

DIGITIZATION OF CIVIL PROCEEDINGS: ELECTRONIC DOCUMENT AND ITS APPLICATION

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The development of digital technologies is rapidly accelerating every year. Today, no one will be surprised by the phrase "electronic government" or "electronic document". A society that develops in step with the times forms a developing and competitive state.

Digital technologies are becoming a part not only of everyday life, but also of everyday professional activity. It should be noted that digitalization is actively coming to the judicial system.

In pursuance of the National Plan – 100 concrete steps to implement five institutional reforms of the First President Nursultan Nazarbayev, an active reform of the judicial system is being carried out in order to ensure the accessibility of justice, the maximum realization of the rights of participants in civil proceedings, timely protection and restoration of violated individual rights and freedoms, the interests of society and the state [1].

This was also mentioned by the Head of State Kasym-Zhomart Tokayev in his message dated September 2, 2019 [2].

In order to modernize the process of justice administration, the Information system "Torelik" was created and introduced in 2016 [3], which is currently the working platform of the courts of the Republic of Kazakhstan. With its help, the process of receiving, processing and transmitting applications, as well as documents on the case, was automated and accelerated, questions of society and interested persons on all procedural aspects of the work of the courts were removed, opportunities for any manifestation of any subjective factors in the organization of the work of the courts were minimized.

On the basis of the IS "Torelik" [3], the service "Judicial Cabinet" was developed for the parties to the case [4], which is intended for persons involved in the case: filing applications, appeals, complaints and petitions, as well as for sending letters to the judicial authorities of the Republic of Kazakhstan. Through this service, you can search for court documents and cases, pay the state fee online, track the progress of the case, receive a partial state service "Apostille of official documents originating from judicial authorities", go to the Taldau forum and much more.

One of the steps to implement judicial reform was the Law of the Republic of Kazakhstan dated 02.04.2019 No. 241-VI [5], thanks to which the Civil Procedure Code of the Republic of Kazakhstan was supplemented by Chapter 11-1 Features of electronic court proceedings [6].

This chapter is presented in three articles: 133-1 Format of civil proceedings, 133-2 Electronic documents and 133-3 Participation in a court hearing through the use of technical means of communication.

The legislator secured the right of the person participating in the case, his representative, as well as witnesses, experts, specialists and translators not only to use electronic documents in court proceedings, but also to the possibility of choosing the format of civil proceedings, and to participate in the court session by using technical means of communication.

Thus, according to paragraph 1 of Article 133-3 of the CPC of the Republic of Kazakhstan, persons participating in the case, their representatives, as well as witnesses, experts, specialists, translators can participate in the court session by using technical means of communication at their request or at the initiative of the court [6].

The technical means of communication used for participation in the court session must ensure that the presiding judge can establish the identity of the person participating in the case, as well as verify the powers of the representative.

In the absence of such a technical possibility, the applying of the right to participate in a trial is provided by the court at the place of residence of the person participating in the case (paragraph 2 of Article 133-3 of the CPC RK) [6].

If technical means of communication of these institutions are used to ensure the participation in the case of military personnel, persons in medical institutions, social protection institutions, as well as in places of detention or deprivation of liberty, then identification, receipt of a subscription to explain to them by the court considering the case, rights and obligations and a warning about responsibility for their violation is carried out with the assistance of the administration of these institutions. (Part 1, paragraph 3 of Article 133-3 of the CPC RK)[6]. As practice shows, the application of these norms not only significantly saves public funds and human resources, for example, for bringing a person in custody to the process, but also funds of citizens living in another locality.

However, the system of electronic administration of justice had some more shortcomings that needed improvement.

Article 133-1 of the Civil Procedure Code of the Republic of Kazakhstan regulates the format of civil proceedings, where paragraph one states that civil proceedings are conducted in paper or electronic format, depending on the method of appeal to the court chosen by the plaintiff. With the introduction of this norm,

the legislator gave the plaintiff the right to choose a format convenient for him to conduct legal proceedings. In turn, paragraph 2 of the same article states "The Court, taking into account the opinion of the parties and the technical capabilities of the process, may change the format of the proceedings, which makes a reasoned determination" [6].

It follows from the disposition of Article 133-1 of the Civil Procedure Code of the Republic of Kazakhstan that if the plaintiff has the opportunity and desire to conduct legal proceedings in electronic format, and the court where he applied for protection of rights has such an opportunity, and, as a rule, most courts of the Republic of Kazakhstan have such an opportunity today, then an electronic civil case is formed.

And already at this stage of the proceedings, the parties to the case faced the first problem: inability to apply their right. Firstly, the party in the case, having gained access to the personal judicial office, did not have the opportunity to get acquainted with either the civil action with the appendix filed in electronic format, or with the rest of the civil case materials, except with judicial acts issued in the case by the examining court, which contradicted Article 46 of the CPC RK. How was the procedure of overviewing the case materials carried out in practice? The person participating in the case submits an application for overviewing the materials of the civil case in electronic format through the judicial office. And after receiving the judge's permission, had the opportunity to get acquainted with the materials of interest in the case in paper form and make copies of them.

This procedure not only contradicted the current norms of the CPC of the Republic of Kazakhstan, in particular paragraph 3 of Article 133-1 "When conducting legal proceedings in electronic format, an electronic civil case is formed ..." [6], but also directly violated the rights of participants in the process. In addition, the rights of those persons who are unable to come to court for overviewing and participated in court sessions by using technical means of communication were violated.

Moreover, when conducting a civil case in electronic format, a participant in the process did not have the opportunity to get acquainted with and receive copies of documents provided by other participants in the process, if they were provided through the Judicial Cabinet system, which again deprived him of the right provided for in Article 72 of the procedural legislation to challenge facts, bring evidence and objections to evidence. As practice shows, often the participants in the process, having not received a copy of the submitted document in a timely manner through the judicial office, are deprived of the right to challenge the fact and provide the necessary evidence due to the end of the terms of preparation for the case (paragraph 1 of Article 73 of the CPC RK) [6]. In fact, it turned out that the case

was conducted in paper format, and only judicial acts issued in the case were provided to the parties electronically through the Judicial Cabinet.

The pandemic of 2020-2021 has made its own adjustments and pushed the regulatory authorities to make appropriate adjustments to the electronic system of judicial proceedings. Now, for 2023, any party to the case has the opportunity to get acquainted with all the documents on the case in electronic format remotely.

According to the second part of paragraph 3 of Article 133-1 of the Civil Procedure Code of the Republic of Kazakhstan, the original of the judicial act is an electronic judicial act placed in the automated information system of the court. Upon consideration of the case on the merits and the entry into force of the decision, the party to the case receives a copy of the court decision (Article 234 of the CPC RK)[6].

At this stage, the party to the process is faced with a problem. A copy of the court decision posted in the Court Office and certified by the electronic digital signature of the judge is an improperly executed and certified document for the registering authority. And in the case of a personal appeal, and not through an electronic portal, a citizen must submit to a state body a document certified by a handwritten signature of the judge and an imprint of the seal of the court that issued the decision, with marks of entry into force.

First of all, this contradicts paragraph 1 of Article 10 of the Law on Electronic Document and Electronic Digital Signature "an electronic digital signature is equivalent to a handwritten signature of the signatory and entails the same legal consequences" [7].

Secondly, paragraph 1 of Article 133-2 of the CPC RK: Procedural acts and actions of the court, persons participating in the case, may be issued in the form of an electronic document certified by an electronic digital signature [6]. These documents are equivalent to documents in writing.

The specified discrepancy and non-compliance with the requirements of the law at the stage of execution of a court decision arise due to non-compliance with the procedural legislation of the system capabilities provided by the Judicial Cabinet service and Instructions for office work in the district and equivalent court under the program "Unified Automated Information and Analytical System of judicial bodies of the Republic of Kazakhstan" [8]. It is according to the latter that the courts draw up documents and conduct civil records management. The introduction of full access of persons participating in the case to the electronic format of a civil case will simplify the proceedings and fully ensure the rights of citizens, which will save time and money, will allow achieving maximum transparency and accessibility of the judicial system for the population of the country.

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