



Remote Justice Procedures During the COVID-19 Pandemic in the Russian Federation

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Abstract

The paper aims to form a theoretical model for ensuring the accessibility of justice for participants in the trial through online meetings by solving specific problems in the development of procedural arbitration legislation and the practice of its application. The research objectives are to prepare a scientific assessment of the risks and problems of online litigation through a web conference in the arbitration process and propose ways to improve the law enforcement practice of holding web conferences in arbitration courts. The key ways to achieve the research objective are to study the legal basis for holding online court meetings using online-conference systems; the judicial practice of applying the rules on the participation of parties in a court session through an online conference, using methods of a systemic approach and modeling; as well as formal legal and comparative legal methods. The accessibility of justice is one of the fundamental principles of judicial protection, which determines the purpose and general meaning of judicial activity. During the period of restrictions due to COVID-19, the judicial system of the Russian Federation has taken a significant step forward in the digitalization of justice, primarily in arbitration courts. The pandemic period had encouraged the judicial practice to form the online-conference system that will provide an opportunity for the parties to participate in the court session without physical presence. Within this research, based on the analysis of the procedure of online court sessions, the authors identified the risks of their conduct.

Based on the analysis of the current practice of arbitration courts, the authors revealed different and contradictory results. Courts misinterpret the rules of holding a court session using the online-conference system, particularly when parties break regulations while participating in such meetings. The paper raises problems caused by the lack of uniformity of law enforcement practice and different applications of the rules by the courts, regulating the relations of the parties to hold court meetings online using online-conferencing systems in the way of a possible violation of the rights of participants in the trial. The authors identified the risks associated with online court meetings. As a result of the research, the authors formulate proposals to optimize the practice of applying procedural law in terms of using online-conference systems to organize a trial online.

Keywords

Arbitration process · Court session · Online conference · Arbitration · Online session · Litigation

1 Introduction

The restrictions associated with the spread of COVID-19 did not negatively affect the work of the Russian judicial system (Chernogor & Zaloilo, 2020; Valeev & Makolkin, 2020). On the contrary, the restrictions imposed during the period of self-isolation have become an impetus for the development of new technologies in courts, in particular, online meetings, and further informatization of the entire justice system.

The Arbitration Court of the Yamalo-Nenets Autonomous District was the first court to post on its official website an information message about holding court meetings online from April 28, 2020. Thus, since the end of April 2020, arbitration courts have been actively holding trials through an online conference.

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Meanwhile, one can currently claim the indispensability and importance of online meetings, which help prevent the spread of COVID-19 and ensure the right of participants in the arbitration process to participate in the court session.

However, in practice, the trial participants are faced with problems due to the lack of uniformity of judicial practice and the different application of the rules by the courts regulating the relationship of the parties to holding an online meeting.

In this regard, there arise new questions related to online meetings and their availability for all participants in the process, regarding its compatibility with key fundamental rights—the right to be heard in court, the right to defense, the right to effective judicial remedies, and the right for a fair trial (Gori & Pahladsingh, 2021).

Ensuring the rights of participants in online litigation is impossible without minimizing the existing risks and eliminating the problems currently faced by participants in litigation.

The further development of advanced technologies naturally requires the solution to the issues above. Otherwise, it can cause citizens to distrust the court, the quality, and objectivity of judicial activity, as well as distort society's ideas about the role and significance of the judiciary (Vasilkova, 2018). Additionally, the digitalization of justice is attractive to investors and is a factor in the country's economic development.

This paper aims to form a theoretical model of accessibility for participants in the trial by solving the problem of the development of arbitration legislation and its practice.

2 Materials and Methods

The works of Byrom et al. (2020) Rossner et al. (2021), Valeev and Makolkin (2020), Rusakova et al. (2021) reveal issues of digital justice and other aspects of these issues. An analysis of judicial practice on this issue was carried out in the works of Vasilkova (2018) and Razveykina and Shikhanova (2021).

The problems faced by the participants in the litigation when participating in them online are addressed in the works of Frazier et al. (2021), Gori and Pahladsingh (2021), Vildanova (2020), Kamaeva (2020), Koryakina and Khokhryakova (2020), Rusakova and Frolova (2022).

The purposes and objectives set in the work determine the choice of research methods. During the research, the authors applied general scientific methods (analysis, synthesis, modeling, and functional method) and special legal methods (formal legal and comparative legal methods). Thus, the formal-legal method was used to analyze the legal basis for holding a court session online in civil proceedings in Russia, as well as to study the practice of arbitration courts. The comparative legal method was used in studying foreign

experience in conducting court meetings via video communication.

3 Results

3.1 Lack of Regulation

Until January 1, 2022, one of the problems was the lack of consolidation of the possibility of holding a trial online (via a web conference) at the legislative level, in connection with which the arbitration courts developed rules for holding online meetings independently and published them on their official websites.

Meanwhile, this problem has been resolved; from January 1, 2022, Federal Law “On amendments to certain legislative acts of the Russian Federation” (December 30, 2021 No. 440-FZ) came into force, in accordance with which the regulations of the Arbitration Procedure Law of the Russian Federation, the Civil Procedure Law of the Russian Federation, the Administrative Procedure Law of the Russian Federation, and other legislative acts of the Russian Federation were amended to improve the procedure by using electronic documents in legal proceedings and ensure the right to remotely participate in court meetings using personal means of communication of users safely.

Trial participants can participate in a court session using an online conferencing system if they file a petition and if the courts have the technical possibility of conducting an online conference, but they do not do so. The grounds for refusing to satisfy an application for participation in a court session via an online conference may be a lack of technical ability to participate in a court session using the online conferencing system or the discussion of the case in a closed court session.

The law created a legal framework for using the available possibilities in courts, filing documents electronically, and remote participation in court meetings. Simultaneously, participants are not deprived of the right to submit paper documents in person and personally attend court meetings. The acts introduced into the legislation may be used at their own discretion. Thus, in the absence of a technical possibility to participate in a court session remotely, the parties have a right to participate in person, which guarantees the rights of citizens and legal entities for judicial protection.

A number of papers have raised concerns or provided evidence of the adverse impact of the rapid transition to remote sessions on the ability of digitally excluded individuals to effectively participate in court sessions (Byrom et al., 2020).

Addressing the experience of the UK, we note that, in accordance with the Coronavirus Act (the Act), which came into force on March 25, 2020, as a reaction to the COVID-19 pandemic, the decision to hold a meeting by telephone or

video can be enforced for several reasons and is made by a judge.

In May 2021, the London High Court Judge, Mr. Mostyn, cited pandemic-entrenched online sessions practices and ruled that two asylum seekers were legally expelled as their right to a fair distribution had not been violated. In Turkey, according to the judge, the Internet works excellently, and even in the remote village where the deportee lives: “All he needs is a laptop and a Wi-Fi or data connection. In the unlikely event that they are unable to download the Zoom or Microsoft Teams apps, they can access Zoom or Teams via a browser; alternatively, the session may be held on the CVP platform developed by HMCTS, which is also accessed via a browser” (High Court of Justice of England and Wales, 2021).

The possibility of granting the right to participate and access justice is provided, which leads to a fair decision. However, fairness can be undermined if the parties do not have reliable internet connections or devices (Rossner et al., 2021). Meanwhile, in the Russian Federation, the opportunity to participate in court proceedings via an online conference is provided only by the interest of the parties by considering their will.

3.2 Equivalence of Online Meetings to Face-to-Face Meetings

Having introduced virtual meetings in multiple courts, legal practitioners have begun to raise critical questions about the equivalence of virtual meetings to face-to-face meetings (Frazier et al., 2021).

One of the apparent risks and the difference between an online meeting is the inability to remotely identify a person involved in the process (Matytsin et al., 2022).

The risk of presenting falsified samples of documents on the identity and powers of the representative increases because the court is deprived of the opportunity to establish their authenticity by reviewing the original. In fact, the court is limited in resolving the issue of the possibility of participation of persons in a court session, establishing the identity of the participants in the process, and verifying their abilities (Kamaeva, 2020).

Arbitration courts of Russia use the Unified Portal of Public Services [Gosuslugi] to identify participants. This portal operates on the Unified Identification and Authentication System.

However, the portal does not guarantee the authenticity of the information provided by the participant in the online process; there is no opportunity to see originally submitted documents (Vildanova, 2020). Russia has not implemented a service for identifying litigants using biometric data, which could solve the problem of personal identification.

Meanwhile, judicial practice (primarily arbitration proceedings) has not yet demonstrated problems associated with abusing power, indicating a critical vulnerability in identifying persons in the My Arbiter system used to ensure procedural guarantees of the parties or protect information.

Additionally, following Part 5 of Article 158 of the Arbitration Procedure Law of the Russian Federation as amended (January 1, 2022), the arbitration court may postpone the trial if it recognizes that it cannot be considered at this court session, including that the court has reasonable doubts about the fact that a person who has passed identification or authentication is participating in the court session, or about the will of that person in case of technical problems when using technology to hold a session, including video conferencing systems or web-based conferences.

Thus, the court has the right to postpone the court session if there is doubt about the identity of the person participating in the court session through a web conference or their will, which relatively guarantees the possibility of the court to influence the stated risk.

3.3 Postponing the Hearing Due to Communication Problems as a Possibility of Abusing Power and Delay of the Process

Due to the relevant practice of arbitration courts on the issues mentioned above, we believe it is possible to start with an analysis of the adopted judicial acts, based on which the problem was identified by the authors.

Thus, by the decision of the Arbitration Court of the Primorye Territory in case No. A51-16998/2020 (September 21, 2021), the trial was postponed since a third party received a request to hold an online court session, which was not satisfied due to the late application and lack of technical ability to satisfy it (Primorsky Territory Arbitration Court, 2021).

Thus, the third party influenced the delay of the process by not filing a petition for holding an online court session in advance, which allowed the third party to postpone the trial without regulations established by the procedural legislation.

Meanwhile, it is worth mentioning that there is no deadline for applying for participation in an online meeting. However, in practice, courts refuse to hold an online meeting if an application has been violated.

For example, the Arbitration Court of the Udmurt Republic indicated that an application for participation in an online meeting is to be submitted no later than five business days before the court session (ruling in case No. A71-3578/2015 (October 8, 2020). Some courts proceed from the fact that such an application is to be submitted at least ten days in advance (Arbitration Court of the Udmurt Region, 2022).

We believe that to eliminate discrepancies in judicial practice, it is necessary to establish the exact period for submitting an application at the legislative level. The foregoing will minimize the risk of abusing power by the participants in the trial and the possibility of delaying the consideration of the case.

3.4 Unjustified Refusal to Satisfy the Parties' Petitions for Participation in the Court Session Through the Web Conference System

We believe it is possible to start with an analysis of judicial practice on this issue.

Thus, the Arbitration Court of the Kemerovo Region refused to hold an online meeting in case No. A27-16134/2019 on the following grounds: "Reason for rejection: the representative is in self-isolation" (Arbitration Court of the Kemerovo Region, 2021). Meanwhile, there is no causal relationship between the fact that the representative of the party is in self-isolation and the inability of the parties to participate in the court session via a web conference.

Thus, a fairly common reason for rejecting a party's petition to participate in a court session via a web conference is the lack of the necessary time to hold it, which cannot be called a reasonable ground for refusing to satisfy the petition because such a ground is not provided for by the procedural legislation.

Thus, by the decision of the Arbitration Court of the Krasnodar Territory in case No. A32-47952/2021 (January 26, 2022), the applicant was denied the request to hold an online court session in the web conference because, at the time of the receipt of the application by the court, the schedule of court sessions did not provide additional time costs for holding a court session in the online session mode, consideration of the case in the online session mode will lead to a violation of the time limit for consideration of the subsequent case (Arbitration Court of the Krasnodar Territory, 2022).

Some courts have rejected applications to participate in web conference proceedings because applicants are entitled to provide a position and, in the opinion of the courts, this is sufficient to exercise their rights without the participation of the parties in the litigation (Inshakova, 2021).

By the ruling of the Arbitration Court of the Krasnodar Territory in case No. A32-42523/2017 (November 25, 2021), the application for holding a court session in the web conference mode was denied since the receipt of a petition for holding an online session may indicate the objective impossibility of attending the court session (Arbitration Court of the Krasnodar Territory, 2021a). Meanwhile, the applicant is not deprived of the opportunity to submit a position regarding the stated requirements in electronic form.

In the ruling in case No. A32-18505/2021 (July 1, 2021), the Arbitration Court of the Krasnodar Territory refuses to hold an online meeting due to the specifics of bankruptcy cases, including the identification of a wide range of participants in the process and the difficulty of initiating them, including non-professional participants in the process (Arbitration Court of the Krasnodar Territory, 2021b).

Thus, referring to the analysis of judicial practice, it is possible to identify various grounds for refusing to initiate a criminal case in a criminal trial. The proposal to assign a distant event and non-compliance due to compliance with the procedure is granted the right to review in the online review.

Meanwhile, the foregoing may be delayed on the violation of the rights of the parties to the investigation accessibility. However, the foregoing study is unacceptable within the scope of this paper.

3.5 Unsettled Procedure for Providing Evidence to the Court by Persons Participating in the Case

Online litigations present a number of procedural difficulties. Thus, participants are deprived of the opportunity to present written evidence and video and audio recordings during the meeting. They also cannot quickly get acquainted with the evidence provided by other participants during the court session.

Additionally, the technical support for the operation of this system remains imperfect: there are problems with uploading documents to the system, synchronizing data from the Unified Portal of Public Services and the My Arbiter system, and other technical failures, which entail negative consequences in the form of the inability to participate in the process, violation of deadlines, etc. Thus, despite the significant period of operation of the My Arbiter system, there is a pattern of technical unpreparedness of the judicial system for several objective reasons of a technical nature (Razveykina & Shikhanova, 2021).

Meanwhile, all listed difficulties that the parties face in practice when expressing their will to participate in the trial online are undoubtedly leveled by the merits of online meetings.

4 Conclusion

Advanced technologies improve the efficiency and quality of the administration of justice and ensure the implementation of the principles of openness, publicity, accessibility, and legality of justice, as well as the exercise of procedural rights by participants in legal proceedings.

Meanwhile, to continue the sustainable development of online litigation, it is necessary to pay attention to the existing problems that participants in the meetings face in practice; direct efforts to solve these problems are required.

Thus, the procedure for identifying a person participating in a trial through a web conference is subject to improvement, including the introduction of face identification services, including biometric indicators.

Additionally, efforts should be directed to eliminate several problems faced by participants in the court session.

First, it is necessary to ensure the uniformity of judicial practice in terms of the grounds for refusing to satisfy the petitions of the parties to the litigation to participate in the court session in the web conference mode.

Second, at the legislative level, it is necessary to establish a period before the expiration of which the parties must file a petition for participation in a court session by using web conference systems.

Third, it is necessary to regulate at the legislative level the procedure for providing evidence to the court by persons participating in the case when they participate in the trial using web conference systems.

The introduction of advanced information technologies in legal proceedings is an irreversible phenomenon that affects all key aspects of judicial activity—improving the quality of consideration of cases, improving the forms and methods of organizing the work of courts, and increasing the openness of justice to society.

The main result of this research is a model for the further development of Russian arbitration procedural law in theoretical and practical aspects.

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