

SOME APPROACHES TO THE LEGAL INTERPRETATION OF THE TERMS "VERIFICATION" AND "AUTHENTICATION"

DOI: <https://doi.org/10.24115/S2446-622020206Extra-B612p.185-189>

Nikita Nikolayevich Makolkin 

ABSTRACT

In this article, the author attempts to formulate the problem of the absence of a clear regulatory fixation of the terms "verification" and "authentication" in the legal field of the Russian Federation. In order to overcome the existing uncertainty, the study proposes a scientifically based approach to the interpretation of the above evidence, based both on the linguistic features of these terms and on their interpretation by foreign lawyers, their commonly used meanings. In the course of this study, the authors have found that there is a gap in the legislation, which leaves unresolved issues of verification and authentication, as well as online accessibility of justice, which, given the existing realities, allows talking about some belated responses of the judicial system to the current challenges of our time, which in particular showed the spread of a new type of coronavirus infection COVID-19. At the same time, it is emphasized that the formation of non-standard situations is a kind of trigger and catalyst for the accelerated intensive development.

Keywords: Evidence. Relevance. Admissibility. Civil procedure. Authentication.

ALGUMAS ABORDAGENS PARA A INTERPRETAÇÃO JURÍDICA DOS TERMOS "VERIFICAÇÃO" E "AUTENTICAÇÃO"

ALGUNOS ENFOQUES DE LA INTERPRETACIÓN JURÍDICA DE LOS TÉRMINOS "VERIFICACIÓN" Y "AUTENTICACIÓN"

RESUMO

Neste artigo, o autor tenta formular o problema da ausência de uma fixação regulatória clara dos termos "verificação" e "autenticação" no campo jurídico da Federação Russa. A fim de superar a incerteza existente, o estudo propõe uma abordagem cientificamente fundamentada para a interpretação das evidências acima, com base tanto nas características linguísticas desses termos quanto na sua interpretação por advogados estrangeiros, seus significados comumente utilizados. No decorrer deste estudo, os autores constataram que existe uma lacuna na legislação, que deixa por resolver questões de verificação e autenticação, bem como a acessibilidade online da justiça, o que, dadas as realidades existentes, permite falar sobre algumas respostas tardias do sistema judiciário aos desafios atuais do nosso tempo, que em particular evidenciaram a propagação de um novo tipo de infecção por coronavírus COVID-19. Ao mesmo tempo, destaca-se que a formação de situações atípicas é uma espécie de gatilho e catalisador para o desenvolvimento intensivo acelerado.

Palavras-chave: Provas. Relevância. Admissibilidade. Processo civil. Autenticação.

RESUMEN

En este artículo, el autor intenta formular el problema de la ausencia de una fijación reglamentaria clara de los términos "verificación" y "autenticación" en el ámbito jurídico de la Federación de Rusia. Para superar la incertidumbre existente, el estudio propone un enfoque con base científica para la interpretación de la evidencia anterior, basado tanto en las características lingüísticas de estos términos como en su interpretación por abogados extranjeros, sus significados comúnmente utilizados. En el transcurso de este estudio, los autores han constatado que existe un vacío en la legislación, lo que deja sin resolver cuestiones de verificación y autenticación, así como la accesibilidad online a la justicia, lo que, dadas las realidades existentes, permite hablar de algunas respuestas tardías del sistema judicial a los desafíos actuales de nuestro tiempo, que en particular mostraron la propagación de un nuevo tipo de infección por coronavirus COVID-19. Al mismo tiempo, se enfatiza que la formación de situaciones atípicas es una especie de detonante y catalizador para el desarrollo intensivo acelerado.

Palabras-clave: Prueba. Pertinencia. Admisibilidad. Procedimiento civil. Autenticación.

INTRODUCTION

Objective transformations of society, public relations, development of the digital environment, growing role of the digital economy and digitalization processes, as well as integration of digital technologies in the process of administering justice and their extensive and intensive development are associated with an increase in the level of social significance of the process itself, as well as an increase in the level of social responsibility, which corresponds to the constitutional right to judicial protection (SAKHNOVA, 2020; NIKITIN, PATSATSIYA, 2019). At the same time, it is important to note that there are actually elements of digital technologies that permeate the entire judicial ecosystem in all forms of administration of justice established by the Constitution of the Russian Federation. At the same time, there are proven results of the integration of digital technologies to varying degrees in all four forms of administration of justice: constitutional, civil, administrative, and criminal.

At the same time, new challenges facing society due to its normal progressive development, as well as some abnormal phenomena that play the role of catalysts, for example, the spread of a new type of coronavirus infection COVID-19 (FRENCH, MONAHAN, 2020; NIKOLAOU, DIMITRIOU, 2020; MCCLINTON, 2020), force to increase the degree of integration of information technologies in all fields of life, and the field of the administration of justice is no exception.

One of possible scenarios for the judicial system development, in the light of an increase in the integration level of information technologies and changes in the structure of courts of general jurisdiction, is an increase in the number of court sessions conducted using video conferencing technologies, and, accordingly, the transformation of this institution, by providing the possibility of video conferencing without visiting a court or without participation of another jurisdictional body, but only through their own personal computer or telephone with the Internet access, as well as an increase in the number of claims filed through the "Justice" and "My Arbiter" state automated systems, which is also associated with the need to develop these systems.

A logical stage in this development is an increase in the level of autonomy and mobility of participants in the process, through the integration of new tools that allow both forming the evidence base in the case in electronic form and remotely participating in the court sessions. This development stage corresponds to the increasing role of certain aspects of verification and authentication of various elements of the judicial process. It is necessary to make a reservation that two proposed transformation vectors do not have a sufficient theoretical basis and the key task of this study is the formation of a terminological approach to these concepts.

METHODS

This work was made using the dialectical method. Legal study is also facilitated by logical techniques in the form of analysis and synthesis, induction and deduction, comparison and generalization, analogy and typology. With their help, we developed a differentiated understanding of the interpretation of the terms under consideration. The formal legal technique made it possible to understand the essence and significance of legal norms, both directly and indirectly related to verification and authentication.

RESULTS AND DISCUSSION

The issues of verification and authentication, as well as the interpretation of these concepts, go back to the times of ancient Greece and Rome. Thus, the word "authentication" has one common root with the Greek word **αὐθες** **ντικός** (authentikos), which means "real, authentic", as well as the word **αὐτός** (autos), also referring to the Greek language, which sounds like "oneself; the very same" in modern language. The second term, "verification", is genetically formed by the fusion of two Latin words *verum* "true" and *facere* "to do". Such a linguistic analysis already makes it possible to determine both the very general lexical meaning of these two terms, as well as to carry out their comparative analysis already at this stage. Thus, based solely on the linguistic approach, it is necessary to indicate that, within the framework of this study, verification will mean the authenticity of documents, evidence and information, their truth, which is a kind of prototype of the procedural term "admissibility". Authentication, in turn, will be interpreted as the identification of someone, performing the function of establishing the identity of persons entrusted to the judicial system in the process of administering justice, as well as identifying something, implying certain aspects of the procedural institution of relevance.

Thus, the current regulatory framework of the Russian Federation, in particular GOST ISO 9000-2011 "Quality Management Systems" defines the term verification as confirmation through the provision of objective evidence (data confirming the existence or truth of something) that the established requirements (need or expectation,

which is stated, usually assumed, or required) have been met. Authentication, in accordance with the provisions of GOST R ISO/TS 18308-2008: Health informatization. Requirements for the architecture of electronic health records is an "act of verifying the declared identity of the subject", which directly correlates with the linguistic interpretation of this term. In addition, considering this term, it is important to refer to GOST R ISO/IEC TO 13335-4-2007: Information technology. Security methods and means. Part 4. The choice of protective measures, where authentication is defined as "ensuring an unambiguous correspondence of the declared identifier to the object", which in turn can be perceived as an element of the admissibility of evidence (for example, conformity of the signature certifying the document and the signature of a person authorized to certify it), as well as an element of the relevance of evidence (the parties to the contract can act as an identifier, if the text of the contract is attached to the case files considered by the court).

These terminological approaches and interpretations are only indirectly related to the judicial process and do not reflect the whole essence of these concepts, which can be assigned to them when they are considered through the prism of judicial and evidence law. This is also due to the fact that these terms, when studied in the light of individual institutions of judicial law, will also have high level of dynamism in their interpretation.

Along with the above, individual attempts to interpret these terms in current dictionaries are of interest. Thus, if we turn to the Explanatory Dictionary of Foreign Words, then the term verification will have two meanings: 1. Verification of the truth of theoretical provisions, establishment of reliability on a trial basis; 2. One of the methods of neopositivism: establishing the truth of statements about the world by comparing them with sensory data. It is also noteworthy the interpretation proposed in the Complete Dictionary of Foreign Words that have come into use in the Russian language, which defines the term in question as follows: "certification of authenticity, certification of the fidelity of any document or paper". The second approach has already individual elements associated with the legal institutions and can be identified as a starting point for further research.

The interpretation of the term authentication has not found its proper reflection in the existing Russian-language dictionaries, therefore, the starting point here seems to be possible to take the approach outlined above, since despite the multifaceted nature of this term, its main meaning will be associated precisely with identifying and confirming that exactly the person who should take part in it or has the right to do so participates in the trial. Therefore, the developments of foreign authors are of particular interest. Thus, if we turn to the explanatory legal dictionaries, we can find the following approaches:

- Verification is the act of verifying something (proving or checking that it exists, or is true or correct) (Colin McIntosh Cambridge Advanced Learner's Dictionary. Cambridge University Press, 2013).
- Verification is the process of testing or finding out if something is true, real, accurate, etc. (Cambridge Academic Content Dictionary. Cambridge University Press, 2008).
- Verification is the process of establishing the truth, accuracy, or validity of something. (Oxford English and Spanish Dictionary).
- Verification is the declaration under oath or upon penalty of perjury that a statement or pleading is true, located at the end of a document (John Bouvier. A Law Dictionary, Adapted to the Constitution and Laws of the United States, 1856).

A systematic analysis of the views of foreign legal thought shows that verification is an action, a process that allows establishing the accuracy and reliability of something.

Authentication is the confirmation rendered by an officer of a court that a certified copy of a judgment is what it purports to be, an accurate duplicate of the original judgment. In the law of evidence, the act of establishing a statute, record, or other document, or a certified copy of such an instrument as genuine and official so that it can be used in a lawsuit to prove an issue in dispute. Self-authentication of particular categories of documents is provided by federal and state rules of evidence. A deed or conveyance that has been acknowledged by its signers before a Notary Public, a certified copy of a public record, or an official publication of the government are examples of self-authenticating documents (West's Encyclopedia of American Law, edition 2. 2008).

Authentication is the act of proving that something is real, true or what somebody claims it is (Colin McIntosh Cambridge Advanced Learner's Dictionary. Cambridge University Press. 2013).

Authentication is the process or action of proving or showing something to be true, genuine, or valid (Oxford

English and Spanish Dictionary).

Analysis of these approaches allows identifying a number of overlapping features between verification and authentication. This is due to the fact that authentication is also a process, an action, and is also aimed at establishing the truth of something.

At the same time, the technical approach to this term deserves attention, which boils down to the following: «Authentication is the process of verifying the identity of a person or device». Definition from the Tech Terms Computer Dictionary (techterms.com).

The technical approach undoubtedly more accurately describes the main element of authentication associated with establishing an identity, but it is the presence of two demonstrated interpretations that further confirms the thesis about the multifaceted nature of this institution.

SUMMARY

Thus, as a result of the analysis of legislation, as well as foreign legal thought and individual linguistic Russian and foreign studies, the conclusion suggests itself that the terms verification and authentication are universal for various legal families, various state legal systems, as well as have certain unique features allowing both separating them from separate previously named institutions of procedural law, such as the relevance and admissibility of evidence, and comparing them with these institutions, which is one of the objectives of this study.

CONCLUSIONS

The development of electronic document management, streaming scanning systems, artificial intelligence, machine learning, text recognition and analysis certainly leaves its mark on the work of the judicial system and determines certain trends in its development. One of such trends is an increasing importance of accessibility to the administration of justice using certain digital technologies. At the same time, an increase in the availability of legal proceedings in this area, as it is seen, is associated with the introduction of new procedural structures. One of these constructions is verification and authentication, which are associated with all stages of the trial.

Based on the foregoing, it is possible to formulate the author's approach to understanding the terms considered in the field of evidence. Thus, verification may be understood as follows: "the process of confirming the truth of the evidence provided to the court, regardless of the form of their presentation, using procedural and material tools to confirm the truth".

Authentication, in turn, despite the expressed opinion about its similarity with verification and confirmation of the truth of documents, may be considered as a "process of verifying a person's identity", since there is a resolution of the issue of subjects of proof in the law of evidence.

ACKNOWLEDGEMENTS

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University. The reported study was funded by RFBR according to the research project n. 20-311-90041 «Verification and authentication in the institutions of the civil process in the conditions of transformation of society and the increasing role of digital technology».

REFERENCES

- CAMBRIDGE ACADEMIC CONTENT DICTIONARY. Cambridge University Press, 2008
- COLIN MCINTOSH CAMBRIDGE ADVANCED LEARNER'S DICTIONARY. Cambridge University Press, 2013
- FRENCH, M.; MONAHAN, T. Disease surveillance: how might surveillance studies address COVID-19? *Surveillance and Society*, v. 18, Issue 1, p. 1-11, 2020.
- JOHN BOUVIER A LAW DICTIONARY, Adapted to the Constitution and Laws of the United States, 1856.
- MCCLINTON, A. The COVID-19 Pandemic: a Call to Action to Identify and Address Racial and Ethnic Disparities. *Journal of Racial and Ethnic Health Disparities*, v. 7, Issue 3, 1 June, p 398-402, 2020.
- NIKITIN, S. PATSATSIYA, M. Summary procedures and optimization of commercial court proceedings in Russia

BRICS, *Law Journal*, v. 6, Issue 2, p. 108-131, 2019.

Nikolaou, P; DIMITRIOU, L. Identification of critical airports for controlling global infectious disease outbreaks: Stress-tests focusing in Europe. *Journal of Air Transport Management*, v. 85, Art n. 101819. June, 2020.

OXFORD ENGLISH AND SPANISH DICTIONARY

SAKHNOVA, T. V. Development of simplified procedures in civilistic process in the context of legislative reforms. *Journal of Siberian Federal University - Humanities and Social Sciences*, v. 13, Issue 1, p. 103-115, 2020.

WEST'S ENCYCLOPEDIA OF AMERICAN LAW, edition 2, 2008

Kazan Federal University, Assistant of the Deputy Dean for Science activities, Law Faculty of KFU, Graduate student, LL.M. E-mail: nikita.makolkin@gmail.com. Author ID SCOPUS: 57213196295. ORCID ID: <https://orcid.org/0000-0002-0528-8862>

Received: 20 Oct.2020

Approved: 01 Dec.2020