of all, it should be noted that it is necessary to distinguish between the concept of "electronic justice" and "informatization of courts". Informatization of courts suggests that courts use computers and other equipment as an extra means in their activities, but not as a procedural instrument. Despite the fact that the informatization of courts in Ukraine has been intense over the past few years, there is no single network for all courts yet. Judicial service in the sense of its own unification is limited to the existence of a Single Court Registry as a separate website. At the same time, it is necessary to agree with the opinion of N.N. Fedoseeva and M. Tchaikovska that the merger of courts in itself into a single computer network is not yet electronic justice. Publication of all court decisions on the Internet, the appearance of web sites courts is not electronic justice as well [2, p. 2]. In the legal press all information innovations concerning, for example, ways of communication of persons involved in the case with the court, providing information on the movement of cases through the website of the relevant court, the placement of judicial acts on the Internet, etc., are often united under one the term "e-justice" [3, p. 131], which cannot be considered as a clear definition of this phenomenon.

It is also worth paying attention to the fundamental distinction between e-justice from the electronic state which lies in aiming at the target audience. If the system of the electronic state is created with intention to increase the openness of the state bureaucratic system as a whole and is meant to be used by all citizens and organizations of the country, electronic justice is intended for participants of the process and professional lawyers with the necessary legal and technical knowledge. Considering the target and professional nature of the audience and analysing the experience of e-justice in Germany, K. Branovytskyi concludes that for the successful implementation of the elements of e-justice it makes no sense to concentrate on the complex reform of the courts themselves (for example, to create organizational conditions for the use of modern information technologies in legal proceedings, structural changes of courts, etc.) [4, p. 64].

To date, in the domestic literature there is no understanding of what electronic justice is. Many scientific papers on this topic, in particular articles in scientific publications, despite the stated aim of investigating the content of e-justice [5; 6], the authors of these works do not give the precise definition of the latter, confining themselves to general conclusions. In foreign publications there is an attempt by authors to formulate the phenomenon under study more clearly. For example, N. Teleshyna defines electronic justice as a way of administering justice, based on the use of information technology in the process of production of procedural actions [7, p. 45]. E. Dorzhiev believes that the purpose of the project "Electronic Justice" is not only the provision of all arbitration courts with computerized workplaces connected to the Internet, but also the possibility of some procedural actions through the

use of specially developed information resources [8, p. 15].

The most profound analysis of this concept has been made by S. Romanenkova. According to her ideas, it is necessary to distinguish between the concept of "electronic justice" in the broad and narrow sense [9, p. 26]. In a broad sense, under e-justice the author understands a set of different automated information systems – services that provide means for publication of judicial acts, electronic business and access of parties to electronic materials. The above means can lead to an entirely different quality level of interaction between the court, participants of the process and other interested parties. At the same time, all these services are of practical and supporting nature which do not change the way of litigation. In the narrow sense, e-justice is the ability of the court and other participants in the court process to carry out acts prescribed by regulatory acts that directly affect the beginning and progress of the trial (for example, such actions as filing documents in court in electronic form or participating in a court hearing for help video conferencing system).

It should be noted that the interpretation of the concept of e-justice in two senses (narrow and broad) is inherent not only in the legal science of the post-Soviet law school. Thus, there is the definition of e-justice contained in the recommendations of the Committee of Ministers of the Council of Europe CM / Rec (2009) 1 to the member states of the Council of Europe on e-democracy adopted by the Committee of Ministers on 18 February 2009 at the 1049th meeting of the Ministers' Deputies, according to which e-justice means the use of information and communication technologies in the implementation of justice by all parties involved in the legal field in order to improve the efficiency and quality of public services, in particular for individuals and enterprises. It includes electronic communication and the exchange of data, as well as access to information of a judicial nature [10, p. 17]. This definition is similar in content to the understanding of e-justice in the broad sense.

In this case, there can be traced a dialectical interconnection between electronic justice in the broad and narrow sense. Accordingly, there is no particular need for a "broad" and "narrow" interpretation of e-justice. When defining e-justice, a significant factor is the reference to the dynamic parameters (elements) of this process, which are transformed into the practical scope of the provision by national courts of electronic services. The experience of foreign countries shows that the informatization of courts leads ultimately to the introduction of elements of e-justice into the law enforcement practice of the state. In his 1996 report on "Access to justice" Lord Wolfe said: "Information technologies will not only help optimize and improve existing systems and processes; in the long run, they will eventually become a catalyst for radical changes ... Information technologies will become the basis of the judicial system in the near future, and for this reason, they already deserve special attention at the highest level" [11, p. 75]. Applying the method of comparative law, by means of analysis of modern foreign legislation and acquaintance with the latest results of his theoretical research, V. Ponomarenko comes to the following only possible conclusion: under electronic justice (electronic court, electronic justice) the scholars abroad mean a judicial and jurisdictional review of civil cases that (including the implementation of all necessary procedural actions) are fully mediated by electronic form of expression (consolidation) of procedural information and co-operation of members of civil proceedings [12, p. 26]. However, this definition of e-justice is not defective as it reflects the dynamics of e-justice when considering a specific category of cases, artificially limiting the nature of justice. Electronic justice can be defined as a set of different automated information systems (services) that enable the court and other participants in the judicial process to perform actions prescribed by regulatory acts which are mediated by electronic form of expression of procedural information and interaction of participants in legal proceedings.

Conclusions. Thus, we can draw the following conclusions.

1. Clear legislative work at the international and national levels in relation to e-justice as an international legal phenomenon is conditioned by its terminological certainty. The notion which is meant by the term "e-justice" has not yet got its legal definition in domestic law. In scientific circles, where concepts such as "electronic justice" and "electronic court" are used as well, there is also no unity about the unification and content of these coordinate terms, which further complicates the understanding of the essence of the term "electronic justice" and how they relate to each other.

2. Electronic justice in Ukraine can be defined as a set of different automated information systems (services) which enable the court and other participants in the trial to carry out acts prescribed by the legal acts mediated by the electronic form of expression of procedural information and interaction of participants in the proceedings.

3. There are some differences in approaches to understanding the essence of e-justice in different ways. Domestic interpretation, in contrast to foreign ones, does not emphasise the obligatory nature of the expression in electronic form of all procedural actions, but speaks of such a possibility only for those procedural actions for which there is a corresponding regulatory framework. Nowadays, for all procedural actions provided by domestic law, it is impossible to find the appropriate electronic form for their expression. However, in order to speak of genuine e-justice, one should strive precisely for such an understanding of e-justice, as is currently the case abroad.

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