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Substituting Classic Procedures in Favor of Digital Procedures in Cases with Minors

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Abstract: In the current context, as a result of the spread of the COVID-19 pandemic, the need to develop a network that allows the creation of a suitable environment for the digitization of the judicial system is being discussed more and more frequently. The pandemic has brought to the surface the gaps in the judicial system regarding the entire digitization process. Thus, an example would be the norm that provided that the courts can communicate documents using the electronic signature and which was mostly inapplicable, because many courts were not equipped with this signature, although the recommendations were in the sense of sending the documents by post electronics . The lacunar legislative framework is a common problem that does not allow the development of a real possibility of creating and expanding viable digitization mechanisms that respect the procedural guarantees imposed by national and European legislation. Trying to summarize, we can say that technology comes to the aid of modern devices by diluting the classic procedure in favor of the digital procedure and regarding cases with minors. In civil matters, we show that the digitalization of justice in Romania has developed in an extremely slow manner compared to the need for freedom and evolution of humanity, but also a certain convenience of the people. In the context of the digitalization of society, we appreciate that it is normal for the legal profession to begin a transformational change towards new opportunities.

Keywords: digitization, cases with minors, procedural documents, digitization process, justice, legal profession.

Without analyzing too much, we can easily conclude that we are in the full expansion of digital era.

This situation has been forcibly induced for about three years, starting with the Covid-19 pandemic. In 2021 on March 9, the European Commission presented and argued innovative ideas for the European digital transformation until the end of 2030. Specifically, on January 26, 2022 the European Commission, with the aim of helping

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the citizens of the European Union to take advantage of the digital transformation, proposed the institutional declaration with reference to digital rights making direct reference to the rights arising from the EU Charter of Rights.

At the moment of the fulminant onset of the pandemic, without the possibility of continuing legal life in the classic way, not having, however, a procedural framework favorable to the novelty, the courts mobilized and got involved in the sense of issuing decisions and judgments of the board of directors in view of the possibility the continuation of judicial activity.

“Legal customs” undoubtedly have their significance in the history of the Code of Civil Procedure (which suffered acutely in terms of originality, taking over many of the procedural rules of foreign law and developing its construction on their foundation) but they can be left behind if we aspire to direct our procedural law towards an innovative and adaptable character to social realities.

The digitization directive, in stages, began to supersede the idea of traditionalism in favor of the idea of nonconformity. This gradation is due to the fact that the legislator, essentially cautious, accepted the adoption of rules for the implementation of judicial digitization with great difficulty. Despite the fact that, it is very clear that digitization is the trend of the future, considering the fact that for all litigants, as well as legal professionals (lawyers, bailiffs, notaries, judicial liquidators) the legislator does not even at the moment have an attitude of prioritizing legislative changes in this directive being somewhat deposed by a reality with which, unfortunately, it still cannot keep up (Alex, 2020).

Thus, the method of communication and confirmation of communication by fax, email was timidly started and implemented. We doubt that the guarantee standard of the communication procedures would be diminished or inferior compared to the guarantee standard brought by the classic procedure. The virtual space brings indubitable evidence of the communication of procedural documents, a clear example is the message of the digital system which proves that the document has reached the addressee, thus fulfilling the procedure according to art. 145 paragraph 61, it is listed and attached to the case file. Even if at the beginning the doctrinaires raised numerous alarm signals about the risks of this procedure, time has shown that they proved to be unfounded.

The digital space is relaxed from a rigorous point of view, but the philosophy of the Code of Civil Procedure is based on the contradictions of public debate, the support of a fair procedure. It is clear that the entire evolution of the law was based on the contradictions and solemnity of the courtroom, but the reality of the current context made it necessary to implement the meetings in the videoconference system.

When establishing the procedure regarding the conduct of court hearings by videoconference, both the relevant legal instruments and the non-legal reality created by the context were considered. In a concrete analysis, we can see that the solemnity

of the meeting can be ensured, and regarding the removal from the room provided for in 217 of the Civil Procedure Code, it can be done very simply by disconnecting the party that disrupts the meeting. If we refer to the principle of availability and adversarial of the parties, we find that they suffer no limitations, the parties having the opportunity to propose evidence and formulate defenses, appearing physically through video connection. Including the active role of the judge, according to art. 22 Civil Procedure Code, is respected.

In the context of court hearings held in the videoconference system, the identity of the parties or their representatives is easily established by the president of the panel who will request their identification.

The general opinion is that the legislator, motivated by the reality of digitization, will tend to tilt the balance of some legislative solutions in favor of some solutions offered by practice, this being marked by the behavior of litigants who, in the vast majority, are hurried and digitally trained.

The mandatory introduction of the extended electronic signature of the court replaced the court stamp as well as the signature of the court clerk.

The implementation of the electronic file was initiated, with great success. Once it is implemented, in addition to the known methods, both classic and digital, along with fax, electronic mail, classic mail, procedural documents can also be submitted through the "Electronic file" application, which is assumed to present sufficient guarantees.

We have sufficient arguments (both procedural and technical) to maintain the regularity of this correspondence carried out directly in the IT support of the court, presumed to present sufficiently serious guarantees, if it is done in a systematic way, and the entered data is protected against alterations and counterfeiting, the integrity of the document being fully ensured (Civil Procedure Code (art. 283).

Although designed to ensure greater procedural transparency, the electronic file

One thing worth considering is the fact that court staff would be relieved of many operations, which in the light of digitization would fall under the care of the litigant who is directly interested in carrying them out.

In conclusion, we show that the benefits of the procedure cannot be denied, all stemming from the practical advantage of being able to exercise procedural rights remotely.

The civil procedure code offers, to a limited extent, the legislative instruments necessary for its reform. We are looking into a future where justice and the rapid pace at which technology evolves involve advantages/disadvantages for all actors in the justice system. Does the party's decision not to appear to conduct its trial (from

the courtroom), opting for electronic connection in an online environment, make it vulnerable?

The procedural examination in this article tilts the balance of appreciation (and) in favor of the meeting by videoconference, which would require an extensive normative intervention. The adaptation of the legal framework (through the lens of the court procedure) would achieve a spectacular movement in terms of legislation and of the actors involved in the act of justice.

Bibliography

Alexe, Liliana Cătălina (2020). Restrângerea fazei oralității în unele dintre cauzele aflate pe rolul instanțelor judecătorești – soluție de tranziție necesară sau nu în contextul epidemiologic actual?/ Restricting the oral phase in some of the cases pending before the courts – necessary transitional solution or not in the current epidemiological context?. *Revista Analele Universității "Titu Maiorescu"/"Titu Maiorescu" University Annales journal – Drept/Law, New series - year XIX.*

Law no. 455/2001 regarding the electronic signature, republished, art.4, Law no. 506/2004 regarding the processing of personal data and the protection of private life in the electronic communications sector, with subsequent amendments and additions: Art. 1, Art. 2 paragraph (1) letter g.

Civil Procedure Code (art. 283).