

Development dilemma and solutions to online civil litigation in China: Kyrgyzstan experience

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Abstract. The research relevance is determined by the need to review the regulatory aspects of the digitalisation of civil litigation in the Kyrgyz Republic, given the complex set of problems that exist in this area. The main objective of the study is to analyse the digital civil litigation in China with the prospect of extracting positive experience for possible implementation in Kyrgyzstan. The methods of statistical analysis, analogy, generalisation, as well as formal-legal and formal-logical approaches are used in the study. As a result of the analysis of the peculiarities of legal regulation of online civil proceedings in China, modern mechanisms of this regulation are found to contribute to maintaining stability and improving the efficiency of the judicial system. The scientific research confirms the fundamental concept that the integration of information technologies into the processes of legal proceedings does not affect the fundamental concepts of the theory of judicial evidence. Nevertheless, the analysis also identified significant risks associated with this process, such as an increase in the number of court cases, potential distortion of the nature of judicial activity, and other aspects. This study provides a conceptual approach to facilitating access to justice through the digital transformation of court procedures. This approach includes the use of information and telecommunication technologies and remote alternative dispute resolution methods such as online mediation and online dispute resolution systems. Special attention is paid to the need to consider the interests of all parties when introducing artificial intelligence into the judicial system. The study of different points of view allows for a deeper understanding of the complexity of this process and identifies possible ways to improve civil litigation in the context of digitalisation in Kyrgyzstan. The findings of the study are of potential value for the implementation of China's positive experience in the context of the digitalisation of civil litigation in Kyrgyzstan

Keywords: e-process; legislation; digitalisation; artificial intelligence; digitalisation

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Introduction

Currently, a global trend of informatisation is underway, which covers various spheres of public life, including the judicial process, despite its traditional nature. The development of information and communication technologies has a significant impact on the structure of judicial procedures and requires not only their introduction but also their effective use. The introduction of information technology into the judicial process requires a systematic approach to assessing changes to procedural legislation and a critical evaluation of innovations that may be required in practice.

The application of information and communication technologies in the process of proving is an important and specific area of regulation in the modern information society. The development of the information society raises the issue of the formation of a new information culture, including judicial practice. The gradual integration of modern Internet technologies into judicial procedures is undoubtedly an integral part of the evolution of justice. This process is unfolding on several levels, reflecting both its technological development and the growing needs of users of legal services, as well as the willingness of each country to innovate. The shift from random technical innovations and procedural improvements to systematic revision of procedural rules is a key stage in this evolution.

While many innovations have already been successfully integrated into court systems in various countries, there remain many potential technologies awaiting deeper integration. Big data, blockchain technology and artificial intelligence (AI) are all tools that could change the litigation landscape even more radically. The 2020-2021 events of the COVID-19 pandemic and the imposition of quarantine measures have pushed governments and judicial systems to adopt information and communication technologies more rapidly, demonstrating the inevitable movement towards modern digital justice.

The study of various points of view on this problem allows for a deeper understanding of the complexity of this phenomenon and identifies possible ways to improve civil proceedings in the context of digitalisation in Kyrgyzstan. Thus, analysing the dilemma of the development of online civil proceedings in China is important for Kyrgyzstan, as it allows for the identification of best practices and approaches to adapting court processes to new technological realities. Modern legal science considers issues related to the improvement of civil proceedings in the Kyrgyz Republic, as well as the problems associated with the digitalisation of this sphere. Thus, R.J. Tuibaev and A.K. Egeshova (2021) covered the topic of digitalisation of civil proceedings, including the issues of online notification of parties, electronic filing of claims, the introduction of AI in court proceedings, as well as the use of electronic court devices.

N.S. Semenov (2022) analysed the legal aspects of establishing information relations in the e-justice of the Kyrgyz Republic. E-justice is considered a significant direction of the electronic state, where information relations play a key role in the cooperation of various legal entities. This study also identifies legal problems related to e-justice, such as the lack of legal status of electronic power of attorney, electronic lawsuits, and electronic court proceedings, as well as the lack of an electronic legal system for conducting court procedures and unequal recognition of paper and electronic documents. G. Kuldysheva *et al.* (2021) raised the issue of

the development of the legal sphere in Kyrgyz society. The authors conclude that the influence of customs, traditions and existing outside formal legal systems far exceeds the influence of popular education. This system is an effective mechanism for maintaining stable conditions of existence.

B. Karypov (2020) raises the topic of informatisation, and digitalisation of processes related to the creation and introduction of legal acts in the Kyrgyz Republic. Public authorities play an important role in ensuring the process of digital transformation in the law-making sphere. The introduction of information technologies in law-making activities contributes to a more effective process of development of legislative acts based on the information and legal basis.

A. Ibraiyym *et al.* (2021) discussed the importance of e-learning in the education system of Kyrgyzstan. Their study also noted the official programmes developed by the Ministry of Education and Science of the Kyrgyz Republic to introduce e-learning. Increasing the level of digital and media-information literacy is important as it contributes to the formation of an educational environment in which the achievement of high-quality education becomes more accessible and effective. At the current stage of education development, quality education is presented as an optimal combination of traditional teaching methods (lectures, practical and seminar classes, course projects, consultations) and e-learning tools (electronic textbooks, computer simulators, testing, etc.).

The research aims to analyse the experience of the development of online civil litigation in China and assess its relevance and applicability for Kyrgyzstan. Within the framework of this objective, based on the integrated use of general scientific and specialised methods of scientific analysis, the main problems and challenges faced by Kyrgyzstan in the process of digitalisation of the judicial process are considered, and practical ways of solving these problems are proposed based on the analysis of the Chinese experience.

Materials and methods

The research employed various methods, including philosophical, general scientific and special scientific approaches. As such, a dialectical method was applied in the course of the research to analyse not only the positive aspects of the introduction of information technology in civil proceedings in China and Kyrgyzstan and assess the limitations of this process. The logical analysis method was used to identify the content and orientation of normative acts regulating online legal proceedings in both countries. The dogmatic method was used for a more detailed analysis of judicial norms and their compliance with information technologies in court evidence. The comparative method of research was employed to analyse the processes of online civil litigation in China and Kyrgyzstan and to highlight similarities and differences in their regulation and practice. In studying the impact of judicial practice on legal consciousness and legal culture of the individual, as part of the law enforcement community, the methods of specific sociological research were used. These methods were used to identify problems and shortcomings in the sphere of judicial proceedings, as well as their possible causes and manifestations of legal nihilism.

The hermeneutic method was used to interpret the texts of legislative acts and materials of judicial practice, which contributed to a deeper understanding of the legal aspects of their application. Classification and grouping methods

were used in analysing the main directions of China and Kyrgyzstan towards the formation of prospects for the functioning of online civil proceedings. With the help of concretisation and generalisation techniques, the main problems, and gaps in providing e-justice in civil proceedings were revealed. The combination of these methods allows us to obtain a more complete and comprehensive understanding of the issues related to understanding the current state of online legal proceedings in China. This approach allows for a deeper study of the peculiarities of its functioning of online civil proceedings in China, as well as to identify potential ways to implement its experience in the judicial system of Kyrgyzstan.

To fully comprehend and substantiate the issues, the norms of various legal sources, including both national and foreign law, were used in the research and, in particular Online Litigation Rules of the People's Courts of China (2021), Law of the Supreme People's Court No. 49 "On Regarding Strengthening and Standardizing During the Prevention and Control of the New Coronavirus Epidemic" (2020), Decree of the President of the Kyrgyz Republic No. 221 "On the National Development Strategy of the Kyrgyz Republic for 2018-2040" (2018), Digital Transformation Concept "Digital Kyrgyzstan 2019-2023" ("Roadmap" for implementation..., 2023), the Civil Code of the Kyrgyz Republic (1996), the Law of the Kyrgyz Republic No. 70 "About Notariate" (1998), Decree of the Government of the Kyrgyz Republic No. 179 "Instruction on the Procedure for Notarial Acts Performed by Notaries of the Kyrgyz Republic" (2011), Civil Procedure

Code of the Kyrgyz Republic (2017), Administrative Procedure Code of the Kyrgyz Republic (2017), Law of the Kyrgyz Republic No. 153 "On State Registration of Rights to Immovable Property and Transactions Therewith" (1998), Instructions on the use of the System of audio and video recording of court hearings and provision of materials of audio and video recording of court hearings to trial participants and their representatives (2018). Furthermore, various sources such as research articles, books, theses, dissertations, reports, and other materials related to the research topic have been utilised.

Results and discussion

Positive experiences with the implementation of online civil litigation in China

Information technology and electronic evidence can be integrated into an existing system of forensic evidence, retaining the basic principles and structure, but requiring adaptation and refinement to accommodate the new opportunities and challenges they present.

During the prevention and control of the COVID-19 epidemic, extensive practical experience in online litigation has been accumulated. From 2020 to 2022, the judicial demand for resolving disputes related to COVID-19 epidemic prevention and control has promoted the development of global online litigation to some extent. Online civil litigation was particularly widely used and promoted in China. Thus, the Supreme People's Court Law No. 49 (2020) was issued, allowing courts at all levels across the country to apply online trial rules to prevent and combat the epidemic (Fig. 1).

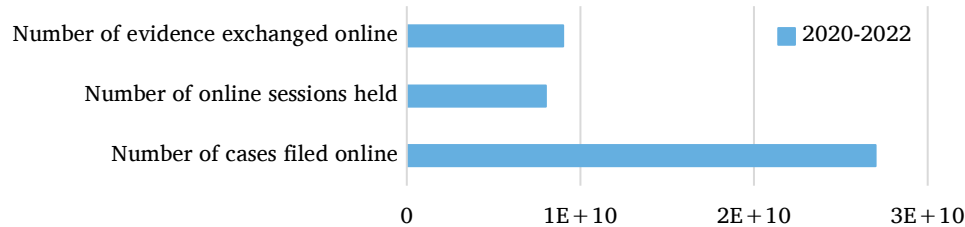


Figure 1. Statistics of online cases handled between 2020 and 2022

Source: compiled by the authors based on the Supreme People's Court (2022b)

Online civil litigation in China functions as an independent and complete mechanism. China's "Online Litigation Rules of the People's Courts" (2021) carefully considers various factors such as the characteristics of each particular case, the wishes of the parties, and technical aspects, while providing detailed explanations of the positive and negative aspects of the application of online litigation. First and foremost, online court proceedings are based on the principle of "legality and voluntariness". Without the explicit consent of the parties and other litigants, the People's Court has no right to force or insist on the use of online litigation. It is important to note that the parties themselves have the right to choose whether to apply the online litigation process and, if so, which aspects of the online litigation process to use. An analysis of the positive and negative conditions applicable to online litigation shows that online litigation is mainly applied in simple cases covering most types of civil disputes. Finally, the "Online Litigation Rules of the People's Courts" (2021) contains rules governing the various stages of online litigation, including filing a lawsuit, holding court hearings, and enforcing court judgements. Based on the analysis of

the application conditions, application scope and coverage of online litigation in civil cases in China, it can be seen that this method is an independent alternative to offline litigation and has full legal justification.

The value of procedural efficiency cannot, of course, replace the value of procedural fairness. In practice, there are many cases where the course of proceedings and judicial authority suffer because of the unfair surroundings of litigants, poor network transmission, and unclosed spaces. Online litigation merely shifts the form of the parties' participation in litigation from offline to online and cannot detract from the rights and interests of both parties to participate in litigation on an equal footing and receive a fair judgement. At present, "Online Litigation Rules of the People's Courts" (2021) requires court appearances to "choose quiet, out of each other's way, well-lit, with good network signal and relatively private places" to participate in the litigation and does not require court appearances to participate in a court-like environment.

In this context, the experience of the Chinese People's Courts in creating innovative judicial processes known as

“Smart Court”, where AI has been widely used, is extremely interesting (A brief introduction..., 2018). The court system of this concept includes three important stages: case registration, trial, and judgment. Five key platforms designed to deeply optimise and better describe the trial process include the following functionalities:

- ▶ automatic generation of e-portfolios with case files;
- ▶ copying of data to cloud storage;
- ▶ intelligent transcription of court sessions;
- ▶ electronic cross-examination using an electronic whiteboard;
- ▶ generation of judicial acts.

The system can automatically recognise and address the representative’s instructions during court sessions, accurately retrieve electronic evidence such as documents, images, audio, and video, and instantly display them on the monitors of all trial participants in real-time. The generation of court documents is done via split-screen, providing convenience for judges when copying and pasting information from e-portfolios.

In Hangzhou Internet Court and other similar projects, case records are recorded using speech recognition software (Du & Yu, 2019). This allows for the automatic conversion of the oral speech of the participants in the trial into text format. However, the practical implementation of such innovations is challenging, including not only the development and use of advanced technological solutions but also the equipping of courtrooms with highly sensitive microphones. During court sessions, various conditions such as simultaneous speeches of participants, unintelligible speech and others often arise, requiring a high degree of technical sophistication for speech and context recognition and analysis. Written and spoken language synthesis systems facilitate the recognition and digitisation of documents and facilitate the digital recording of court proceedings. Question-and-answer modules can be used to educate users of an e-judicial system, similar to their use in the business sector. For example, a virtual assistant can be created to support users in using individual modules of the “Court” Automated Information System (AIS of the Court..., 2016).

China has introduced an innovative method for solving the challenges of obtaining, storing, and validating electronic evidence. This method relies on big data, cloud storage and the application of blockchain technology. The Supreme People’s Court (2022a) has developed the “Unified Platform of the People’s Judicial Blockchain Convention” and applied blockchain for distributed storage and integrity of evidence. This unified platform integrates 27 nodes, including courts, national services, multilateral dispute mediation platforms, notary offices, and forensic centres. It utilises blockchain characteristics such as immutability, post-audit, data tampering protection and a high level of security to ensure the reliability of electronic evidence. Electronic evidence stored on this platform can be validated in future court hearings.

In December 2019, the Supreme People’s Court of China presented a “white book” describing a unique case of the first use of electronic evidence stored on blockchain and assigning legal significance to it. This historic moment occurred in the context of *Huatai v. Daotong*, a case heard by the Hangzhou Internet Court. In this case, details of the plaintiff’s copyright infringement were documented on a third-party platform utilising blockchain technology (Chinese Courts and Internet..., 2019). The plaintiff in this case, accused of illegally publishing copyrighted works without

permission, provided evidence of infringement through a specialised evidence storage platform. On this platform, the data was uploaded as hash values for the Bitcoin and Facom blockchains. The court found that blockchain technology had several advantages, such as decentralised storage, anti-tampering mechanisms and traceability, which made it outstanding for the capture, storage, and retrieval of electronic evidence. However, it should be noted that the court follows certain standards and procedures to establish the authenticity of electronic data. In this case, electronic data stored on the blockchain has a clear source, its origin and transmission are documented and can be mutually verified using web page screenshots, source code information and logs. All these ensure the reliability of electronic evidence (ruled on 27 June 2018 by Hangzhou Internet Court) (Chinese Courts and Internet..., 2019).

As of March 2021, China’s National Forensic Blockchain Platform already held an impressive 640 million data fragments for storing forensic evidence. During this time, nearly 2.5 million of them have been validated and certified, as noted by researchers (Stern *et al.*, 2021). Previously, one had to resort to the services of a notary to authenticate the content of evidence in cases such as copyright infringement. This was necessary because such evidence was susceptible to easy deletion if it was not properly formally documented. Now, however, blockchain is acting as a notary public, providing secure documentation and protection of forensic evidence. It should be emphasised that information secured on the blockchain as forensic evidence has immutable power in resolving legal disputes. This characteristic, designed to curb possible falsifications, guarantees the authenticity of the evidence presented and greatly facilitates its evaluation by judges. The application of blockchain technology in the judicial system is not only an innovation but also contributes to building trust in the judiciary and ensuring fairness (Stern *et al.*, 2021).

The Forensic Blockchain Platform also verifies various types of forensic examinations, including forensic, financial, copyright and many others. According to experts, the forensic blockchain can solve numerous problems related to the creation, storage, transmission, and retrieval of electronic forensic evidence. It can become a unique global repository of forensic electronic evidence (Stern *et al.*, 2021). In addition, as of July 2020, several Chinese courts began using a blockchain-based electronic lock system to monitor and seal real estate properties under their jurisdiction. This system provides real-time video surveillance of the sealed immovable properties. If any violation is observed, the system automatically informs law enforcement agencies, warns potential violators of legal consequences, and records the incident using photos that are sent to a special platform (Chinese courts use..., 2020).

In Kyrgyzstan, there have not yet been any serious draft laws regarding the introduction of blockchain technology into state registers by government agencies. Therefore, it is possible to consider adopting China’s experience in applying blockchain to evidence storage. The technology is undoubtedly complex, but there is already a proven model that can be adapted. As suggested earlier, providing judges with access to public registers could be implemented as a separate service using the Court’s automated information system. Although technologically challenging, this could be an extremely effective tool for courts, allowing them to obtain up-to-date information on the status of cases. Implementing

such a service using blockchain technology, however, would provide an additional tool to protect information from falsification. Thus, the introduction of online civil litigation in China represents a positive experience that reflects successful steps in improving the judicial system and making justice accessible to citizens.

Online court proceedings allow for more efficient management of court cases, reducing time delays and bureaucratic processes. This contributes to faster and more accessible justice for citizens. Online systems also provide a more transparent and accessible way to follow the progress of court proceedings. Citizens and litigants can easily obtain information about their cases and judgements. In turn, civil litigation allows citizens to participate in court proceedings and file documents from the comfort of their homes or offices. This is especially important for people living in remote areas. Online court proceedings can also reduce costs for the courts and the parties to the process, as it reduces the need for paperwork and physical presence.

The introduction of information technology in the process of judicial evidence in Kyrgyzstan can be considered in the context that it does not change the basic concepts of the theory of forensic evidence but requires some clarification and adaptation to new conditions. The basic principles on which the theory of forensic evidence is based, such as the presumption of innocence, duty of proof, freedom of evaluation of evidence by the court, etc., remain relevant even with the introduction of information technology. Technology does not change these basic rules. However, with the advent of electronic evidence such as electronic documents, digital photographs, video recordings and audio recordings, there is a need to adapt forensic evidence theory to accommodate these new forms. For example, courts may develop standards and rules for the admission and evaluation of electronic evidence. In doing so, it is important to preserve the principle of inadmissibility of illegally or improperly obtained evidence, even in the context of information technology. This ensures that the rule of law and the rights of citizens are respected. At the same time, when introducing information technology, it is necessary to ensure a high level of confidentiality and data security protection to prevent unauthorised access and use. The introduction of new technologies also requires appropriate training of judges and lawyers for the effective use of electronic evidence and information technologies in court proceedings. It is therefore necessary to develop and amend legislation and court procedural rules to address the new realities of information technology and electronic evidence.

The main risks of introducing electronic court proceedings in the civil procedure of Kyrgyzstan

The integration of information and telecommunication technologies into court proceedings relies on several key factors. The first of them is the public trend towards worldwide digitalisation and the introduction of information and telecommunications innovations in the field of justice, which is comparable to similar processes in other spheres of state bodies. The second factor is the change in the ways of recording and implementing the activities of the participants of social relations, which in the context of judicial processes requires evaluation and resolution. Finally, the third factor is the reform of procedures for resolving legal cases.

It should also be noted that the introduction of electronic court proceedings carries certain risks, and one of the key

tasks of both theorists and government agencies involved in improving the efficiency of court proceedings is to minimise them. When striving to compete with scientific and technological progress and automate processes related to court proceedings, new challenges and problems arise. Shortly, the authors can expect a study on issues related to ensuring the right to a fair trial in the context of rapidly changing technologies that significantly affect the judicial system and facilitate the automation of civil proceedings. In this regard, it is necessary to emphasise the risks associated with the integration of information technology into court proceedings.

The first and main risk of introducing information and telecommunication technologies in court proceedings is the issue of information security. Cybersecurity concerns represent a major challenge in the global context, especially in the area of public services, including legal proceedings. However, the use of personal, confidential, and other data by both governmental, private and public institutions requires a level of trust on the part of citizens. This is achieved by implementing technical and organisational measures to ensure cybersecurity and prevent access by third parties or malicious actors.

The main task of political leaders, state institutions and enterprises are to ensure the security of information systems and ensure public access to them as a public good (Supporting digitalisation in Kyrgyzstan..., 2021). It should be emphasised that cybersecurity is not only a technical problem, but also a legal one, as questions arise about the legal consequences of leaking personal data, disclosure of state secrets and other information covered by confidentiality. The second risk relates to the possibility of intrusion into the document flow of courts, as well as archives and other systems, which may lead to the distortion of information. This has an impact both on the court proceedings as a whole and on each participant in the process. There is the potential threat of losing a huge amount of information, including state and commercial secrets, as well as personal data, which are particularly sensitive for each individual.

A case in point is a legal case in London involving a 28-year-old Englishman. In addition to 8 counts of bank fraud totalling close to £2 million, the defendant was also found guilty of escaping from custody. He was able to leave the prison by sending a fake email to the institution's administration announcing his release. To do this, he created a mailbox whose address was similar to the real address of an official from the judicial department. The letter was designed following all the rules of British justice and signed with the name of a real inspector of the Royal Courts of Justice. The escape was not discovered until three days later when the accused's defence counsel turned up for an appointment (Gander, 2015). This incident illustrates how easily some people can utilise information technology, even in the context of legal proceedings. The intervention of AI in government agency processes and document management can potentially affect countless individuals.

In addition, there is a possibility that facilitating access to remote justice and the ability to file claims online may lead to an increase in the number of court cases and possible abuse of rights. The introduction of information technology does not necessarily reduce the burden on the judicial system. The use of information technology facilitates access to the judicial process, opening doors to persons who have not previously taken advantage of this opportunity. For example, the head of the Lithuanian Supreme Court,

R. Norkus (2015), noted that he received a significant number of electronic appeals and complaints that might have previously been sent by regular mail. However, the ease of access may also facilitate the abuse of the rights of civil procedure. Therefore, it is necessary to actively use protection mechanisms against possible abuse of civil procedural rights. An important task for the state is the formation of a legal culture among the population and respect for the law, courts, and other participants in the legal process.

The solemnity of the judicial process may also be compromised. The solemnity of the proceedings is important not only for the creation of a special respect for judges or the traditional rituals accompanying trials. Its importance lies in maintaining a high degree of respect for judicial decisions, which directly affects the principle of the binding effect of judicial decisions. During the period of restrictions and quarantine, there are often news reports of various curious situations where officials and other officials appear inappropriately dressed when participating in court proceedings through their means of communication. Participation in court proceedings through technical means of communication is a positive development, but to prevent such situations, appropriate rules of participation should be developed to ensure that respect for the judicial process is maintained.

For example, the Supreme People's Court of the People's Republic of China issued the Law of the Supreme People's Court No. 49 (2020). This document highlights that online court sessions, such as mediation, evidence exchange and trial, can successfully meet people's litigation needs during the epidemic and its prevention by ensuring smooth and organised trials. It is important to note that online court hearings should only be conducted in the form of video conferencing and may not be conducted in written or voice form. Participants in trials are also bound by judicial standards of conduct, making them solemn, civilised, and orderly. Another interesting aspect of this document is its endeavour to prevent abuse of procedural rights. If the parties have agreed to hold an online court hearing but fail to appear at the scheduled time or interrupt participation in the proceedings without permission, such behaviour may qualify as "withdrawal" and "abandonment of the trial", unless it is due to obvious technical malfunctions, equipment damage, power problems or force majeure.

Such provisions can be introduced into national legislation and used in the practice of judicial proceedings. There is a possibility of deformation of judicial activity. Judges involved in remote judicial proceedings should fulfil their duties to the required standard. However, it should be noted that judges are human beings, and it may be difficult for them to maintain clarity and concentration during long hours of court sessions, especially with unstable internet connections and disorganised participants in the proceedings and other factors. Judges tend to be elderly people who may have difficulty due to the additional strain on their eyesight and other physical problems. Such problems can also affect litigants, albeit for a short time. Another important problem is the phenomenon of "judicial substitution" in electronic court proceedings. Consequently, the improvement of procedural legislation should include the regulation of the rules of behaviour of the participants of the proceedings in the framework of videoconferencing.

The issue is also relevant for Kyrgyzstan, where the process of analysing case materials and forming a position that

will serve as a basis for judicial decisions will largely depend on the technical staff of the courts. It will be extremely difficult to avoid this situation, as online court proceedings will be conducted in a closed mode, inaccessible to outside observers. Today, most court work is done by assistant and associate judges, but when appearing in court in person, the judge personally hears the arguments of the plaintiff and defendant, witness testimony and expert opinions. If the need for such personal attendance of the participants in the proceedings disappears, there is a risk of transferring the functions of court proceedings to assistant judges, especially given the significant workload of judges and the requirements for speedy proceedings. The introduction of information technology into the judicial system may also increase the risk of "flash judgements" (a term used among lawyers and journalists to describe situations where judges copy the original texts of court decisions using electronic media). The potential for abuse by judges is undeniable, given that in many countries the rules for filing documents with the court electronically require the submission of documents with the ability to copy the text. Efforts should be made to minimise or eliminate these risks of using information technology.

In this way, the adoption of technology and AI can improve the analysis of evidence, the management of court cases and the provision of information. However, while there are many benefits, it is also important to consider data security and privacy issues and to ensure that the system is accessible to all segments of the population, including those without access to the internet or technological devices. However, it is important to adhere to the principle of equal opportunities in the use of information technology, considering differences in accessibility and skills of users. In this context, the legislator's position supporting optional participation in court proceedings through e-justice tools is intended to avoid possible barriers to access to justice.

The proposed concept of improving access to justice includes not only the digitalisation of court procedures and the use of information and telecommunication technologies but also the introduction of remote alternative dispute resolution methods such as online mediation and online conflict resolution systems. These approaches provide a variety of means of informing about alternative dispute resolution options, automated completion of documents, e-consultations, the possibility of obtaining a decision from an expert online, and even online discussions in contentious situations.

Regulation of online civil procedure in Kyrgyzstan

In today's digital era, the judiciary, including Kyrgyzstan, is actively transitioning from the use of traditional paper-based systems to electronic platforms. This transition aims to reduce the workload of judges and judicial officers by providing the ability to file and access documents electronically. It also provides the ability to file and manage lawsuits online. The use of videoconferencing enables judges, parties, and witnesses to participate in court sessions, which not only facilitates user interaction with the judiciary but also reduces the overall burden on the judiciary, optimising costs.

In recent years, the legislation of the Kyrgyz Republic has undergone significant changes that have strengthened the principle of access to justice in the Constitution of the Kyrgyz Republic. Nevertheless, one of the serious problems remains the overload of judges, despite the introduction of the system of automatic distribution of cases to the courts.

As a result of this overload, judges find themselves in a situation where they do not have enough time to properly study and analyse the arguments presented in court proceedings.

Given the aforementioned, 2019 was proclaimed as the “Year of Regional Development and Digitalisation of the Country”, followed by the announcement of 2020 as the “Year of Regional Development, Digitalisation of the Country and Support for Children of the Kyrgyz Republic”. These initiatives challenge the education system to fully integrate information technologies into the educational process and develop information and communication skills among pupils and students (Decree of the President..., 2018). This confirms the promising application of digital technologies in various spheres, including legal, economic, social, and political, which can stimulate the evolution of state functions. The Digital Transformation Concept (“Roadmap” for implementation..., 2023), approved for 2019-2023, defines the main tasks in the sphere of state activity. Among them, the following can be highlighted: providing high-quality digital public services, increasing efficiency, effectiveness, openness, transparency, accountability, and the fight against corruption in the system of public administration, as well as activating the participation of citizens in the processes of making state and municipal decisions through the digital transformation of the system of state and municipal administration.

At the same time, Kyrgyzstan is currently facing several problems with the legal regulation of electronic court proceedings. For example, there is no legal status of the electronic power of attorney, which should be considered an essential component of e-justice. Currently, the legislation of the Kyrgyz Republic recognises only a paper version of the power of attorney following the established rules. For example, Article 204 of the Civil Code of Kyrgyz Republic (1996) (CC) requires notarization of a power of attorney issued to citizens for representation in court, but the Law of the Kyrgyz Republic No. 70 (1998) does not mention the possibility of electronic power of attorney. The Decree of the Government of the Kyrgyz Republic No. 179 (2011) allows for the certification of any power of attorney that complies with the legislation of Kyrgyzstan, including the standard form (written) approved by the Government of Kyrgyzstan, or any other form. However, this wording does not consider the electronic form of the power of attorney and leaves many questions unanswered, such as the procedure of drafting, location, and requirements for it.

The lack of legal status of an electronic claim is another problem. The amendments to the Code of Civil Procedure of the Kyrgyz Republic (2017) (CCP) and the Administrative Procedure Code of the Kyrgyz Republic (2017) (APC) stipulate that a statement of claim or administrative claim must be filled out using a form posted on the website of a particular court and signed with an electronic signature. However, each court in Kyrgyzstan does not have a website where the relevant form can be found. For example, the official website of the Supreme Court of Kyrgyzstan does not have such a form but provides only the function of submitting an appeal with the indication of full name, email, phone number, address, and the essence of the appeal. Consequently, this appeal of citizens cannot be recognised as an electronic lawsuit with an appropriate set of documents.

The lack of a legal institute for electronic court proceedings is one of the national-level problems. In this context, it is necessary to develop the format of the court session

(ordinary – offline or remote – online) and fix it in the CCP (2017). The remote format is becoming increasingly relevant, especially in light of the spread of the coronavirus (COVID-19) and national digitalisation efforts. Any citizen should have the right to apply to the court remotely. At the same time, Order of the Supreme Court of the Kyrgyz Republic “On approval of the regulations on the use of videoconferencing in the courts of the Kyrgyz Republic” (2020) was adopted, which provided an opportunity for courts to consider cases via videoconferencing. However, this format is not yet permanent and has limitations in terms of time and technical capabilities, according to paragraph 3.1 of this Order of the Supreme Court of the Kyrgyz Republic (2020). Even if the appropriate equipment is available, it is necessary to submit a special application, as stated in paragraph 3.3, three working days before the videoconference, with a request from the parties (if any), as well as to specify the date, time and room of the court session, the name of the case and the court.

Another problem is the lack of an electronic legal system for conducting e-trial proceedings, which would allow the parties and participants of the trial to monitor its progress remotely. This system should function as an Internet site, accessible round the clock and hosted on the servers of the Supreme Court of Kyrgyzstan. In addition, it is necessary to establish legal norms and technical standards for authentication of users, including plaintiffs, defendants, judges and other participants in the judicial process. An equally important problem is the unequal recognition of documents in paper and electronic forms, which leads to a slowdown in the development of e-justice and information relations in this area.

The lack of an electronic case file system is a problem at the national level. This system should be based on the principle of openness and free access to data, allowing any user to access court cases. At the legislative level, the issues related to the digital profile (avatar), which should play a key role in the management of personal data of citizens on various electronic platforms, such as the portal of public services, electronic archives, cloud storage and others, have not been elaborated in detail. As a consequence, there is a misunderstanding in the field of digital rights of users and a lack of clear definitions of the objects, subjects, and content of this data.

The issue of verification of transactions and documents related to real estate in electronic format has also not been properly regulated. According to the Law of the Kyrgyz Republic No. 153 (1998), any transaction related to real estate must undergo state registration and be entered into a unified state register. Consideration of this issue would allow the electronic court to automatically verify the submitted evidence, including in the area of contracts, as well as to send requests to authorised bodies to obtain objective data on transactions. Another unresolved problem is the use of audio and video recording (AVR) in court proceedings. Despite the existence of the AVR Instruction (Instructions on the use..., 2018), according to which it is possible to request recordings to confirm violations on the part of litigants, the issues related to the scope of application of AVR and the issuance of electronic copies of AVR to the parties remain unresolved. It would be ideal if the AVR system would automatically provide information to the parties immediately after the end of the court session, which would reduce bureaucratic barriers and eliminate possible loss of records for various reasons.

Based on the aforementioned problems, an effective way to improve the electronic court in Kyrgyzstan is to introduce the legal institute of electronic power of attorney by amending the relevant regulatory legal acts, such as Article 53 of the Law of the Kyrgyz Republic No. 70 (1998). This measure implies the possibility for a notary to certify powers of attorney both in printed and electronic format. A power of attorney certified in electronic format must be secured with an electronic signature and included in the unified electronic database of notarial documents of Kyrgyzstan.

It also makes sense to fix the legal status of an electronic lawsuit in the CCP (2017) and APC (2017) in the form of a lawsuit, rather than a statement of claim filed on the court's website. A unified electronic portal for e-justice should be created, providing the possibility of filing an electronic claim, including the sequence of actions, transmission, and receipt of notices, including petitions and applications, using the user's e-mail. The portal should also provide the possibility of filing complaints following the established procedure. At the same time, it makes sense to fix the legal status of electronic legal proceedings in the CCP (2017) and APC (2017) in the form of a legal institute, including the definition of civil and administrative cases in electronic format, as well as the concept of "electronic image of a document". It is important to establish norms concerning the recognition of court decisions in electronic form, including the use of electronic signatures and the creation of writs of execution. The latter should contain electronic signatures of judges and be entered into the electronic register of court acts, which will require the development of appropriate databases. The next step is to develop, implement and legislate an electronic legal system for electronic court proceedings. This process can be done by adopting a relevant law or a resolution of the Cabinet of Ministers of the Kyrgyz Republic. In addition, it is necessary to develop a mechanism of equal recognition of documents in printed and electronic form.

Summarising the aforesaid, it should be noted that the idea of digitalisation is being actively promoted in the Kyrgyz Republic, which leads to further strengthening of information relations. One of the key areas of digitalisation is the judicial system, which already has its developments, such as the development of remote justice, the use of audio and video recording, electronic document management and others. At the current stage, it is possible to automate both the legislative process and the functions of law enforcement agencies. AI can be used successfully in this context, but its role should remain in a secondary role. The main task of AI is a supportive and auxiliary function aimed at identifying potential inconsistencies in legislation.

Actual problems of development of online civil proceedings in scientific doctrine

M. García-Alberti *et al.* (2021), M. Toqmadi and N. Zakharchenko (2021), and B. Kaczmarek-Templin (2023) note that when analysing the impact of information technology on the principles of justice, it is necessary to respect the inviolability of fundamental principles of law, including the principles of procedural law. Technology should be considered as a tool for solving the problems of justice, and not as an end in itself. Undoubtedly, it is important to respect the inviolability of fundamental principles of law, including principles of procedural law, when analysing the impact of information technology on the justice system. However, it should also be

considered that modern technologies have the potential to significantly improve the process of justice and increase its efficiency. Considering them as a tool does not exclude their role as a means to achieve fairer and more accessible justice.

The emergence of public online courts and tribunals designed to resolve small civil disputes can improve cost efficiency and streamline formal adversarial court procedures while preserving the necessary procedural safeguards. Thus, according to I. Gras, the unique characteristics of Internet communications and the digital environment provide an opportunity to create a more accessible and convenient justice system, providing personalised legal solutions and contributing to reducing the duration and cost of litigation, as well as simplifying legal proceedings (Gras, 2021). In the context of modernity, information technologies can indeed significantly reduce the time and cost of litigation, increase transparency, and improve access to justice. They can also improve the efficiency of judicial decisions by providing judges and lawyers with tools to analyse evidence and conclusions more accurately. By automating and analysing data, technology can facilitate better compliance with procedural rules and standards.

In recent years, the Chinese government and its judiciary have made a policy decision to actively utilise AI as part of judicial reforms. This approach is unique to China and is due to the chronic challenges faced by the courts in the country, such as a dramatic increase in the number of cases and a shortage of skilled personnel in the judiciary. As a result, pilot programmes have been launched across the country to develop various AI systems that have been applied to different aspects of the judicial system. Some of these systems aim to improve mechanical processes, such as transcription and document analysis, to increase efficiency. Others, more ambitious projects, aim to use AI to make decisions. Therefore, we should agree with the thesis of M. Sari (2021), N. Wang and M.Y. Tian (2023) that we should not consider information technology and the principles of justice as mutually exclusive factors, but rather learn to integrate technology into the legal system in a way that respects the fundamental principles of law to achieve a fairer, more efficient, and accessible justice.

Based on the opinion of many scholars, including G.G. Zheng (2020) – China is currently moving towards the creation of a system of case law based on algorithms, which eliminates the need for preliminary decisions, but considers statistically detectable patterns. H. Fan and F.L.F. Lee (2021) emphasised that live streaming of court proceedings allows ordinary Chinese citizens to have additional means to monitor and understand the work of courts. However, it is important to realise here that despite the proximity of judges, this does not necessarily mean true openness and attention to public opinion. The decision on which particular case to broadcast live is left to the discretion of the authorities, and the official practice of live broadcasting does not always favour active public participation. It is important to note that even in liberal democracies, trials do not always depend on public opinion.

According to T. Grieshofer (2023), current improvements in the digitalisation of court proceedings are still limited in certain aspects. The main barrier for court users in the early stages of proceedings remains communication problems, including translation of passages with grammatical and lexical difficulties, persistent difficulties with definitions and insufficient support for court users in creating their documents. Therefore, ignoring the information needs

of lay court users results in complex legal discourse developing in an environment where lay litigants remain on the periphery. In this context, the position of T.S. Hamad and T.M.F. Al-Sarraf (2023) that modern litigation tools save effort, time and resources and optimise notification processes is correct. This contributes to the reduction of the negative effects associated with traditional notification methods that slow down litigation processes.

Online hearings greatly simplify the conduct of proceedings in favour of the parties and contribute to a more systematic flow of proceedings. These advantages may extend not only to court proceedings but also to non-judicial proceedings, such as cases of acquisition, division, inheritance, and dissolution of inheritance of joint property, where participants located abroad can participate. However, according to some scholars (Fibinger-Jasińska, 2022), they should remain an exception and courts should mostly stick to traditional hearings. In practice and from a theoretical perspective, it is possible to consider all types of civil cases online, provided that the requirements of the platform and the participants in the process are met. The civil procedure legislation can be amended accordingly to provide for the online method as an additional option for the parties. However, it should be emphasised that the integration of information technology into court proceedings should not be merely an attempt to follow fashionable trends or demonstrate technological excellence. Its goal should be to ensure fairness, impartiality, and timeliness of resolution of civil cases, as well as effective protection of violated, unrecognised or contested rights, freedoms or interests of individuals and legal entities, as well as the interests of the state. Nevertheless, in scientific doctrine, there are concerns related to some aspects of this approach. Thus, C. Shi *et al.* (2021) among other concerns highlights issues related to automatic decisions, digital issues of power-sharing, independence of the judiciary, as well as issues related to privacy and data protection.

The aims and objectives of civil justice remain unchanged, and the introduction of new technologies should be aimed at achieving them more effectively. It is important to remember that if at a certain stage, it is not possible to fulfil these objectives and goals exclusively through new means, changes that may violate the constitutional principles of the judiciary should not be rushed. Therefore, technology should serve judicial activity while preserving its essence, and the focus should be on transforming the form rather than the essence of justice.

In this context, it is necessary to consider the works of the English scholar R. Susskind (2019) in more detail, who has become widely known in the context of electronic court proceedings and online proceedings. R. Susskind (2019) has received special attention after the release of his book "Online courts and the future of justice". This book focuses on the use of online courts as a means to increase access to justice and provide better judgements. R. Susskind (2019) raises important questions about whether court services should be seen as mere service delivery or as a place to inspire and work for everyone. He argues that the introduction of technology will open up new ways of resolving disputes and providing access to justice for citizens. In addition, R. Susskind (2019) views the future and predicts that the first generation of online courts, where decisions are made by humans, will be replaced by a second generation where AI techniques will play a greater role in decision-making.

He also raises ethical questions about the extent to which machines can provide judicial decisions following the rule of law, and whether the role of judges can be supported or replaced by AI. The development and implementation of new technologies in the judicial system implies not only changes in the technical field but also requires the adaptation of doctrinal provisions of the science of civil procedure law, especially in terms of judicial proof. These changes are aimed at facilitating and improving the efficiency of evidentiary activities in court proceedings.

However, the views of scholars on the introduction of information technologies differ. Thus, for example, M. Giacalone and S. Salehi (2022) express high appreciation of the introduction of this practice and argue that courts should actively use all advanced methods of research and analysis of digital evidence to ensure the correct resolution of civil disputes. At the same time, N.T.H. Nhung *et al.* (2021) take a more moderate position and believe that when investigating theoretical issues of digital evidence, it is necessary to rely on the theory of evidence without making radical changes in the doctrine of evidence in civil proceedings. Consequently, when analysing new means of proof in electronic form, it is necessary to consider not only the specificity and features of applied information technologies but also the need to determine the limits of changes in the process of proving, taking into account the basic provisions of evidence law and principles formed over the centuries to ensure a truly fair trial.

Thus, modern science is increasingly scrutinising various aspects of evidence, which are undergoing changes under the influence of the development of social relations, changes in scientific and practical understanding, changing priorities of legislators, the tasks faced by legal proceedings and trends in the development of legal norms. The digital age contributes by not only providing new means that are already actively used in judicial practice but also by raising questions about possible means that may be applied in the future to achieve the goals of civil proceedings. It should be noted that when researching the impact of information technology on judicial processes, it is necessary to clearly define the scope of its application to avoid distortions in court cases. Particular attention should be paid to analysing new means of electronic evidence. In doing so, it is necessary not only to consider the specificity and the peculiarities of the applied information technologies but also to determine the limits of changes that can be introduced into the process of proving following the principles and foundations of evidentiary law that have developed over the centuries to ensure a truly fair trial. Indeed, this is how AI can be used to develop automatic decision-making systems. However, such systems can only be used in cases where the issues are not in doubt among the parties and are factual or do not depend on value judgements, such as fines for traffic offences. In cases involving complex facts and value choices, decisions can only be made by human intelligence. AI can serve an auxiliary purpose, but the final decisions always remain in the hands of human judges.

To successfully integrate China's experience in the field of online civil litigation into the system of Kyrgyzstan, it seems necessary to make significant changes in the national legislation. First of all, it is advisable to develop and implement legislative acts that would establish clear norms and standards for digital court proceedings, including the definition of procedures, rights and obligations of all par-

ticipants in court proceedings. Such norms should aim to ensure the transparency and legitimacy of judicial processes, as well as to guarantee equal opportunities for access to justice for all participants. In parallel, mechanisms should be developed and implemented to ensure the protection of data and personal information of litigants, taking into account global standards of cybersecurity and privacy. An integral part of this process is the establishment of a specialised body or authority responsible for coordinating and supervising online civil proceedings, which also needs to be enshrined in legislation. This body will have to organise and conduct training for judges, lawyers and other judicial actors to ensure that they are ready and competent to use digital tools. Modern information technology and digital tools, including e-filing and court notification systems, should be actively introduced to ensure compatibility with the existing infrastructure. Finally, an extensive information campaign should be provided for in the legislation to raise public awareness of the benefits of online civil proceedings and its rules and procedures for use. Legislative changes based on the above recommendations contribute to the successful integration of online civil proceedings into the judicial system of Kyrgyzstan, ensuring increased efficiency and accessibility of justice for citizens.

For further research, it is important to look more deeply into the technical and legal aspects of implementing digital solutions, as well as to conduct a comparative analysis between the Chinese and Kyrgyz experiences to identify key lessons and recommendations for the successful adaptation of such systems in Kyrgyzstan.

Conclusions

The experience observed in China demonstrates the success of online courts. In this system, cases are dealt with in a short time frame, litigation costs are reduced, and simple cases are resolved through informal proceedings. It is possible that similar online courts, inspired by the Chinese experience, could serve as a model for increasing the efficiency of litigation and reducing the costs of litigation participation. With judicial reform that separates complex and simple cases and gradually improves the system of online trial rules, online civil litigation will continue to play a meaningful role in the post-pandemic era.

The challenges associated with the implementation of e-judicial proceedings stem from the ambiguity of the objectives and outcomes of the process. It is important to investigate the stages, characteristics, content, and main drivers of e-judicial implementation in other countries, especially those with significant achievements or unique features in this field. This experience can be adapted and applied in the domestic context, considering the economic, human, and legal realities. It is important to clearly define the following aspects: implementation objectives; availability of resources; functionality to be implemented first and incentivise its use through various procedural and non-procedural measures.

The state has the right and duty to set specific requirements for technological aspects in the judicial sphere while ensuring a balance between technological neutrality and strict limitations. In some cases, a more flexible approach to the choice of technology should be adopted, such as in the use of simple electronic signatures in transactions and their ability to be considered as evidence in court proceedings. However, in areas where the nature of the proceedings and their security require special concerns, comprehensive lists of permissible technological solutions should be developed.

The integration of information technology into the process of forensic evidence does not change the fundamental principles of evidence theory. Rather, it requires their refinement and adaptation to new realities. It is important to emphasise that electronic court proceedings should not be a barrier to access to justice. The concept of facilitating access to justice includes the digitalisation of court procedures and the use of information and telecommunication technologies. It also includes the introduction of remote alternative dispute resolution methods, such as online mediation and online conflict resolution systems. These alternatives include various ways such as information on alternative dispute resolution options, automated form-filling, e-consultations, the possibility of engaging experts online and online discussion of conflict situations, and so on.

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Conflict of interest

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Дилема розвитку та шляхи вирішення цивільних судових справ онлайн у Китаї: досвід Киргизстану

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Анотація. Актуальність дослідження зумовлено необхідністю переглянути нормативно-правові аспекти цифровізації цивільного судочинства в Киргизькій Республіці з огляду на складний комплекс проблем, що існують у цій сфері. Основною метою дослідження є аналіз цифрового цивільного судочинства в Китаї з перспективою вилучення позитивного досвіду для можливої імплементації в Киргизстані. У дослідженні використано методи статистичного аналізу, аналогії, узагальнення, а також формально-юридичний та формально-логічний підходи. У результаті аналізу особливостей правового регулювання онлайн – цивільного судочинства в Китаї виявлено сучасні механізми цього регулювання, які сприяють підтриманню стабільності та підвищенню ефективності судової системи. Наукове дослідження підтверджує фундаментальне положення про те, що інтеграція інформаційних технологій у процеси судочинства не впливає на фундаментальні концепції теорії судових доказів. Проте аналіз також виявив значні ризики, пов'язані з цим процесом, як-от: збільшення кількості судових справ, потенційне спотворення природи судової діяльності та інші аспекти. Це дослідження пропонує концептуальний підхід до полегшення доступу до правосуддя через цифрову трансформацію судових процедур. Цей підхід включає використання інформаційно-телекомунікаційних технологій та дистанційних альтернативних методів вирішення спорів, як-от онлайн-медіація та системи онлайн-вирішення спорів. Особлива увага приділяється необхідності врахувати інтереси всіх сторін, упроваджуючи штучний інтелект у судову систему. Вивчення різних поглядів дало змогу глибше зрозуміти складність цього процесу та визначити можливі шляхи вдосконалення цивільного судочинства в контексті диджиталізації в Киргизстані. Висновки дослідження мають потенційну цінність для імплементації позитивного досвіду Китаю в контексті цифровізації цивільного судочинства в Киргизстані

Ключові слова: електронний процес; законодавство; диджиталізація; штучний інтелект; цифровізація