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THE PROCEDURAL ASPECTS OF ELECTRONIC EVIDENCE IN CIVIL LITIGATION: EXPERIENCE OF UZBEKISTAN

Pirmatov Otabek Shavkatovich

Doctor of Philosophy in Law,

Acting Assistant Professor of the Department of Civil Procedural and Economic Procedural
Law of the Tashkent State University of Law,
Uzbekistan

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Abstract: This article discusses the differences between electronic evidence and written, thing evidences, the problems of electronic evidence evaluation in civil litigation, electronic evidence, electronic documents, audio or video recordings, cellular messages (SMS, MMS), Internet and e-mail messages, disks and discs. Issues such as categorization, the admissibility of electronic evidence, and the improvement of electronic evidence in the current legislation.

I. INTRODUCTION

An example of the use of modern information technology is the filing of civil court cases through E-courts, videoconference proceedings. At the same time, we can't imagine our lives without the internet, cell phones and computers. In these economic and civil litigation cases, judges are tasked with verifying electronic evidence, and identifying and eliminating conflicts of interest in the electronic evidence presented.

In 2018, 6,2934 applications were received through the national electronic information system E-SUD. Of these, 351516 are applications for filing court orders and 271418 are applications about claim.

12765 users are registered in the national electronic information system E-SUD. The number of registered individuals is 9906, legal entities - 2084, 505 lawyers.

Complaints filed electronically consist of the following categories: divorce, 25.5%, legal confirmation of significant facts was 8.4%, in the title document the name mismatches 10.7%, family relations 9.5%, debt collection 6.7%.[1]

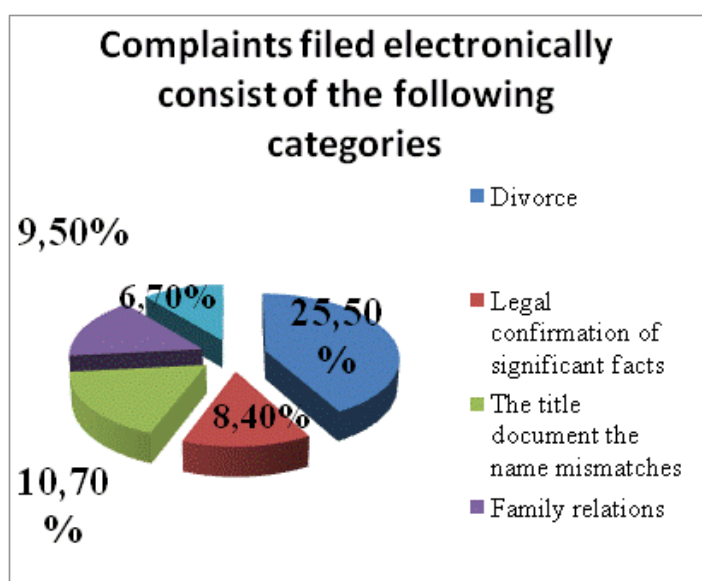
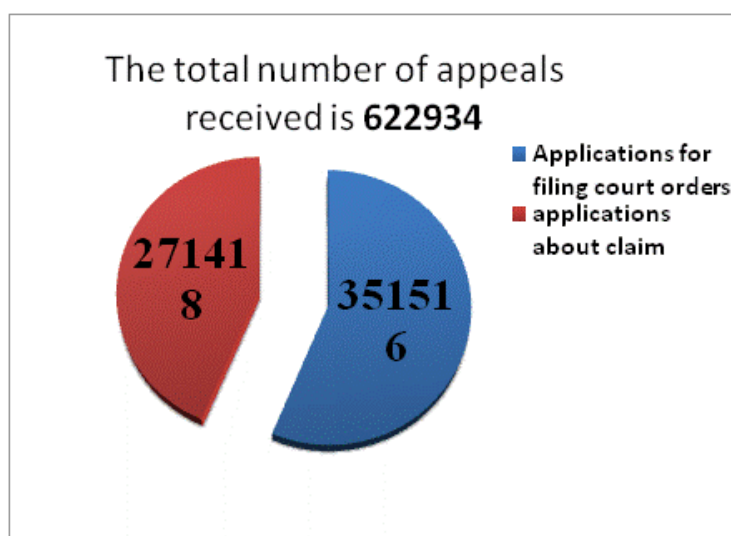
From the above statistics it is possible to say that the present legal proceedings in electronic form are practically a guarantee of reliable and effective protection of the rights of citizens and organizations by the courts.

The Code of Civil Procedure and the Economic Procedure Code also provide for a complete electronic filing of cases in courts. Forming cases electronically not only reduces manual labor, but also significantly simplifies procedural processes such as storing cases, sending them to higher courts, introducing parties to the case files, and copying them.

Although the Code of Civil Procedure and the Economic Procedure Code provide for a complete electronic filing of cases in courts, the parties have not yet introduced the practice of submitting electronic evidence to the courts..[2]

Although scientific definitions of the concept of evidence in economic procedural law and civil procedure law have been developed, conceptual views on the concept of electronic evidence and their procedural aspects have not been developed in economic procedural law and civil procedure law

Appeals through the National E-Judicial Information System E-SUD in 2018



II. LITERATURE REVIEW

In some Western countries, a new type of evidence-created, transmitted, processed information is being used under the guise of "electronic evidence", "digital evidence" and "computer evidence."

According to Lawyer Y.M. Baturin, computer-based evidence is a particular type of evidence, including electronic evidence..[3]

Foreign legal scholars argue that electronic evidence is a separate type of evidence.

According to Lawyer S.P. Vorobjit, both electronic evidence-based tools are those obtained by an independent judge who has a written form and verbal or material, or has been recruited by an expert..[4]

According to Dr. Swarupa Dholam, electronic evidence is a database that is created, reproduced, transmitted and transmitted in both digital and analog media, using technical means, computers, and telecommunications..[5]

S. Dholam outlines three features of electronic evidence:

- Firstly, all forms of electronic evidence are created, stored and transmitted by computer intelligence in computer technology;

- Secondly, electronic evidence is created and transmitted through various technical means, including analogue proofs. We mean the technical means of computers, telecommunications, wireless, Internet, navigation systems, mobile phones;

- Thirdly, the use of the electronic evidence as proof of the admissibility of evidence is not always accepted by judges as inadmissible evidence.

The admissibility of electronic evidence is a problem not only for the Indian judicial system, but also for the judicial system in Uzbekistan.

The range of electronic evidence is so extensive that electronic evidence can be a combination of both written, material, or oral, and it needs to be investigated and evaluated by any technical means. For example, if oral evidence is obtained through testimonies of parties and third parties and their legal representatives, testimony of witnesses, written evidence may be relevant to the case.

Existing information is documents obtained from recorded documents, service-related and personal correspondence, including by fax, electronic or other communication, or otherwise. Electronic evidence is available through communication or technical means. The peculiarity of electronic evidence is its availability and storage in electronic form.

The audio recording of a civil or economic dispute is oral and material, and the audio record is audited by a tape recorder or by a computer, as well as by flash drives, CDs and cassettes.

According to Lawyer M.V. Gorelov, electronic evidence is visual, audio, and video data that proves the case..[6]

Electronic evidence by Vakul Sharma, an Indian lawyer, categorizes the following categories:

- Web sites;
- Database;
- audio or video recording;
- pictures;

- Documents;
- social network correspondence;.[7]

While the idea of categorizing electronic evidence is similar to that of Paul Grimm, Paul Grimm incorporates chat correspondence into the category of electronic evidence. Paul Grimm also submits electronic evidence into the following categories

- allocates:
- e-mail;
- news;
- message messages;
- social network posts;
- Web site posts..[8]

Australian scientist Allison Rebecca categorizes electronic evidence based on the content and storage of electronic evidence. Specifically, electronic evidence based on storage devices is divided into the following categories: PC, email, storage devices (Compact Disks (CDs), Digital Versatile Disks (DVDs), Universal Serial Bus (USB), Subscriber Identity Module (SIM Card), local networks, recorders, and ZIP archives.

The content of the electronic evidence consists of email, websites, social networks, Short Messaging Services (SMS), office documents, databases, computer files..[9]

As we have seen above, the classification of evidence in the procedural law of the Commonwealth States (former USSR) is based on several categories.

S. Vorobjit categorizes the evidence on the following grounds:

- 1) based on the close link between the evidence and the proven fact;
- 2) based on origin;
- 3) Depending on the form;.[10]

According to S. Vorobjit, modern technologies do not affect the quality of information when copying information, so it is illogical to separate primary and complementary evidence in relation to electronic evidence. Dividing electronic evidence into primary and compelling evidence can distract the court. The most important thing for the court is to consider the full version of the electronic evidence..[11]

In fact, it seems illogical to divide electronic evidence into primary and compelling evidence, depending on the source. However, some types of electronic evidence, such as electronic documents, e-mails, can be submitted to court by screening web pages. In this case, we can divide electronic evidence into primary and combined evidence, depending on the source. If the electronic evidence is printed or photographed on paper, the evidence may be included in the scope of the evidence.

Electronic evidence can include electronic documents, audio or video recordings, cellular communication (SMS, MMS), Internet and e-mail messages, disk and flash data and so on.

Each of the above forms of electronic evidence requires a judge to give a separate review and evaluation.

III. DISCUSSION AND ANALYSIS

Although the Civil Procedure Code of the Republic of Uzbekistan contains chapters devoted to proof and evidence, however, these chapters do not include articles on electronic evidence. Civil Procedure of the Republic of Uzbekistan Article 73 of the Code specifies written evidence, which states that information about circumstances relevant to the case is obtained from documents, business and personal correspondence, including by fax, electronic or other communication, or by any other means that may determine the accuracy of the document. In our procedural legislation, electronic evidence is reflected as written evidence.

This creates a practice of not treating electronic evidence presented by the parties in court proceedings as acceptable evidence. Specifically, on December 17, 2018, the Ferghana inter-district civil court heard a civil case number

2-1501-1815 /4404 on divorce. If the plaintiff stated at the hearing that the respondent had a romantic relationship with the other men over the phone and the Internet, and therefore had a strained relationship with him, he had filed a lawsuit to divorce the respondent after losing hope of restoring his family. The slanderous telegram records also show that the plaintiff himself organized the purpose of rebuilding his family, and if the plaintiff gave him a home, he would agree to divorce. asked him to die. In the above civil case, the defendant's failure to provide reasonable evidence was grounds for dismissal of the claim..[12]

In Code of Civil Procedure of the Republic of Uzbekistan there are no exceptions to the case under Article 74, which are required by law to prove by certain means it cannot be confirmed by means of proof. We believe that video or audio recordings or webpages reflecting copyright infringement should be accepted as evidence by judges in economic and civil litigation.

One of the main reasons for the inadmissibility of electronic evidence by judges in economic and civil litigation is that they are not clearly stated in our procedural legislation and that virtual civil relations are not regulated by statutory acts. For these reasons, the electronic evidence presented to the court is not accepted by the judges, or they can be proved by means of evidence, witness opinion, expert opinion.

The unacceptability of electronic evidence causes negligence on the part of the parties when submitting them to court.

Each type of electronic evidence should be considered. Article 168 of the Economic Procedure Code of the Republic of Uzbekistan demonstrates audio and video recordings in the courtroom or in another specially equipped room. It was stated that audio and video recordings will be reflected in the court records. In our economic procedural legislation, audio and video recordings of electronic evidence are accepted by the courts as acceptable evidence.

In our view, electronic evidence is information technology and information systems and information that is created, processed, stored and has other details that allow it to be identified and used as a means of identifying situations relevant to the content of a case.

Electronic evidence - can be in electronic form, drawing, marking, diagram, chart, map, audio and video recording, etc.

Classification of electronic evidence is made on the basis of the specificity of each of them.

E-evidence can be classified into the following categories:

- Electronic documents;
- audio or video recording;
- e-mail (social networking, e-mail, SMS, MMS);
- Internet;

-disk, information on computers and flashcards, of course we can continue this categorization.

Electronic arguments differ in their structure, and their classification is more complex. These types of electronic evidence can be classified according to their structure, subject and requirements set by the law.

Due to the fact that electronic evidence is technically made, sometimes it is not possible to do so. In particular, the Internet, databases, viruses to files, spam emails, power outages and technical violations of the Internet should also be considered by the court. The contract in the form of spam or virus is considered by the court itself as evidence not charged.

IV. CONCLUSION AND OFFERS

In our view, it is necessary to strengthen the legal status of electronic evidence by reflecting it in the legislation. In our view, the Civil Procedure Code of the Republic of Uzbekistan should include articles devoted to electronic evidence.

The introduction of an electronic evidence clause would enable economic and civil litigation to be legally, fairly and reasonably settled.

Norms on the procedure for receiving, checking and evaluating electronic evidence must be reflected in the Code of Civil Procedure of the Republic of Uzbekistan. In particular, Article 89¹ of the Code of Civil Procedure of the Republic of Uzbekistan, that is, an article called Electronic Evidence, shall be as follows:

Electronic evidence is information that contains information about circumstances that are relevant to civil litigation, created, processed, stored and other identifiers that are used with the use of technology and information systems and information technology.

Electronic evidence can be presented to the court either through electronic storage devices or by email.

The court may accept evidence stored in electronic media that is relevant to the civil case. If necessary, the court may appoint an expert for electronic evidence or obtain expert opinion.

Evidence stored in electronic media may include electronic documents, e-mails and drawings, spreadsheets and graphs, Internet information, audio-visual recording and other information.

As a result of the introduction of electronic evidence standards in the Civil Procedure Code of the Republic of Uzbekistan:

Firstly, the scope of factual information that substantiates the claims and objections of the parties will be expanded. The Parties will be able to substantiate their claims and claims with allowance agreements, receipts, documents and items, but also with electronic correspondence, Internet, SMS, electronic documents, IT programs, etc. ;

Secondly, electronic evidence saves the parties time and money when submitting electronic evidence, which prevents the parties from spending too much time on printing paper evidence and taking their case to court;

Thirdly, when sending electronic evidence through the e-court procedure, the size of the case in the courts will be reduced;

Fourthly, the introduction of electronic evidence will help improve the electronic litigation.

In conclusion, the introduction of the above norms into the Civil Procedure Code of the Republic of Uzbekistan would facilitate the quick, easy and legal resolution of civil cases

REFERENCES

- Supreme court of Uzbekiston Republic, International development agency of USA (USAID) and joint project of Development program of UN named “ Road to way of improving law in collaboration” in Uzbekistan in newsletter of 2018. Tashkent. 2018. p.20.
- Yodgorov Kh. The role of modern info-communication in order to improve the activity. The artical collection of international conversation named “ Actual issues of developing civil procedural law” Tashkent. 2018. p. 26
- .[http://www.dissercat.com/content/elektronnye-dokazatelstva-i-printsip-neposredstvennosti-v-arbitrazhnom-rotsess](http://www.dissercat.com/content/elektronnye-dokazatelstva-i-printyip-neposredstvennosti-v-arbitrazhnom-rotsess)
- Vorojbit S.P. Issues of representation and researches of electronic mail message in arbitral process . <http://www.twirpx.com/file/378165/>
- Swarupa Dholam. Electronic evidence and its challenges. 2015. At page 14.
- Treushnikov M.K. Court evidences. M., 2005. p. 119.
- M. Mitrafonova. Dissertation Candidate of Law (PhD). Saratov. 2013. p. 133.
- A. Vayshnurs. Offenses on the Internet: acceptable law and evidences / Evidences in arbitral process. Court practice. Library EJ-Lawyer. M., 2004. p. 134.
- V. Pogulyayev. Means of evidences by cases related to the Internet // Economy and law. 2004. № 7. P. 69.
- M. Gorelov Electronic evidences in civil court: Dissertation Candidate of Law (PhD). Yekaterinburg, 2005. p. 79.
- Position on Digital Signature Laws and Notarization: a Position Statement from the National Notary Association // National Notary Association // <http://nationalnotary.org>
- M. Yegorova Information advertising on the Internet: to search and to fix, or to the issue of providing notary evidence in the form of advertisements on the Internet // Actual issues of Russian law. 2016. N 9. p. 131 - 136.
- A. Leshenko. Actual questions of providing evidences by notaries // Law. 2008. № 9. p. 171.
- M. Mitrofonova. Elthe principle of immediacy in arbitral process. Dissertation Candidate of Law (PhD) . Saratov. 2013. p.145.

- M. Shvarts Providing of evidences and some general issues of evidences in arbitral process //Evidences in arbitral process. M., 2004. p. 119.
- C.Vorobjit. Dissertation Candidate of Law(PhD). Sankt-Peterburg. 2011. p. 205-206.
- DHIVYA, R., SD SIVAKUMAR, and S. SELAVANAYAKI. "INTERNET SHOPPING-WHAT TENDS TO COME BACK FOR MORE?." *International Journal of Business and General Management (IJBGM)* 5.5 (2016):13-24
- Sherasiya, Tariqahmad, Hardik Upadhyay, and Hiren B. Patel. "A survey: Intrusion detection system for internet of things." *International Journal of Computer Science and Engineering (IJCSE)* 5.2 (2016): 91-98.
- Singh, Binu. "INTERNET, SOCIAL RELATIONS AND CHANGING STRUCTURE OF KNOWLEDGE." *IMPACT: International Journal of Research in Humanities, Arts and Literature (IMPACT: IJRHAL)* 6.9 (2018):347-352
- Patil, Rajeshwari, and Suresh Jange. "USE OF INTERNET TECHNOLOGY BY ENGINEERING AND MEDICAL COLLEGE TEACHING FACULTY AND STUDENTS IN BIJAPUR: A STUDY." *IMPACT: International Journal of Research in Humanities, Arts and Literature (IMPACT: IJRHAL)* 6.12 (2018):299-304
- KUMAR, UMESH, and DN SINGH. "ELECTRONIC WASTE: CONCERNS OF LIGHTING LAMPS IN JHARKHAND." *International Journal of Electrical and Electronics Engineering Research (IJEEER)* 4.3 (2014):103-120.
- YERZHAN, ASSEL ANUARKYZY, and KURALBAYEV ZAUYTBEK. "AN APPROACH TO THE PROBLEM SOLVING OF SENSITIVITY DETERMINING OF ELECTRONIC CIRCUITRY." *BEST: International Journal of Management, Information Technology and Engineering (BEST: IJMITE)* 3.9 (2015):83-94