Digitalization of civil proceeding in BRICS countries[1]

Digitalización del procedimiento civil en los países BRICS

Nikolay R. Izralovsky

https://orcid.org/0009-0001-5888-4465

St. Petersburg State University. Rusia
E-mail: izralovsky.spbu@mail.ru

Antonina S. Petrova

https://orcid.org/0009-0004-5941-9997

St. Petersburg State University. Rusia
E-mail: petrova.spbu@mail.ru

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Abstract: In the present article, the authors aim to analyze the current issues related to the implementation of digital technologies and artificial intelligence (AI) technologies in civil proceedings in the BRICS countries. The novelty of the research lies in its generalization of the experience of the BRICS countries in accordance with the latest developments in doctrine, practice and legislation in the post-COVID19 period. On the basis of comparative legal analysis, the authors consistently describe the experience of all the states that are members of the BRICS organization in 2023. The key conclusions that the authors reach are the followings: the level of digitalization differs in the BRICS countries in terms of qualitative and quantitative indicators, which leads to a general slowdown in this process in the countries of this union. In order to overcome this obstacle, states need to first develop legislative regulation of the digitalization process at the national level, provide courts with technological equipment and improve the literacy level of judges and court staff. In addition, BRICS countries need

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to take into account the experience of other BRICS countries in order to build synergies with each other, as well as to borrow the strengths of the digitalization process in other countries and integrate it into their civil society processes. Consolidation in the development of the introduction of new technologies in civil proceedings among the BRICS countries is necessary.
Keywords: civil proceeding; digitalization; artificial intelligence; e-evidences; videoconferencing; BRICS.

Abstract: En el presente artículo, los autores pretenden analizar las cuestiones actuales relacionadas con la implementación de las tecnologías digitales y de inteligencia artificial (IA) en el proceso civil en los países BRICS. La novedad de la investigación radica en la generalización de la experiencia de los países BRICS de acuerdo con los últimos desarrollos en la doctrina, la práctica y la legislación en el período postCOVID19. Sobre la base de un análisis jurídico comparativo, los autores describen de forma coherente la experiencia de todos los Estados miembros de la organización BRICS en 2023. Las principales conclusiones a las que llegan los autores son las siguientes: el nivel de digitalización difiere en los países BRICS en términos de indicadores cualitativos y cuantitativos, lo que conduce a una ralentización general de este proceso en los países de esta unión. Para superar este obstáculo, los Estados deben, en primer lugar, desarrollar una regulación legislativa del proceso de digitalización a nivel nacional, dotar a los tribunales de equipamiento tecnológico y mejorar el nivel de alfabetización de los jueces y del personal de los tribunales. Además, los países BRICS deben tener en cuenta la experiencia de otros países BRICS para crear sinergias entre ellos, así como tomar prestados los puntos fuertes del proceso de digitalización en otros países e integrarlos en sus procesos de sociedad civil. Es necesario consolidar el desarrollo de la introducción de las nuevas tecnologías en los procedimientos civiles entre los países BRICS.
Keywords: proceso civil; digitalización; inteligencia artificial; e-evidencias; videoconferencia; BRICS.

I. Introduction

The purpose of this research is pointing out the current problems of digitalization of civil proceedings in the BRICS countries. The particular aims of the present article are 1) to compare legislation of BRICS countries on digital technologies in civil proceedings; 2) to find out the general tendencies in those countries on implementing the digital technologies into civil trials; 3) to analyze pace of digitalization in countries of the BRICS.

There are few reasons prevent from achieving the full implementation of modern technologies in trial. Firstly, it is insufficiency of legislative covered the informatization of all civil proceeding levels. Secondly, in the BRICS

countries the technical equipment of the courts often does not allow for the introduction of digital technology at a high level. Thirdly, the living standard in part of these countries is quite low or of the majority of their population, that is why citizens cannot afford use available digital services. Fourthly, the uncoordinated of work of courts' digital platforms or low level of their coordination, as well as not being able to perform certain procedural actions on them, lead to suspicious attitude to digital justice.

Recent developments in the world contribute to the development of digitalization in general (Razveykina & Shikhanova & Dmitriev, 2022). The introduction of such technologies as blockchain, artificial intelligence, etc., into civil proceedings is an integral part of the global process of informatization of life. Implementing of modern technologies is necessary for improving the process of rights protection, increasing access to justice, raising the standard of court proof.

All in all, it is concluded that the pace of digitalization of civil proceeding differ in BRICS countries (Rusakova & Frolova, 2021). Some of them have implemented e-technologies into civil trials quite deeply and their experience could be adopted for other countries.

II. Materials and Methods

The main goal of this article is exploration the current issues on civil proceedings in the context of introduction of e-technology and e-technology related legislation in BRICS. For purposes of the present paper authors analyzed digitalization process in Brazil, Russia, India, China and South Africa. Counties joined the BRICS on 1 January 2024 are not included.

The methodology is based both on comparative legal analysis, analysis of judicial practice data and sociological analysis of statistics. The study of legislation on civil proceeding, as well as international doctrine, different regulatory acts was fulfilled using the methods of logical and statistical analysis. In the article, the authors relied on researches of the scholars and lawyers from BRICS countries.

During the work on the authors faced the fact that the statistical material is presented fragmentary. In order to achieve more accurate indicators, it is necessary to conduct additional research, which will be the next stage in the author's work on this issue.

Another limitation was the geographical scope of the study. The difference in the level of judiciary digitalization in the BRICS countries, as well as in the doctrinal development of the issue, resulted in some difficulties in the

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collection of literature by the authors. Furthermore, the economic structures of the five countries in question exhibit significant disparities.

The BRICS member countries lack permanent and comparable political arrangements due to the significant economic, cultural, political, industrial and technological diversity (Thorstensen & Ferraz, 2017). Furthermore, China and India, as the key members, engage in competition with each other in the political and economic arenas. Consequently, the BRICS member countries do not constitute a unified entity that develops joint strategies to regulate artificial intelligence, in contrast to the member countries of the European Union (Ciurea, 2023; Gogić, 2022). The absence of political consensus among BRICS member states is also evident in the domain of digitalization of civic processes. To illustrate, the study will demonstrate that China has pursued deliberate reforms with the objective of digitalizing civil processes, whereas in India digitalization has been a more compelled response to the pandemic caused by the COVID-19.

III. Results

1. General characteristics of theoretical grounds of digitalization of civil proceedings

To begin with, the term 'digitalization' is defined as the implementation of various digital technologies, including videoconferencing, electronic signatures, elements of AI technologies, blockchain, within the justice system (UNGP Digital Strategy 2022–2025, 2022). The introduction of artificial intelligence technologies should be regarded as a component of the general digitalization process. In articles that are more detailed, it would be beneficial to consider the implementation of AI in the justice system as a standalone process (Holmström, 2022), as it is a more complex and contentious issue than the widespread use of electronic evidence and the utilization of online services for the organization of court trials.

AI refers to systems that exhibit intelligent behavior in analyzing the environment and making decisions (with a certain degree of autonomy) to achieve specific goals. Such systems may be entirely software-based and operate within a virtual environment (e.g., for the purpose of judgment analysis). The most prevalent AI mechanisms include voice assistants, image analysis software, search engines, voice and facial recognition systems, data processing and systematization for decision-making, and text creation and processing (Fanni & Steinkogler, et. al., 2023). The future potential of AI is a topic of considerable

debate, particularly in the context of the current gap in the economies of the BRICS member countries. The most significant benefit of AI is its capacity to discern, diminish, or even eradicate disparate forms of bias. By virtue of its intrinsic impartiality, AI is capable of avoiding the perpetuation of negative sentiments towards specific demographic groups. However, this same advantage also presents a significant potential hazard (Re & Solow-Niederman, 2019). At this present of development, AI technologies exhibit reduced autonomy and limited decision-making autonomy.

Nevertheless, as autonomous AI capabilities continue to evolve, a number of potential risks emerge. Artificial intelligence will be programmed in a manner that contravenes the principles of equality, fairness, and inclusiveness. Furthermore, as AI develops and learns, there is a possibility that it may adopt genetic, racial, or other prejudices that exist in the cultural context of the BRICS countries. These prejudices are the result of historical processes and are deeply embedded in the cultural fabric of these countries (Ribeiro & Dwyer, 2015).

The empirical testing of AI systems all over the world in the criminal justice system, on balance, establishes that they enhance the integrity and rectitude of decision-making. In particular, the most common and compelling criticisms leveled at algorithms in this arena, bias, is far more prevalent in decisions made by humans (Bagaric & Svilar, et al., 2022).

In the doctrine of civil procedure law there appear such terms as electronic evidence, e-document, artificial intelligence, e-justice, trial with the use of video-conferencing and others (Prasałek, 2015). Despite such seemingly significant transformations and modernization of the entire judicial system, the legislation remains unchanged, that means that it retains all its principles and continues to function in accordance with the basic provisions of the laws which did not take into attention implementation of modern technologies.

There are now three most important fields for the implementation of digital technologies in civil proceedings. The most widespread is the use of electronic evidence. The most significant is the introduction of the possibility of conducting trials online. The most promising way, but still unavailable for majority of BRICS countries, is the using artificial intelligence technologies (Damian, 2021).

Researching such a direction of civil proceedings as the use of electronic evidence in court proving, it is also necessary to draw out the problem of ensuring safety and security of e-evidences, since when working with them there is a high probability of their alteration or loss. For this reason, it is necessary to create a separate network with a limited possibility of usage of protected information, to start data storage records and appoint a responsible person who

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would monitor access to information stored on an electronic medium, as well as to use other means of protection to ensure information security.

The most controversial from the legal point of view, both practical and theoretical, is the implementation of artificial intelligence in the courts' work. Some researchers note that this process is inevitable, and therefore it should be given the right legal form (Rahbari & Shabanpoor, 2023). Positive sides in full or partial replacement of a human being (real judge) by a machine can be seen in the following: - increasing the efficiency of the courts' activity in taking judicial decisions due to the fact that the machine is engaged in preparing the necessary documents and requisites; - promptness of issuing a judicial act; - "impartiality" of the machine. Despite the success of the experimental implementation of artificial intelligence in the administration of justice, the authors of this article believe that it is not possible to completely replace a human judge to make a decision on a case at current level of development of AI technologies, since no one can exclude the possibility of a certain failure in the system. As an examples can be following: a "machine" will not always be able to correctly recognize a document, since it must be examined not only for relevance to the case, but also to check copies for authenticity, since there are many programs that can edit a scanned copy of a document), therefore, artificial intelligence cannot be considered as a guarantee of the protection of human and civil rights and freedoms, as well as a means of ensuring justice and humanity when resolving a case arising from civil legal relations (Kleinberg, et. al., 2018).

2. Brazilian experience

The Brazilian judicial system is characterized by the following shortcomings: high caseloads and long case processing times. The number of applications to the courts, especially civil trials, is constantly increasing, and the period associated with the coronavirus had only exacerbated this situation. On March 19, 2020. The Brazilian National Council of Justice adopted Resolution No. 313/2020, which regulates the entire judicial system and establishes the obligation of the courts to guarantee the implementation of basic judicial services, as well as the transition to telecommuting (Kerche & de Oliveira & Couto, 2020). A series of regulations were issued to implement this decree by other states: the CSM Regulation N° 2550/2020; Ato Normativo n. 7/ 2020 and others.

These provisions have prompted the search for new methods of administering justice and pushed courts to use online sessions. The Court of Appeals of the State of São Paulo, Rio de Janeiro and the Federal District provided

with the possibility of remote work for judges, interns and civil servants, as well as remote audience with judges. The Brazilian Supreme Court of Justice changed its internal rules and established the possibility to hear disputes online. And as early as April 1, 2020, the Brazilian Council of Justice announced the creation of a digital platform allowed courts and tribunal to securely conduct virtual court sessions (Legg & Song, 2020).

In Brazil, artificial intelligence technologies have already been implemented in at more than 50% of the Brazilian courts, at least 47 of them nowadays use AI programs and systems. The most of courts are under development AI technologies into their work. Such courts include the Supreme Court and the Superior Court of Justice (De Souza & Finger De Araújo & Maranhão, 2023; Izralovsky & Petrova, 2024).

It shall be mentioned that there is no specific legal regulation in Brazil for AI. The National Council of Justice in August, 2020 issued Resolution 332. It focuses on issues of usage of AI in judiciary such as ethics, government regulation etc. (CNJ, 2020). General legal principles were established by that Resolution as principles applicable to the AI legal regulation: non-discrimination, publicity, transparency, user control etc. In the chapter on the principle of user control, Article 18 states the necessity to provide information in clear and precise language on the use of intelligent systems in the services provided, while Article 19 establishes that systems that use AI as an adjudication support tool must respect as a predominant criterion the explanation of the formula "measures led to the result".

The Brazilian resolution provides with a measure that can help minimize discrimination (Article 20). The formation and composition of AI research and development teams must include diversity "across the broadest spectrum, including gender, race, ethnicity, color, sexual orientation, people with disabilities, generation and other individual characteristics."

In addition, the use of artificial intelligence technologies in general and ChatGPT in particular by judges increases concerns directly related to the possibility or right to be judged by another person, or at least to know about the use of the system in the decision by which their case will be decided. The Resolution requires information about the use of artificial intelligence systems in courts and an explanation of the steps taken by the system to make a decision, but in principle it concerns institutional systems and aims at their development by Brazilian courts.

However, it did not anticipate the use of widespread AI engines such as ChatGPT and the inherently obvious impossibility of explaining its response process. On the other hand, the draft basic proposal of the Brazilian law governing the general use of artificial intelligence anticipates the right to prior

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information about one's interaction with artificial intelligence systems and to explain decisions, recommendations, or predictions made by artificial intelligence systems. This is broader than the Resolution No 332 and could conceivably extend to judiciary use of ChatGPT. However, given the instability of the legislative process in Brazil, it may still be subject to many changes and the final text cannot be known with certainty.

In any case, whether at the legislative or regulatory level, consideration should be given to whether the non-institutional use of ChatGPT should be free for use in courts, and to what extent and detail the parties to litigation should be informed (Brait & Pistori et, al., 2023). Thus, given the relentless use of AI in general and ChatGPT in particular by the judiciary, it is necessary to think about its boundaries and some parameters, meaning that minimally responsible and ethical use will require that decisions made with its help include references to its use, ensuring the necessary transparency to even provide a resource that can be used as an argument regarding the possible inaccuracy of the system, as well as insurgents using the same resource.

The transition to the use of digital technology or artificial intelligence has not been without its difficulties.

In 2020 in Brazil was a case connected with ATHOS system (court digital assistant). Regarding the ATHOS system, some difficulties were noted during the monitoring of its results (STJ, 2020), such as the presence of conflicts between the system and security mechanisms, as well as the internal aspect that "the model under training does not converge sufficiently, which requires an adjustment of the data sample used". In addition, a study was conducted to confirm the benefits and advantages of using the system and it was found that the model did not perform well with short documents, which forced the implementation of filters for this condition to avoid inappropriate responses.

From this point of view, the algorithmic selection, although more accurate and faster than human analysis, is not completely error-free. In this sense, any rejection or non-classification of the appeal with general repercussions may end up harming the right to defense and the rule of law itself, if the machine, "improved" by machine learning, fostered by repeated analysis and fed by an ever-growing database, makes a mistake. It's well known that the development of machine learning can produce unexpected, unpredictable, and often surprising results.

In this regard, although undesirable for a large part of the legal community, the deeper issue of partial replacement of judges by machines is perhaps inevitable and in the not-too-distant future in the current Brazilian legislative and regulatory context, but it is important. that it occurs on ethical grounds,

with full awareness of the users of the judicial system, first of all, its main addressee – the citizen.

3. Experience of Russian Federation

The continuous process of development of digital technologies, affecting the legal area of society, in particular, various branches of procedural law, is based on the provisions of the Federal Target Program "Development of the Judicial System of the Russian Federation for 2013-2024" (Government of the Russian Federation, 2012).

To begin with, it has become possible to file an application to the court remotely. First of all, it should be noted that this possibility applies not only to procedural applications (i.e., those filed within the framework of court cases), but also to non-procedural applications allowed by law (ordinary applications, complaints, requests for information, etc.).

In Russia, the question is particularly relevant: to what extent do the introduced electronic procedures for filing appeals really simplify access to the court and comply with the equality principle and prevent unjustified restriction of the right to judicial protection? Moreover, is it justified to establish by-law (order of the Judicial Department under the Supreme Court of the Russian Federation) additional requirements to the form of an electronic complaint as compared to the common written form?

In our opinion, such differentiation of legal regulation is justified due to the specificity of the electronic form, the need to establish additional technical requirements related to the applicant's passing through the identification and authentication procedure and the certification of the document with an electronic signature (Valeev & Makolkin, 2021). Nevertheless, serious doubts are raised by the Judicial Department's establishment of such requirements to the form filled out by the applicant on the website, which are not related to the technical aspect, but to the submission of additional information about both the applicant and other participants in the process (i.e., the respondent, third parties, other interested parties). Moreover, this information is not required at all or is optional when filing a claim in the common written form.

Turning to the practice of state electronic reception centers, it shall have been stated that currently the vast majority of them do not provide an opportunity to track the fate of the application. The beginning of the process of creating specialized state sites for submission of citizens' appeals was laid by the Federal Law No 210-FZ. According to Article 10(2) of this Law it was guaranteed that "an applicant may submit a request and other documents necessary for provision of a state or municipal service... using the Unified Portal

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of State and Municipal Services". using the Unified Portal of State and Municipal Services". (Federal Law No 210-FZ, 2010). As for specialized Internet platforms through which citizens may send their claims and applications to the judiciary, it shall be mentioned the creation of a single information space of all courts (except for the Constitutional Court of the Russian Federation) in the federal system GAS "Justice". GAS "Justice" began to be created in 2004 as a territorially distributed information system of courts of general jurisdiction, bodies of the judiciary and bodies of the Judicial Department system. With the adoption of the Law on Access to Information on the Activities of the Courts, GAS "Justice" was also tasked with creating a unified information space of courts and justices of the peace as a set of databases, technologies for their maintenance and use, information systems and networks functioning on the basis of the information interaction between the Supreme Court of the Russian Federation, courts, justices of the peace, judiciary and the Judicial Department system.

Nowadays the GAS "Justice" portal is a territorial distributed automated information system tasked with forming a unified information space of courts of general jurisdiction and the system of the Judicial Department under the Supreme Court of the Russian Federation. In order to submit documents electronically, it is necessary to register in a personal account and to sign documents with a digital signature. The Internet platform is created as a website with open access, on the home page of which all the functions that can be offered to the user at the moment are displayed in separate units. Citizens can choose a topic of interest on their own, and in case of difficulties or questions to contact the technical support of GAS "Justice". Registration is not required to use the website; the search forms also do not require any data other than those on which the information will be analyzed and provided to the user. In all sections where the submission of an appeal is provided, citizens need to fill out a form, leaving their contacts.

In the future, it is possible that a system of user registration and a personal account will be created (so far, such a procedure is provided only in the section of the Supreme Court of the Russian Federation). It shall be noted that GAS "Justice" is not the only platform for filing appeals, complaints and other documents in electronic form. Thus, the creation of a super-service "Justice Online" on the platform of the Gosuslugi portal has been announced. This super-service will not only allow to submit applications to the court online (i.e., will become an additional channel for filing lawsuits and similar applications), but will also allow to automatically determine the jurisdiction of cases and automatically calculate the amount of state duty, provide the opportunity

to pay state duty directly on the Gosuslugi portal, the opportunity to receive all notifications and familiarize with the case file in a personal account.

In 2020 during the spread of coronavirus infection, the Supreme Court of the Russian Federation instructed courts considering disputes arising from civil law relations to hold court hearings online through the use of video-conferencing systems. This decision was necessary in the framework of the fight against Covid-19. Federal Law No. 440-FZ, adopted in December 2021 and effective as of January 1, 2022, secured the possibility of using the then already known portal Gosuslugi when filing relevant documents with a general jurisdiction court, and therefore amendments were made to the Code of Civil Procedure (hereinafter - the CPC), the Code of Arbitration Procedure and the Code of Administrative Procedure of the Russian Federation (Federal Law No. 440-FZ, 2021).

The grounds and order for the use of video-conferencing systems in civil proceedings are defined in Article 155.1 CPC. Special rules are presented in Article 155.2 (CPC, 2002). Thus, this article established the right for persons involved in the case, as well as for other participants in the process to participate in a court session by using video-conferencing, but only under the simultaneous presence of the following conditions: firstly, the presence of a petition of such persons to conduct the trial online and, secondly, the availability of technical equipment for this court and other subjects of civil proceedings (Rusakova & Zaytsev, 2022).

Through using of video-conferencing systems in the trial may participate: persons involved in the case (claimants, respondents, applicants, interested parties, third parties), as well as witnesses, experts, specialists and interpreters. At the same time, within the meaning of part 2 of Article 152, Articles 327, 387, 386, 391.10, 396 of the CPC, video-conferencing may be used in court hearings at any stage of civil proceedings: in a preliminary court hearing; in the resolution of disputes on the merits by the court of first instance; in the consideration of a case in a court hearing appointed to resolve certain procedural issues (for example, to resolve the application of a person involved in the case for review of court rulings on newly discovered or new circumstances). Civil procedural legislation provides the only direct prohibition (Article 10(6) of the CPC) on the use of video-conferencing systems: their use is not allowed in a closed court session.

However, the main disadvantage of modern "judicial" video-conferencing is that in order to connect to it, a citizen must appear in a different court. On the one hand, this certainly makes simpler the life of the court session participants, eliminating the need to come to the court for the proceedings, located in another city or even another constituent entity of the Russian Federation.

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On the other hand, such organization of video-conferencing no longer meets the expectations of society and the modern capabilities of digital tools (including the identification of participants in the trial).

Table 1. Number of cases dealt through Video Conferencing in District Courts of general jurisdiction in Russia

Category	Years				
	2018	2019	2020	2021	2022
Total amount of civil cases (in thousands)	3402	3389	3245	3655	3944
Total amount of trials dealt through video-conferencing (in thousands)	34,5	40,9	48,3	59,4	84,3

Resource: Judicial Department reports

According to the table based on Judicial Department's statistic, only 3 million 402 thousand cases were heard by district courts as first instance courts in 2019, of which only 34.5 thousand cases were heard via video-conferencing. Then there is a decline in the total number of cases in district courts. The number of cases disposed through video-conferencing decreased in direct proportion to the number of cases disposed through video-conferencing. In 2022, when the number of cases starting peaked from 2018, there was an increase in the number of trials conducted through video-conferencing. The table shows that from 2018 to 2022, the number of cases tried via video-conferencing increased by 1%. However, these figures cannot indicate a qualitative increase in the prevalence of this way of hearing cases. Consequently, it can be concluded that the video-conferencing system has not been implemented in Russian district courts of general jurisdiction at a qualitative level. The increase is directly proportional to the increase in the total number of cases, but not due to an increase in demand for the procedure of case consideration via video-conferencing. Notably, even at the peak of the coronavirus infection spread in Russia, there was no significant increase in the number of trials transferred to the online format.

It is worth mentioning here that the practice of online court hearings through video-conferencing is more widespread in arbitration proceedings than in civil proceedings since before the pandemic in arbitration proceedings this system had already been introduced and successfully used in the administration of justice.

Table 2. Number of cases dealt through Video Conferencing in High/District Courts in Russia AC

Category	Years				
	2018	2019	2020	2021	2022
Total amount of civil cases (in thousands)	1908	1878	1765	1879	1954
Total amount of trials dealt through video-conferencing (in thousands) 1st Inst	5,6	5,7	6,3	22,5	No data
Total amount of civil cases (in thousands) Appeal	323,8	346,1	304,4	347,1	348,0
Total amount of trials dealt through video-conferencing (in thousands) Appeal	7,2	9,8	9,3	10,9	No data

Resource: Judicial Department reports

The table 2 shows that the peak of number of trials was in 2021, when COVID restrictions were the strictest. In addition, according to figures it can be concluded that in the appeal instance the parties almost 1.5 times more often use of video-conferencing system. Taking into account the legal nature of disputes resolved by arbitration courts, it seems that cases that are more expensive and more complex were appealed in the second instance, and therefore, after attending personally the first instance hearings, the parties decided to use video-conferencing in order to save their time.

Compared to the number of civil cases, firstly, there is a significantly smaller total number of cases, and secondly, a greater prevalence of the usage of video-conferencing system. Such a gap indicates that in Russia the digitalization of civil proceedings still needs to be developed to a large extent.

The second aspect of the digitalization of civil proceedings in Russia is the use of electronic evidence. Currently, there is no concept of electronic evidence in legislation, including it is not enshrined in the Code of Civil Procedure. In this regard, there are discussions among various scholars regarding the place of this type of evidence in the general system of the proving process (Zaytseva & Sukhova, 2019), as well as the distinction between the concepts of "electronic evidence" and "electronic document". Despite the fact that in accordance with Article 71 of the CPC "electronic evidence" is attributed to the number of written evidences. Some researchers suggest allocating them to a separate category (Kukartseva, 2023). Besides, there is a point

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of view according to which the evidence in electronic form can be attributed to both written and physical, that is, it has a variable nature (Gritsenko & Yaluner, 2020). In addition, when the court accepts electronic evidence, the judge must make sure that it meets the requirement of admissibility, that is, to check how the document was created, whether the information contained in it was subjected to editing by the owner of the electronic signature, etc. However, due to the specificity of the provided evidence, specialists in computer technologies and electronic media shall be involved for this purpose, as only they will be able to provide answers to the questions posed.

It shall be noted that one of the most progressive directions of civil proceedings digitalization today is the implementation of artificial intelligence. The starting point in this matter in accordance with the above-mentioned Target Program is the creation and widespread introduction in 2024 of the platform "Justice Online", which is based on artificial intelligence technology. It is worth emphasizing that in judicial practice, this development has already been applied for the first time on a trial basis by justices of the peace in the Belgorod oblast' when considering and resolving a case related to the collection of transportation tax arrears.

Thus, it can be concluded that the state is taking significant measures for digitalization of the legal area, in particular in the implementation of justice in civil cases. Assessing the main vectors of this process, it should be noted that they are aimed only at the introduction of certain technologies in a particular area of life. Therefore, it is possible to identify other tendencies in the development of digitalization to improve the quality and efficiency of civil proceedings, like these:

- Introduction of the concept of "electronic evidence" into civil procedural legislation, as well as the application of measures aimed at storing and ensuring the security of such evidence and the data contained in it;
- Creation of special platforms for online court sessions by means of video-conferencing (for example, as in arbitration courts¸ where a unified video-conferencing system is installed only for the work of arbitration courts of all links);
- The possibility of using e-justice systems not only by courts, but also by citizens.

4. Indian Experience

Virtual courts in India were an emergency, so-called temporary response to the COVID-19 pandemic, but a some of judges and lawyers proposed to apply virtual courts to regular court proceedings even after the pandemic is over. Sharad Arvind Bobde, Chief Justice of India, said that "there is no looking back" and the way forward will be a combination of virtual courts and physical courts, "new and old" (Kirit, 2021). However, several structural issues have also come to the fore with this new drive towards virtual courts. A lot of judges and lawyers believe that these challenges need to be addressed as Indian courts move into the digital area.

The transition to virtual courts is not easy for India because the country has a widely developed judicial infrastructure with thousands of courts, many of which are in remote areas without broadband internet access, there are unequal technological realities that go beyond connectivity and physical infrastructure issues. Many people either lack the knowledge to use these systems or are uncomfortable using them. For example, the Bar Council of India states that 90% of lawyers and judges across the country are "unaware of this technology". Some lawyers are concerned about their earnings, stating that virtual courts are currently available to only a few. The introduction of digital technology is important, but change must be gradual and acceptable for the majority of population.

Earlier, in view of the spread of coronavirus infection (COVID-19), the Supreme Court of India recommended all courts to adopt electronic and communication technology in their operations. The Supreme Court of India published the Standard for Conducting Trials by video-conferencing in Urgent Cases. However, in practice, not all courts were able to organize properly in the new format, and proceedings involving witnesses have been delayed due to the inability to obtain witness statements without influencing them. The New Delhi High Court issued a circular on e-filing of documents and applications in courts No. 10 (IT)/DHC/2020 emphasizing on the technicalities of e-documents and their validation. The established e-courts in India were delivering justice properly during the period of restrictive measures and since then have remain an important link in the Indian judicial system (Rusakova, 2022). Thus, the active promotion of e-judicial services, the creation of a unified information space, the establishment of virtual courts or E-courts is a given of modern times and not a temporary phenomenon caused by the coronavirus pandemic.

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Table 3. Number of cases dealt through Video Conferencing in High/District Courts in India (from 2015 to 2023)

No.	City/State	High Court	District	No.	City/State	High Court	District
1.	Allahabad	241644	4829051	15.	Karnataka	1231461	131851
2.	Andhra Pradesh	380258	1417565	16.	Kerala	162216	564491
3.	Bombay	41653	108970	17.	Madhya Pradesh	671271	838762
4.	Calcutta	143167	84886	18.	Madras	1435227	380994
5.	Chhattisgarh	103353	53481	19.	Manipur	38695	15288
6.	Delhi	318966	4773938	20.	Meghalaya	3853	35509
7.	Gauhati-Arunachal Pradesh	2299	8131	21.	Orissa	304349	263723
8.	Gauhati-Assam	266233	372939	22.	Patna	277203	2272127
9.	Gauhati - Mizoram	3963	13268	23.	Punjab & Haryana	581047	2079396
10.	Gauhati-Naga-land	947	702	24.	Rajasthan	231796	182924
11.	Gujarat	388969	195805	25.	Sikkim	490	13702
12.	Himachal Pradesh	183915	135661	26.	Telangana	299031	190327
13.	Jammu & Kashmir	258615	481373	27.	Tripura	10667	14736
14.	Jharkhand	220523	655137	28.	Uttarakhand	80703	42780

Resource: Department of Justice. Video-Conferencing

Table 3 is imperfect insofar as it does not reflect the differentiation of cases into civil and criminal cases. However, for the present research, it will be of interest in the context of the regional spread of using video-conferencing system through court proceedings in India. Thus, in India's capital city, Delhi, proceedings are most prevalent in district courts compared to other regions. These indicators are obvious: it is the most technologically advanced region and the second most populous city in the country. The city of Patna, given that it is located in India's fastest growing state, Bihar, rather gives out quantitative indicators.

Nagaland's courts, located in a small state of India, handle many fewer cases in quantitative terms than courts in Mumbai and Delhi. Madhya Pradesh, the territorially largest and a very economically developed region of India, is noteworthy. This state is the largest producer of manganese ore and

diamonds in India, and therefore has a high investment potential, so the government can afford to provide technological facilities to the region. The observations regarding the state of Karnataka, the largest IT center in India, are interesting. The focus of its economy on the introduction of digital technologies causes insignificant difference in the number of cases handled through online communication services at the level of district courts and the Supreme Court.

The adoption of AI technology in the Indian judicial system has been much slower. Civil procedure in India consists of three main stages: commencement of action, trial and judgment (Agrawal, 2016). The commencement of trial includes the filing and service of judicial applications, as well as appearance in court and written statement of defense. Trial is divided into the raising of issues, presentation of evidence by both parties, and final argument. The issuance of judgment and ruling may further entail or lead to review of the ruling, appeal, enforcement of the ruling. As artificial intelligence seems to have conquered the field of document analysis and research, there are many advantages of using it in court. Judges can use artificial intelligence to obtain document summaries, find important case law on a given issue, and the greatest contribution can be made to assist the judge in administrative work. It can also help with calculating costs, fines, damages, and sentencing through various algorithms (Tiwari & Singh, 2020). However, this may not happen anytime soon unless there is a reform in the use of technology in civil litigation. That is why it's close, but far away. It has affected law firms, but not yet the court system. The use of artificial intelligence in the courts raises the question of what additional safeguards may be required. Data privacy, encryption and cybersecurity are areas that need to evolve with technology. In the absence of sufficient professionals willing to collaborate with AI systems, the ordinary citizens in India have expressed concerns about the perceived unfairness of AI-driven decisions within the judicial system (Sambasivan & Arnesen, et. al., 2021). Given the particularly complex ethnic composition of the Indian population and its religious diversity, there is a prevailing sentiment among citizens that AI decisions may not be entirely impartial. There is a pervasive lack of trust and confidence in the impartiality of AI-based decision-making, particularly in matters pertaining to equality, caste, social status, and religious affiliation (Marda, 2018). On this point, there is a reluctance among Indians to introduce AI into cases that are more complex than the recovery of damages after an accident and other obvious disputes.

In this regard, Indian companies and various AI research centers are developing programs with the objective of implementing technologies in a manner that is as painless as possible and in compliance with all legal principles of

equality, honor, and dignity. NITI Aayog has formulated the National Artificial Intelligence Strategy as a tool to develop the industry in India (NITI Aayog, 2018). This was deemed appropriate as artificial intelligence is often seen as a solution to the huge backlog in India. NITI Aayog's efforts may eventually bring India closer to implementing artificial intelligence in courtrooms.

While online courts are being actively adopted in India, many believe that physical courts should not be abandoned and that a legal system model that incorporates online courts while addressing information problems is needed. Lokur, an ex-judge of the Supreme Court of India, emphasized the difference between online courts and virtual courts. "Online courts are what our judicial system is striving for. Virtual courts are automated courts for minor offenses like traffic violations and other more complex offenses", he said (Roy, 2020).

AI and digital technologies will continue to be a significant part of the judiciary. India is currently trying to incorporate as much technology as possible into its judicial system, given the many constraints such as lack of internet connectivity across India, lack of education and access to technology, etc. Hopefully, in the process of improvement, India will be able to utilize technology as a norm rather than an exception. A logical combination of digital technology and artificial intelligence will bring about the efficiency and responsiveness that the Code of Civil Procedure had in mind.

5. Chinese experience

In recent years, China has made great progress in research and development on the implementing artificial intelligence in law. Deng Xiaoping declared at the 1st National Science and Technology Conference in 1978, "Science and technology are the main productive forces" (Xiong, 2021). Since the beginning of the reform and opening-up policy, Chinese experts in law and science and technology have conducted continuous research on the introduction of technology into the judicial system. The combination of law and innovation technologies has become an irreversible tendency. In the late 1970s and early 1980s, Prof. Qian Xuesen, a famous scholar, proposed the design of a legal system with the introduction of scientific technology for the first time in China and consistently defined the contents and criteria of this system (Tang & Zhu, 2018).

At the beginning of the 21st century, the government gradually began to pay attention to the application capabilities of artificial intelligence in judicial activities. After 2002, in order to promote the informatization of people's courts, the most advanced people's courts successively issued a series of documents on the informatization of trial and the establishment of computer

information network system platforms, laying the foundation for the judicial application of artificial intelligence.

Immediately afterward, the Central Political and Legal Commission decided to develop relevant software for the reform, utilizing high technology to promote it and encouraging the integration of artificial intelligence into judiciary. From 2015 to 2016, the Supreme People's Court first proposed the introduction of smart court and the establishment of an information platform for people's courts to improve the level of informatization in every stage of case processing. Subsequently, the Third World Internet Conference was held in Wuzheng, Zhejiang Province. The participating countries reached a consensus on court informatization, combining cyberspace, information technology, informatization of judicial work and adoption of AI technology. The measure also fully shows that the state attaches great importance to "building smart courts". On December 15 of the same year, China released its National Information Plan for the "13th Five-Year Plan" period, which included informatization to drive innovation, use data to administer justice, promote e-judicial processes and strengthen judicial informatization (Gao, 2019).

It shall be noted that the application of artificial intelligence in criminal justice, which has shown great results, has also strongly promoted the introduction of artificial intelligence in civil proceeding. The ancillary trial systems in Guangdong Province and Shanghai City, which at this stage represent the highest level of judicial application of artificial intelligence in China, have begun to focus on machine learning of human legal reasoning and judicial rules. They use mechanisms such as unifying standards and building models of evidence admissibility. Which means that the judicial application of artificial intelligence has gradually moved from theoretical concept to practical methodology. Influenced by the experience of applying artificial intelligence in criminal proceedings, the Chongqing High Court started with credit card cases on relatively minor factual disputes and simple legal relationships and established a special judicial platform with AI elements. "Smart Judge" of Beijing Higher Court utilizes artificial intelligence technology and machine learning to support judges in making decisions. "Legal Cloud" of Jiangsu Provincial High Court is designed to offer similar cases and court documents to judges. "Intelligent Litigation System 1.0" of Hebei Provincial Higher People's Court can search and recommend supporting information, automatically create legal documents and intelligently analyze justice standards. "C2J Intelligent Case Support System" of Shanghai No.2 Intermediate Court combines the functions of legal document guide, similar case recommendation and experience sharing (Wang & Tian, 2022). It includes nine information databases including laws and regulations, judicial clarifications, similar cases and judicial acts.

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According to the case records, relevant information from the nine information databases is automatically checked, analyzed, and recommended.

People's court in Suzhou for transportation accident cases with simple factual composition and obvious legal relations, with the help of "Judge AI", tried cases, cross-examined, ruled in particular trial, and archived the cases at the same time (Xu, 2022). The "Judge AI" system is a highly intelligent product that assists judges in reviewing cases. "Judge AI" develops the abilities of "listening, writing, reading, identifying and reasoning", from primary perception to logical thinking skills in the field of learning, using the knowledge map of expert judges as a source of information, guidance and artificial intelligence analysis as a means of reasoning. Reasoning skills using AI technologies are the main driving force behind supporting judges.

Nowadays the "Judge AI" system of Suzhou People's Court focuses on traffic accident disputes and helps judges to analyze case files, summarize the essence of disputes and make simultaneous judgments. "Judge AI" plays an important role in optimizing the overall workflow of judges, which can cover the majority of different circumstances of cases, save a lot of judges' time of writing judicial acts.

The synthetic development of artificial intelligence and rules of evidence shows that intelligent judicial modeling is not only static legal reasoning and justification, but also the dynamic application of procedural actions such as proof (Rusakova & Frolova, 2022). Although the study in the complex of artificial intelligence and judicial proof is still in the early stage, it already has significant capability. It can be believed that the integration of artificial intelligence and proof will lead to new revolution in the theory of new evidence, and the logical structure of proof can be developed by intelligent justice model. In the legal debate model, the party who makes a certain proposition bears the burden for proving that its proposition has been substantiated. Both the claimant and the respondent can switch places in this process, which is very similar to the process of proof in civil proceeding. The structure of the allocation of the burden of proof and the significance of two opposing arguments in a conflicting justification of fact are universals for the theory of proof in litigation.

6. Experience of the Republic of South Africa

The concept of online courts has so far been implemented within the High Courts of South Africa, which is an end-to-end electronic system where parties can file documents, manage their case and evidence online from any place and time without physically being present in court. However, the majority of court cases are dealt with in the ordinary course of business, although the cur-

rent epidemiological environment could have a more effective impact on the process of establishing digital justice in South Africa.

It is clear that e-technologies have and will continue to have an impact on the current judicial rules of South Africa. More broadly, it is argued that they are not yet sufficiently aligned with developments in e-law and ECTA. In addition, it is argued that the implementation of Electronic Communications and Transactions Act 25 of 2002 (further - ECTA) and the Electronic Technology Act will result in problems. For example, document delivery, which is currently done by sheriffs, will in the future be done by digital or electronic means. This impact can also be illustrated by the example of the recording of court proceedings, which in the future will be done digitally or electronically. Thus, it is necessary to draft amendments to fill this gap.

It is noted that the Constitutional Court has made good progress in the use of electronic technologies. However, there is a need to further amend and supplement the existing regulations to ensure full compliance with ECTA and other legislation in the field of electronic technologies.

The courts should promote, regulate and ECTA (CMC Woodworking Machinery (Pty) Ltd v Pieter Odendaal Kitchens, 2012). For example, evidence may be presented regarding surveillance video of the claimant walking naked on his private property without his knowledge or permission.

The authenticity of this testimony has been disputed but has been confirmed by oral testimony. Thus, witnesses were found who confirmed the authenticity of the footage and the digital electronic technologies used (Mabeka, 2018). The court concluded that the evidence in the form of the video recording and its identification by the person who downloaded it was sufficient to prove guilt and conviction and was therefore admissible (S v Mdlongwa, 2010). Although this case concerns a criminal trial, it shows that South African courts recognize and accept evidence obtained through CCTV and digital electronic technology where the latter is identified. This means that a claimant defamed by photographs or videos posted on any social media sites can successfully file a defamation claim against the respondent in the future. However, the problem in these cases is the discovery of such photographs and video clips to protect the respondent's veracity, as this will result in an invasion of the claimant's right to privacy. Scholars confirm that a respondent in libel cases can use truthfulness as a defense (Van Der Merwe et al., 2022).

The extent of disclosure of photographs and video clips in civil proceedings should be limited. Van der Merwe and his colleagues agree that "...any action that allows surveillance and monitoring of communications certainly raises privacy concerns" (Van Der Merwe et al., 2022). This is why it is necessary to establish strict rules governing the disclosure of evidence obtained

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through video surveillance systems and digital electronic technologies in civil proceedings.

It is clear from the content of the various chapters that South Africa's civil procedure law needs to be amended to bring it in line with ECTA and other digital or electronic technology laws and standards.

IV. Discussion

Discussing the digitalization of the process, it has to be mentioned a number of difficulties faced by lawyers and judges in practice. Thus, scholars and practitioners highlight the following problems related to the judicial process and affecting the following aspects: difficulties in implementing the observance of order in the court session; difficulty in identifying persons and verifying their authorities; shortcomings related to the technical equipment of organizing an online session; the impossibility of taking into account in full certain procedural principles; the order of investigation of certain means of proof.

Scholars also recently emphasize the danger of neglecting the human factor (Khabrieva & Chernogor, 2018). They note that the use of modern technologies has possible negative consequences. Thus, if algorithms will help the judge, analyze the case materials and offer some possible solution to the dispute, one may encounter bias of the algorithm. The system will tend to make perfect decisions. It may analyze what courts usually decide in similar cases and conclude that this is what is fair. However, it will not take into account different life conditions, phycological circumstances, emotional health of parties. That is why the risk of making a decision logical and mathematically fair but human unfair increases.

Indeed, automated systems cannot assess the possible abuse of the right, there can be no question of good faith or honesty. These definitions are too complex and subtle to be understood by a machine, because a computer or artificial intelligence is technically set up for certain tasks, which do not include these moral concepts. All of these points are interrelated in the resolution of legal issues, and thus cannot be viewed from all perspectives 'on behalf of' a machine. For all the optimistic forecasts about the acceleration of digitalization, lawyers point out that the main problem of modern justice in the BRICS countries is still, first and foremost, not at all in the insufficient number of sessions held online. The convenience of filing a lawsuit, the possibility of paying state duty electronically, as well as any online sessions in no way compensate for the consideration of a case by an incompetent or unbiased court (Rusakova & Frolova, 2021).

To the experts' opinion, the expansion of distance justice leads to a decrease in the ability of process participants to realize the right to judicial protection of their rights (Voskobitova & Przhilenskiy, 2022). Relieving the courts by expanding the number of cases in simplified and writ proceedings, they are exempted from their main function - the administration of justice, which involves the right of persons to be heard, as well as the right of the parties to the court's evaluation of evidence in the dispute, with the issuance of a reasoned decision. Counsels and lawyers consider that online participation in the process, no matter how well the connection works, reduces the persuasiveness of the representative's speech before the court (Pevtsova, 2020).

As for e-justice, the low information literacy of judges leads to insufficient use of even the functionality of court systems and lack of understanding of what tools can facilitate the work of a judge (Zeman, 2022). Thus, certain conclusions can be drawn. In recent years, digitalization in the field of judicial activity has been widely spread in practice. It is predominantly a positive process. However, despite the presence of positive trends related to financial savings for some participants in the process, the introduction of modern technologies in judicial activity, and the development of a new form of judicial proceedings, one cannot but note the presence of some gaps (Tarakanov & Inshakova & Dolinskaya, 2019). It seems that the most serious problems in the framework of court proceedings and digitalization in practice are: the lack of a fixed time limit for participation in a video conference on some platforms; the influence of the subjective factor on the implementation of order in the court session and compliance with the procedural form; technical failures, non-compliance with procedural principles; and the lack of a legal regulation.

V. Conclusion

Digital technologies used in most BRICS countries have proven their effectiveness, the ongoing changes in the judicial process fundamentally change the foundations of justice, create new basic principles.

AI entails changes in work organization and competencies as it creates new varieties of socio-technical systems. Thus, AI creates problems at the level of retraining and improving traditional skills and abilities at the individual level (Robert & Pierce, et. al., 2020; Santoni de Sio & Almeida, et. al., 2024).

To sum up, it can be said that the rapid introduction of digitalization does not have a positive movement in all countries, the most serious obstacles are the lack of legislative regulation of the use of digital technologies, the lack of technical equipment of courts throughout the territory of a number of coun-

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tries, the uncoordinated operation of judicial digital platforms or the lack of the ability to perform certain procedural actions on them, the unsatisfactory attitude of citizens to digital justice; the low standard of living of the majority of the population of these countries. The solution to the above-mentioned problems cannot be a one-step solution; a clearly formulated strategy is required to discuss all the advantages and disadvantages of increasing digitalization and to formulate proposals for systemic changes in civil procedure legislation. All this leads to the fact that there is a need for an exchange of experience, because cooperation on this issue will contribute to the effective introduction of digital technologies in civil proceedings, which will ultimately improve the quality of protection of citizens of the BRICS countries.

Based on the authors' analysis of the legislation, judicial practice and doctrine of the BRICS countries in the field of digitalization of civil proceedings, the following ways of solving the problem can be proposed.

Taking into account the significant differences between the BRICS countries, as well as the lack of an organizational component of the association, which would recognize it as an international organization in the full sense of the subject of international law (Sergunin & Gao, 2018), the development of a 'digital code' similar to the one adopted in the European Union (The European Parlaiment, 2024) does not seem to be an effective measure for the BRICS countries.

However, on the initiative of the BRICS countries (since 01 January, 2024 BRICS+) there may be developed recommendation documents (so-called *Guidelines*) for countries with developing economies and pronounced regional peculiarities in the field of effective implementation of digitalization, as well as the use of AI technologies in civil proceedings. The UN has already developed principles for the implementation of digitalization and AI (UNGP Digital Strategy 2022–2025, 2022). However, it is aimed at the implementation of digital technologies in general, but not in judicial activities, and in particular in civil proceedings. Consequently, the development of *Guidelines* based on the experience of all BRICS countries in the introduction of digital technologies in civil proceedings will be an activity useful not only for the countries of the association, but for the entire global community. Thanks to this, other states and organizations, in particular the UN, will be able to participate in the development of the *Guidelines* and make the document global.

Such *Guidelines* may include the following aspects

— Principles of digitization and AI taking into account respect for human rights: equality, fairness, inclusiveness, respect for honor and dignity,

preservation of national traditions, publicity, openness, transparency and other fundamental legal principles.
— The main stages of the digitalization of the civil proceedings: how to make this phenomenon consistent and effective.
— Risks associated with the implementation of digitization in different countries and how to overcome and minimize them.
— Development of machine learning criteria for AI, limitations aimed at preventing human rights violations due to the introduction of AI.
— Creation of the necessary educational base and key tasks of training qualified personnel in the field of justice, capable of using digital technologies.
— Promote international exchange of specialists for the purpose of educating the population and popularizing digital justice, increasing confidence in it.
— Necessity of assistance other countries in the introduction of digital and AI technologies in civil proceedings.

The above provisions are the necessary minimum that can be reflected in the recommendation documents for the BRICS countries.

Undoubtedly, the process of digitalization of civil production will not be complete until digitalization penetrates as many spheres of life as possible. Therefore, the BRICS countries need to strengthen their cooperation in the implementation of digital technologies in general.

Due to the fact that AI technologies are not yet a fully independent and autonomous actor, and in one way or another are only an auxiliary tool for judges and law enforcement officials, it is necessary to create a separate block of AI implementation in the Guidelines. First of all, it is necessary to develop principles for the introduction of AI at the current stage of development: as an auxiliary element. Also, to pay some attention to the period when AI can become an independent actor in civil proceedings.

As mentioned above, the BRICS countries are not ready to create a single legal instrument, but the development of common principles would be a big step towards the creation of accessible justice and a common harmonious future.

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