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# PHILOSOPHICAL FOUNDATIONS OF THE TRANSFORMATION OF THE JUDICIAL METHOD OF RIGHTS PROTECTION IN THE CONTEXT OF THE CREATION OF A UNIFIED INFORMATION SPACE OF THE EEU

Ekaterina P. RUSAKOVA <sup>1,\*</sup>  | Evgenia E. FROLOVA <sup>1</sup> 

<sup>1</sup> Peoples' Friendship University of Russia named after Patrice Lumumba (RUDN University), Moscow, Russian Federation

*\* Correspondence*

Ekaterina P. RUSAKOVA, 6, Miklukho-Maklaya st., Moscow, 117198, Russian Federation  
E-mail: rusakova-ep@rudn.ru

*Abstract:* The article is devoted to the study of the dispute resolution procedure by the EAEU Court in the context of creating a single information space of the member countries of this integration association. Within the framework of the theoretical and practical orientation of this study, special attention is paid to conceptual problems related to the description of key social and digital phenomena that arise in the process of implementing the digital agenda and its impact on the judicial method of protecting the rights and legitimate interests of citizens and business entities. The transition to digital or electronic justice will increase the efficiency of the EAEU Court and create the most attractive conditions for the parties to the dispute to protect their rights and legitimate interests. Digitalization provides for large-scale changes in the field of justice, the emergence of new means of proof, the introduction of an electronic form of cases, remote court sessions all this leads to a change in the fundamental principles of legal proceedings. The solution to this problem should begin with the creation of a comprehensive program of legislative changes to the judicial method of protecting rights related to their digital transformation within the EAEU.

*Keywords:* EAEU Court, judicial proceedings, electronic justice, digital agenda, integrated information system.

## Introduction

In the conditions of sanctions and unstable geopolitical situation in the world, their integration associations play a special role in the economic development of countries, one of which is the EAEU (Meshchanova & Frolova, 2021). One of the main areas of cooperation is the implementa-

tion of the “digital” agenda of the EAEU and the concept of cross-border information interaction of the EAEU, which should create all conditions for favorable business and effective economic cooperation of the participating countries (Inshakova et al., 2020). At the last international conference of the EAEU Court in November 2022, one of the main topics was touched upon,

namely: legal support of modern technologies within the EAEU, in the context of the development of the legal framework of the Union in the field of technical regulation. However, in June 2023, at a meeting of the Eurasian Intergovernmental Council, the Target Program for the Development of the Integrated Information System (AIS) of the Union until 2027 and the Terms of Reference for its development were approved. The AIS will become the foundation for the digital transformation of all cooperation processes in the EAEU.

The main objectives of the implementation of the IIS are to ensure the free movement of goods, services, capital and labor within the Union; open access to all IIS services; leveling the level of digital development of all participating countries; improving the competitiveness of economies; ensuring information security; development of the digital space of the EAEU.

The creation of a single digital platform and the integration of all services on it will ensure the most effective interaction in all areas of cooperation and solve a number of urgent tasks: providing qualitatively new functions and services in the process of information interaction; ensuring state control; conducting a coordinated information policy; increasing the number of participants in the integrated system. However, the main task is the formation and development of digital infrastructures and ecosystems.

The digital capabilities of the AIS will allow all the authorities of the participating countries to interact on the basis of a “single window”, which will greatly accelerate the process of creating a single information space, but most importantly, the business community and citizens of the participating countries will be able to receive the necessary interstate services. AIS will provide communication in such areas as customs, anti-monopoly, currency, financial, labor regulation and other areas.

However, such an important issue as ensuring the protection of the rights and legitimate interests of citizens and economic entities in the process of economic cooperation of the EAEU has not found proper consolidation within the framework of the creation of the AIS, which is a serious omission.

Integration of a single information space and a common AIS will allow for rapid, effective interaction of all participants in this process (Entin

et al., 2022, pp. 315-330). Therefore, in the process of creating an AIS, it is necessary to create a service that provides an opportunity to transfer the dispute to the competent authority for its resolution. Currently, this may be the Court of the EAEU.

## Methodology

The theoretical and methodological basis of the research is the dialectical-materialistic method of cognition of social processes and socio-legal phenomena during their digital transformation. In particular, the dialectical-materialistic method will allow us to study the rules of procedural law governing the procedure for resolving disputes in the EAEU Court, taking into account the creation of a single information space. The legal and sociological orientation of the work also determines the use of general scientific methods: generalization, abstraction, analysis, synthesis, induction, deduction, historical, logical, comparison, classification. Allowing to conduct a comprehensive legal study of the judicial method of protecting the rights and legitimate interests of citizens and business entities within the framework of the EAEU integration association.

The existing judicial method within the framework of the EAEU for protecting the rights and legitimate interests of citizens and business entities does not allow for an effective legal mechanism, since digital rights are rapidly evolving and constantly changing, and end-to-end digital technologies themselves are constantly “flowing” from one sphere of public life to another, and the proceedings in the EAEU Court remained the same as during its institution. Instead of actively integrating information and communication technology into the dispute resolution process and introducing the EAEU Court into the integrated information system (AIS), it remains outside these processes, which negatively affects its main function.

The main problem currently lies in the fact that in the current draft documents that form the basis of legal regulation of the development of digitalization, as well as legal protection, there is a largely artificial transfer of the existing regulatory models to fundamentally new relations, which leads to contradictions and the impossibility of implementing legal regulation of new pub-

lic relations, as well as to guarantee the safety and protection of rights and the legitimate interests of citizens and economic entities in the EAEU.

As other important and system-forming methodological principles on which the study is based, the following can be distinguished:

- 1) the principle of complementarity in understanding the specifics of the phenomena associated with the integration of digital technologies into the legal sphere;
- 2) the principle of “understanding interpretation”, this approach allowed us to consider the sphere of legal interaction of the judicial method of protecting rights and individual digital technologies;
- 3) the principle of integrity is a methodological principle of systemic and organic unity, interaction and interdependence all elements of the legal and digital life of society, comprehensive consideration of private and public interests in the context of ensuring the protection of the rights and legitimate interests of citizens and business entities.

## Main Study

Within the framework of the Eurasian Economic Union, a Court was established whose competence includes disputes, one party of which is a member state or an economic entity of a member state or a third state, arising on the implementation of the Treaty, international treaties within the Union and (or) decisions of the Union bodies. Participants in the judicial process can be both legal entities and individuals registered in accordance with the legislation of the Member State as an individual entrepreneur. However, the defendant is a member State of the Union or the Commission.

However, despite its status as a judicial body, the EAEU Court does not administer justice, but only ensures the unity of application by Member states and Union bodies of international treaties and decisions of Union bodies aimed at ensuring the harmonious development of the economy, trade, competition, as well as the development of a coordinated, unified and coordinated policy in economic sectors.

It is supposed to achieve the set goals by harmonizing and unifying the legislation of the

member states of this regional integration association, the decisions of the EAEU Court play an important role in this process.

The normative basis of functioning is the Treaty on the Eurasian Economic Union of 29.05.2014, the Statute of the Court of the Eurasian Economic Union (Annex No. 2 to the Treaty on the Eurasian Economic Union of May 29, 2014), the Decision of the Supreme Eurasian Economic Council of December 23, 2014 No. 1 “On approval of the Rules of the Court of the Eurasian Economic Union”.

The Regulations fix the procedure for applying to the Court to resolve a dispute, depending on the applicant: a member State, an economic entity, as well as for clarification by Member States or Union bodies, officials or employees.

Some authors highlight the supranational nature of the decisions of the EAEU Court, since the Court of the Eurasian Economic Union, as well as the Court of the Eurasian Economic Community, can accept complaints that have not passed the national judicial instances of the EAEU member states, which is one of the most important signs of supranationality in the jurisdiction of the EAEU Court (Khachatryan, 2019, pp. 51-57).

Analyzing the activities of the EAEU Court, it can be concluded that its practice demonstrates examples of judicial activism on issues such as the properties of the law of the integration association, the formation of general principles of law (Dyachenko, 2020, pp. 103-125).

The procedure for applying to the court is clearly regulated and divided into separate stages. The first stage is written, includes the submission of an application, the conclusion of a specialized group (if it was going to) and other documents to the Court. Moreover, it should be noted that the only mention of the electronic form of documents concerns the filing of an application to the Court. Thus, in the Logoservice case of 11.10. 2022, in paragraph 4 of the section “Conclusions of the Board of the Court”, it was established that, in accordance with paragraph 4 of Article 9 of the Rules of Court on the submission of an application and documents attached to it in 1 copy on paper, as well as on electronic media, implies identity (identity) materials submitted on paper and electronic media.

Then this application is registered and the formation of the composition of the court begins.

When applying to the Court to resolve a dispute, the applicant must attach the contested decision of the Commission; documents confirming compliance with the pre-trial procedure for resolving the dispute; documents confirming the requirements; documents confirming the sending of a copy of the application and documents to the defendant after that, the application is registered in the manner determined by the Chairman of the Court.

Then the composition of the court is formed by the Chairman of the Court, on the basis of the submitted application, the judge-rapporteur, the secretary of the court session is appointed and transferred to the appropriate composition of the Court. If the case is considered by a Grand Collegium, then the Chairman of the Court is the presiding Judge, and the Judge-Rapporteur is chosen from the Grand Collegium of the Court, if the case is considered by the Collegium of the Court, then the presiding judge is the speaker, who is selected from the Grand Collegium of the Court alternately by the judge's surname, starting with the first letter of the Russian alphabet. The secretary of the court session, as a rule, is an assistant to the judge-rapporteur.

Within 10 calendar days from the date of receipt of the application, the Court decides to accept the application for production, to leave the application without motion or to refuse to accept the application, which it notifies the parties by sending a resolution.

The next stage is the examination of the case materials by the Court, after which the persons participating in the case are notified of the time and place of the court session, and this information is posted on the official website of the court no later than 15 days before the date of the court hearing.

The Regulations provide for the possibility of protecting the defendant by sending objections to the Court and the plaintiff, if this is not done, the Court has the right to consider the case and make a decision based on the documents available in the case.

At the next stage – the preparation of the case for trial, the judge-rapporteur has the right to propose to the plaintiff to submit additional documents and materials, and to the defendant objections, if they were not submitted; to clarify the requirements and objections of the parties, as well as to resolve the need to involve experts,

specialists and other actions in the case. This stage ends at the suggestion of the judge-rapporteur with the appointment of the case to the court session, the time and place are determined, as well as the circle of persons to be summoned to the process, about which the persons participating in the case are notified.

After that, the second stage begins – oral, which includes the report of the judge-rapporteur, hearing of the participants in the process, as well as the announcement of documents, materials, rulings and Court decisions. According to the Regulations, the total period of consideration of the case (making an application or explanation) should not exceed 90 days from the date of receipt of the application to the court.

With regard to the general requirements of the proceedings, it is fixed that the use of technical means of recording is possible with the permission of the Court and taking into account the opinions of the parties, about which a corresponding entry is made in the minutes of the court session. This provision, in the light of the adoption of various digital agendas of the participating countries, does not correspond to the present realities, when information and communication means of communication are being introduced everywhere in order to increase the effectiveness of this method of dispute resolution.

The trial of the case is open and begins with the speech of the judge-rapporteur, which reflects all the actions taken to prepare the case for trial, as well as the content of the case materials.

Then the representatives of the parties speak, who give explanations to the Court on the evidence presented, and also answer the clarifying questions of the judges on the merits of the dispute, and they address the Court and the judges with the words: “High Court!” or “Your Honor!”. The sequence of speeches of specialists, experts and witnesses is determined by the Court.

The procedural actions of the participants in the trial are recorded in the minutes of the court session, audio and video recordings of the court session are also made, which is attached to the case materials. The protocol is signed by the presiding judge and the secretary of the court session, and written statements submitted by the parties in court debates are attached to it.

Experts, specialists, witnesses, interpreters may participate in the trial, who, before their entry into the process, give an obligation, which is



attached to the protocol. An interesting fact is that the party requesting their entry into the process must ensure the appearance of these persons.

After examining all the evidence presented in the case, the court proceeds to debate. The parties or their representatives participate in the debate, who justify the position. The right of the last remark remains with the defendant.

At any stage of the process, the parties have the right to conclude a settlement agreement, which they are obliged to notify the court about. The plaintiff still has one of the administrative rights in the process - it is to abandon the claims in full or in part, or withdraw his application.

In addition to the above-mentioned circumstances leading to the termination of the proceedings, the rules fix two more, these are: the consideration of the dispute does not fall within the competence of the Court; there is a Court decision that has entered into force in a case with the same parties on the same subject and on the same grounds.

However, according to statistics, from 2015 to 2022, a total of 46 applications for dispute resolution were filed; 28 applications for clarification; 21 complaints to the Appeals Chamber of the Court.

In the process of implementing its functions, the EAEU Court still raises the question of its competence. Thus, the competence of the Court arises in the presence of two conditions simultaneously operating: a dispute arose on the implementation of decisions of the Union bodies; the decision of the Commission or its individual provisions directly affect the rights and legitimate interests of an economic entity in the field of entrepreneurial and other economic activities.

In addition, the competence of the EAEU Court does not include the authority to confirm the conclusions of economic entities, but most importantly disputes related to the obligation of the Union bodies to carry out legally significant actions. Thus, the main functions of the EAEU Court are the interpretation and filling of gaps in the law of the Union.

Analyzing the practice of the EAEU Court, K. V. Entin (2022) believes that despite the fact that for the first time the EAEU Court used the term “general principles of the law of the Union” in an advisory opinion on the case of public procurement in 2021, the process of forming its own

system of principles was started by it already in 2016-2017. This is evidenced, in particular, by the systematic appeal of the EAEU Court to the principles of proportionality and legal certainty, not only when interpreting the law of the Union, but also as an independent requirement determining compliance with the law of the Union of Commission decisions and acts of the Member States of the Union (Entin, 2022, pp. 64-83). Thus, the EAEU Court forms the “law of the Union” to ensure the rule of law and protect the rights and legitimate interests of citizens and economic entities (Savenkov et al., 2021). According to T. N. Neshatayeva, currently there has been a failure in this area due to a change in the balance towards national or personal interests, accompanied by a denial of the meaningful role of the Court in the development of integration. The latter should be overcome, since, perhaps, to a very significant extent in the future, the Court’s practice will have an impact on new areas transferred to supranational competence: this is anti-monopoly regulation, intellectual property protection, ahead is the transfer of all issues related to energy, etc. (Neshatayeva, 2022, pp. 107-126).

The analysis of the dispute resolution procedure by the Court and its competence do not meet modern trends in the protection of rights and legitimate interests in the field of international economic integration (Rusakova & Frolova, 2022, pp. 323-332). Moreover, within the framework of the Union, it is planned to transform all integration processes to a qualitatively new level by comprehensively modernizing and achieving interoperability of information systems at four levels: regulatory, organizational, semantic and technical, therefore, the judicial method of protecting rights is in urgent need of digital transformation.

Honored Worker of Kazakhstan, R. K. Sarpekov (2022), in his work “Theoretical and practical issues of the introduction of remote justice at the international and national levels” drew attention to the need for a radical change of the EAEU Court towards digital transformation, using the example of judicial proceedings in Kazakhstan.

It should be noted that due to the small number of cases that the Court is considering, the situation caused by COVID-19 did not play an important role in the digital transformation of the Court’s activities, compared with the experience

of the courts of the EAEU member states during this period. Thus, according to the Chairman of the judicial composition of the Court of the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation, Yu. G. Ivanenko (2022), the use of various remote technologies along with traditional procedural forms will contribute to ensuring the right to a fair trial within a reasonable time and the availability of justice, including in relation to the need for social distancing, which remains relevant during the pandemic.

However, the lack of the possibility of carrying out procedural actions in electronic format can make this method extremely unattractive and hindering the development of the Union (Mikhaliyova, 2019, pp. 251-264).

It seems most appropriate to turn to the foreign experience of creating electronic justice and implement it into the practice of the EAEU Court. Thus, within the framework of the European Union, a single economic space has actually already been created on the basis of an electronic platform where transactions can be made, and in case of disputes, there are ways to resolve them – online Dispute Resolution and alternative dispute Resolution (Frolova et al., 2020, pp. 76-87).

The Security Strategy of the European Union stipulates that cross-border judicial cooperation should be based on the constant interaction of the competent authorities of the participating countries related to the digitization of judicial services, the use of videoconferencing, simplification of access to national databases and registries, as well as the promotion of the use of secure electronic data transmission channels.

It is obvious that the creation of a single information space of the EAEU member states will ensure the implementation and functioning of a cross-border trust space, namely, the creation of special conditions agreed by the participating countries to ensure trust in the interstate exchange of data and electronic documents.

Thus, it will be quite simple for the EAEU Court to receive all the necessary information from the EAEU AIS, which will allow the Court and the parties to concentrate directly on the substance of the dispute rather than on collecting evidence.

In addition, it is necessary to improve the procedure for applying to the Court, giving the par-

ties to the dispute a choice of paper, electronic form, including an electronic document. An electronic document can be created by selecting a special template depending on the nature of the dispute.

In this regard, it is necessary to give the parties the right to choose the form of participation in court sessions, giving priority to a web conference rather than videoconferencing, since the latter option is unlikely to simplify the dispute resolution procedure, but on the contrary, it may complicate the procedure, since the parties will need to appear in court at their place of residence.

It is also necessary to convert many procedural actions into an electronic format, for example, the record of a court session can be completely switched to automatic mode when a special program will transcribe the process.

## Conclusion

Taking into account the general trend in the development of legal proceedings, namely: the in-depth introduction of modern technical means into the dispute resolution process through the creation of special platforms as the most convenient and popular form, it will be necessary to apply special regulations or introduce into the existing rules of conducting legal proceedings in electronic form. However, in order to ensure a balance of private and public interests, it is necessary to provide the parties with a choice of appropriate procedure.

In addition, it is necessary to consider the transformation of the EAEU Court into an electronic court based on an AIS, in which the entire process can be carried out in electronic form, as well as using artificial intelligence technologies, which will make the judicial method of protection effective, transparent and safe.

The fundamental problem of defining digital and electronic justice remains unresolved. The emergence of a qualitatively new legal procedure in the EAEU will require the regulation of fundamental principles through the prism of digitalization. The process of constant legal and technical “adjustment” of existing regulatory models to fundamentally new social relations is ineffective (Kozhokar, 2019, pp. 14-17). The solution to this problem must begin with the formation of a

unified concept for the development of the EAEU Court in the era of digital transformation.

According to M. A. Sarsembayev (2022), the EAEU Court could adopt an autonomous Technical Manual for the implementation of remote justice based on digital technologies or supplement the existing Regulations of the EAEU Court with sections, norms of digitalized justice, on the basis of which remote justice can be developed. This option is preferable in comparison with the technical manual, since the Regulations of the EAEU Court are an official document subject to unconditional execution, while the technical manual as an organizational and technical document can hardly be perceived as an official document.

To increase the efficiency of the Court, it is necessary to integrate information and communication technologies into the dispute resolution process, in which all actions could be carried out in electronic format, including pre-trial procedures, which will significantly speed up the dispute resolution process and increase the number of disputes resolved in a pre-trial manner, but most importantly, it is necessary to integrate the option of applying to the EAEU Court through the EAEU AIS. Attention should be paid to the opinion of Ispolinov A. S. and Kadyshov O. V. (2021) on the rather narrow competence of the Court and the possibility of considering the issue of its expansion (pp. 93-110). In particular, the expansion of its competence by returning to the Commission the right to appeal to the Court with applications for dispute resolution (Baishev, 2019, pp. 57-75); expanding the list of state bodies authorized to apply to the Court (Ispolinov, 2016, pp. 152-166); possibilities and permissibility of judicial activism (Chaika & Savenkov, 2018, pp. 5-22).

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