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# Leading Principles of Equity and Equality Before the Law in the Process of Electronic Justice

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**Abstract** This paper focuses on the leading principles of equity and equality before the law in the process of electronic justice. One would probably agree that in the era of digital economy, the judicial reform in Russian Federation should and is being developed and modernized. E-justice is being introduced at all stages of legal proceedings which corresponds to all leading trends in the world.
In this paper, the authors consider e-justice as a necessary phenomenon of a dual nature identifying some problems concerning the principle of equity and that of equality before the law caused by electronic justice. The research analyzes both the interaction between the principles of justice and their implementation in the process of administering e-justice and foreign experience in putting e-justice into practice. We reveal several e-justice problems and propose the way of dealing with them. We also come to a balanced conclusion that the method of comparative analysis applied in the research helps to introduce e-justice in Russia and modernize it.

***Keywords:*** *rule of law, electronic justice, digitalization, leading technologies, leadership*

## 1 Introduction

One would probably agree that the relevance of the study of the principles of justice and equality of all before the law and the court of electronic justice, the determination of their essence, the implementation and implementation of judicial reform in the informatization of justice is due to the fact that in the era of the digital economy, a systematic and planned transition to electronic justice is carried out during the development of the judicial system.

In connection with the accumulated technological potential that improves the conditions of activity and the vitality of people, the modernization of all spheres of human life, including public administration, e-justice is viewed through a prism as a dual phenomenon.

In a view of all that, the problems of the operation of the principle of justice and the principle of equality of all before the law and the court in the process of implementing electronic justice have been identified. In this connection, there is a need to generalize judicial law enforcement practice, in a unified application and consolidation of views on the conflict aspects arising in the administration of justice.

This research of the principles of justice in the implementation of e-justice aims to study the implementation of the principle of justice and the principle of equality of all before the law and the court in the implementation of e-justice. The goal set forth a number of research tasks, such as:

- Give concepts to the principles of justice and equality of all before the law and the court;

- Give the concept of e-justice;
- Define the content of the interaction of the principles of justice in the process of e-justice;
- examine the issue of accessibility of e-justice.

## 2. Literature review

The theoretical basis of the study was the provisions formulated in the works of representatives of sectoral legal and related humanities, as well as in the works of foreign scientists.

In particular, the issue under consideration was studied in the works of Alekseev (1972), Nersesyants (1980), Rosenberg (1994), Romanenkova (2013), Zhdanova (2015), Solovyova (2016) as well as many others.

In the framework of the science of constitutional law and the organization of the judiciary in the Russian Federation, the issue under consideration was also well-covered in the works of Russian and foreign authors. In the framework of foreign science, the issue under consideration was studied in the works of Bacon (1971) or Rosenberg (1994) among many others.

We employ the review of the relevant research literature to base our study upon it. The methodological basis of the research is made up of both general scientific methods (dialectical, analysis, synthesis, deduction) as well as private scientific methods (historical-legal, formal-legal, comparative-legal).

## 3. Justice and the principles of legal responsibility

The justice and equality of all before the law and the court are legal principles and are included in the system of principles of legal liability. These principles appear in normative terms and are applied through legal regulators, being reflected in the main law of the country and regulatory legal acts. Justice and equality are the categories of philosophy that have had legal significance since ancient Rome. Therefore, “justitia” - justice (truth) - is a constant and continuous will to give everyone their right (Nersesyants 1980, p. 87-88).

As noted by Solovyova (2016), in this definition Plato’s formula “to each his own” is laid down, which subsequently transformed into the concept of equality of all before the law and the court. The connection between justice and equality of all before the law and the court was emphasized by V.S. Nersesyants: the principle of justice has a value meaning, which is integrated into the principle of equality of all before the law and the court, meaning “equality”, “proportionality” (Solovyova 2016, p. 54).

Solovieva (2016) identifies three approaches to the question of the relationship between justice and equality: 1) equality - one of the components of justice; 2) equality - a means of achieving justice; 3) justice and equality - self-sufficient, not single-order categories (Solovyova 2016, p. 54).

The correlation of principles of justice and equality of all before the law and the court can be formulated using the division of justice into “distributing” and “equalizing”. So, according to O.V. Raguzina justice acts as a principle of legal responsibility and is the basis of legal responsibility, which is a system of moral values, in which the offense and retribution, lawful behavior and remuneration are commensurate with them (Raguzina 2001, p. 8). Justice as a principle of legal responsibility requires a comparison of the act and retribution, the correspondence of the gravity of the misconduct and the identity of the guilty person to the measure of legal responsibility, specifying the Platonic formula "to each his own." By setting the criteria for legal liability, the principle of justice requires their distribution equally to all and thereby determines the content of the principle of equality of all before the law and the court. In addition, the principle of justice requires equal recognition and respect for the honor and dignity of any participant in the legal process, effective protection of his rights and legitimate interests, bringing each guilty to legal responsibility - the so-called “equalizing justice”.

The principle of the equality of all before the law and the court, in accordance with the principle of “equalizing” justice, is aimed at realizing the ideas of the highest moral value of each person and requires, in this regard, the legislator and law enforcer to prevent the privileged or discriminatory position of participants in the legal process. It applies to all types and stages of the legal process and assumes: the existence of a single and universally binding law for all that regulates the bringing to any type of legal liability. Moreover, the text of the law should be clear, consistent, not allow for ambiguous interpretation, it should not contain rules that lead to the emergence of a privileged or discriminatory position of someone.

In addition, the principle of the equality of all before the law and the court implies equal protection of the honor and dignity of participants in the legal process, as well as moral and ethical requirements for the activities of the law enforcer, aimed at ensuring the rights of each participant in the legal process on an equal footing.

The requirements of “distributive” justice characterize not only the individualization of legal responsibility, but also the ratio of the volumes of rights and obligations of participants in the legal process. For example, for persons incapable of protecting their rights and legitimate interests due to age or mental characteristics, the principle of justice requires the provision of additional guarantees or rights. Moreover, the scope of rights of these persons is greater than that of others, however, the equality of all before the law and the court is not violated, since the principle of justice in this case is primary and as a criterion for assessing the situation of participants in the

legal process does not consider the scope of their rights, but rather the possibilities their interests. The content of the principle of the equality of all before the law and the court always coincides with the requirements of "distributive" justice, being a part of them.

The principle of equality of all before the law and the court, being derived from the requirements of "distributive" justice, implies: consolidation of equal legal opportunities to protect their rights and legitimate interests by each participant in the legal process. Moreover, the scope of their rights may differ, however, persons with an independent procedural interest are vested with equal rights to protect it; participants with the same legal status have the same rights and obligations.

Legal liability should be differentiated depending on the severity of the misconduct and the identity of the offender. The principle of equality of all before the law and the court involves securing guarantees for the participants in the legal process to exercise their rights, as well as requirements for the activities of the law enforcement officer to properly implement these provisions of the law.

Thus, the close connection of the principles of justice and equality of all before the law and the court is that justice on the one hand determines the content of the principle of equality of all before the law and the court, and on the other, the equality of all before the law and the court is a condition for the implementation of the principle of justice.

The principle of justice in modern law is reflected in every principle of justice by incorporating it. This is clearly seen in the implementation of the principles for litigation (Article 46 and Article 15 of the Constitution of the Russian Federation). The principle of the equality of all before the law and the court is directly enshrined in the Constitution of the Russian Federation (Article 19).

Sectoral legislation includes the principles of justice and equality of all before the law and the court. So, the Criminal Code of the Russian Federation in Art. 6 establishes the principle of justice, linking it with the imposition of punishment, and also highlights justice as a "social" category, putting it as the goal of punishment (Article 43 of the Criminal Code of the Russian Federation). At the same time, the Criminal Code of the Russian Federation declares the equality of all persons who have committed a crime before the law and the court (Article 4 of the Criminal Code). The Code of Criminal Procedure of the Russian Federation mentions justice in the context of the appointment of a fair punishment by the perpetrator (part 2 of article 6 of the Code of Criminal Procedure).

The Code of Administrative Offenses of the Russian Federation does not directly establish the principle of justice, but expresses it through the prism of other principles of legal responsibility: legality, equality before the law of persons who have committed administrative offenses (Article 1.4. Administrative Code of the Russian Federation).

The Code of Administrative Procedure of the Russian Federation enshrines the principle of justice in the consideration and resolution of court cases (Article 9) and the equality of all (citizens and organizations) before the law and the court in the administration of justice in administrative cases (Article 8).

In the Arbitration Procedure Code of the Russian Federation, the principle of justice acts as one of the tasks of the legal proceedings (clause 3 of article 2), which is carried out on the basis of the equality of all before the law and the court (article 7).

The Civil Code of the Russian Federation declares recognition of the equality of all participants in regulated relations (part 1 of article 1), and with respect to justice, it only fixes the correctness and timeliness of the consideration and resolution of civil cases in order to protect violated or disputed rights, freedoms, legitimate interests of citizens, organizations and other persons who are subjects of civil, labor or other legal relations.

The Civil Procedure Code of the Russian Federation secures the administration of justice on the basis of equality of all citizens and organizations before the law and the court (Art. 6), and the tasks of civil proceedings recognize the correct and timely consideration and resolution of civil cases.

According to some authors, the concept of "correct" resolution of civil cases is not identified with the concept of "fair" resolution of civil cases (Aleshkova et al 2015, p. 254).

In our opinion, the concept of "correct" displays several meanings in the interpretation of this concept: true, fair, uniform, accurate, error-free. By "correctness" we must understand the exact compliance with the law enforcement. A priori, this concept contains features of the principles of justice and equality of all before the law and the court.

I would like to note that in the interpretation of the concept of "right" several aspects of the principle of justice are laid down, namely: social, moral and legal. Alekseev says about this relationship: "Justice, representing in its basis a socio-moral phenomenon in society ... takes on the importance of the legal principle to the extent that it embodies in the normative legal way of regulation, in those principles of" proportionality" (Alekseev 1972 p. 108). Justice, according to Alekseev (1972), is of independent importance in legal practice, when the court, taking into account the "internal conviction", has to make a decision.

Often, in their decisions, the Constitutional Court of the Russian Federation is guided by the Preamble of the Constitution of the Russian Federation, which clearly stipulates "justice". Along with the principle of justice, the principle of the equality of all before the law and the court is used.

As Vitruk noted, even in the texts of the constitutions of individual states, it is no coincidence that the duty for judges of constitutional courts to solemnly take the oath of personal responsibility of each judge before God and the people in good faith to exercise constitutional justice upon assuming office (Vitruk 2005, p. 183).

According to Rosenberg (1994), "justice acts as the cornerstone of the normal functioning of the state (justitia est fundamentum regni) and therefore any disrespect or mistrust of the judiciary is a signal that indicates corruption and corruption, instability and precariousness of the state (Rosenberg 1994).

Agreeing with the opinion of Ibragimov (2011), that it is the role of the court in ensuring fair justice and maintaining a stable social law and order is extremely large. Since the court during the trial of the case, ensuring the implementation of the principle of adversarial and equal rights of the parties in the process, impartially listening to different, sometimes opposing positions of the parties, must remain fully biased in revealing the truth in the criminal case under consideration, at the same time, without setting himself on a par with the competing parties, is obliged to be a zealot and an active subject of revealing the true circumstances of a criminal case, and not go about the more professionally prepared with Orono criminal proceedings. In this context, without obligatory comprehensive and objective consideration of all material and legally significant circumstances of the criminal case, the court should not make a final decision or sentence (Ibragimov 2011, p. 113).

Bacon's statement should be noted that justice is unthinkable without justice and justice - without truth and truth, and truth and truth - without holiness, because "the court is a sacred place, and therefore not only the judicial chair, but also its foot and all approaches they must be protected from temptations and poor glory " (Bacon 1971, p. 365).

## 4. Justice and e-justice

Due to the increasing interest of the population in the judicial system of the Russian Federation as a mechanism of state power, which protects the rights and interests of citizens, judicial reform has ripened, which will become effective and fair when the court makes decisions.

The judiciary is the activity of the judiciary in administering justice. According to Savitsky, "the terms" judicial power "and" justice "express the same concept. But they are not synonyms "(Savitsky 1997, p. 597).

The judicial power is exercised by state authorities, and justice is the resolution of a legal dispute (conflict) by restoring violated rights and legitimate interests, that is, the very concept of "justice" includes the subject of judicial power.

Russia is proclaimed a rule of law in accordance with article 1 of the Constitution of the Russian Federation. The Russian Federation has one of the three branches of government - the judicial one, designed to guard the interests of the state, protect the interests of citizens and legal entities. The principles of the judiciary are expressed in:

- independence;
- justice;
- publicity;
- democracy;
- legalities;
- equality of all before the law and the court;

It is obvious that today in the process of e-justice, a number of principles can be distinguished:

- mobility;
- profitability;
- efficiency and quality;
- transparency.

As we see it, the principles listed above follow from the Program, whose goal is to achieve the multiscale level of the digital economy (Government of the Russian Federation 2012).

It should be noted that in the Constitution of the Russian Federation, in addition to the concept of "justice", the concept of "legal proceedings" is also mentioned. Judicial proceedings - this is the implementation by the judicial authorities of activities in accordance with certain procedural forms. In accordance with the Federal Constitutional Law of December 31, 1996, No. 1-FKZ "On the Judicial System of the Russian Federation," judicial power is exercised through constitutional, criminal, civil, administrative legal proceedings.

However, e-justice includes not only the exercise of judicial power, vested in a procedural form (legal proceedings), but also the relationship between all participants in e-justice, including the commission of procedural actions by them.

A number of authors adhere to the position of Chernykh, who believes that "e-justice should be understood

as a whole system of dispute resolution, including such elements as process and court management, circulation of court documents, access to court information, judicial notices, legal search, internal court procedures ” (Zhdanova 2015, p. 81).

But we see that this is also an informatization of justice itself, i.e. information field of justice and jurisdictional actions on the sites, as well as the filing of electronic applications, receiving information quickly and easily from justice sites.

According to Omarov, “the implementation of the informatization of the judicial system involves the transition of the court system through the introduction of GAS“ Justice ”to the ultimate goal of informatization □“ electronic justice ”, which involves amendments to the procedural legislation, which, in turn, allows individuals and legal entities to carry out procedural digital actions ”(Omarov 2014, p. 55)

To date, there are a significant number of regulatory and departmental acts that regulate technical support, the functioning of complexes of automation GAS "Justice".

These include: Federal Law of July 27, 2006 No. 149-ФЗ “On Information, Information Technologies and the Protection of Information”, Federal Law of December 27, 2002 No. 184-ФЗ “On Technical Regulation”, Federal Law of April 6, 2011 No. 63 -FZ "On electronic digital signature" and others.

Zhdanova reveals e-justice in two aspects. In narrow and wide. In the narrow aspect “e-justice is the ability of the court and other participants in the judicial process to carry out actions provided for by regulatory legal acts that directly affect the beginning and course of the judicial process (for example, actions such as filing electronic documents in court or participating in a court hearing through a video conferencing system). This is what we call electronic justice. ”

In a broad aspect, “e-justice means a combination of various automated information systems - services that provide the means for publishing judicial acts, conducting an“ electronic case ”and access of the parties to the materials of an“ electronic case ”(Zhdanova 2015, p. 82). The experience of foreign countries shows that the informatization of courts ultimately leads to the introduction of elements of electronic justice in the law enforcement practice of the state (Romanenkova 2013, p. 27).

Thus, e-justice is the implementation by the courts of the resolution of legal conflicts by performing procedural actions through electronic document management and video conferencing systems, the results of which are displayed in the information system. One of the important factors for ensuring the accessibility of e-justice is the opportunities provided, namely:

- citizen participation in open court hearings;
- holding closed court hearings;
- participation in court hearings of defendants, prosecutors, defense counsel, victims, witnesses and other participants in the trial;
- secrets of meetings of judges, jurors and arbitrators;
- interrogation of witnesses in conditions ensuring their safety;
- reproduction of photo-, cinema-, audio- and video materials during the trial;
- proper placement of judges and the court apparatus in office premises;
- proper temporary detention of defendants and discharge of duties by the convoy service of the Ministry of the Interior of the Russian Federation in the relevant premises of the courts during criminal cases;
- the proper performance of duties by employees of the Federal Bailiff Service to ensure the established procedure for the courts;
- storage and inspection of material evidence;
- familiarization with case materials for prosecutors, lawyers, and other participants in trials under the control of court staff;
- archival storage of current and completed litigation;
- organization of work with legal literature;
- receipt and exchange of information using modern electronic public communications.

The following elements of the mechanism for implementing e-justice can be distinguished: i) open information; ii) remote communication; iii) current archive of court decisions; iv) electronic circulation of documents; v) online information; vi) mobile justice; vii) electronic consultation; viii) electronic file of court cases; ix) electronic judicial cooperation; x) electronic mediation.

## 5. Results

To date, there are a number of problems that the Program is facing. One of them is the problem of lengthy court proceedings. The legislator sees a solution to this problem by reducing these deadlines, namely, minimizing the

deadlines for conducting various forensic examinations, whose results are used by courts of general jurisdiction and arbitration courts to establish the circumstances of the case.

It also seems that the solution to this problem depends directly on the financing of forensic activities of the Ministry of Justice of the Russian Federation, in the equipment and availability of the latest information technologies in the field of expertise: construction, auto and car assessment, financial, economic, commodity research, environmental, linguistic, psychological, computer and handwriting.

Also, one of the acute problems is the execution of court decisions within a reasonable time. To do this, it is planned to introduce modern technologies into the field of enforcement of judicial acts, which will be called upon for effective and full access to electronic justice.

Based on foreign experience, Antonov explains some provisions of e-justice. “The Council of Europe clarified three basic functions that a European e-justice system should have:

- Access to justice information;
- dematerialization of the trial, i.e. replacement of “physical” relations between the parties with “electronic” in the course of legal proceedings and mediation;
- the relationship between the judiciary. Establishing sustainable communications through video conferencing and special electronic networks ”(Antonov 2017, p. 39-40).

Agreeing with the opinions of Antonov and other authors, we come to the conclusion about the underdevelopment of e-justice in Russia. Since the majority of the participants in these legal relations have a subjective opinion that, first of all, e-justice is understood as electronic document management, the availability of an electronic database of court cases and archives of court cases, the presence of video-conference communication with the presence of the parties in person.

The solution of such a problem as the technical equipment of the vessels themselves is ambiguous, which often eliminates the very principle of accessibility and mobility.

The implementation of this judicial reform is possible while strategically verified by equipping those areas of the procedural activities of the judiciary with modern technologies, as well as by introducing electronic mediation and the interaction of electronic document management between courts of all levels.

Analyzing foreign experience, a problem in the Russian Federation may be the lack of legislatively binding legal obligations for the parties to submit documents electronically. In the conditions when there is no positive obligation, one of the parties to the process can take advantage of the opportunities provided by information technology, while the other does not. Thus, the effectiveness of using e-justice technologies is significantly reduced (Romanenkova 2013, p. 27).

## 6. Conclusions

Currently, the main benefits of e-justice are its transparency and mobility of information of the activities carried out by the court. Another benefit one can distinguish is the publicity of justice information. Also, there is an improved information retrieval interface. In addition, there is protection of legitimate interests in the field of citizens' rights to privacy, personal and family secrets, business reputation of citizens and organizations. Moreover, there is the protection of the rights and interests of participants in a legal dispute. Yet another benefit is the independence of the administration of justice by the court.

The introduction of electronic justice is an alternative form and organization of the administration of justice, successfully tested in the modern digital economy, which forms an effective mechanism for the implementation of the constitutional right of citizens to access justice.

In conclusion, we would like to note that in order to solve the complex problems associated with the development of the judicial system and the system for the enforcement of judicial decisions, the program should provide the following ways:

- The importance of the effective work of the judiciary in building a state of law;
- The close relationship of the processes of socio-economic development of society and the justice sector;
- The complexity of the organizational structure of the judicial system, special requirements for its formation and functioning.

Thence, to summarize the foregoing, e-justice is not a substitute for “classical” justice, not a transition to continuous implementation only in electronic form, but an opportunity without a physical presence to consider a court case in electronic justice. The basic concept of e-justice is unhindered access to justice and judicial information.

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