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КОНСТИТУЦИЯСЫ МЕН ЗАҢНАМАСЫ: ДИАЛОГ ЖӘНЕ ҮДЕМЕЛІ ДАМУЫ»
АТТЫ ХАЛЫҚАРАЛЫҚ ҒЫЛЫМИ-ПРАКТИКАЛЫҚ КОНФЕРЕНЦИЯ
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В сборнике материалов международной научно-практической конференции рассмотрены вопросы, касающиеся актуальных аспектов конституционной и судебно-правовой реформы, проводимой в рамках национальной идеи построения Справедливого Казахстана.

The collection of materials of the international scientific and practical conference considered issues related to the current aspects of constitutional and judicial law reform, carried out within the framework of the national idea of building a just Kazakhstan.

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MODERN TRENDS IN THE REGULATION OF CIVIL LEGAL RELATIONS

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Annotation. The article discusses the use of digital technology in the new condition of digital law as well as in civil law in the field of transactions and contracts. The emergence, creation and widespread practical application of revolutionary technologies artificial intelligence, blockchain technologies, analytical structures based on Big Data, self-managed Smart Everything systems, etc. forms a new "digital ecosystem" in which the system of law.

Keywords. digital technologies, electronic document management, electronic digital signature, digitalization, database, artificial intelligence.

Аннотация. Мақалада цифрлық технологияларды мәмілелер мен келісімшарттар саласындағы азаматтық құқықта қолдану қарастырылады. Революциялық жасанды интеллект технологияларының, блокчейн технологияларының, үлкен деректерге негізделген аналитикалық құрылымдардың, Smart everything өзін-өзі басқаратын жүйелердің және т. б. пайда болуы, жасалуы және кең практикалық қолданылуы. құқық жүйесі жұмыс істейтін жаңа "цифрлық экожүйе" қалыптасып, қарқын дамуда. Осыған байланысты осы мақалада бүгінгі күнде заң саласында жаңа технологиялар қалай қалыптасып жатқанын көреміз.

Тірек сөздер: цифрлық технологиялар, электрондық құжат айналымы, электрондық цифрлық қолтаңба, цифрландыру, деректер базасы, жасанды интеллект.

Аннотация. В статье рассматриваются вопросы применения цифровых технологий в гражданском праве при совершении сделок и контрактов. Раскрыты применение революционных технологий искусственного интеллекта, блокчейн-технологий, аналитических структур на основе больших данных, самоуправляемых систем Smart everything, формирующих развитие новой «цифровой экосистемы», в которой функционирует система права. Показаны современные тенденции регулирования гражданско-правовых отношений в правоприменительной деятельности РК.

Ключевые слова. цифровые технологии, электронный документооборот, электронная цифровая подпись, цифровизация, база данных, искусственный интеллект

In the era of globalization, it is very important to keep up with the times for the development of the digital economy, competitiveness, as well as to improve the quality of life of each state, for this our government and other countries of the world must be able to adapt, adopt and use their own digital development strategies. Digital technologies are becoming an integral part of our time.

Introduction of concepts such as blockchain, artificial intelligence, digitalization etc. makes it possible for humanity to make their lives easier and be more confident in the future. On the basis of the digital revolution in legal, social, economic, and political life, a new reality of our time is being formed, in which social relations as a whole are produced.

The "digitalization" of the economy has a significant impact on the sphere of legal regulation. New social relations are beginning to take shape between the subjects of legal relations. Thus, in the sphere of legal regulation, the emergence of relations is observed:

1. the subjects of which are virtual or digital personalities;
2. related to legally significant identification of a person in the digital space;
3. arising in connection with the realization of human rights in the digital space (the right to access the Internet, the right to oblivion, the right to "digital death");
4. focused on the application of robotics; [2, 30 p.]

At the moment, it can be noted that Kazakhstan is one of the most advanced countries in the world in the development of digital technologies. According to the statistics, of a Global CIO, in 2022 Kazakhstan took 51st place in the world ranking for the development of information and communication technologies and entered to the TOP-30 developed countries in the field of digitalization, which is high achievement of our state. As K.K. Tokayev noted at the plenary session of the international technology forum Digital Bridge 2022, "Today our state is in the top 30 of the rating of the most digitalized states of the UN, ahead of many developed states."¹³⁵ By the 2025, Kazakhstan plans to enter the top 20 developed countries in this sphere. It can be noted that foreign countries have become increasingly interested in the technological success of our nation. This is evidenced by the fact that Mastercard Visa President Nicolla Villa said at the meeting with head of state that the company is going to promote Kazakhstan in the field of digitalization abroad, especially in emerging markets.¹³⁶

One of the accomplishments in the development of digitalization in Kazakhstan can be noted that citizens of our country can use digital documents. Through programs Kaspi.kz and egov mobile, you can get digital identity card, driver license, student ID and it is possible to get various certificates, which make life easier and saves time for every citizen of Kazakhstan. For example, without leaving home, you can get certificate on pension contributions, certificate from narcological, tuberculosis, neuropsychiatric dispensary, a certificate of social contributions, certificate of payments and benefits. It is very important to note that this is joint work of Kaspi bank and the Ministry of Digital Development, Innovation and Aerospace Industry of the Republic of Kazakhstan. According to the Vice Minister Digital Development, Innovation and Aerospace Industry "Egov mobile is PSC in our pocket".¹³⁷ With the advent of this program, obtaining public services has become much more acceptable and convenient, and increasing its functionality makes it possible for individuals and legal entities not to visit public service center. By 2026, government agencies plan to fully all public services and make them available in the E-gov program.

Digital human rights are the concretization (through law and law enforcement, including judicial acts) of universal human rights guaranteed by international law and State constitutions, in relation to the needs of a person and a citizen in an information-based society. The task of the state is to recognize and protect the digital rights of citizens from all kinds of violations, while ensuring the constitutional and legal security of the individual. The question of the concept of "digital law" is controversial. This is primarily due to the fact that it is quite difficult to reflect the whole essence of global changes in one concept or definition. [2, 29 p.]

Doctor of law, Chairman of Human Rights Commission under the President of the Republic of Kazakhstan, member of the Venice Commission of the Council of Europe from Kazakhstan Igor Rogov, participating in the international conference Digital Almaty 2023, noted that digitalization

¹³⁵ <https://www.nur.kz/politics/kazakhstan/1989988-tokaev-kazakhstan-vhodit-v-top-30-samyh-otsifrovannyh-gosudarstv-oon/>

¹³⁶ <https://www.nur.kz/politics/universe/2037095-tokaev-prinyal-ispolnitelnogo-vitse-prezidenta-mastercard-nikoluyillu/>

¹³⁷ <https://profit.kz/articles/14579/Aset-Turisov-NIT-eGov-Mobile-eto-CON-v-karmane/>

in Kazakhstan is developing at a rapid pace, but digitalization in the legal sphere is not fully finalized. The scientist remarks that at the moment there is such a problem as the legal personality of artificial intelligence. Before the digitalization, the subject of law were individuals, legal entities and government agencies. Currently, many scientists, as well as the European Union, are considering the issue of allowing artificial intelligence as the subject of law. For the development of digitalization in legislation, I. I. Rogov proposes to adopt a law called "Digital Kazakhstan" as the French Republic did the law on the digital republic, which was adopted on October 9, 2016. The scientist also notes the experience of the Kyrgyz Republic, which was the first in the world to adopt the "Digital Code", considering that this experience is very interesting.

The Ministry of Digital Development, Innovation and Aerospace Industry of the Republic of Kazakhstan in 2022 announced the news that it is planned to create a digital code that will regulate all legal relations related to advanced technologies. This code will contain laws on electronic digital signature, personal data protection, public services, and informatization. This bill is planned to be fully implemented by 2030. According to the Ministry of Digital Development, Innovation and Aerospace Industry of the Republic of Kazakhstan, the digital Code will prescribe such norms as:

- Basic digital rights of citizens, including ensuring the confidentiality of private life;
- The order of management and processing of information stored in the database of state information systems;
- Collection, processing and storage of database;
- Sequence of turnover and release of digital assets;
- The procedure for storing, collecting and processing biometric data, as well as the use of biometric identification technologies;
- Legal status of unmanned vehicles, mobile robots;

The Ministry believes that the digital code will help our country to switch to a "platform model of digitalization", legislation will become more simplified, public administration will be able to switch to digital unity, which will help facilitate the work of state institutions, strengthen the confidentiality of personal data, and it is also believed that the digital code will eliminate conflicts in law and contradictions in laws, create comprehensive and systemic legal regulation.¹³⁸

According to the Doctor of Legal Sciences Idrisheva S. K. in his scientific article "On the Digital Code" writes that Kazakhstan is not yet ready to adopt the digital code in the coming years. According to the scientist, each institute requires deep knowledge and careful approach separately, and it is also necessary to classify and verify the current legislation, to detect and eliminate collisions and gaps in legal norms. It can be noted that the author proposes to further develop and improve the quality of existing legislation, that is, in legal terms, it is necessary to consolidate laws. These are the "Law on Electronic Digital Signature", "Law on Informatization", "Law on Personal Data and their Protection". [1, 82-83 p] We believe that the author is right to some point, because there is still an imperfection of the legal norms of civil legislation.

For the first time, the terms "digitalization", "electronic digital signature", "cybersecurity", "electronic archive", "electronic document management" appeared in the Law of the Republic of Kazakhstan No. 370 dated January 7, 2003. This law regulates relations in which electronic documents are used or created, legal relations arising in the sphere of circulation of electronic documents, including the commission of civil transactions, are terminated, or changed. It should be noted that the above terms did not immediately become widespread among citizens, for example, many had great doubts and questions about the use of an electronic digital signature (EDS). Now, the legal force of an electronic digital signature is equivalent to a signature on paper. The Law of the Republic of Kazakhstan dated January 7, 2003, prescribes that an electronic document is recognized only when all the requirements comply with this law and is certified by an electronic digital signature (hereinafter-EDS) of a person who has permission to use it. It should also be noted that the legislator gives a clear understanding that an electronic digital signature is equivalent to a handwritten signature and entails the same legal consequences. As practice shows, an electronic

¹³⁸

<https://orda.kz/chtobudet-regulirovat-cifrovoj-kodeks-kazahstana/>

digital signature is most often used in the field of public procurement. For example, it is possible to allocate such platforms as "Public procurement of the Republic of Kazakhstan-goszakup.gov.kz", "NADLoC tenders, procurement subsurface users -reestr.nadloc.kz ", "Electronic procurement of Samruk-Kazyna -zakup.sk.kz ".

The Civil Code of the Republic of Kazakhstan gives a full opportunity to conclude a transaction in electronic form, as evidenced by Article 152 of the Civil Code of the Republic of Kazakhstan. According to this article of the Civil Code, it is indicated that during the transaction, a written transaction can be made in writing by hand, as well as in electronic format with the help of an EDS signature. This paragraph was added to Article 152 of the Civil Code of the Republic of Kazakhstan in 2015 in the Law of the Republic of Kazakhstan "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on informatization" dated November 24, 2015, No. 419-V of the SAM (hereinafter - the Law of the Republic of Kazakhstan dated November 24, 2015).¹³⁹

Currently, as an example, we can mention the Kazakh large construction companies BAZIS-A, BI-Group which has partially switched to online contracts. This procedure occurs in such a way that when a person gives his consent to sign a contract, the subject receives a one-time SMS code with confirmation on the phone. A one-time SMS code is often used by telecom operators, banks, microfinance organizations and, as mentioned earlier, among construction organizations. Many people have had various disputes about whether the signature via SMS code is legitimate, whether it will be possible to prove their case in court in the future, what legal force this type of signature has. According to the legal opinion, the Ministry of Digital Development and Aerospace Industry of the Republic of Kazakhstan, since 2019, citizens of the Republic of Kazakhstan have fully registered their cell numbers by specifying their data, which is ID number. The Ministry stressed that any actions performed through a cell phone or a device that has a SIM card are the actions of the subscriber (person) for whom this card is issued. The Vice Minister in this conclusion noted that a contract signed with an SMS code can identify the parties, that is, it can be said that contracts signed with SMS codes have the same jurisdiction as a live signature. This type of electronic signature is one of the easiest, since there is no need to have a flash drive with an EDS key or a special computer, we should also note that this type of signature is one of the safe types, because when you use an EDS key there is already a memorized code, and in this case a one-time SMS code comes, which, after signing the document, you can forget.

To date, in our country, various companies, individual entrepreneurs, legal entities have started using the service called "Trust Contract". This service works through the blockchain program. It seems that first of all it is worth giving an idea of what a blockchain is. Blockchain is an information database in which all data is stored. Blockchain technology makes it possible for the participants of contractual relations, the investor, to transfer important information without the need for any formalization or mediation during the transfer. In simple words, this technology is created from different "blocks" that are created for each transaction and verified by the entire network using. The blockchain program provides complete security for signing contracts. "Trust Contract" is a service thanks to which it will be possible to sign any contract online using an SMS code that comes to the subscriber's phone number. There are three steps to sign a contract:

1. You need to choose the contract form or you can upload your own version.
2. Send the contract link to the signing party via SMS or via WhatsApp service, and also possibly via Face ID
3. Two parties sign the contract using a one-time password.

The service makes it possible to upload, store, and sign documents with counterparties at any time, regardless of where a person is. The program is available in two languages, Kazakh and Russian. With this program, the contract can be concluded in 90 seconds, which saves time, eliminating bureaucracy, etc. This service can be used not only by entrepreneurs and legal entities, but also by ordinary citizens of our state. According to the founder of this startup project, Chingiz

¹³⁹ https://online.zakon.kz/Document/?doc_id=30396612

Dauletbayev, "people who want to conclude a purchase and sale agreement can use the Trust Contract service and conclude a contract in a matter of seconds, as well as save money. According to him, if you compare prices at a notary, you can pay about 36 thousand tenge, while in this service it is ten times less."

He also gave another example about renting housing. When a tenant rents housing from a landlord, often two subjects of civil proceedings do not conclude any contracts, which leads to the fact that a person can stay on the street. To do this, as the entrepreneur says, there are several types of templates in the service for concluding a lease agreement, that is, it is possible to conclude absolutely legitimate contractual relations between landlords and the tenant.

In the future, Chingiz Dauletbayev plans to introduce this system into state bodies, create a precedent. According to him, while state bodies are not willing to implement this project into their system, as the system of bureaucracy is still present in the bodies.

Eight years ago, such a concept as an electronic offer appeared in the Kazakh legislation. According to Article 395 of the Civil Code of the Republic of Kazakhstan, an offer is an offer to a certain person to conclude a contract.¹⁴⁰ Today, the main mistake of many people is that many confuse the offer with the contract, although there are significant differences. As many scientists say, an offer becomes a contract only when the offer is accepted, that is, it is an acceptance of the terms, an agreement to conclude a contract. In simple terms, an offer and an acceptance are the same as a paper contract with a signature and seal. When a person has accepted the contract, that is, accepted the terms of the contract, then both parties are obliged to fulfill the conditions and at this moment the contract is not subject to change. We would like to give a couple of examples:

1. The girl bought a swimming pool subscription – this is the conclusion of a contract for services.
2. In social networks, the girl saw a skirt and wrote in the message "I want to buy this skirt" – this is the conclusion of a sales contract.
3. The user purchased the program from an Internet source - this will be a license agreement.

Article 395 of the Civil Code of the Republic of Kazakhstan states that the offer must be offered to a specific person or may be offered to several persons. The Civil Code of the Russian Federation also has a similar definition of the offer. However, many Russian scientists and lawyers note that the offer should not be offered to several persons, as in the future in practice it can lead to huge disputes. Scientists mention that in this case, the method of acceptance must be indicated, because it is possible that there will be a situation when it is simultaneously accepted by different persons and there will be a conflict that in the future it will not be clear with whom the contract is concluded. You can give such an example, a person wants to sell a refrigerator and did not specify the method of acceptance. In this case, it is possible that the buyer will come in person, send an email or call by phone and it all happens at the same time, in this case it is not clear with which client the offeror is accepted and many other issues.

The Law of the Republic of Kazakhstan dated November 24, 2015 introduced the term electronic offer, namely in paragraph 2 of Article 397 of the Civil Code of the Republic of Kazakhstan, according to which, when a written or electronic offer does not contain a deadline for acceptance, the contract is considered concluded if the acceptance is received by the person who sent the offer before the deadline established by law, and if such a deadline not installed - within the time required for this. However, at present, changes determined by the introduction of digital technologies into many public and state processes have been introduced into the main legislative act regulating civil turnover - the Civil Code of the Republic of Kazakhstan. And it should be noted that the norms introduced in the Civil Code of the Republic of Kazakhstan are not welcomed by civil scientific circles. According to the Kazakh scientist, civil scientist M.K. Suleimenov, attempts to amend the Civil Code were not very successful.

¹⁴⁰ <https://adilet.zan.kz/eng/docs/Z1500000418>

In conclusion, it can be noted that Kazakhstan is one of the most advanced states in the field of digitalization. At the moment, our state is doing a tremendous job of introducing new digital technologies into the sphere of legislation. The development of post-industrial society is strongly linked with advanced achievements in the field of science and technology. It hardly requires proof that scientific and technological progress has a significant impact on various spheres of society, including the sphere of human rights and freedoms. Changes in transactions, namely electronic transactions, have led to a legal effect, which is to prevent forgeries and falsifications of documents due to the replacement of paper media with electronic ones.

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ҚР АЗАМАТТЫҚ СОТ ӨНДІРІСІ: ТМД ЕЛДЕРІМЕН САЛЫСТЫРМАЛЫ ТАЛДАУ

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ғылыми жетекшісі; аға оқытушы, құқық магистрі

Әлем елдерінің құқықтық жүйесінің ілгері жылжулары мен оларға енгізіліп жатқан өзгерістер, ұлттық құқықтық жүйеміздің, соның ішінде азаматтық сот өндірісінің заман талабына сай болуын, құқықтық жүйені ұйымдастыру мен тиімді әрекет етуі үшін қажетті деңгейді қанағаттандыру мәселелері бүгінгі күн тәртібіндегі ең басты қажеттіліктердің бірі екендігін дәлелдеп отыр.

Азаматтық сот өндірісі – күрделі ұғым, алдымен азаматтық іс жүргізу құқығына түсінік беріп өтейік. Азаматтық іс жүргізу құқығы – азаматтық істер бойынша сот төрелігін жүзеге асыру, сондай-ақ сот шешімдерін орындау барысында сот пен сот ісін жүргізудің басқа да қатысушылары арасында туындайтын қоғамдық қатынастарды реттейтін құқықтық нормалардың жиынтығын қамтитын құқық саласы ретінде сипатталады. Бұл процесс бірнеше бөлімдерден құралады. Ең бірінші Қазақстан Республикасының азаматтық сот өндірісіне қысқаша тоқталып өткеніміз жөн.

Азаматтық сот өндірісі талаптың болуымен ғана бастау алады. Яғни, талап қоюшы талабын жазбаша немесе электрондық құжат нысанында жазуы керек. ҚР Азаматтық процестік кодексінің 150-бабына сәйкес, судья талап арызды алған күннен бастап бес жұмыс күні ішінде оны сот талқылауына қабылдау туралы шешім қабылдайды. Бірінші сатыдағы соттың іс жүргізуіне талап арызды қабылдай отырып, судья іс жүргізу тілін көрсете отырып, азаматтық істі қозғау туралы ұйғарым шығарады. Міне, осы жерден бастап бізде азаматтық сот өндірісі бастау алады.

Екінші кезең ретінде біз сот отырысына дайындық және алдын-ала тыңдалымды жатқыза аламыз. Азаматтық істерді соттың қарауына әзірлеу бірінші сатыдағы соттың іс жөніндегі іс-әрекетінің қажеттілігі болып табылады және ол тараптар ұсынған дәлелдемелер мен қолданылуға жататын материалдық құқық нормаларына сәйкес тараптардың заңды құқықтары мен міндеттерін, олар ұсынған дәлелдемелерді сот отырысында толық, жан-