

Questionnaire with a view of the preparation of Opinion No.14 on the non-materialisation of the judicial process and the use of IT by judges and court staff (Ukraine)

1. Access to courts

a) No, the legislation provides the written form of documents with the personal signature of the person which submits it to instigate legal proceedings.

b) The Criminal Procedural Code (item 95 Criminal Procedural Code) doesn't provide for instigation the criminal proceeding on the basis of electronic documents. The legislator provides the written form of documents on which basis criminal case can be brought, exceptions make oral statements of citizens which have to be recorded in the report and signed by the applicant and the official who has accepted the statement, the messages published in press (in printing editions).

Civil proceedings are also instigated by the written claim – item 98, 119 the Civil Procedural Code. The same procedure in administrative process – item 105 the Code of administrative legal proceedings, and in arbitration process – item 54 the Arbitration Code.

c) -

d) -

2.Procedure within courts

a) The legislation doesn't provide submitting of claims, and other procedural statements differently as in written form with the signature of the applicant.

d) After receiveing the procedural documents (statements, petitions, materials etc.) court staff registrate them in the electronic automathised documentary system. At registration the basic requisites of the document are brought. In this system the further movement of case is displayed. Procedures of document registration in system differ depending on a legal proceeding category.

c) Both. Basically, the court communicate with parties who use electronic means themselves in the traditional ways, but the legislator provides the party's right to specify the contact e-mail address in their claims, statements, etc. (cr. 400-15 The Criminal Procedural Code, 111-18 the Arbitration Code, 357 the Civil Procedural Code, 33 the Code of administrative legal proceedings).

With other parties- by traditional means.

d) Powers of lawyers include acquaintance with case materials, submitting procedural documents etc. in the general order – on the basis of letters of inquiry or oral petitions in hearings.

e) All case materials exist in a paper variant. The exception are material evidences which can be contained in electronicmeans. In electronic form, using automatic documentary system, date of submit the procedural documents, the information of the matter of case, the parties, the information on movement of case, the affairs given about the judge which considered case are registered, etc.

f) -

g) -

h) The information contained in case materials is the subject to protection that is provided in Laws of Ukraine „On the information”, „On electronic documents and electronic document circulation”, „On information protection in information-telecommunication systems”. The information with the limited access (confidential, secret) is the subject to special protection in an order confirmed by corresponding state structures.

i) -

j) The parties have to adhere the written form of procedural documents..

k) Case materials and documents of court's activity are subject to transfer and storage to the state archives according to „the List of case materials and documents of court's activity with instructions of term of their storage". The period of storage of case materials and documents of court's activity depends on a category of the given document. So, periods of storage of judicial statistics are: before the need expiration, 1 year, 5 years, constantly. Periods of storage of criminal cases: 2 years, 3 years, 5 years, 6 years, 7 years, 8 years, 10 years, 15 years, constantly. Periods of storage of civil cases: before the termination of the right to the alimony, to majority of the child, 1 year, 3 years, 5 years, 10 years, 15 years, 75 years. Periods of storage of documents on organizational work of court: before the need expiration, 1 year, 3 years of 5 years, 10 years, 75 years, constantly.

All procedural documents, should be signed the judge (or the clerks within its powers) personally. The digital signature is applied in case of a direction of an electronic copy of the judgement to the Uniform state register of judgements (Decision of the Cabinet of Ministers of Ukraine «On the statement of the Order of conducting to the Uniform state register of judgements » from 5/25/2006).

m) The parties have the right to get acquainted with case materials, to do extracts, x-copies, to receive copies of judgements (item 6, 27 the Civil Procedural Code). Parties during the preparatory procedure can get acquainted with case materials, to do extracts, copies (item 49, 119 the Code of administrative legal proceedings). The parties have the right to get acquainted with case materials (item 22 the Arbitration Code). Accused, the defender, victim, the civil claimant have the right to get acquainted with all materials has put after the pretrial investigation termination (item 43, 49, 51, 45 The Criminal Procedural Code).

n) On a court site the information on appointments of hearings can be placed. Other acquaintance with movement of case by means of the Internet isn't provided.

o) Judges and court staff have access to electronic files (within the authorized documentary system) according to their powers (‘Regulations on the authorized documentary system’, confirmed by the Decision of the Council of Judges of Ukraine 26/11/2010 № 30).

p) 1) Using automatic documentary system, judges have access to the files within their jurisdiction.

2) Court staff have the limited access to files within their jurisdiction depending on a post.

3. Oral hearing

a) As the legislation doesn't provide the electronic form of legal proceeding, judges in oral hearings use materials in paper form.

b) No, it isn't provided by the legislation.

c) No, it isn't provided by the legislation.

d) In exceptional cases for demonstration of some documents (for example, for research of material evidences which are contained in the electronic carrier), it can be used the special technical means if it is possible in oral hearing, however it isn't applied widely.

e) The audio record of oral hearings within civil and administrative proceeding is conducted in the obligatory order (item 197 the Civil Procedural Code, item 41 the Code of administrative legal proceedings), within criminal and arbitral proceeding – under the party petition (item 87 The Criminal Procedural Code, item 81 the Arbitration Code). Videorecording is conducted under the party petition.

f) No, conducting videoconferences isn't provided by the legislation.

g) To specify the exact data it is not obviously possible, but the courts' electronic equipment (especially in areas) is insufficient.

Electronic files access 100%

Electronic data base of jurisprudence 100%

Screen projectors -10%

Internet access -50%

Videorecording +50%

Audirecording 100%

4. Information services for judges.

1) There are central database of national legislation and international case-law (www.zakon1.rada.gov.ua, www.reyestr.com)

2) There are databases run by a private institution of national legislation (www.nau.ua, www.liga.net.ua) on commercial basics.

5. Practical court work

a) The Judge writes the procedural documents.

b) Court staff depending on their official duties deliver, registrate the documents, , and also write the projects of pocedural documents (assistants to judges).

c) Recently the tendency of reduction of the judicial corps is observed that can't positively reflect on a work of the courts. It is connected with set of the reasons, including with imperfection of the legislation in sphere of regulation of procedure of certification, training, appointments of judges. Especial attention it is necessary to give necessities of creation of an effective personnel reserve, acceptance of measures on performance of the Program of preparation and familiarizing of youth with public service, service in local governments, creations of conditions for its professional growth ..., confirmed by the decision of the Cabinet of Ukraine from 9/10/2003 № 1444, including to enlist young civil servants in a personnel reserve on the higher posts, to organize their training and training.

d) Yes.

e) No.

f) No.

g) The authorized documentary system contains the information on stage-by-stage movement of case, which can be used for statistic, evaluation, etc.

6. Internet.

A) No, courts aren't equipped by sufficient technics, therefore each judge doesn't have the access to Internet within his\her office.

b) The courts of the highest authorities have their own websites:

<http://www.ccu.gov.ua/uk/index>- The Constitutional Court of Ukraine

<http://www.scourt.gov.ua/> - The Supreme Court of Ukraine

<http://sc.gov.ua/> - The Highest Specialized court Of Ukraine in civil and criminal cases

<http://arbitr.gov.ua/> - The Highest Arbitral Court of Ukraine

<http://www.vasu.gov.ua/> - The Highest Administrative Court of Ukraine

United web-site contains information about other courts of Ukraine: <http://court.gov.ua/>

Sites of courts contain the information on a court management, contact addresses and court phones, requisites, the work schedule. The information on judiciary practice, on appointment of hearings and news in sphere of organizational activity of court (personnel appointments, the information on vacancies etc.) also can be issued.

7. Use of private personal computers/laptops by judges and court staff.

a) Judges and court staff can use own personal computers, but with the permission of material department on use of personal devices in the office of court..

b) The legislation doesn't provide such order of communication with judges.

c) No, it isn't provided by the legislation.

d) No, it isn't provided by the legislation.

8. Use of data.

a) Data which are received during proceeding, about movement of proceeding can be used as the statistical data, for carrying out of generalization of judiciary practice.

b) Yes.

c) The authorized court staff are engaged in gathering of the statistical data. Judges of superior courts can be curators of minor courts on reception of the statistical data.

Statistical data is used for control of duration of proceeding by courts of higher instances, and also for carrying out of generalizations of judiciary practice on inquiry of The Supreme Court of Ukraine, The Highest Specialized court Of Ukraine in civil and criminal cases.

9. Data security

a) The data containing on electronic carriers in courts, is the subject to protection in the same order as well as any other information of personal character (the Law of Ukraine «About the information»). The information with legal status of the confidential or secret is protected in the special order provided by the legislation of Ukraine.

b) Using the automated documentary system each clerk has a limited access to a system branch in which he/she works.

c) Processing and use of the information which contains the state secret, is managed by the authorised person in a special order in a privacy mode (Law of Ukraine «On the state secret», «the Order of the organization and maintenance of a mode of privacy in public authorities, local authorities, at the enterprises, establishments and the organizations», confirmed by the decision of the Cabinet of Ukraine from 02.10.03. №1561-12 ("secretly").

Judges have no special powers on information protection.

10. Participation of judges.

The Council of Judges of Ukraine, the State judicial administration participate in working out of programs on introduction of computer technologies in courts, with the separate initiative representatives of courts (for example, councilors of judges). Concepts about development affirm as in any other sphere by the Cabinet of Ministers Ukraine, at legislative level the decision on development of technical maintenance in courts are accepted by the Verhovna Rada of Ukraine.

11. Conclusion.

Development of the electronic infrastructure in courts is provided by the governmental programmes of judicial system reform. Introducing the IT must positively reflect on observing principles of public procedure, objectiveness, independence of judges, and full and comprehensive research of case materials. Advantages of the of the IT in courts may be seen in automated electronic documentary system and storage in electronic archive. It helps to monitor the lengths of the proceedings. Communication with parties (date of hearing notifications) by e-mail is a convenient way on the condition that this information will be protected properly from the third persons. Special attention must be paid to the web-sites of court. Proper and timely updating of information about court's activity provides the access to the courts.

But not every innovation of development of the electronic infrastructure in courts is expedient. Video and audioconferencing can negatively reflect on full and comprehensive research of case materials. Resistant model of legal procedure provides for personally taken evidence from parties (their representatives) or written documents with personal signature. It can't be replaced by electronic files. Submitting claims, statements and other procedural documents also is possible only in written documentary way, as applying of digital signatures in legal proceedings is not developed and its protection is far from perfect. Also, there are many unsolved problems in an adequate and sufficient equipment of courts. Also every innovation needs the approbation term and demands the proper and thorough provision in legislation.