

## **ABSTRACT**

**of the dissertation for the degree of Doctor of Philosophy (PhD) in the specialty «6D030100 – Jurisprudence» of**

**KUSSAINOVA AINUR KAZYBEKOVNA**

**on the topic: «Civil-legal regulation of the relations in the sphere of the electronic document circulation in the Republic of Kazakhstan»**

**General characteristics of the dissertation.** The dissertation is devoted to the study of the problems of civil regulation of relations in the field of electronic document management in the Republic of Kazakhstan. The paper studies the theoretical concepts of defining the conceptual apparatus of the sphere of electronic document flow; considers the development of the norms of international legislation regulating relations in the field of electronic document flow and makes proposals for the implementation of these norms into the current legislation of the Republic of Kazakhstan; the experience of providing electronic document circulation in the USA, Canada, Estonia, Italy, France and other states of the European Union, as well as the countries of the Asian region has been studied.

### **Relevance of the research topic.**

One of the main factors influencing scientific and technological progress on all spheres of human activity is the widespread use of information technology. At the current level of their development, work with information (collection, analysis, storage, distribution, etc.) is carried out faster and more efficiently.

The widespread use of information and communication technologies requires a systematic study of relations in the field of electronic document management as a new legal structure.

It should be noted that in the Republic of Kazakhstan, the legal regulation of relations in the field of electronic document management was started with state bodies. During this period, work began on the creation of a project for the Unified Electronic Document Management System (ESED0). The main goal of this project was to increase the efficiency of the work of state bodies of the Republic of Kazakhstan, including the prompt and high-quality processing of official documents.

On September 1, 2020, the Head of State K.K. Tokayev delivered an annual Address to the people of Kazakhstan «Kazakhstan in a new reality: time for action». K.K. Tokayev defined the following: «We must strive to abandon the use of paper in interagency interaction and when communicating with citizens. I instruct you to cancel the most demanded certificates and paper confirmations (30 out of 47) by the end of the year, to provide digital confirmation of information».

In this regard, it is very important to comprehend such an essential element of the information sphere as the legal aspects of organizing electronic document management.

### **The degree of scientific elaboration of the research topic.**

In Kazakhstan, there is no fundamental scientific research devoted to the civil legal aspects of the legal regulation of relations in the field of electronic document management. At the same time, it is possible to single out separate scientific studies of the leading Kazakhstani civil scientists. So, M.K. Suleimenov, in his works, fragmentarily considered the issues of civil law regulation of electronic document management. In particular, the problems of the legal nature and the conclusion of online transactions are considered. The article analyzes the emergence of special forms of concluding contracts - smart contracts; considered the concept of «digital asset» as property in digital form.

Features of the conclusion of contracts in electronic form under the legislation of foreign countries in his article were investigated by F.S. Karagusov. One of the research topics in his works is the peculiarities of making payments through electronic money.

The problems of ensuring information security, including the sphere of electronic document management, were investigated by A.E. Zhatkanbaeva.

E.A. Shelepina, S.I. Semiletova, E.Yu. Shishaeva, D.V. Shibaev.

The issues of legal regulation of the use of EDS are discussed in the works of such researchers as Manshin S.V., Kvashnin V.I., R.O. Khalikov.

The problems of legal regulation of transactions in the field of e-commerce and trade were analyzed by A.S. Kosarev, N.V. Minenkova, A.V. Krasikova. V.Yu. Mochenov, A. Abdujalilov.

One of the main tasks of legal regulation of the use of electronic document management, information resources is the problem of determining the procedure for access to information and its protection.

The legal basis for the circulation of information with limited access (confidential information) became the object of research by A.V. Semashko, S.A. Shadrin.

A large amount of scientific work in the field of researching various aspects of electronic document management has been done by foreign researchers such as Stephen Mason, Christina Ramberg, Catherine Walsh, Ingrid Pappel, Roxana Motefi, Taavi Kotka, Stephen E. Blythe, Kamini Bharvada, Dina Prokić, Parviz Bagheri, Thomas Hoffmann and etc.

**Object of study.** The object of the research is the social relations that develop in connection with the use of the electronic document exchange system in civil circulation.

**The subject of the research** is the legal norms of the legislation of the Republic of Kazakhstan and foreign countries, regulating information relations arising in connection with the use of the electronic document exchange system in civil circulation, judicial practice and modern doctrinal provisions of law.

**The purpose of the dissertation research** is to investigate the essence and content of the institution of electronic document regulation in the Republic of Kazakhstan with the development of a holistic view of the civil legal provision of its use in order to ensure the proper electronic form of civil circulation and to propose ways to improve it.

To achieve the set research goal, based on the subject and object of research, the following **tasks** were set:

- to reveal the theoretical and legal foundations of the institution of electronic document management;
- to study the international experience of the development of the institution of electronic document management;
- to define the concept of electronic document circulation through the prism of the categories «electronic document», «information», «civil circulation» and analysis of the history of its development in law;
- to form a legal characteristic of a modern electronic document management system in the Republic of Kazakhstan, identifying the features of transactions, the legal status of participants and methods of their identification in electronic document management;
- to develop proposals for the improvement and further development of domestic legislation governing the institution of electronic document management;
- to identify the features of the use of electronic digital signatures and other methods of certifying electronic documents;
- to analyze the problems and directions for improving the legislative support for the protection of personal data when using electronic document management.

**Methodological basis for dissertation research.** In the process of performing the dissertation research, general and special methods of cognition were used, which made it possible to conduct a comprehensive analysis of the main issues of the topic of scientific research and achieve the set goals.

During the dissertation research, various methods of scientific knowledge were used. Among them it is necessary to highlight: the historical method; formal logical method; method of analysis and synthesis; structural and systemic method; method of legal comparison; statistical method; logical method; generalization method, etc.

Through the use of the historical method, the main stages of the development of international and national legislation regulating relations in the field of electronic document management and electronic commerce were considered. The comparative legal method made it possible to analyze the theoretical concepts and approaches to the concept of electronic document flow under the legislation of the Republic of Kazakhstan, countries of the near and far abroad. The application of the combination of the above methods contributed to a comprehensive study and the formulation of theoretical conclusions and practical recommendations.

**The normative basis of the study** was the Constitution of the Republic of Kazakhstan, constitutional laws, laws and other normative legal acts of the Republic of Kazakhstan; international model laws in the field of electronic document, electronic digital signature and electronic commerce. Particularly noteworthy is the system of State programs, such as «Digital Kazakhstan» and «Informational Kazakhstan -2020», acts of specially authorized central and local executive and representative authorities.

The empirical basis of the study was the materials of the practical activities of the authorized authorities, the results of analytical studies in various branches of science and practice that are directly related to the problem under consideration,

materials of law enforcement practice, reviews, analytical materials, statistical data obtained from periodicals and electronic resources.

**The scientific novelty of the dissertation research is determined by the following basic provisions for the defense:**

1. The author's position on the use of the concept of "electronic document" as denoting a document in which information is presented in electronic digital form on an electronic medium and the authenticity of which is certified by means of an electronic signature, which should be understood as legally fixed digital methods of identifying subjects.

2. Justification of recognition as an electronic document flow of a set of document flow processes associated with the use of information technologies and telecommunication systems with the need to make the following changes and additions to:

(a) Clause 13 of Article 1 of the Law of the Republic of Kazakhstan dated January 7, 2003 No. 370-II «On an electronic document and electronic digital signature» shall be stated as follows: «13) Electronic document flow is a set of processes of creation, processing, sending, transfer, receipt, storage, use, protection of electronic documents using information technology and telecommunication systems».

3. The author's proposal to single out electronic circulation within the framework of civil circulation. Justification of recognition as an electronic civil turnover the commission of legally significant actions in relation to objects of civil rights by the exchange of electronic documents in electronic digital form using information and communication technologies (electronic means of communication).

4. Reasoned author's position on the relationship between the concepts of «electronic signature», «digital signature», «electronic digital signature», «digital handwritten signature» as intersecting concepts, in which the concept of «electronic signature» and «digital signature» should be considered as a genus category, which denotes all types of electronic signatures, and «electronic digital signature» and «digital handwritten signature» are its varieties. Proposal to amend the legislative definition of an electronic digital signature.

5. The author's characteristic of the modern electronic document management system has been formed with the identification of the features of the legal status of the participants in the electronic document management and the transactions they conclude in electronic digital form using various identification methods with a proposal to amend the legislative definition of the concept of "signatory" with the need to make the following changes and additions to Law of the Republic of Kazakhstan dated January 7, 2003 No. 370-II «On an electronic document and electronic digital signature»:

(a) Supplement and set out clause 6 Art. 1 of the Law of the Republic of Kazakhstan dated January 7, 2003 No. 370-II «On electronic documents and electronic digital signatures» as follows:

«6) signer - an individual, an authorized body of a legal entity or an official of a state body, lawfully possessing the private key of an electronic digital signature and having the right to use it in an electronic document».

(b) addition to the point 4 Article 10 of the Law of the Republic of Kazakhstan

dated January 7, 2003 No. 370-II «On an electronic document and electronic digital signature» shall be supplemented with paragraph 4 in the following edition:

«If, in accordance with the regulatory legal acts of the Republic of Kazakhstan or the custom of business turnover, a document must be certified with a seal, an electronic document signed with an electronic digital signature and recognized as equivalent to a paper document signed with a handwritten signature is recognized as equivalent to a paper document signed with a handwritten signature and certified by the seal».

6. Argued author's position on the relationship between the concepts of "electronic signature", "digital signature", "electronic digital signature", "digital handwritten signature" as intersecting concepts, in which the concept of "electronic signature" and "digital signature" should be considered as a generic category, which denotes any kind of electronic signature, and "electronic digital signature" and "digital handwritten signature" - as a kind of electronic signature.

7. Formed author's idea of the content of the right to personal data as a power to restrict the performance by third parties of any actions with personal data of a person without his consent, as well as to control the actions of personal data operators with justification for recognition as an object of relations for the protection of personal data in the electronic document management system, any documented information, which refers to information recorded both on tangible and electronic media, having actual or potential commercial or social value, in respect of which a restricted access regime has been established in order to prevent their misuse and / or disclosure .

**Theoretical and practical significance of the research.** The theoretical significance of the study is that it is the first to comprehensively investigate the problems of civil law regulation of relations in the field of electronic document management.

The practical value lies in the fact that, based on a comprehensive analysis, proposals are made to improve the mechanism of civil law regulation of relations in the field of electronic document management.

**The approbation of the research results** was carried out as the results were obtained at each stage of the dissertation work. The dissertation was completed at the Department of Civil Law and Civil Procedure, Labor Law of the Law Faculty of the Al-Farabi Kazakh National University. The results of the research were reported and discussed at scientific and theoretical seminars of the above department.

The main conclusions of the dissertation research were published in 9 scientific articles, including in 1 international peer-reviewed journal in the Scopus database, in 4 scientific publications recommended by the Committee for Control in the Sphere of Education and Science of the MES of the RK and in the materials of international conferences.

**The structure and volume of the thesis.** The dissertation consists of an introduction, three sections, uniting seven subsections, a conclusion and a bibliographic list of used normative acts and literature.