

# Abuse of Procedural Rights in the Context of Digital Transformation of Justice (the Case of the Russian Federation)



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## ABSTRACT

Recently, Russian state courts have actively turned to the construction of abuse of rights, referring to the legislative requirement for the exercise of procedural rights in good faith. The purpose of this article is to test the hypothesis that the concept of e-justice, by significantly expanding the range of procedural opportunities of the parties to a case, can act as a catalyst for the emergence of new mechanisms of abuse of process, including contributing to the modification of the classical forms of procedural misconduct. In this work, a comprehensive general theoretical and practical study of the impact of digitalization on the abuse of procedural rights was carried out. The study used several methods of scientific research: legalistic, technical, dialectical, logical, systemic-legal, comparative law, legal interpretation method. In the course of the analysis, the need for the judiciary system to expand the forms of electronic interaction between parties to a case and the court, as well as courts with each other, was confirmed. The author has established a cause and effect relationship that mediates the emergence of new mechanisms of procedural abuse due to the introduction of new digital tools in the civil process, and also structured the main directions of the digital development of the Russian civil process. In general, the analysis showed that digital technologies have great potential, opening access to justice to an increasing number of interested and in need of people. The digitalization process cannot be estimated only as a source for new procedural risks and abuses. Informatization also serves as a tool for preventing procedural abuses through audio and video recording of court sessions, which does not make it “pure evil”.

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# 1 INTRODUCTION

The digital transformation of court procedure is a natural phenomenon that best meets the new challenges of the time. The digital transition of the judiciary system was emphasized long before the events associated with the coronavirus infection. At the same time, the epidemiological risks caused by COVID-19 only emphasized the importance of the already begun digital transformation of the civil process, setting before the legislators and law enforcers the urgent tasks of adapting Russian civil and arbitration court procedures to the restrictions caused by quarantine measures.

Despite the fact that the system of arbitral courts of the Russian Federation was already characterized by a high informatization level amid the pandemic, and the elements of e-justice in this system can be considered as an accomplished fact, the beginning of the pandemic showed “legal uncertainty and the unpreparedness of the Russian legal system for fundamental digital changes” (Chekmareva, 2021).

The restrictions imposed by the courts on receiving incoming correspondence, as well as on the presence of the parties with more than one representative, and the shortcomings of the videoconferencing, put in the thrall of the technical equipment of a concrete court – all this came upon law enforcers and parties to a case who have the traditional wisdom of the judicature exclusively in the courthouse. In this regard, there is a new conceptual framework: “digital procedural rights”, “digital procedural equality”. In addition, “the definition of information security as a legal category is being formulated” (Tulikov, 2017, p. 8).

It can be noted that recently the Russian state courts have actively turned to the construction of abuse of right, referring to the legislative requirement for the exercise of procedural rights in good faith. By significantly expanding the range of procedural opportunities of the parties to a case, the concept of e-justice will be able to act as a catalyst for the emergence of new mechanisms of procedural abuse, including contributing to the modification of the classical forms of unconscientious procedural behavior.

Being largely an evaluative category, the concept of conscientiousness has not received a meaningful fixing neither in the substantive nor in the procedural law. However, this does not diminish its significance, especially in the context of a new, “digital” reality. Evaluative categories can be used to make up for the missing or underperforming regulation of social relations. They can also be used to evaluate the actions of participants in legal relations.

It should be noted that not so much attention was paid to the peculiarities of abuse of the right in the context of the procedural law of the Russian Federation. Among the main works in the field of the Russian civil process, one can single out only the dissertations of Ya. V. Grel, A. I. Prikhodko, A. V. Yudin and M. A. Bolovnev. Regarding e-justice issues, the work of S.V. Vasilkova “Electronic justice in the civil process” (2018) can be distinguished. It should be noted that among the rather large amount of literature on the topic of “abuse of the right”, the features of “procedural unconscionability” were not given as much attention as, for example, abuses in civil law.

In the foreign scientific community, the issues of procedural (rather than substantive) abuses were also given less attention. Among the main works that deals with the procedural unfair behavior in the “digital” context are the following works: “Transformation of Civil Justice” (Uzelac & Hendrik van Rhee, 2018), “eAccess to Justice” (Benykhlef et al., 2016, p. 8), and “Online Courts and the Future of Justice”

(Susskind, 2019, p. 145). At the same time, all the works listed in this paragraph deal with general issues of digitalization of the **process:obtaining** electronic access to justice. Only a few phrases and sentences allow us to conclude that this digitalization process may be associated with the emergence of new types of procedural abuse. Thus, the scientific task of designating certain types and forms of procedural unfair behavior remains necessary and relevant.

Based on the above, at the moment there is a clear lack of updated monographic and at the same time interdisciplinary works. There is a need to update the existing array of information with the involvement of sociological, economic, statistical data [that allow studying the abuses of process in all their diversity, in particular due to the emergence of new mechanisms and the field for new practices of abuse in the era of e-justice] and the development of information technologies, which makes this topic of particular relevance.

## 2 MATERIALS AND METHODS

The purpose of this article is to determine how the development of electronic technologies in Russian justice in civil cases can affect the phenomenon of abuse of procedural rights (from the perspective of a discouraging / stimulating effect) and how these abuses can be minimized.

Research tasks:

1. The place and role of digital technologies in the civil process;
2. The degree of influence of the development of e-justice on the procedural rights of parties to a case and their implementation;
3. The main directions of the digital development of the Russian civil process;
4. The range of possible legal malpractice carried out when using the videoconferencing system;
5. The types of abuse of procedural rights in the context of the implementing e-document management;
6. Analysis of measures to minimize procedural abuses, as well as counter them in the digital space.

The author of this article used the technical method- the specific property of which is the distraction from some essential aspects of law related to the material and class conditionality of the legal system. In the context of the analysis of procedural abuses, logic, language and other abstract aspects came to the force expressing the structural regularities of law. In this regard, special complex legal and technical means were used. This made it possible to apply the methods of various non-legal sciences in the study, in particular linguistics and semantics.

A single role in the study was assigned to system-legal and rather-legal methods, making it possible to qualitatively compare the current legal regulation in the context of civil and arbitration proceedings, to determine the place of procedural abuses in relation to the procedural status of the parties involved in a case.

The empirical basis of the study includes the court practice of the Supreme Court of the Russian Federation, the Supreme Court of Arbitration of the Russian Federation, arbitration courts, as well as general jurisdiction courts.

The hypothesis of the study is that the introduction of specific technological and digital tools in civil proceedings could qualitatively improve access to justice. However, such a digital transition carries, among other things, significant legal risks associated with the emergence of new mechanisms for the abuse of procedural rights.

As previously mentioned, for obvious reasons, the full impact of digitalization on the principle of procedural good faith has not been thoroughly explored. It is pertinent to note that “under the influence of digitalization, the methods of resolving disputes and their nature have become significantly more complicated.” (Rusakova, 2021, p. 305). Moreover, the digitalization of legal proceedings is a natural progression in the advancement of justice. Therefore, a return to “analogue” justice as technological advances will become less feasible and necessary.

## 2.1 HISTORICAL RETROSPECTIVE

Thoughts that information technology can act as a source of regulatory impact on social relations were expressed in the last century. For example, J. Reidenberg suggested using the concept of *lex informatica* (by analogy with *lex mercatoria*) as a description of a set of technologies that can replace legislated rules of conduct (Reidenberg, 1998, p. 553).

In the search for the “Holy Grail of access to justice” (Uzelac & Hendrik van Rhee, 2018, p. 49), the implementation of information technology from the perspective of practitioners is perceived, first of all, as a tool to reduce significant time and labor costs for the implementation of multiple repetitive procedures that are typical for various stages of legal proceedings. It is also an additional way to make justice more accessible for those participants who are in remote areas, belong to a low-mobility group or who are financially squeezed that hinders the execution of certain procedural actions. According to a 2019 World Justice Project report, about 1.5 billion people face barriers to their day-to-day challenges of delivering justice (World Justice Project, n.d.).

At the same time, in the context of the digital transition in the procedural and legal aspect, researchers note the need to distinguish between the concepts of “e-justice” or “cyberjustice” (Benyekhlef et al., 2016) and “informatization of the judicial system”, which have not yet received their final legislative consolidation in the Russian legal system. The most formally definition of “e-justice” can be found in the Concept for the Development and Informatization of Russian Courts until 2020. According to the latter-justice is understood as “the method and form of the implementation of procedural actions prescribed by law, based on the use of information technologies in the activities of courts, including interaction of courts, individuals and legal entities in electronic (digital) form”. For the purposes of further presentation, we use this definition as a key standard for the definition of e-justice.

It should be noted that several scientists express an extremely skeptical attitude towards the concept of “e-justice”; it means the effectuation of justice exclusively by artificial intelligence, but not by a person (Reshetnyak & Smagina, 2017, p. 19), which is not entirely feasible in the short term. Therefore, according to A. T. Bonner, e-justice is just a new-fashioned term, and not a time-bound reality (Bonner, 2018, p. 23).

As for the concept of “informatization of the judicial system”, it implies the technical equipment of the courts with the required computer technology and special software. Thus, the informatization of courts can be carried out without the transition to

e-justice, however, e-justice is unthinkable without the proper level of informatization of the judicial system.

In turn, the digitalization phenomenon, according to R. Susskind, is divided into two more areas: (a) optimization (automation) of processes and (b) transformation of procedures (Susskind, 2019). If it is possible to designate the transfer of already existing procedural and legal opportunities to the “digital rails” as an optimization, designating the practice of electronic submission of documents as its characteristic manifestations, online interaction between parties involved in a case and the court, etc., then transformation is understood as qualitatively new changes in procedural legislation related to the introduction of previously unused procedures developed and implemented solely under the influence of the digital transition (for example, appear by video link – article 153.2 of the Arbitration Procedure Code of the Russian Federation, article 155.2 of the Civil Procedure Code of the Russian Federation). This division is due to the fact that some scientists understand the digitalization of law as any use of digital technologies (the emergence of information systems), while others understand only qualitative changes in law (for example, smart contracts).

### 3. RESULTS

#### 3.1 RUSSIAN EXPERIENCE OF DIGITALIZATION OF JUSTICE

It is worth noting that a significant outbreak in the active use by parties to proceedings of their “procedural-digital” rights in Russia occurred precisely in 2020, which was marked by the first waves of the COVID-19 pandemic and the beginning of an active period of online court sessions. So, if as of September 2019, 1 million 867 thousand electronic applications were submitted to the federal courts of general jurisdiction, then as of April 2020, there were already 2.5 million such applications (Interview of the A. V. Gusev, 2020).

There was a trend in which the classical rights of parties to proceedings, filled with procedural and legal content, add a digital element to themselves, including the Internet access right, the right to protect personal data, the right to be forgotten or otherwise called the right to erasure (Zorkin, 2018). Even though according to paragraph 1 of Art. 141.1 of the Civil Procedure Code of the Russian Federation, only liability and other rights understood as objects of civil rights are recognized as digital rights in the legal sense, it seems that this definition is erroneous. As E. V. Talapina points out, “all over the world ‘digital rights’ are understood as specific human rights in the field of precisely public law” (Talapina, 2019, p. 134). This allows us to talk about the formation of special “digital procedural rights” of the parties in the civil process.

At the same time, it is worth noting an interesting trend in the Russian civil process – with the appearance and development of digital rights in the era of strict lockdown measures- the ordinary procedural rights of trial participants were significantly limited. Thus, during the first wave of the COVID-19 pandemic, Russian courts, based on the Resolutions of the Presidium of the Supreme Court of the Russian Federation, the Presidium of the Council of Judges of the Russian Federation dated March 18, 2020 No. 808 and April 8, 2020 No. 821, the following should have been done:

- 1) to temporarily suspend the personal reception of citizens in the court-houses;
- 2) to consider only undelayable cases and materials, as well as cases under the summary and simplified procedure;

- 3) to consider cases, the parties of which have made the motions for the trial in absentia (if such participation is not mandatory);
- 4) to restrict access to courts by persons who are not parties to a case.

And even the gradual resumption of the work of the courts did not relieve the persons participating in the case of the need to comply with the restrictions that erode the principle of transparency, openness and adversarialism as well as call in question the opportunity of participating in judicial sittings by a large part of the trial participants. For example, to admit representatives to the courts of the Amur Region and the Zabaykalsky Krai, a rule was established on the need, after arriving in the region from other constituent entities of the Russian Federation, to ensure stay-at-home restrictions at the temporary residence within 14 calendar days from the date of arrival. According to information from the official website of the Arbitration Court of the Zabaykalsky Krai, the bailiff was vested right in not permitting representatives of the parties who arrived in the region shortly before the date of the court session ([Official website of the Arbitration Court of the Zabaykalsky Krai, n.d.](#)).

Furthermore, among the additional restrictions on the procedural rights of parties to a case the followings can be identified:

- time-bound for the admission of parties to a case and their representatives to the courts (for example, not earlier than 10 minutes before the start of the court session);
- time-bound for the parties to a case in the court-house, as well as the determination of the number of representatives allowed to participate in court sessions (as a rule, no more than one).

Of course, such a format for the activity of civil law courts was not convenient for all trial participants, since they suspended alternative ways of judicial recourse. That significantly limited the exercise of access to courts, and also significantly reduced the contentiousness level in each individual under consideration. As D. Kh. Valeev and A. G. Nuriev point out, the activities of Russian state courts during the pandemic demonstrated that “the constitutional right to judicial protection has become more dependent on technical means” ([Valeev & Nuriev, 2019](#)). For this reason, it is extremely important to realize that the introduction of information technologies into the civil process should provide for “a balanced and cautious approach, since along with the benefits, such technologies may also carry risks” ([Branovitsky, 2018](#)).

In addition, as I. K. Lyaskovskiy notes, “at the trials in online format, certain elements of the general procedural form, originally intended only for presence of trial participants in the courtroom, disappeared or changed” ([Lyaskovskiy, 2020](#)). Thus, it seemed impossible to carry out certain procedural actions requiring joint signing of documents by both parties; this also significantly affected the procedural opportunities provided to the trial participants.

For example, during the web conference or video conferencing, it is difficult for all parties to stand up at the entrance of the court to the courtroom, as well as to give explanations to the court while standing (Article 154 of the Arbitration Procedure Code of the Russian Federation, Article 158 of the Civil Procedure Code of the Russian Federation). It is of interest if a fine for contempt of a court can be imposed on a person who refuses to stand in front of his laptop while at home, but while participating in a court session via an online meeting on the Zoom platform.

### 3.2 ACTUAL DIRECTIONS OF DIGITAL DEVELOPMENT OF THE RUSSIAN CIVIL PROCESS

Based on the study, in order to accumulate all currently observed and predicted future directions of the digital development of the Russian civil process, the following fundamental elements of e-justice were identified:

- (a) reflecting the openness of justice;
- (b) aimed at the interaction of the court and the parties in the case;
- (c) aimed at ensuring the activities of the court and interdepartmental interaction (Table 1).

DIRECTIONS OF DIGITAL DEVELOPMENT	CHARACTERISTIC MANIFESTATIONS
Reflecting the openness of justice	Placement of information about the court, the progress of case and extra-procedural appeals on the Internet (with a gradation of the level of access for participants in proceedings and court employees)
	Free and unlimited access to court practice materials
	Internet broadcasts from the courtroom
	Creation of an unified end-to-end information service for arbitration courts and general jurisdiction courts
Aimed at the interaction of the court and the parties in the case	Submission of documents in electronic form, including interactive forms
	Video conferencing and meetings through web conferencing (online meetings), simplification of regulations for them
	Implementation of the “Electronic File” service – information on the progress of the case, the possibility of remote access
	Audio and video protocolling with automatic transcription and transfer of the minutes of a judgment into text (voice recognition technologies)
	Compiling judicial acts in the form of electronic documents
	Development of predictive justice, automation and robotization of the consideration of the case (especially in the order of summary and writ proceedings), the introduction of artificial intelligence in the analysis of case materials
	Implementation of a special service based on artificial intelligence to predict the timing and results of cases
	The practice of an asynchronous or hybrid dispute escalation, presenting legal propositions in the format of video recordings or presentations
	Electronic judicial summons
	The practice of implementing an electronic complaint procedure and conciliations
Use of digital evidence	

**Table 1** Directions of digital development of the Russian civil process.

Source: Compiled by author.

<b>DIRECTIONS OF DIGITAL DEVELOPMENT</b>	<b>CHARACTERISTIC MANIFESTATIONS</b>
Aimed at ensuring the activities of the court and interdepartmental interaction	Automatic distribution of cases
	Electronic letters of request
	Automation of the functions of the court administration (on the mailing of writ obligatory, materials for conducting a forensic examination)
	Implementation of the digital and engineering infrastructure of the courts
	Ensuring the protection of information, including personal data
	Creation of an electronic database of warrants of attorney and diplomas/certificates of legal representatives
	Integration of justice information systems with other state information systems

At the moment, some of the indicated methods and forms of informatization in the Russian federal general jurisdiction courts are provided through the *Justice State Information System* (“Pravosudie” in Russian), in the Moscow courts of general jurisdiction – through a separate Single Information Portal of the Courts of General Jurisdiction of Moscow. The activities of arbitration courts on the digital plane are supported by the well-established information service “MyArbiter” and the associated Arbitration Cases Database. Currently, the Arbitration Cases Database includes data on more than 99% of all cases received for consideration and considered by arbitration courts. This share significantly exceeds the share of published cases in the *Justice State Information System* of courts of general jurisdiction.

In May 2021, V. Mamotov, the head of the Council of Judges of the Russian Federation, made a statement about the unification of the systems of the *Justice State Information System* and the Arbitration Cases Database into a single “super service” based on the Portal of Government Services ([The official site of the super service “Justice Online”, n.d.](#)). Its launch is expected in 2024 under the working title “Justice Online”. According to information from the “super service” website, by the beginning of its launch, biometric authentication of the participants in the process will be implemented. Also, all significant judicial summons will begin to arrive to the parties to a case in their personal account on the Portal of Government Services. It is already partially implemented in practice, for example, in the context of a notice of initiation of enforcement proceedings in personam.

Meanwhile, social surveys of judges and court staff have shown that even the most basic problems of informatization and digital transformation exist in their professional activities today. Thus, at the end of 2019 – beginning of 2020, with the support of the Council of Judges of the Saratov Region, a survey was conducted among the judges of the region. As a result, the following problems were identified in the context of technical equipment and the transition to the e-justice model: lack of Internet connection (in mainly among the peace justices), lack of necessary computer equipment for videoconferencing, the coexistence of two competing document management systems (paper and electronic), etc. ([Collective monograph of the Russian State University of Justice, 2020, p. 96.](#))



In addition, in these courts (as in most others) there is an untimely update of information databases. This significantly affects the calculation of the period for appeal of a particular judicial act, reducing the time for preparing counter-positions (revocation or counter-arguments to opponent's procedural documents).

## 4. DISCUSSION

### 4.1 EXAMPLES OF DIGITAL PROCEDURAL ABUSES

It seems that the digital transition of the civil process, as actively observed in the last 2–3 years, can give rise to new types of abuse of the procedural right of the persons involved in the case. This application of the results of technological progress will contribute to an increase in cases of procedural abuse (Table 2).

Similar to the search for a definition of the concept of “e-justice”, such a frequent phenomenon as the abuse of procedural law also has no legal definition. Combining all the signs of unfair procedural behavior noted in science, we will introduce the following definition of abuse of procedural law: designedly unfair behavior (cumulative action) of a person involved in a case and (or) his representative, expressed in exceeding the limits of the exercise of a subjective right, not associated with the intention to achieve the goals and objectives of arbitration proceedings; it is aimed at obtaining benefits and implicating wrongdoing to other persons and (or) justice as consequences.

As S. V. Vasilkova notes, a typical example of the abuse of law in e-justice is the abuse of online court sessions (Vasilkova, 2018, p. 9). One of the latest manifestations of unfair procedural behavior, in this context, may be the abuse of the right to choose one or another software environment for online court sessions, since the factor of ignorance of any of the persons involved in the case about the operating instruction of with specific software is not excluded (of those that are not so widely used in practice).

The most technically competent party to the trial, who filed a motion to hold a meeting via a web conference, can use this factor in bad faith. In this regard, A. V. Poteeva suggests that the court consider the “degree of mastery of information technologies by the party” (Poteeva, 2021) when choosing a specific information platform. In our opinion, this problem is somewhat phony and can be overcome by launching a single web service with detailed instructions for its use before the start of each court session, as well as by holding regular test conferences for everyone. In addition, as practice shows, when court session is in an online format, some of the trial participants still appear directly in court room.

However, as the most popular form of procedural abuse in the context of remote judicial sittings, one can designate a systematic obstruction of the consideration of the case by a trial participant by ambiguities of individual judicial procedures. Thus, a party may willfully avoid participating in an online trial, simulate technical failures during the remote connection, use unreliable and counterfeited evidence (by showing it to the camera only partially evidence or using poor image quality for its own benefit).

Thus, I. K. Lyaskovskiy investigated the issue of how the presumption of reasons for default of appearance through a web conference correlates with the general rule established by procedural civil codes. In his opinion, if a person filing a motion for an online court session does not appear, the court should assume that such a person has objective obstacles to participating in an online meeting (Lyaskovskiy, 2020). The same approach is suggested to be used if there are technical failures

during an already-established connection with one of the persons participating in the case. It seems that this approach is erroneous. Since it will increasingly encourage unfair persons to commit procedural abuses, it contributes to drag the case as long as possible by filing multiple motions for online court session, followed by default in appearance or simulation of technical problems. By connecting to a web conference from their personal devices, the parties to the case must bear a greater procedural risk associated with technical problems than in the case of a meeting in praesentia or joining the meeting via videoconferencing. If technical difficulties are caused by the actions of the court itself, the court session is subject to adjournment (Zaitseva, 2020, p. 132). Thus, the person who filed a motion to hold an online meeting is obliged to bear the burden of ensuring, on his part, the technical capabilities of participating in it.

In addition, the legally established grounds for refusal to satisfy petition for trial through a web conference somewhat minimize the risks of procedural abuses in this part:

- 1) insufficient technical resources to participate in a court session using a web conference system;
- 2) the implementation of the proceedings in a closed judicial session (part 2 of article 155.2 of the Civil Procedure Code of the Russian Federation, part 2 of article 153.2 of the Arbitration Procedure Code of the Russian Federation), as well as the requirement established by part 4 of article 159 of the Arbitration Procedure Code of the Russian Federation for the timeliness of such motions (before the assignment of case for judicial examination).

Experience has proven that non-compliance with the condition of the timely filing of a petition remains the most popular reason for refusing to use videoconferencing systems. Now it is also true in relation to resolving motions for dispute resolution through web conferences. The main thing is that the norm provided for by Part 4 of Art. 159 of the Arbitration Procedure Code of the Russian Federation did not become a catalyst for abuse by the court itself. For this reason, it seems that the very fact of receipt of a motion after the rendering of ruling of a court session has been issued should not be an absolute reason for refusing to hold online trial if the court has sufficient technical resources.

According to the position in the legal doctrine, the court should also not forget about the opportunity of resorting to its own discretion in a situation where a citizen who is located in a constituent entity of the Russian Federation remote from the court participates in a dispute, and in a situation in which a large commercial organization with a whole network of branches and representative offices throughout the country (Shevchenko, 2020). In this case, the issue of resolving the petition should be decided differently.

Regarding the abuse in terms of providing unveracious, false or partially observable evidence on camera, the adduction of written evidence in the format of online trial is unacceptable. The Russian legislature has established a rule according to which, during a court session, through the use of a web conference system, all necessary applications, petitions and documents attached to them are submitted to the court separately, in electronic form (part 3 of article 155.2 of the Civil Procedure Code of the Russian Federation, part 3 article 153.2 of the Arbitration Procedure Code of the Russian Federation). The same applies to the issue related to ensuring the verification and protection of the personal data of participants in the process, in the context of

preventing possible abuse at the stage of user authentication, for example, in the possible substitution of a representative. To do this, even before the start of the meeting, the *vakil* must submit all the necessary documents through electronic services: 1) identity verification documents; 2) identity papers.

According to the authors of the analytical report on the digitalization of the civil process, all the risks existing in this context can be easily eliminated through standard authentication procedures through the Portal of Government Services, visual verification of documents, the use of encrypted and certified digital signature, as well as available cryptographic tools (Kashanin, Kozyreva & Kurnosova, 2020, p. 32).

According to the definition given by E. V. Lyubimova, electronic document management should be understood as the possibility of sending applications to the court in electronic form, presenting evidence and familiarizing with case materials in a remote format, receiving electronic notices, as well as publishing judicial acts in the form of electronic documents with placement in a special file of cases (Lyubimova, 2018).

As the first of the possible types of procedural bad faith in the field of electronic document management, one already widespread practice can single out – repugnant procedural behavior, for example, in the case of using an electronic system to submit multiple and unfounded applications and petitions with subsequent cancellation. Indeed, the subsumption of the actions of a party in the case as an unfair use of his procedural right in the digital environment is no longer only a potentially discussed phenomenon. Thus, in the proceedings of the Arbitration Court of St. Petersburg and the Leningrad Region, case No. A56-98398 / 2019 was considered, during which a legal entity repeatedly entered the motion for discontinuance (through the online service “MyArbiter”), followed by filing an application on the retraction of the previously entered motion for discontinuance (also through the online service “My rbiter”). It was interpreted as a repugnant procedural behavior with the application of the principle of procedural estoppel to it.

Unfortunately, even the arbitration courts of the Russian Federation do not register electronic documents in a timely manner, the status of current submitted documents is often not updated. Due to technical work, the MyArbiter service may suspend its work for as long as four days (for example, 1–4 February 2022). It seems that the analyzed case is not an example of true unfair procedural behavior, since the applicant was in good faith mistaken in the absence of the fact of registration of his applications. As we have already indicated earlier, the abuse of procedural law is an exclusively deliberate act. It appears that it is impossible to cause significant damage to justice or other persons involved in a case, even at the stage of filing of suit. For this reason, the actions of the Arbitration Court of St. Petersburg and the Leningrad Region to qualify the applicant’s behavior as unfair are unreasonable, contributing to abusive acts on the part of law enforcers, thereby restricting the rights and freedoms of the persons involved in a case.

As another interesting form of procedural digital abuse, a situation may arise in which a trial participant, who has taken advantage of the absence of a legally defined list of data storage devices, will present outdated storage devices (floppy disks, vinyl records, cassettes) to the court or experts for examination, which will significantly complicate the activity of court and suspend the case for a rather long period due to the lack of the relevant reading device. Making appropriate changes at the legislative level would help eliminate the problem raised.

In addition, there remains the risk of abuse in the context of verification at the stage of sending an application to the court through an electronic form. E. S. Druzhinin, in his scientific work, recalls that during the period when the owner of a personal account was recognized only under the registration in the MyArbiter system (without authentication on the Portal of Government Services), there were widespread situations when people unreasonably appealed to the court on behalf of unsuspecting true applicants, control the requirements filed by procedural opponents, filed other possible appeals for other participants up to the plea of waiver (Druzhinin, 2013, p. 35). The main guarantee of the reliability of user identification in this regard should be an enhanced qualified digital signature (Tereshchenko, 2013, p. 39).

Indeed, to minimize abuse during filing applications for injunctive relief, including the forms of electronic document, Russian law provides that a for injunctive relief, as well as a statement of claim containing a motion to secure a claim, which are submitted by filling out the form posted on the official website of the court on the internet. They must be signed with an enhanced qualified digital signature in the manner prescribed by the legislation of the Russian Federation.

However, in practice there are problems associated with the request of the court to duplicate the documents submitted even with an enhanced qualified digital signature and bring them to the court session in printed form. In this regard, the problem of unjustified duplication of electronic and paper workflow remains very acute. In any case, there is the resource potential, as in the case of online trials, and therefore the introduction of electronic document management; although it will contribute to the emergence of new ways for the abuse of procedural rights. It will also serve as a source of innovative technical tools to overcome them.

#### **4.2 BASIC BLOCKS OF DIGITAL ABUSES**

Special attention was paid to the study of two blocks of procedural abuses in the context of the digital transition – unfair behavior using videoconferencing systems, as well as using the implementation of the rules of electronic document management. The author described specific abusive actions of the persons involved in the case, developed means of minimizing them with a proposal for the use of individual coercive measures.

It was found that despite the existing obstacles to the implementation of a full digital transition, the Russian judiciary system still made a significant step in the introducing the practice of online court session. Thus, the era of COVID-19 provided the persons involved in a case with the opportunity to conduct sessions of the court as a web conference using personal means of communication, that is, without the need to visit the court-house (as is provided for connecting via a videoconferencing system, already existing in the Arbitration Procedure Code of the Russian Federation and the Civil Procedure Code of the Russian Federation at the time of the introduction of quarantine measures).

For the first time, the practice of online court session was launched by the Supreme Court of the Russian Federation, which began considering cases using the web conferencing system from April 21, 2020. Further, by a joint resolution of the Presidiums of the Supreme Court of the Russian Federation and the Council of Judges of the Russian Federation dated April 29, 2020 No. 822, An official recommendation was given on the use of such a format for considering cases at the national level. And

as of July 13, 2020, 90 arbitration courts were connected to the web conferencing system, 19,213 online court sessions were held. And the number of such online court session is steadily growing – in 4 months in 2022, 142.5 thousand court sessions were held using a web conference, which was facilitated by the changes in the procedural law adopted in December 2021, which “legalized” web conferences already at the legislative level (Speech by Vyacheslav Lebedev, 2022.).

TYPES OF ABUSE	SPECIFIC LEGAL MALPRACTICE	MINIMIZATION MEASURES, COUNTERMEASURES
Abuses using the online court session system	The choice of software for the harm-doing to the opposing party	Implementation of a unified service for all trials via web conferences Denial of right
	Footdragging of the case (failure simulation, hacking, default in appearance and ambages)	IT support Assignment of procedural risks to unfair persons Availability of grounds for refusal to satisfy petition for transfer to online court session Criterion of timeliness
	Use of unreliable and counterfeited evidence	Sending written materials separately, in electronic form (with a preliminary visual check by specialists) Denial of right
	Substitution of representative	User authentication
	Abuses with the implementation of electronic document management	Contradictory procedural behavior (declaration of multiple and (or) frivolous petitions with subsequent revocation)
Filing applications not on one's own behalf		Assignment of litigation costs (compensation for lost time) Usage of enhanced qualified digital signature Authentication
Presentation of storage medium that cannot be read		Setting of a legally defined list of storage medium Denial of right

**Table 2** Abuse of procedural rights and measures to minimize them in the context of digital transformation of the civil process.

Source: Compiled by author.

Due to the absence (at that time) of legislative regulation in the usage of the web conferencing system by courts and parties in a case, the First Cassation Court of General Jurisdiction, guided by the recommendations of the Supreme Court of the Russian Federation, decided to consider cases online on its own initiative, adding one

more feature – the composition proceedings should be in one room (directly in the courtroom), and all participants in the process should be in another room (in fact, in the basement of the same court).

During the study, it was found that at the moment this approach of the First Cassation Court is contrary to the current legislation. The amendments made at the end of 2021 to the texts of civil procedure codes (Article 155.1 of the Civil Procedure Code of the Russian Federation and Article 153.1 of the Arbitration Procedure Code of the Russian Federation) provide the possibility of considering a case in an online format only if the participants in the process submit a relevant petition. Thus, the transition to the consideration of the case through the system of web conferences cannot be carried out only at the court's initiative. In addition, the parties themselves determine where they will connect to the web conference.

It should be noted that if in the system of arbitration, court sessions in the format of web conferences are held using the already well-known Arbitration Cases Database, then in the context of civil justice carried out by courts of general jurisdiction, such a unified software is not yet available. However, it seems that, considering the recommendations developed by the Supreme Court of the Russian Federation and the Council of Judges of the Russian Federation, this circumstance should not act as an absolute obstacle to holding online court sessions in the system of courts of general jurisdiction. In order to do that, the court can use any software suitable for this purpose. For example, when considering cases in the first wave of the COVID-19 pandemic, the Supreme Court of the Russian Federation used its own autonomous web conferencing system, and the Nevyansk City Court of the Sverdlovsk Region preferred to consider the administrative violation cases via a WhatsApp video call ([Resolution of the Nevyansk City Court of the Sverdlovsk Region, 2020](#)).

It was found out that the transition to full electronic document management in the context of the civil process would significantly reduce the time costs associated with the consideration of the case, which increases the effectiveness of justice in civil cases. For example, the United Kingdom, since the introduction of electronic document management in 2015 (HM Courts & Tribunals Service Digital Case System), has significantly reduced the amount of paper used by courts (by 500 tons), and the time spent on processing a claim has been reduced from 15 working days to 10 minutes ([Kashanin, Kozyreva, & Kurnosova, 2020, p. 52](#)).

At the moment, all Russian civil procedure codes already provide for the opportunity of judicial recourse in electronic form (Article 35 of the Civil Procedure Code of the Russian Federation, Article 41 of the Arbitration Procedure Code of the Russian Federation). Since 2011, this opportunity has become available in arbitration courts, and since 2017, also in the system of general jurisdiction courts. As for the introduction of electronic judicial summons, an active digital transition to notifications through the Portal of Government Services is expected, however, this reform remains not fully implemented, and therefore food delivery within the territory of the Russian Federation is still better notified than subpoena as a defendant.

#### **4.3 MEASURES OF NEGATIVE IMPACT ON PERSONS WHO HAVE ABUSED THEIR PROCEDURAL RIGHTS**

In addition to the classical measures of negative impact on persons abusing their procedural rights in the traditional aspect, the following ways of counteracting unfair procedural abuse in the digitalization context were identified.

Firstly, these are preventive measures related to ensuring information security and arrangement data processing algorithms and access to them, which can be fully implemented through the creation of special services consisting of experienced IT specialists assigned to each particular court (or even judge). The risk of hacker attacks, viruses, and other forms of attack on computer systems indicates the need to be vigilant. So, in March 2022, unknown persons posted texts that were offensive to Russian citizens on the main websites of the arbitration courts of the Russian Federation (RBC, 2022). Despite the fact that these messages were deleted, the information on the websites of all arbitration courts continued to be inaccessible for several hours. But what if a person who planned to arrange a DDoS attack on the Arbitration Cases Database on the last day of appealing a judicial act in a case had used a similar scheme? This case shows the shortage of competent specialists in the judicial system, reflecting all possible threats coming from third parties.

Also, preventive methods of influencing unfair trial participant included the adoption of measures related to strengthening the authentication system of persons petitioning in electronic form, including through additional verification through documents certification using an enhanced qualified digital signature (which is already used when filing application for injunctive relief). It is assumed that this system will operate automatically based on a unified identification and authentication system, as well as a unified biometric system.

Also in the practical environment, the problem of untimely updating of information systems of courts after amendments to legislative acts is widely discussed. For this reason, the *Justice State Information System* sometimes does not comply with procedural legislation. As a preventive measure, the regulation of specific time intervals for making updates in the information system of the court from the moment changes are made to the texts of procedural codes or updates to the Resolutions of the Plenums of Supreme Courts can act.

Other than that, it seems possible to use the traditional system of general and special delicts, using those procedural solutions for counteracting unfair procedural behavior that are already contained in the texts of procedural codes (Part 5 of Article 159, Part 2 of Article 111 of the Arbitration Procedure Code of the Russian Federation, Article 99 of the Civil Procedure Code of the Russian Federation). Thus, if the “offence of abuse” is directly codified in the relevant articles of the procedural codes, adverse consequences occur in accordance with the provisions of these norms. If the abuse does not come within the criteria set by special norms but is consistent with the general definition of “abuse of procedural right”, then the court applies the basic general consequence – the denial of recovery of a claim of the abuser in full or in part, a special case of which is procedural estoppel.

## 5. CONCLUSION

Based on the analysis, it was concluded that the large branching of the system of courts of general jurisdiction, as well as the initial “internal nature” of the *Justice State Information System* [the creation of which was intended only for intra-judicial use] at the moment do not allow us to state a high level of informatization of courts of general jurisdiction as compared to the same system of arbitration courts. Thus, Russian civil justice has yet to embed “the intensification of the use of best practices in the digitalization of arbitration courts by courts of general jurisdiction” (Kashanin,

Kozyreva & Kurnosova, 2020, p.10). It seems that the revealed gap between these electronic systems can be overcome if they are unified, including by assigning a consecutive number to each material on a civil case received by the courts. Thus, it will be easier to track the progress of cases in the system of courts of different jurisdictions, especially in the context of the deferred jurisdiction to another court.

All the problems of the Russian courts identified in the article are in the context of digitalization significantly complicating the procedural activities of the courts, and turning the process of administration of justice into a longer and more expensive one. The digitalization of judicial activity, by launching the mechanism of “deritualization of justice” (Yarkov, 2020, p. 4), could serve as one of the most effective ways to overcome these negative manifestations, which are already fully recognized by the Russian legislature.

As part of this work, a high potential for the use of online trial systems was identified. Therefore, it is advisable to use the relevant achievements of digitalization for the courts and parties to a case. Video conferencing and web conferencing act as an additional guarantee for the implementation of the principle of openness and oral nature of judicial proceedings. However, in some degree, they act as a catalyst for unfair procedural acts that can be eliminated through additional technical support and competent legal regulation.

Despite the apparent impossibility of identifying and scrutinizing all potential manifestations of unjust procedural conduct (any of the aforementioned rights can be realized by transcending the stipulated limitations of their implementation), the author avowed that the digital transition of justice could provide specific opportunities for those involved in the case to engage in unjust procedural conduct and how, and also suggested specific measures to minimize potential instances of procedural abuse.

The scientific novelty of the study lies in the fact that, for the first time, the latest mechanisms of abuse that arose during the digital transition of the civil process, actively observed in the last 2–3 years, were investigated.

Thus, the theoretical relevance of the study lies in the development of a new systematic view of the abuse of procedural rights. This can be used to further develop the doctrine of Russian (and foreign) civil procedural law. The practical relevance of the study lies in the fact that the provisions of the work can act as methodological and theoretical guidelines for improving the current procedural legislation both in Russia and abroad.

## COMPETING INTERESTS

The author has no competing interests to declare.

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