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ACTUAL PROBLEMS OF PROTECTING THE CONSTITUTIONAL RIGHTS OF CITIZENS IN THE CONSIDERATION OF CRIMINAL CASES IN THE CONTEXT OF A PANDEMIC

*Oralbekov A.S., second-year master's student of the Faculty of Law
Supervisor Bilyalova M.I., associate professor of the Department of Constitutional and International Law*

It is not secret that the pandemic caused by COVID-19 has significantly affected the productivity of many fields of activity. New global problems have also affected the work of the courts in the administration of justice. In order to protect public health and prevent the spread of the virus, the courts were forced to switch to remote consideration of court cases, which, in turn, raised a number of issues requiring further settlement.

In connection with the announcement of quarantine in the country, the Supreme Court recommended that trials be conducted remotely via videoconferencing using the TrueConf platform, postponing the consideration of court cases for which the procedural deadlines have not come (including suspensions, postponements, extensions, etc. [1]), and also gave recommendations to participants in the process to participate in an online meeting [2]. If before the introduction of the state of emergency, 150 meetings were held online every day in the republic, then after their number increased to 4,500 [3].

An analysis of judicial practice for the period from March 2020 to the present day allows us to conclude that the consideration of cases through online court sessions has both advantages and a number of disadvantages. The advantages include organizational factors, such as ensuring the health of the population, saving time and financial costs. At the same time, this format of court sessions revealed quite a lot of organizational, technical and legal problems that both the courts and the participants in the process faced, since this form of consideration of cases is not regulated by law.

According to part 1 of Article 345 of the Criminal Procedure Code (hereinafter referred to as the CPC), the law provides for the possibility of considering cases only via video communication, but it does not provide for its regulation, with the exception of only one judicial action - remote interrogation of a witness and a victim via videoconferencing (Articles 213, 269 Parts 7-9, 370 of the CPC). Meanwhile, the consideration of cases online differs significantly

from the consideration of cases through the videoconferencing: in the first case, a direct Internet connection is established between the court and the participants in the process, whereas with the videoconferencing, the person is subject to summons to the court of the district in which he is located or resides. In this regard, guided by part 1 of Article 1 of the CPC, I believe that there is an urgent need for legal regulation of online court sessions by making appropriate amendments and additions to the legislation.

Undoubtedly, the consideration of cases in an online format should be carried out with the mandatory provision of all the requirements of the CPC. However, according to practice, it is quite difficult to ensure a number of requirements of the law. Thus, at the initial stage, the use of the TrueConf application, as well as some other IT technologies, did not bring the expected results for holding full-fledged, legally compliant court sessions. This was due to the imperfection and insufficiency of the technical capabilities of these applications: communication is often cut off, which is why the content of judicial actions or part of them remain for the participants not seen, or not heard, or both. There were other technical shortcomings. For example, the maximum number of connections in TrueConf is 10 people, whereas, in some cases, the number of participants exceeds this number, and the free version of Zoom has a time limit of 40 minutes maximum. Subsequently, applications such as Zoom and Whatsapp became the most widely used. But even with their application, certain technical difficulties, associated with poor communication, poor image and sound quality, failures, etc. have arisen and still arise. These technical shortcomings often entail non-compliance or simplification of a number of requirements of the CPC, which, in turn, violates the rights of participants in the process, and ultimately leads to a decrease in the quality of the administration of justice and, as a consequence, the issuance of an unlawful decision [4].

Unfortunately, in the online court session, it is not possible in all cases to ensure the implementation of the fundamental principles of the criminal process. For example, not all cases have the possibility of ensuring the principle of equality of the parties due to their digital inequality. So, to participate in an online court session, each of its participants must have gadgets with a camera, be in a high-quality Internet connection zone. However, not all citizens involved in the orbit of justice not only do not have such technical capabilities, but also do not have sufficient digital literacy, which does not allow them to fully participate in an online court session. Moreover, some citizens do not even know about the existence of the ZOOM application, which, unlike Whatsapp, has a wide range of features and tools, including the creation of a conference with up to 100 participants. However, even ZOOM has its flaws. In particular, this applies to the way the microphone is connected. So, when entering the conference, the program requests permission to connect a microphone, but many participants ignore this request, thereby temporarily depriving themselves of the opportunity to speak and hear other participants of the conference. This is one of the reasons why court sessions quite often begin with significant delays.

A significant problem is ensuring information and data transmission security when considering cases in an online format. Meetings are held via unsecured Internet connection channels, which makes it possible for anyone with certain skills in handling programs and applications to connect to the trial [5], while remaining invisible to the court and the participants in the process. In this aspect, it is problematic to ensure the confidentiality of legal proceedings in a certain category of cases that are subject to consideration in a closed court session (Article 29 of the CPC). As noted by Russian researchers, software developers often find themselves compromised by participation in scandals related to the sale of users' personal data. For example, Zoom Video Communications was seen transferring users' personal data to third-party companies, including Facebook, without informing customers about it [6; 58]. Moreover, these applications, with the exception of TrueConf, are not integrated with the video recording equipment installed in the courtrooms, which, in turn, deprives the court of the opportunity to identify and record the participants of the court session. These shortcomings significantly affect

the quality of the administration of justice, creating conditions for the leakage of confidential information.

Furthermore, insufficient material and technical support directly affects the productivity of the consideration of cases. Thus, since the beginning of the pandemic, the courts have not been provided with gadgets for holding court sessions, so that mobile phones of judges and court clerks are still used, and the lack of a guarantee of compensation for damaged personal property only aggravates the situation.

Work in the conditions of a pandemic has shown that the continuous activity of the judicial system, its effectiveness and adaptability to conditions directly depend on the use of the latest information technologies and continuous improvement of legislation in the field of justice [7]. Meanwhile, as practice shows, the most important criterion is the effectiveness of legislation that was not fully ready for holding court sessions in an online format. In this regard, the existing legislation in the field of legal proceedings requires further regulation and adaptation to the current conditions, which can be achieved by adopting an appropriate regulatory legal act.

List of literature:

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ПРИОРИТЕТНЫЕ НАПРАВЛЕНИЯ МИГРАЦИОННОЙ ПОЛИТИКИ РЕСПУБЛИКИ БЕЛАРУСЬ НА СОВРЕМЕННОМ ЭТАПЕ

Рамазанова Н.О., магистр юридических наук, ассистент кафедры международного экономического права белорусского государственного экономического университета

Проблемы государственного управления миграционными процессами в Республике Беларусь возникли не вчера: страна имеет богатый опыт регулирования миграции, однако в последние годы эти проблемы актуализировались. Причина тому – в самой сути миграции, которая является одним из самых чутких инструментов, незамедлительно реагирующих на социальные, экономические и политические изменения в мире, стране или отдельном регионе.

На современном этапе политика нашей страны в сфере управления миграционными процессами еще не обрела четких границ общегосударственной политики. Существующая система реализации государственной политики, государственных услуг, контроля и надзора в миграционной сфере не получила должной научной разработки и, как следствие,