DIGITAL PLATFORMS IN CHINA AND EUROPE: LEGAL CHALLENGES

YULIA KHARITONOVA,

Lomonosov Moscow State University (Moscow, Russia)

LARISA SANNIKOVA,

State Academic University for the Humanities (Moscow, Russia)

https://doi.org/10.21684/2412-2343-2021-8-3-121-147

The paper considers the processes of platformatization of the economy and public government, which have become the last decade's primary trend. Analysis of the digital markets in Russia, China, and Europe proved the dominance of the digital platforms of large technology companies. According to the authors, the concentration of market power in digital platforms threatens a competitive environment in digital markets. In this regard, the demand for antitrust regulation of their activities is justified. Another legal challenge arises concerning the trend of creating public services on the digital platforms of large technology companies. The paper analyzes China's experience in the platformatization of legal proceedings, where the process of establishing online courts is conducted in close cooperation with the leading digital platforms of the PRC. In contrast to China, in Russia, the main focus is on combining public services, and information systems of various departments within a single platform to provide public services, with large technology companies acting as operators. Therefore, the authors conclude that it is necessary to strengthen legal mechanisms to protect citizens' rights and interests during the digitization of public services – primarily citizens' rights to data protection. The problems revealed demonstrate the necessity of a balanced approach to the legal regulation of digital platforms. While it is important to stimulate their development, it is necessary to limit the opportunities for violating the rights and interests of other participants in the digital environment.

Keywords: digital rights; digitalization; digital platforms; large technology companies; online courts; platofrmization of justice; unfair competition in digital markets; protection of personal data.

Recommended citation: Yulia Kharitonova & Larisa Sannikova, *Digital Platforms in China and Europe: Legal Challenges*, 8(3) BRICS Law Journal 121–147 (2021).

Table of Contents

Introduction
1. The Concept of a Digital Platform as a Legal Phenomenon
2. Legal Restrictions on Digital Platforms
3. Platformization in the Field of Public Government
4. Experience of Remote Justice in European Countries During the Pandemic
5. Online Legal Proceedings in China
6. Trends of Digitalization of Legal Proceedings in Russia
7. Risks of Platformization for Data Protection
Conclusion

Introduction

In the modern world, platformization has become a permanent trend in the development of economic relations. Digital platforms play a crucial role in developing the sharing economy, called the "platform economy." Collaboration platforms, among other digital platforms, embody the ethic of sharing between people. The sharing economy is characterized by a lack of hierarchy in its organization since decisions are made together. Economic analysis of digital transformation shows that digital technologies significantly reduce transaction costs in the real economy. Moreover, digital technologies optimize the division of labor and coordination of production. Technology and business are increasingly showing a trend towards cross-integration, which contributes to the acceleration of digitalization.[1]

Today, several influential platforms are in China's jurisdiction. Such digital champions as Baidu, Alibaba, and Tencent, also known as the "Chinese technological Trinity"[2] (often referred to as BAT) have tremendous resources and influence in digital markets. Together, these three companies have 500–900 million active users per month, in their respective fields. In the EU, more than a million businesses trade through online

---

[1] *Теркина Д.* Китайский опыт цифровой трансформации экономики // Российский совет по международным делам. 23 декабря 2019 г. [Daria A. Terkina, *China's Experience of Digital Transformation of the Economy*, Russian International Affairs Council, 23 December 2019] (May 3, 2021), available at https://russiancouncil.ru/analytics-and-comments/columns/asian-kaleidoscope/kitayskiy-opyt-tsifrovoy-transformatsii-ekonomiki/.

[2] Yang Cao, *Regulating Digital Platforms in China: Current Practice and Future Developments*, 11(3-4) J. Eur. Comp. L. Pract. 173 (2020).

platforms to attract their customers, and it is estimated that about 60% of private consumption and 30% of public consumption of goods and services related to the overall digital economy is carried out through online platforms. The Russian experience is of scientific interest due to the dynamic development of national platform companies such as Yandex, the Mail.ru Group of companies and Avito, which have demonstrated steady growth in revenue and market capitalization in recent years.[3]

Platform solutions are used not only in the field of commerce but also in the field of public government. The modern State today actively uses digital platforms to perform its functions. So, in Europe, ideas of online justice are being promoted. While in China, these ideas have already been implemented in some territories and are widely distributed. The Russian public portal Gosuslugi is also a platform where citizens and organizations can access relevant services.

Thus, digital platforms have led to the digitalization of the economy and the entire society. Simultaneously, the activities of digital platforms for the law are not fully regulated and are still forming. In Europe, several policies affect the protection of customers in connection with the emergence of the market power of digital platforms. In China, the sphere of informatization and e-Commerce is regulated in detail. Sometimes, this is due to innovations in business models, sometimes to ensure players' equality in the market. The Russian legislator is still looking for a solution to regulating online platforms' activities in various spheres of public relations. In this regard, it is important to study China and the EU's experience in regulating relevant issues, comparing it with the Russian approach.

1. The Concept of a Digital Platform as a Legal Phenomenon

Researchers' main problem is the lack of an accurate and generally accepted definition of a digital platform. Digital platforms are defined either too broadly or too narrowly.[4]

The literature notes that the term "platform" is often used for various purposes in marketing materials, and not just as a technical concept: "sometimes as a 'platform' from which to speak, sometimes as platforms of opportunity."[5]

---

[3] *Еферин Я.Ю., Россотто К.М., Хохлов Ю.Е.* Цифровые платформы в России: конкуренция между национальными и зарубежными многосторонними платформами стимулирует экономический рост и инновации // Информационное общество. 2019. № 1-2. С. 16–34 [Iaroslav Iu. Eferin et al., *Digital Platforms in Russia: Competition Between National and Foreign Multilateral Platforms Stimulates Economic Growth and Innovation*, 1-2 Information Society 16 (2019)] (May 3, 2021), available at https://www.researchgate.net/publication/334151556_Cifrovye_platformy_v_Rossii_konkurencia_mezdu_nacionalnymi_i_zarubeznymi_mnogostoronnimi_platformami_stimuliruet_ekonomiceskij_rost_i_innovacii.

[4] Juliette Sénéchal, *The Diversity of the Services Provided by Online Platforms and the Specificity of the Counter-Performance of These Services – A Double Challenge for European and National Contract Law*, 5(1) J. Eur. Consum. Mkt. L. 39 (2016).

[5] Tarleton Gillespie, *The Politics of 'Platforms*,' 12(3) New Media Soc. 347 (2010).

Generally, a digital platform is recognized as a "type of technological architecture"[6] of a software product. In this sense, platforms are the basis for a broader range of information systems applications, such as planning systems, computer operating systems, Internet communication channels, web browsers, e-commerce sites, and social media sites.

The German antitrust authority has proposed a broad definition, describing platforms as all Internet companies that provide "intermediary services that allow direct interaction between two or more different groups of users who are connected by indirect network effects."[7] Similarly, the European Commission defined an online platform as

> an enterprise operating in two (or many) third-party markets that use the Internet to enable interaction between two or more different but interdependent groups of users to create value for at least one of the groups.[8]

In a narrow sense, the concept of a platform is used in the EU Directive on online intermediary platforms (Discussion Draft of a Directive on Online intermediate Platforms), which defines a digital platform as an

> information society service accessible via the Internet or similar digital means that allows customers to enter into contracts with suppliers of goods, services or digital content.[9]

Online platforms in European practice include marketplaces, online stores in the form of software applications and/or trading in social networks, as well as Internet search engines, regardless of their place of incorporation, provided that they serve business users who are established within the EU and that they offer goods or services to consumers who are also located within this trans-state association.

The main reason for creating a particular regulation of digital platforms in the EU was to ensure a transparent, fair and predictable online environment for businesses,

---

6 Ruonan Sun, *Digital Platforms: Conceptualization and Practice*, Thesis (PhD) (2020) (May 3, 2021), available at https://openresearch-repository.anu.edu.au/handle/1885/203636.

7 Bundeskartellamt, Working Paper: Market Power of Platforms and Networks, B6-113/15 (June 2016), at 2 (May 3, 2021), available at https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Berichte/Think-Tank-Bericht-Langfassung.pdf?__blob=publicationFile&v=2.

8 Public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy, European Commission, 24 September 2015 (May 3, 2021), available at https://ec.europa.eu/growth/content/public-consultation-regulatory-environment-platforms-online-intermediaries-data-and-cloud-0_en.

9 Research Group on the Law of Digital Services, *Discussion Draft of a Directive on Online Intermediary Platforms*, 5(2) J. Eur. Consum. Mkt. L. 164, 166 (2016); a similar stance is taken Christoph Busch et al., *The Rise of the Platform Economy: A New Challenge for EU Consumer Law?*, 5(1) J. Eur. Consum. Mkt. L. 3 (2016).

including an effective system for obtaining compensation in case of violation of the rights of participants.[10] For this purpose, rules on transparency of online platforms' activities have been developed.[11] The European legislator believes that predictability is the key to successful business development. Companies doing business through online platforms should be fully aware of the terms of these relationships and, if necessary, be able to obtain refunds quickly and effectively, which is seen as an advantage of the digital economy.[12] To increase transparency, platforms should apply clear and explicit terms for providing their online mediation services.

At the same time, the European legislator pays close attention to the fact that digital platforms must indicate reasons every time they decide to restrict, suspend, or stop using their services by businesses. In addition, platforms must publicly disclose the main traits that determine the rating of business users in search results, as well as any differential treatment that they provide for goods and/or services offered directly by them or through any business that falls under their competence. They must also disclose a description of the primary economic, commercial, or legal considerations that limit business users' ability to offer different terms to consumers outside of the platform.

By the way, Chinese academics point to the difference between European and Asian approaches: Western countries rely more on platforms' infrastructure properties to expand and maintain their market power, while research on Chinese social networking application WeChat has led to the conclusion that WeChat is an example of "non-Western digital media service successful primarily due to its platform but not the infrastructure model."[13] Simultaneously, the platform's infrastructure model is linked to national media rules and rather public cyber-sovereignty Program.

According to the approach of Chinese lawyers, platforms mean "business entities" operating alongside other e-Commerce operators. The e-Commerce law of the People's Republic of China of 2018, which came into force on 1 January 2019, focused on the practical aspects of e-Commerce development indicates the main types of businesses that it covers:

– Legal entities provide a platform for digital business, transaction execution, information disclosure, and other services to assist parties in e-Commerce operations (for example, Tmall Alibaba);

---

[10] EU introduces transparency obligations for online platforms, Council of the EU, 14 June 2019 (May 3, 2021), available at https://www.consilium.europa.eu/en/press/press-releases/2019/06/14/eu-introduces-transparency-obligations-for-online-platforms/.

[11] Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (May 3, 2021), available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019R1150.

[12] Proposal for a Regulation of the European Parliament and of the Council on Promoting Fairness and Transparency for Business Users of Online Intermediation Services, COM/2018/238 final, 26 April 2019 (May 3, 2021), available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018PC0238.

[13] Jean-Christophe Plantin & Gabriele de Seta, *WeChat as Infrastructure: The Techno-Nationalist Shaping of Chinese Digital Platforms*, 12(3) Chin. J. Commun. 257 (2019).

– Third-party sellers who sell products or provide services on the e-Commerce platform (for example, a seller who manages a store on the Taobao platform);

– Online sellers who work through their websites or social media apps (for example, a store in the WeChat messenger).

Members of these merchant groups interact with their partners and consumers using the platform's technologies. Simultaneously, the legislator devotes a separate regulation to technology issues,[14] and issues of interaction between market participants.[15] Thus, the platform essentially receives certain powers to verify participants' e-Commerce market based on the law.

The Chinese State explains in public that innovative and technological business development is supported and approved when the resources of large technology companies are used directly in the public interests of the State. For example, to exercise control or even compel market participants to perform their duties concerning each other or the State's participation. In fact, digital platforms are recognized as intermediaries with specific powers that compel them to seek public legal obligations from clients.

However, in Russia, there is no legal consolidation of the concept of a digital platform. The following definition can be found among the Resolutions of the Government of the Russian Federation:

> digital platform means a set of information technologies and technical means that ensure the interaction of economic entities in the field of industry.[16]

The Supreme Eurasian Economic Council proceeds from a broad definition of the digital platform as a system of means that supports the use of digital processes, resources and services by a significant number of subjects of the digital ecosystem and provides an opportunity for their close interaction.[17]

---

[14] For example, in the Chinese Law on Cybersecurity in 2016, the State Strategy for Informatization in 2006–2020, and others.

[15] 曹阳，互联网平台提供商的民事侵权责任分析 *[Cao Yang, Tort Liabilities of Online Platform], 3* 东方法学 *[Eastern Methodology] 73 (2017).*

[16] Постановление Правительства Российской Федерации от 30 апреля 2019 г. № 529 «Об утверждении Правил предоставления субсидий российским организациям на возмещение части затрат на разработку цифровых платформ и программных продуктов в целях создания и (или) развития производства высокотехнологичной промышленной продукции» // Собрание законодательства РФ. 2019. № 19. Ст. 2286 [Resolution of the Government of the Russian Federation No. 529 of 30 April 2019. On Approval of the Rules for Granting Subsidies to Russian Organizations for Reimbursement of Part of the Cost of Developing Digital Platforms and Software Products for the Purpose of Creating and/or Developing Production of High-Tech Industrial Products, Legislation Bulletin of the Russian Federation, 2019, No. 19, Art. 2286] (May 3, 2021), available at http://publication.pravo.gov.ru/Document/View/0001201905060036.

[17] Решение Высшего Евразийского экономического совета от 11 октября 2017 г. № 12 «Об Основных направлениях реализации цифровой повестки Евразийского экономического союза до 2025 го-

Following lawmakers, Russian researchers often focus on platforms' technological features as a way to provide services and distribute information. So, according to A.A. Kartskhiia,

> the concept of "digital platforms" implies a variety of applications of a complex of technologies for various activities: from search and information systems (Google, Yandex, Bing), e-Commerce platforms (eBay, AliExpress) and social networks (Facebook, VK, Snapchat), from providers of 'cloud' services (services) IaaS and PaaS, industrial and business management systems (based on the principle of intelligent, 'smart' objects) to global digital technology (online) platforms (Google-Alphabet, Amazon).[18]

It seems that the broad definition of platforms as a legal phenomenon makes it possible to extend appropriate regulation to not only on online services that accept direct payments from service users, but also to such types of platforms as General Internet search engines, rating websites, and social networks. Under this approach, the concept of a digital platform covers a wide range of different activities, in particular, "online advertising platforms, marketplaces, search engines, social networks and creative content, application distribution platforms, communication services, payment systems and platforms for the joint economy."[19]

Taking the broader concept of digital platforms as a basis, we will be forced to expand the scope of legal analysis to include various socially significant phenomena, which will also complicate the development of general rules of legal regulation. In our opinion, the development of legal regulation should not follow the path of developing the platform's legal regime as an object of civil rights, but the path of establishing the platform operator's legal status.

When forming legislation in this area, it is important to remember that this regulation should not be monolithic. On the contrary, it should be about the provisions enshrined in various regulatory acts but united by a single holistic understanding of how the laws over digital platforms function. Digital platforms are heterogeneous, so "platform regulation" is unlikely to be appropriate for all platforms, while horizontal laws apply to the platform and other business models.

да» // СПС «КонсультантПлюс» [Decision of the Supreme Eurasian Economic Council No. 12 of 11 October 2017. On the Main Directions of Implementation of the Digital Agenda of the Eurasian Economic Union Until 2025, SPS "ConsultantPlus"] (2017) (May 3, 2021), available at http://www.consultant.ru/document/cons_doc_LAW_282472/.

[18] *Карцхия А.А.* Цифровые технологические (онлайн) платформы: российский и зарубежный опыт регулирования // Гражданское право. 2019. № 3. С. 25 [Aleksandr A. Kartskhiia, *Digital Technological (Online) Platforms: Russian and Foreign Experience of Regulation*, 3 Civil Law 25, 25 (2019)].

[19] Eva I. Obergefell & Alexander Thamer, *(Non-)Regulation of Online Platforms and Internet Intermediaries – The Facts: Context and Overview of the State of Play*, 12(5) J. Intellect. Prop. L. Pract. 435, 436 (2017).

The standard issue concerning platforms is that they provide market management through codes of conduct and software code.[20] It should also be borne in mind that, in the absence of a comprehensive legal framework, courts and administrative bodies have played an essential role over the past decade in filling gaps in legislation, or at least in adapting it to a rapidly changing social environment. A compromise or balance should be sought between law and code of conduct, given that they both provide governance. Foreign researchers[21] have moved ahead in this area compared to Russian researchers, but we can develop effective rules based on colleagues' experience and research from Europe and China in this area.

2. Legal Restrictions on Digital Platforms

It is believed that the business models of digital platforms are developing because they have changed the traditional commercial relationships between consumers and manufacturers and invented new ones, removing the distributor from the equation.[22] Platforms have replaced intermediaries in various markets, allowing the parties to meet and conclude transactions using the platform's technological tools.

The use of digital platforms of large technology companies is considered ambiguous. On the one hand, these companies are drivers of economic development since their place in the market is due to the introduction of high-tech products. On the other hand, they displace or acquire other companies that enter the market with innovative products that can be disruptive. According to the authors, the concentration of market power in digital platforms is a threat to the competitive environment in digital markets. Therefore, it is essential to establish legal criteria for determining the relationship between digital platforms' market power and possible anti-competitive behavior. In this regard, legislators from different countries are trying to create rules that restrict platforms' expansion.

Thus, e-Commerce operators must adhere to fair competition. Those of them who occupy a dominant position in the market are prohibited from excluding or restricting competition. Companies operating platforms often have very few real assets, and their value is embedded in their technology, their user base, and their brand.[23]

---

[20] Brian Williamson & Mark Bunting, *Reconciling Private Market Governance and Law: A Policy Primer for Digital Platforms*, SSRN Papers (2018) (May 3, 2021), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3188937.

[21] For more information, *see* Alberto De Franceschi, *The Adequacy of Italian Law for the Platform Economy*, 5(1) J. Eur. Consum. Mkt. L. 56 (2016).

[22] *See, e.g.*, *Нагродская В.Б.* Новые технологии (блокчейн/искусственный интеллект) на службе права: научно-методическое пособие [Victoria B. Nagrodskaia, *New Technologies (Blockchain/Artificial Intelligence) in the Service of Law: Scientific and Methodological Manual*] (Liudmila A. Novoselova ed., 2019).

[23] 徐炎, 网络效应与即时通讯市场支配地位的认定 [Xu Yan, *Identification of Network Effect and the Dominant Market Position of Instant Messaging Industry*], 12 知识产权 [Intellectual Property] 22 (2014).

Technological solutions of the platforms can cause serious social problems.[24] For example, in early 2018, the so-called "Shashu" phenomenon became a major concern in Chinese society. "Shashu" refers to algorithmic price discrimination on the part of online platforms, where the least favorable prices are set for long-term customers. Some observers believe that this type of price discrimination breaks the People's Republic of China's antitrust laws.

Companies working with a platform can quickly transform and expand. In this regard, Chinese law pays much attention to the "online-merge-offline" (OMO)[25] – a trend that many high-tech companies are betting on.[26] Moreover, digital platforms generate network effects, increasing the market power of large technology companies.[27] The rules for the protection of consumer rights are another restriction of digital platforms' activity. It is noteworthy that the Chinese regulation of the relations in question was initially focused on the formalization of the responsibilities of e-Commerce platform providers, which were recognized as intermediaries independent of both parts of trade and business.[28]

There are responsibilities for compliance with legislation operators of e-Commerce related to the platforms. For example, except for a minimal number of rare and small personal businesses, the e-Commerce Law requires all operators (sometimes micro-businesses) to be registered as entrepreneurs. If an exclusive license is required to conduct individual business (for example, related to the sale of food or drugs), such licenses must be obtained following the law.

E-Commerce operators must meet their tax obligations and must issue a tax invoice (fapiao). In the event of any problems, the platform must report the seller's identity and tax-related information to the tax authorities and store transaction-related information for at least three years. Courts can use this data as evidence for online courts if disputes arise with transactions on the platforms.

The law also promotes consumer protection by requiring the e-Commerce operator to disclose accurate information about the product/service and avoid

---

[24] Hong-jin Han & Lei-yi Chen, *On the Civil Obligations of the E-Commerce Platform Providers*, 1 Journal of Tianjin Administrative Cadre College of Politics and Law (2009).

[25] E.g., "Scan-and-Go." By virtue of the up-to-date in-store technologies, omni-channel retailers recently have begun to evolve their business from online-to-offline to online-merge-offline (OMO) strategy. OMO aims to create better experience for the shopping.

[26] *Ли К., Вутзель Д.* Китай – цифровой гигант // 10 декабря 2017 г. [Kai-fu Lee & Jonathan Woetzel, *China Is a Digital Giant*, 10 December 2017] (May 3, 2021), available at https://inosmi.ru/economic/20171210/240930288.html.

[27] Shuai Xu & Chen Hong-min, *Externality of Network in Market Competition: Theory and Practice*, 6 Soft Science 65 (2003).

[28] Li Dejian, *On the Legal Position of the Operator in the Third-Party E-Commerce Transaction – Based on the Study of Commerce-Service Norms for Third-Party E-Commerce Transaction*, CNKI (2012) (May 3, 2021), available at http://en.cnki.com.cn/Article_en/CJFDTOTAL-SDFP201200010.htm.

misleading and deceptive methods. E-Commerce platforms should also create a system for publishing consumer comments and take other measures to ensure accurate information. Fake and motivated reviews are prohibited.

Platforms are required to comply with rules that protect intellectual property rights.[29] There is a fine for non-compliance with the e-Commerce rules, and the platforms are jointly and severally liable with individual stores on it for selling counterfeit goods.[30]

A unique feature is that the regulations provide effective legal measures to regulate consumer protection after their adapting with specific platforms. For example, in the field of mobile payment services, especially with non-financial institutions' participation, there is a regulation based on the experience and critical analysis of the interaction of the digital platform Alipay with consumers of its services.[31]

According to Song Hanliang, a feature of platform technology was that a transaction could be automatically completed using the platform algorithm's technological support.[32] Therefore, initially, it was a question of developing rules on the platform's obligations to fulfill its commitments. So, in trade and business disputes between registered consumers, e-Commerce platform providers must take responsibility for errors in the transaction process.[33] China's e-Commerce law also contains special regulations to protect privacy, including restrictions on the abuse of consumer profiling, forcing consumers to opt-out of certain services and others.

It seems that the public's trust in technology and the algorithm, as such, is based precisely on the fact that it is impossible to reject a transaction that has been started. This is partly the reason for the popularity of platform solutions.[34] In Russia,

---

[29] 著作权法, 网络平台著作权保护的严格化趋势与对策 [Xu Shi, *Growing Tendency of Strict Copyright Protection Under Online Platform Context and its Corresponding Countermeasures*], 4 北京航空航天大学学报（社会科学版） [Journal of Beihang University (Social Science Edition)] 11 (2018).

[30] E-Commerce platform operators can be fined 500,000 yuan ($73,417) or up to 2 million yuan in serious cases for failing to take the necessary measures against intellectual property infringement by sellers on their platforms or for unreasonable restricting of transactions on the platforms. Draft e-commerce law better regulates operators (2018) (May 3, 2021), available at https://www.pkulaw.com/en_news/ba1e3b0c29361fd6bdfb.html?keyword=Law%20on%20e-commerce.

[31] Yue Liu, *Consumer Protection in Mobile Payments in China: A Critical Analysis of Alipay's Service Agreement*, 31(5) Comput. L. Secur. Rev. 679 (2015).

[32] Song Hanliang, *Redefinition of Legal Status of Internet Trading Platform Provider* (May 3, 2021), available at http://html.rhhz.net/BJHKHTDXXBSKB/20150610.htm.

[33] Xia Lu, *Typical Analysis of the Civil Liability on the Third Party of Internet Trading Services – Giving the Example of "Taobao Net"* (May 3, 2021), available at https://www.semanticscholar.org/paper/Typical-analysis-of-the-civil-liability-on-the-of-Lu/d194a47338ee3df5f0c3bf7a6d439082c63530d8.

[34] For more information, *see* Larisa V. Sannikova & Yulia S. Kharitonova, *The Trust and the Digitalization of Society*, Proceedings of the 2nd International Conference on Education Science and Social Development (ESSD 2019) (May 3, 2021), available at https://www.atlantis-press.com/proceedings/essd-19/125913061.

the discussion of regulatory restrictions in consumer rights is linked to antitrust regulation[35] and does not affect consumer protection legislation.

In general, the Russian approach is similar to the European trend. However, in functional terms, rules aimed at protecting competition fairness and consumer welfare tend to converge and systematically overlap in the context of European private regulatory law.[36] In the European tradition, consumer law can be considered an essential component of market regulation law.[37]

For example, the Italian antitrust authority (ICA) is simultaneously responsible for applying antitrust laws and specific critical provisions of the consumer protection law.[38] In this capacity, the ICA has recently initiated significant consumer protection cases involving well-known digital platforms. Some of them relate to Directive 2005/29/EC on unfair commercial practices between enterprises and consumers; others to Directive 2011/83/EU on consumer rights and Directive 93/13/EC on unfair terms in consumer contracts. In these cases, the defendants are some of the largest digital platforms worldwide, such as Facebook, WhatsApp, Tripadvisor, Amazon.

It should be noted that the State can manage society through digital platforms. Such management is not carried out by the direct transition of public powers of the State. States seek to establish rules that require digital platforms that accumulate many business activities and private transactions to perform specific actions that allow the State to act effectively. Due to the inclusion of particular algorithms, technological operators of digital platforms exercise control over users' operations' legality. The algorithm is configured so that violations should be stopped automatically (accrual and payment of taxes, protection of intellectual property, fair competition, and consumer rights).

The technological capabilities of platform solutions have led to the fact that States require digital platforms to provide a quick and effective solution to conflict situations, relying on transparent algorithms that are not related to legal entities'

---

35 *See, e.g.*, *Айрапетян В.* Цифровые гиганты могут подменить собой госплан // Ведомости. 15 ноября 2019 г. [Vartan Airapetian, *Digital Giants Can Replace the State Plan*, Vedomosti, 15 November 2019] (May 3, 2021), available at https://www.vedomosti.ru/economics/articles/2019/11/15/816366-tsifrovie-giganti-podmenit.

36 On this *see*, lastly, Francesco Mezzanotte, *Regulation of Business-Clients Relationships Through 'Organisational Law*,' 13(2) Eur. Rev. Contract L. 123, 131 (2017).

37 Margherita Colangelo & Vincenzo Zeno-Zencovich, *La intermediazione on-line e la disciplina della concorrenza: i servizi di viaggio, soggiorno e svago*, 1 Diritto dell'informazione e dell'informatica 43, 76 (2015); Giuseppe Colangelo & Mariateresa Maggiolino, *Data Protection in Attention Markets: Protecting Privacy Through Competition*, 8(6) J. Eur. Comp. L. Pract. 363 (2017).

38 The ICA is the authority entrusted with the implementation of Regulation 2006/2004/EC (*see* Arts. 27 and 66 of the Italian Consumer Code). Regulation (EC) No. 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (May 3, 2021), available at https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32004R2006.

will. There is a rule in European law[39] that requires almost all platforms to set up an effective and fast internal system to handle complaints and to report annually on its effectiveness. Platforms are required to specify two or more intermediaries in their terms and conditions for cases where the internal complaint processing system cannot resolve a dispute between business users. At the same time, the platforms are encouraged to create bodies of independent specialized intermediaries and draw up codes of conduct and ethical practices.

All these responsibilities assigned to digital platforms allow us to assist the state apparatus and the judicial system since each platform attempts to resolve disputes in the shortest possible time using technologies and algorithmic solutions.

3. Platformization in the Field of Public Government

Digitalization processes are actively developing in the sphere of business and the sphere of public administration. The modern State increasingly uses platform solutions to perform its functions, in particular, in the following areas: the provision of public services, the arrangement of the electoral process, and online justice.

All these areas are developing in Russia actively. Special attention is paid to the problems of interaction of the State with citizens and businesses in the provision of public services. In Russia, the portal "Gosuslugi" is a platform where citizens and organizations can access the relevant services. At the same time, a new digital project "Gostech" is planned, which involves integrating a single platform of such public services as renting state property, state registration of real estate, and obtaining a digital compulsory medical insurance policy (CHI), etc. It is worth mentioning that this platform will be operated by major Russian companies such as Sberbank, VTB, Rostelecom, and Russian Post.

Another experiment in using digital technologies, which received widespread approval and support in society, was remote voting on a blockchain platform on amendments to the Constitution of the Russian Federation. This experiment took place in two Russian regions: Moscow and Nizhny Novgorod. It has demonstrated a very high percentage of registered voters who took part in the vote (about 90%). This experiment is crucial for Russia since it increases citizens' confidence in the electoral process.

There are no obstacles in the Russian electoral legislation to the widespread use of digital technologies in voting. In 2019, the Federal Law of 12 June 2002 No. 67-FZ "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation" was amended to replace the words "complex of automation means of automatic state system 'Vibory' with the words 'technical means.'" Therefore, various technical means intended for conducting electronic

[39] Regulation (EU) 2019/1150, *supra* note 11.

voting can be used during elections. However, there are no legal requirements for these technical means, although a separate Federal Law of 10 January 2003 No. 20-FZ applies to the automatic state system "Vibory."

It should be noted that there is no fixed attitude to "technical means" in the electoral process internationally. Some countries, such as the United States, Estonia, Switzerland, and Sierra Leone, have already held blockchain-based elections. However, in 2009 in Germany, the constitutional court did not allow the use of technical means in elections. It ruled that the type of voting machine used at the time was not sufficiently clear to voters.

The possibilities of using information systems for electronic voting have been discussed for at least the past decade. However, the risks associated with online voting have always prevailed over the advantages (for example, greater involvement of young voters, the possibility of remote voting) that were expected from it.

In general, distributed ledger technologies, in particular, blockchain, are more likely to ensure compliance with generally recognized requirements for the proper voting organization, which include reliable identification of voters, the ability of a voter to confirm their vote before voting and verify the correctness of its submission, anonymity of voting, and transparency of the voting process.

However, digital technologies offer not only new opportunities but also new risks and threats. The most obvious threat is technical vulnerability. To date, blockchain is a relatively new technology that has not yet been sufficiently tested. The developed blockchain platforms contain technical errors and vulnerabilities that can be exploited by hackers.

In addition to technical problems, we should not underestimate the emerging ethical and legal problems, mainly digital discrimination, the collection of biometric data of citizens, and the use of facial recognition systems to identify voters. Therefore, the electoral process's digitalization should be treated as responsibly as possible so as not to undermine the voters' confidence in the elections.

Particular attention should be paid to creating platforms for implementing justice, which has become extremely relevant during the COVID – 2019 pandemic. Professor Richard Susskind called for developing a "standard, adaptable global platform for online courts"[40] that can be deployed to strengthen access to justice worldwide.

It should be recognized that such work is already underway in many countries of the world. China can be called the leader in this area. In China, even today, many kinds of cases will be filed, initiated, and put through other legal proceedings through the court's website. The hearing and announcement of the verdict will be carried out via video broadcast.[41] Chinese justice is in step with the rest of the world in this direction.

---

[40] Richard Susskind, *Online Courts and the Future of Justice* (2019).

[41] China launches first Internet court in e-commerce hub, Xinhua, 18 August 2017 (May 3, 2021), available at available at http://www.xinhuanet.com//english/2017-08/18/c_136536213_2.htm.

For example, Her Majesty's British courts and tribunals Service has increased the cloud video platform resources to enable remote hearings for any courtrooms that have the necessary equipment. Moreover, we can access such a meeting via any laptop or video device. Access points are available in courts, prisons, and police stations.

Russia is also working to ensure access to justice by expanding the use of electronic and information technologies. To date, it is possible to use digital technologies based on a platform approach through the Internet services "Moi Arbiter" or GAS "Pravosudie" in summary (Chapter 29 of the Code of Arbitration Procedure of the Russian Federation, Chapter 21.1. of Code of Civil Procedure of the RF) and the writ (Chapter 29.1 of the Code of Arbitration Procedure of the RF, Chapter 11 of Code of Civil Procedure of the RF) proceedings. Russian researchers are analyzing the possibilities of automating decision-making processes in arbitration courts using artificial intelligence technologies, for example, for calculating damages in corporate disputes.[42]

Given that with the spread of the COVID-19 pandemic, courts worldwide started to consider disputes using videoconference technology, the problems of digitalization of justice deserve separate consideration.

4. Experience of Remote Justice in European Countries During the Pandemic

With the onset of COVID-19, the courts were forced to use digital technology. At the same time, judicial systems in European countries were not ready to use digital technologies.

In Britain, a member of the society of computers and law, Professor Richard Susskind, has supported the active introduction of modern technologies into the judicial system for a long time. He has devoted his research to this problem, which has received full recognition. His ideas are being implemented in the Internet project "Remote Courts Worldwide,"[43] allowing the global legal community to share experience in developing remote justice in the coronavirus pandemic context. This portal is supported by the Computer and Law Society, the British legal services Commission, and Her Majesty's Courts and Tribunals Service. In recent years, Her Majesty's courts and tribunals Service has been working on a project to promote and develop an online court for England and Wales, which is now a significant part of the court's modernization program.

---

[42] *Андреев В.К., Лаптев В.А., Чуча С.Ю.* Искусственный интеллект в системе электронного правосудия при рассмотрении корпоративных споров // Вестник Санкт-Петербургского университета. Право. 2020. № 1. С. 19–34 [Vladimir K. Andreev et al., *Artificial Intelligence in the System of Electronic Justice in the Consideration of Corporate Disputes*, 1 Herald of Saint Petersburg University. Law 19 (2020)].

[43] Neil Rose, *Lawyers and HMCTS launch remote hearings resource*, Legal Futures, 30 March 2020 (May 3, 2021), available at https://www.legalfutures.co.uk/latest-news/lawyers-and-hmcts-launch-remote-hearings-resource.

During the pandemic, HM Courts & Tribunals Service issued guidelines governing remote hearings – "HMCTS Telephone and Video Hearings During a Coronavirus Outbreak."[44] The rules provide the decision to hold a hearing in a case is left to the judges or a panel that will determine the best way to defend the interests of justice.

When considering the appropriateness of using technology, judges should consider the nature of the issues to be resolved during the hearing, participants' needs, and any issues related to public access or participation in the hearing. It is established that the debate participants will use the BTMeetMe program when holding conferences over the phone. British courts will hold video conferences via the Skype for Business program at HMCTS. In this case, the litigation participants do not need any special equipment other than a phone and additional tools such as headphones, speakers, etc. Interestingly, according to the rules, all participants must be in a quiet place on the day of the hearing where they cannot be overheard. A record of the hearing is made and stored.

The first online hearing in Britain was held on 27 March 2020. The court of appeal heard the first complaint against conviction when all involved appeared remotely from different locations. Andrew Thompson, a lawyer at Red Lion Chambers, who participated in the hearing, said he was present at the case sitting in his kitchen in Suffolk.[45] The outbreak caused the closure of more than half of courts and tribunals in England and Wales and the suspension of new jury trials. Hearings in magistrates' courts, the High court, the court of Appeal and the Supreme court were conducted remotely. To participate in the case, as well as to attend the hearings, judges, lawyers, witnesses, translators, and journalists contacted the court by phone and video.[46] Few European countries have followed the path of issuing special instructions on the use of digital technologies for lockdown hearings. That is evidenced by the review "Management of the Judiciary – Compilation of Comments and Comments by Country,"[47] prepared by Council of Europe European Commission for the efficiency of justice (CEPEJ).

For example, in Finland, the national judicial administration has allowed courts to use Skype and video conferencing technologies. However, it is only the judge who makes decisions about their use.

---

[44] HM Courts & Tribunals Service, Guidance: How HMCTS uses telephone and video hearings, 18 March 2020 (May 3, 2021), available at https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak.

[45] Following on from the Court of Appeal's first remote hearing, Andrew Thompson talks to The Times Law section about Norwich Crown Court's 'virtual robing room,' Red Lion Chambers, 2 April 2020 (May 3, 2021), available at https://www.redlionchambers.co.uk/following-on-from-the-court-of-appeals-first-remote-hearing-andrew-thompson-talks-to-the-times-law-section-about-norwich-crown-courts-virtual-robing-room/.

[46] Catherine Baksi, *Coronavirus could permanently alter courts*, The Times, 2 April 2020 (May 3, 2021), available at https://www.thetimes.co.uk/article/coronavirus-could-permanently-alter-courts-mzh5mfv72.

[47] Management of the judiciary – compilation of comments and comments by country, Council of Europe (May 3, 2021), available at https://www.coe.int/en/web/cepej/compilation-comments.

In Italy, Decree-Law No. 18 of 17 March 2020, known as "Cura Italia" Decree, stipulates two remote ways of conducting civil hearings: (i.e. "figurative") and remote (i.e. in "videoconference"). The use of a documental hearing is possible because of the introduction of the new civil telematic litigation and the subsequent telematic production of the court's acts and measures. The hearing by videoconference must take place through the applications made available by the Ministry of Justice: Microsoft Teams and Skype for Business (decree of the Director-General S.I.A. of 20 March 2020).

In Portugal, remote media communication, namely via conference call or video call, is only allowed in urgent cases. These include "procedural steps relating to minors of age at risk or urgent educational guardianship proceedings, steps and trials of arrested defenders."

Thus, the European countries have taken the digitalization of justice only concerning the pandemic threats. It must be admitted that the use of videoconferencing can only be regarded as the first step on this path.

5. Online Legal Proceedings in China

The attempts to introduce remote justice systems described above cannot compare with the achievements of the judicial system in the People's Republic of China. The country's first court specializing in Internet-related cases was launched in Hangzhou in the Eastern province of Zhejiang in 2017. The decision to create the court was made at the 36th session Of the Central Committee of the Communist Party of China on deepening reforms in the Chinese city of Hangzhou in the Eastern province of Zhejiang.[48] Currently, such online courts operate in Beijing and Guangzhou.

In its activities, the courts are guided not only by laws but also by the regulation of the Supreme People's Court of the People's Republic of China (hereinafter, the Regulation of the SC of the PRC) adopted at the 1747th session of the judicial Committee of the Supreme People's Court on 3 September 2018. This regulation has stipulated the rules of holding the cases by the online courts to regulate the operation of the courts, to protect the legitimate rights and interests of the parties and other trial participants, ensure fair and efficient resolving of cases following the Civil procedure law of the People's Republic of China, the law of the People's Republic of China on administrative proceedings and other laws, and in the area of practical judicial work of people's courts.

The online court considers cases online. This means that the reception, handling, mediation, exchange of evidence, pre-trial preparation, trial, adjudication, and other judicial operations related to the case are usually made online. However, it is still

[48] 杭州互联网法院揭牌：打官司像网购一样便捷 [Hangzhou Internet Court Unveiled: Litigation Is as Convenient as Online Shopping], 新闻频道_央视网 [CCTV.com], 18 August 2017 (May 3, 2021), available at http://news.cctv.com/2017/08/18/ARTI0ErO9H2vE3vOwr6zaQf8170818.shtml.

possible that a decision can be taken offline at the request of one of the parties or as necessary to consider the case.

Standardization is a distinctive feature of Chinese online justice since it deals with a unique set of cases related to the digital environment. Under Article 2 of the provisions of the Supreme court of the people's Republic of China, these courts have the right to hear:

– Disputes arising in connection with the signing or execution of the sale of goods contracts via e-Commerce platforms;

– Disputes over contracts for the provision of services on the Internet that are concluded and executed on the Internet;

– Disputes over loan agreements that are simultaneously concluded and executed on the Internet;

– Disputes about copyright or related rights to works first published or distributed on the Internet;

– Disputes about the right to domain names on the Internet, including contractual disputes in this area;

– Disputes arising in connection with the violation of personal rights, property rights, and other civil rights and interests of other persons on the Internet;

– Cases related to the public interest of the Internet initiated by the Prosecutor's office, as well as disputes arising in connection with governmental acts made by governmental bodies concerning the management of Internet information services, sale of goods on the Internet, and the management of respective services;

– and some other Internet civil disputes and administrative cases.

Online court jurisdiction under Chinese law is determined by the contract's conclusion, which is related to the dispute. If an e-commerce operator or network service provider enters into a jurisdiction agreement with the user using standard clauses, it must comply with the provisions of laws and judicial interpretations concerning such standard clauses.

Under Article 5 of the Provision of the Supreme court of China, the online court creates an Internet trial platform as a unique platform for the trial and the parties and other participants to conduct judicial proceedings and activities. At the same time, it is established that any judicial activity carried out through the judicial platform has legal force.

The case-related data required for online court proceedings must be provided by e-Commerce platform operators, network service providers, and relevant government agencies and entered on the court platform. This data is subject to online verification, recording in real-time, and is monitored by the Security Department of the online court. In the future, the parties have the right to upload and import evidence to the judicial platform, including electronic data or offline evidence in electronic form, which is processed by scanning, copying, duplicating, or other means.

Accordingly, all documents, identification, duplicates of business licenses, powers of attorney, identification of legal representatives, other materials of the

court proceedings, documentary evidence, expert opinions, inspection reports, and other evidentiary materials are processed electronically by technical means. After passing the examination of online courts, they are considered to meet the originals' formal requirements.

However, if the other party raises any objections to the authenticity of the materials mentioned above and has reasonable grounds to do so, the online court requires this party to provide their originals. The storage and use of case-related data by the judicial platform must comply with the provisions of the cybersecurity law of the People's Republic of China and other laws and regulations.

When conducting a trial through a digital judicial platform, participants perform identity authentication using online tools such as comparing identity certificates and licenses, biometric identification, or certification on a single state identity authentication platform and receive individual accounts to log in to the judicial platforms. Actions performed on judicial platforms filed with individual accounts are considered actions performed by authenticated persons themselves, with some exceptions.

Within seven days, the decision is made whether the online court can handle the case. Using mobile phone numbers, fax numbers, email addresses, and instant messaging accounts provided by the plaintiff, the defendant, and the third party are notified of the case and identity authentication through the judicial platform, and the procedure for resolving the dispute starts. The defendant and a third party receive information about the case, receive and submit the trial materials, and conduct administrative activities through the judicial platform.

The parties have the right to raise any objections to the authenticity of electronic data. The online court reviews and assesses the authenticity of generating, collecting, storing, and transmitting electronic data. The following factors are taken into account:

– Are the hardware and software environments, such as the computer system on which electronic data is created, collected, stored and transmitted, secure and reliable;

– Whether the nature and time of electronic data generation is specified;

– Is the content shown clear, objective and accurate;

– Whether the means of storing electronic data are defined;

– Whether methods and means of their storage are appropriate, etc.

The Online court confirms the electronic data submitted by any party, provided that the electronic data's authenticity can be proved. It can be done by:

– Electronic signature;

– Trusted time mark;

– Verification of the hash value, blockchain, or any other technological means of collecting evidence, fixing it, or protecting it from unauthorized access;

– Certification on the platform for collecting and storing electronic evidence.

The trial itself is held via online video communication. Judges, assistant judges, court clerks, parties, and other participants in the proceedings confirm mediation agreements, transcripts, electronic service certificates, and other materials of the proceedings through online confirmation, electronic signatures, or other online methods. Electronic transcripts can be created simultaneously using speech recognition technologies in mediation, evidence exchange, court proceedings, peer review, and other court references. Electronic transcripts, after online verification and confirmation, have the same legal effect as written transcripts.

The entire case is generated together with the consideration of the dispute through the judicial platform. At the end of the dispute, the online court draws up an electronic certificate. This electronic service certificate has the legal force of confirming a court decision.

The activity of online courts in China shows its high efficiency in dealing with disputes arising in the Internet environment due to the speed of development of such relations, a small cost of the dispute, and the lack of motivation of participants in the trial to spend time and effort on complex judicial procedures.

6. Trends of Digitalization of Legal Proceedings in Russia

In Russia, ensuring access to justice through electronic and information technologies is considered the primary task of the judicial system, which is carried out to solve courts' informatization[49]. Such measures can be the following:

– Receiving information in electronic form, both about the activities of the court and about a specific case;

– Technical and software support of the trial (videoconferencing, devices that ensure the study of electronic evidence, recording of the court session, and the exchange of information and documents between trial participants and the court, ensuring the security of information stored in the systems);

---

[49] Федеральный закон от 22 декабря 2008 г. № 262-ФЗ «Об обеспечении доступа к информации о деятельности судов в Российской Федерации» // Собрание законодательства РФ. 2008. № 52 (ч. 1). Ст. 6217 [Federal Law No. 262-FZ of 22 December 2008. On Providing Access to Information About the Activities of Courts in the Russian Federation, Legislation Bulletin of the Russian Federation, 2008, No. 52 (Part 1), Art. 6217]; Федеральный закон от 23 июня 2016 г. № 220-ФЗ «О внесении изменений в отдельные законодательные акты Российской Федерации в части применения электронных документов в деятельности органов судебной власти» // Собрание законодательства РФ. 2016. № 26 (ч. 1). Ст. 3889 [Federal Law No. 220-FZ of 23 June 2016. On Amendments to Certain Legislative Acts of the Russian Federation Regarding the Use of Electronic Documents in the Activities of Judicial Authorities, Legislation Bulletin of the Russian Federation, 2016, No. 26 (Part 1), Art. 3889]; Приказ Судебного департамента при Верховном Суде Российской Федерации от 25 декабря 2013 г. № 257 «Об утверждении Регламента организации извещения участников судопроизводства посредством СМС-сообщений» // СПС «КонсультантПлюс» [Order of the Judicial Department of the Supreme Court of the Russian Federation No. 257 of 25 December 2013. On the Approval of Regulations of the Organization of Notification of Participants of Legal Proceedings by SMS Messages, SPS "ConsultantPlus"] (May 3, 2021), available at http://www.consultant.ru/document/cons_doc_LAW_158206/.

– Electronic interaction of courts with state authorities.

However, the pandemic has proven that not all measures taken are adequate. During the lockdown period, many problems and gaps were revealed in regulating mechanisms for interaction between courts and parties of the process using technical means.

Thus, the situation with the case resolved using the messenger was exceptionally on the agenda. In the Sverdlovsk region, the first court session was held using a video call in the WhatsApp messenger (Resolution of 30 March 2020 in the case No. 5-40/2020 document ID 66RS0038-01-2020-000380-15[50]). The judge closed the Simba cafe in Nevyansk for 45 days for violating the legislation in the population's sanitary and epidemiological welfare (Article 6.3 of the Administrative Code of the Russian Federation). The cafe continued to serve visitors, despite restrictions for restaurants and catering establishments introduced in the region since 28 March, bailiffs sealed the entrances to the cafe.

This case caused a heated discussion in the professional environment, since holding a court trial via video call in the WhatsApp messenger does not comply with the established procedure for holding an administrative offense case. A literal interpretation of Article 29.14 of the administrative code leads to the conclusion that a judge may resolve the issue of trial through the use of videoconferencing, but only with the use of courts' videoconferencing system or in respect to individuals in places of imprisonment by the system of video conferencing of appropriate place. For example, within the law framework, the way out for criminal proceedings was the use of video conferencing in a situation where the accused "appear" before the court via video conferencing directly from the building of the detention center.

In civil and arbitration proceedings, there is no necessary legal regulation of the use of video conferencing communication systems in courts. Therefore, most researchers agree that today in Russia, it is impossible to talk about electronic litigation's legality.[51] One of the arguments is the absence of this type of legal proceedings in Article 118 of the Russian Federation's Constitution.[52] In our opinion, the administration of justice using technical means or even establishing superior

---

[50] Постановление Невьянского городского суда Свердловской области от 30 марта 2020 г. по делу № 5-40/2020 // Поиск решений судов общей юрисдикции [Resolution of the Nevyansk City Court of the Sverdlovsk Region of 30 March 2020 in the case No. 5-40/2020, Search for Decisions of Courts of General Jurisdiction] (May 3, 2021), available at http://судебныерешения.рф/49304102.

[51] *Нахова Е.А.* Проблемы применения электронных доказательств в цивилистическом процессе и административном судопроизводстве // Закон. 2018. № 4. С. 81–90 [Elena A. Nakhova, *Problems of Applying Electronic Evidence in Civil and Administrative Proceedings*, 4 Law 81 (2018)].

[52] *Зарубина М.Н., Павлов А.А.* О процессуальных реалиях и потенциальных возможностях использования электронных доказательств в цивилистическом процессе // Вестник гражданского процесса. 2019. Т. 9. № 1. С. 205–222 [Maria N. Zarubina & A.A. Pavlov, *On Procedural Realities and Potential Possibilities of the Use of Electronic Evidence in Civil Procedure*, 9(1) Herald of Civil Procedure 205 (2019)].

online courts does not create a new type of legal proceedings to be added to the constitutional, civil, administrative, and criminal proceedings listed in the Russian Federation's Constitution.

Accordingly, it is unnecessary to amend the Russian Federation's Constitution to solve the procedural problems that have arisen. They can also be resolved using the law. For this purpose, the Government and the Supreme Court of the Russian Federation have submitted a draft Federal law "On Amendments to Article 1551 of the Civil Procedure Code of the Russian Federation, Article 1531 of the Arbitration Procedure Code of the Russian Federation and Article 142 of the Administrative Procedure Code of the Russian Federation in Order to Improve Access to Justice in Electronic Form."[53]

This draft is intended to radically simplify citizens' access to video justice. Thus, it is proposed to allow participants in civil, arbitration, and administrative proceedings to participate in court trials remotely, using personal means of videoconferencing. The requirements for software, hardware and other characteristics of personal videoconferencing facilities, the procedure of their compliance with the requirements, as well as the procedure for connecting personal videoconferencing facilities to those of the court are to be established by the Government of the Russian Federation.[54]

The draft law sets out the peculiarities of participation of individuals in a trial by a videoconferencing system. The person participating in the case is obliged to submit an application to the court for participation in a trial by personal means of videoconferencing (it is possible to do this through the "Unified Portal of State and Municipal Services (Functions)" (unified portal)). When the trial starts, such persons should log in via a unified portal when connecting to the videoconferencing system. At the same time, they must independently ensure the technical possibility of timely connection to the video conferencing system at the beginning of the trial and a stable connection that secure the uninterrupted operation of their personal videoconferencing facilities. Complete or partial inability to use personal means of videoconferencing by participants of the trial, if not due to the court's technical equipment or the State of communication networks at the location of the court, is not considered an obstacle to the case hearing. The parties send evidence submitted to the court to each other in advance.

The advantages of conducting dispute resolution remotely are apparent and are not disputed by the trial participants. It includes making the process cheaper by

---

[53] Сенаторы Клишас и Русских вместе с Бюро адвокатов «Де-юре» предлагают радикально упростить доступ к видео-правосудию // Право.ru. 27 марта 2020 г. [Senators Klishas and Russkikh, Together with the *De Jure* Law Office, Propose to Radically Simplify Access to Video Justice, Pravo.ru, 27 March 2020] (May 3, 2021), available at https://pravo.ru/news/219927/.

[54] Новый законопроект позволит участвовать в судебных заседаниях удаленно [The New Bill Will Allow to Participate in Court Hearings Remotely] (May 3, 2021), available at https://fc-g.com/novyj-zakonoproekt-pozvolit-uchastvovat-v-sudebnyh-zasedaniyah-udalenno/.

eliminating on travel and accommodation cost, reducing time costs, facilitating access to justice for people with difficulties such as severe illness or physical disabilities who cannot quickly get into the courtroom, problems with transport links, etc.

In general, supporting the proposed amendments to the procedural legislation, it is noteworthy that the digitalization of justice should not be identified exclusively with the consideration of disputes using videoconferencing technology. In this regard, Russia should pay attention to China's experience in creating online courts. It seems reasonable to resolve disputes via the Internet using digital technologies in cases where the disputed legal relations have existed or occurred in a digital environment.

It should be noted that this conclusion was reached by the experts of the first legal foresight session "The transformation of rights in the digital age" arranged by the Institute of State and Law of Russian Academy of Sciences together with the Department of Business of Law Faculty, Lomonosov Moscow State University and the Baltic Federal University.[55] During the discussion, the need for virtual arbitration aimed at quickly suppressing violations in the virtual environment was justified. However, the experts did not insist on the general nature of this method of dispute resolution.

Further introduction of digital technologies, in particular, artificial intelligence technology, may lead to more radical changes in the administration of justice. For example, in Estonia, it is planned to use artificial intelligence to resolve specific categories of cases using a robot judge. The promise of this area of digitalization of justice is evidenced by the fact that the European Commission for the Efficiency of Justice of the Council of Europe has adopted the first European Ethical Charter on the use of artificial intelligence in judicial systems. It sets out the basic principles that must be observed in the field of artificial intelligence and justice:

1) Principle of respect of fundamental rights: ensuring that the design and implementation of artificial intelligence tools and services are compatible with fundamental rights;

2) Principle of non-discrimination: specifically preventing the development or intensification of discrimination between individuals or groups of individuals;

3) Principle of quality and security: about the processing of judicial decisions and data, using certified sources and intangible data with models conceived in a multi-disciplinary manner, in a secure technological environment;

4) Principle of transparency, impartiality, and fairness: making data processing methods accessible and understandable, authorizing external audits;

5) The principle "under user control": precluding a prescriptive approach and ensuring that users are informed actors and in control of their choices.[56]

---

[55] *Санникова Л.В., Харитонова Ю.С.* Трансформация права в цифровую эпоху: взгляд в будущее// Государство и право. 2019. № 9. 87–96 [Larisa V. Sannikova & Yulia S. Kharitonova, *Transformation of Law in the Digital Age: A Look into the Future*, 9 State and Law 87 (2019)].

[56] CEPEJ European Ethical Charter on the use of artificial intelligence (AI) in judicial systems and their environment, Council of Europe (May 3, 2021), available at https://www.coe.int/en/web/cepej/cepej-european-ethical-charter-on-the-use-of-artificial-intelligence-ai-in-judicial-systems-and-their-environment.

Thus, the digitalization of litigation allows to ensure accessibility, publicity, and transparency of justice, as well as significantly to speed up and simplify the operation of courts. Digitalization processes are closely related to the platformatization of justice, which should be understood as creating such Internet resources that would allow all the main procedural actions legalized by the State.

7. Risks of Platformization for Data Protection

According to the research, the development of digital markets in various countries shows a trend towards platformatization. Digital platforms can accumulate a large amount of information from their users. So, the owners of digital platforms, the state and business entities, receive a vast array of various data, both systematized and unsystematic. These data acquire value and cost in the economy only after some processing carried out by online platforms, turning them into a top-rated product on the market – big data.

Big data includes a variety of information, including personal or other private data of citizens. They are essential for the emergence and expansion of data-based businesses, as well as for improving the rendering of public services. Simultaneously, the use of big data should not infringe on citizens' rights to data protection, as well as other rights related to privacy.

The most significant concern is not so much about the risk of data leakage but the State's attempt to control citizens' conduct and actions. China has clearly demonstrated the possible consequences of this approach. China has launched and is currently implementing a program to build a social credit system (hereinafter referred to as the Program), which provides mass collection and processing of Big user data and Internet traffic of 1.3 billion citizens of the PRC by major Chinese companies.

The social credit system (社会，信用，体系, *shehui xinyong tixi*) is an ambitious project based on information technology. Through it, the State seeks to create a Central depository of data on individuals and legal entities that can be used to monitor, evaluate, and modify their actions through motivation for punishment and remuneration. Thus, both personal and other sensitive data of citizens and organizations are processed and analyzed.

According to official statements, the Program aims to create a social support system, improve the social system, and strengthen and update the social management system.[57] The gist of it is that every Chinese citizen will have a rating, determined by his daily actions, how he pays taxes and utilities, what content he browses, how much time is spent on online games, which goods he buys, whether he has committed any

[57] 国务院关于印发社会信用体系建设 规划纲要（2014—2020年）的通知 [Notice of the State Council on Issuing the Planning Outline for the Construction of the Social Credit System (2014–2020)] (May 3, 2021), available at http://www.gov.cn/zhengce/content/2014-06/27/content_8913.htm.

offenses, who are his friends, etc. This rating will affect the citizens' social status: potential employment, education, credit, visiting certain public places, and other rights.

The negative consequences of insufficient credit rating can be a ban on working in state institutions; the refusal of social security, particularly thorough customs inspections; a ban on holding leading offices in the food and pharmaceutical industry; the refusal of air tickets and night trains of places in luxury hotels and restaurants; a ban on teaching children in private schools.

However, the social credit system is supported by the majority of Chinese citizens. Independent research by western scientists evidences it.[58]

In Russia, the negative consequences of digitalization were fully realized by residents of Moscow during the pandemic. A mobile application "Social Monitoring" was launched in Moscow, installed on the smartphones of people who sought medical help with signs of catarrhal diseases. Using this app, the authorities tracked sick people's movement and fined those who violated the quarantine. However, many fines were issued automatically and unreasonably, for example, when a person went out on their balcony. Moreover, there were leaks of personal data of citizens. Passport data of individuals fined for violating self-isolation rules were publicly available.

It should be noted that the trend of digitalization in recent years in Russia has been the aim of the State to combine information about citizens within a single digital platform.

The draft law No. 747513-7 "On Amendments to Certain Legislative Acts (in Terms of Clarifying Identification and Authentication Procedures)," caused an extensive discussion in the society. This draft, as indicated in its memorandum, introduces a new legal institution "digital profile." The digital profile is considered to mean

> a set of information about citizens and legal entities contained in the information systems of state bodies, local self-government bodies and organizations that exercise certain public powers following Federal laws, as well as in the unified identification and authentication system.[59]

According to the draft law, information about citizens and legal entities stored in the digital profile infrastructure is provided to it and updated automatically by state bodies and organizations that exercise certain public powers.

This bill has been criticized by both the public and Federal authorities. In particular, the Federal security service pointed out the risks of data leakage, which creates additional threats for law enforcement officials.

---

58 Genia Kostka, *China's Social Credit Systems and Public Opinion: Explaining High Levels of Approval*, 21(7) New Media Soc. 1565 (2019).

59 Законопроект № 747513-7 «О внесении изменений в отдельные законодательные акты (в части уточнения процедур идентификации и аутентификации)» [Draft Law No. 747513-7 "On Amendments to Certain Legislative Acts (in Terms of Clarifying Identification and Authentication Procedures)"] (May 3, 2021), available at https://sozd.duma.gov.ru/bill/747513-7.

However, in Russia, the Federal Law of 8 June 2020 No. 168-FZ "On the Unified Federal Information Register Containing Information About the Population of the Russian Federation"[60] (hereinafter – the EFIR Law) was adopted. It provides for the collection, processing, storage, receipt, use, and protection of information about citizens of the Russian Federation, foreign citizens, and stateless persons. The operator of the information system is the Federal tax service, which forms and maintains this register.

In EFIR, basic and additional information about an individual is contained. The basic one includes last name, first name, patronymic (if available), date and place of birth and death, gender, details of the civil status act of birth and death, pension insurance number, tax identification number, etc., and an additional one-marital status, family ties, etc. According to Article 4 of the EFIR Law, data on population are used in order to: improve the system of public services; implementation of public policies; ensure the relevance and reliability of information resources of public authorities; statistics; notarial acts etc.

Thus, in Russia, unlike in China, the State does not use the capabilities of digital platforms of large technology companies to collect population data but creates a unique platform for this purpose. This approach significantly increases the threat of unauthorized access to data.

Conclusion

As the research has shown, platform solutions find their application both in the economy and public government. In this regard, it is concluded that legal regulation should disclose the patterns of functioning of digital platforms, taking into account their features, depending on the scope of application.

According to the authors, the concentration of market power in digital platforms threatens the competitive environment in digital markets. Therefore, it is essential to establish legal criteria for determining the relationship between digital platforms' market power and their possible anti-competitive behavior. Antitrust regulation also covers issues of consumer protection of digital platforms.

At the same time, states seek to be able to manage society through digital platforms. Moreover, such management is carried out not by a direct delegation of public functions of the State, but by establishing rules that control digital platforms that accumulate many business activities and private transactions to perform specific actions in the State's interests. For example, each platform attempts to resolve disputes in the shortest possible time using technologies and algorithmic solutions, which, to a certain extent, unloads the judicial system.

---

[60] Федеральный закон от 8 июня 2020 г. № 168-ФЗ «О едином федеральном информационном регистре, содержащем сведения о населении Российской Федерации» // Собрание законодательства РФ. 2020. № 24. Ст. 3742 [Federal Law No. 168-FZ of 8 June 2020. On the Unified Federal Information Register Containing Information About the Population of the Russian Federation, Legislation Bulletin of the Russian Federation, 2020, No. 24, Art. 3742].

Platform solutions are also used by the State to perform its functions. There are several most relevant areas of implementing digital technologies in public government: the provision of public services, the arrangement of the electoral process, and online justice.

The coronavirus pandemic has given a significant new drive to the development of online justice. Most European countries had been forced to authorize video conferencing to conduct hearings during the lockdown expressly. In this regard, special attention should be paid to China's experience in regulating online courts' activities created directly to consider disputes arising in the Internet environment. In the article, the platformatization of justice is considered to create such Internet resources that would allow us to carry out all the main procedural actions legalized by the State.

The main risk of platformization is the accumulation by digital platforms of a large amount of information about their users. This information is essential for the emergence and expansion of data-based businesses and for improving the rendering of public services. At the same time, the use of big data makes a threat of infringement on citizens' rights to data protection and other rights related to privacy.

Acknowledgements

Supported by Russian Foundation for Basic Research project No. 18-29-16223; project No. 18-29-16145.

References

Зарубина М.Н., Павлов А.А. О процессуальных реалиях и потенциальных возможностях использования электронных доказательств в цивилистическом процессе // Вестник гражданского процесса. 2019. Т. 9. № 1. С. 205–222 [Zarubina M.N. & Pavlov A.A. *On Procedural Realities and Potential Possibilities of the Use of Electronic Evidence in Civil Procedure*, 9(1) Herald of Civil Procedure 205 (2019)]. https://doi.org/10.24031/2226-0781-2019-9-1-205-222

Busch C. et al. *The Rise of the Platform Economy: A New Challenge for EU Consumer Law?*, 5(1) J. Eur. Consum. Mkt. L. 3 (2016).

Cao Y. *Regulating Digital Platforms in China: Current Practice and Future Developments*, 11(3-4) J. Eur. Comp. L. Pract. 173 (2020). https://doi.org/10.1093/jeclap/lpaa001

Colangelo G. & Maggiolino M. *Data Protection in Attention Markets: Protecting Privacy Through Competition*, 8(6) J. Eur. Comp. L. Pract. 363 (2017). https://doi.org/10.1093/jeclap/lpx037

Colangelo M. & Zeno-Zencovich V. *La intermediazione on-line e la disciplina della concorrenza: i servizi di viaggio, soggiorno e svago*, 1 Diritto dell'informazione e dell'informatica 43 (2015). https://doi.org/10.2139/ssrn.2629788

De Franceschi A. *The Adequacy of Italian Law for the Platform Economy*, 5(1) J. Eur. Consum. Mkt. L. 56 (2016).

Gillespie T. *The Politics of 'Platforms,'* 12(3) New Media Soc. 347 (2010). https://doi.org/10.1177/1461444809342738

Kostka G. *China's Social Credit Systems and Public Opinion: Explaining High Levels of Approval*, 21(7) New Media Soc. 1565 (2019). https://doi.org/10.1177/1461444819826402

Liu Y. *Consumer Protection in Mobile Payments in China: A Critical Analysis of Alipay's Service Agreement*, 31(5) Comput. L. Secur. Rev. 679 (2015). https://doi.org/10.1016/j.clsr.2015.05.009

Mezzanotte F. *Regulation of Business-Clients Relationships Through 'Organisational Law,'* 13(2) Eur. Rev. Contract L. 123 (2017). https://doi.org/10.1515/ercl-2017-0006

Obergefell E.I. & Thamer A. *(Non-)Regulation of Online Platforms and Internet Intermediaries – The Facts: Context and Overview of the State of Play*, 12(5) J. Intellect. Prop. L. Pract. 435 (2017). https://doi.org/10.1093/jiplp/jpx042

Plantin J.C. & Seta G. de. *WeChat as Infrastructure: The Techno-Nationalist Shaping of Chinese Digital Platforms*, 12(3) Chin. J. Commun. 257 (2019). https://doi.org/10.1080/17544750.2019.1572633

Sannikova L.V. & Kharitonova Y.S. *The Trust and the Digitalization of Society*, Proceedings of the 2nd International Conference on Education Science and Social Development (ESSD 2019). https://doi.org/10.2991/essd-19.2019.111

Sénéchal J. *The Diversity of the Services Provided by Online Platforms and the Specificity of the Counter-Performance of These Services – A Double Challenge for European and National Contract Law*, 5(1) J. Eur. Consum. Mkt. L. 39 (2016).

Susskind R. *Online Courts and the Future of Justice* (2019). https://doi.org/10.1093/oso/9780198838364.001.0001

Xu S. & Hong-min C. *Externality of Network in Market Competition: Theory and Practice*, 6 Soft Science 65 (2003).

徐炎， 网络效应与即时通讯市场支配地位的认定 [Yan X. *Identification of Network Effect and the Dominant Market Position of Instant Messaging Industry*], 12 知识产权 [Intellectual Property] 22 (2014).

Information about the authors

Yulia Kharitonova (Moscow, Russia) – Professor, Law Faculty, Lomonosov Moscow State University (1, Bldg. 13–14 Leninskie Gory, GSP-1, Moscow, 119991, Russia; e-mail: sovet2009@rambler.ru).

Larisa Sannikova (Moscow, Russia) – Head of Centre for Legal Research of Digital Technologies, State Academic University for the Humanities (26 Maronovskii per., Moscow, 119049, Russia; e-mail: 7718609@mail.ru).