

ANNOTATION
of the dissertation for the degree of Doctor of Philosophy (PhD)
in the specialty «6D030100 – Jurisprudence»
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on the topic «Civil - legal regulation of electronic commerce of the Republic of
Kazakhstan in modern conditions»

Relevance of the research topic. The development of information and communication technologies has contributed to an increase in the speed of interaction of subjects of civil law relations, cost reduction and expansion of geographical boundaries, as well as an increase in the number of these relations.

The particular importance of the development of electronic transactions was manifested during the coronavirus pandemic. In 2020, despite the general decline in world trade under the influence of measures to combat the pandemic, experts noted an increase in retail sales by e-commerce by 20%.

The degree of scientific development of the research topic. The development of electronic commerce requires the updating of existing laws for effective legal support of civil legal relations in this area. Insufficient civil law regulation of these legal relations leads to problems of qualification of actions as electronic transactions, including valid and invalid, as well as to problems of protection of the rights of subjects of these legal relations, including protection of confidentiality of commercial information.

In the legal literature on general issues or some mechanisms concerning the legal regulation of electronic transactions, as well as the specifics of the commission and execution of electronic transactions, are considered in the scientific works of the following domestic lawyers: Suleimenov M. K., Dusipova E. Sh., Idris S. S., Ermankulova R. I., A. B. Omarov, S. P. Moroz, V. T. Batychko, S. Saukenova.

These issues have been studied in the scientific works of the following Russian authors: I. R. Salieva, Yu. A. Savinova, M. Alekseeva, J. K. Tereshchenko, A. Yu. Andreeva, N. V. Kozinets, V. I. Dal, I. B. Novitsky, P. Podretsky, T. Y. Kulik, O. I. Makarevich, M. A. Denisenko, A. A. Didenko, N. Dmitrik, S. I. Klimkin, Yu. P. Egorov, A. G. Kosarev, I. A. Shashkova, A. Yu. Rykov, A. V. Krasikova, R. A. Marchenko, D. F. Dundyukova, Ya. A. Karev, Yu. V. Romel, E. V. Nesterova, G. F. Shershenevich, V. I. Sinaisky, F. S. Heifetz, I. V. Kostyuk.

Theoretical, methodological and methodological basis of the dissertation research. The theoretical and methodological basis of the dissertation is the scientific works of Soviet, Russian, Western and Kazakh legal scholars related to the civil regulation of electronic commerce, as well as the works of the Organization for Economic Cooperation and Development, the CIS Executive Committee, the Asia-Pacific Economic and Social Commission, the Institute of Legislation of the Republic of Kazakhstan, the Moscow School of Management SKOLKOVO and publications, including reports from other organizations.

Goals and objectives of the study. The purpose of the dissertation research is to study the specific characteristics of electronic commerce and develop proposals for improving the civil regulation of electronic commerce in Kazakhstan. To achieve this

goal, the solution of the following specific research tasks is indicated:

- to study the concept of "electronic commerce" and the essence of;
- to determine the civil value of electronic documents in the implementation of electronic commerce;
- to conduct a comparative analysis of international and domestic experience in the field of legislative support of electronic commerce;
- to reveal the legal nature of electronic transactions and its subjects; > BD: - describe the methods and procedure for concluding electronic transactions in accordance with the legislation of the Republic of Kazakhstan;
- to study the legislation of the Republic of Kazakhstan regulating the security of commercial secrets in the implementation of an electronic transaction;
- analyze the conditions of validity and invalidity of electronic contracts;
- to develop practical proposals on improving legislation in the field of regulation of electronic commerce on the basis of the conducted research.

The object of the study is social relations arising in connection with the legal regulation of electronic transactions that carry out electronic commerce in civil circulation.

The subject is the doctrinal scientific and theoretical conclusions of domestic and foreign scientists studying the theoretical foundations of civil law regulation of electronic commerce, as well as national legislation and international norms related to the conclusion and execution of transactions in the field of electronic commerce in the Republic of Kazakhstan in modern conditions.

Scientific novelty of the research. The scientific novelty of this dissertation research lies in the fact that it is a comprehensive theoretical and legal study of trends and problems of electronic transactions in Kazakhstan, including those related to the legitimacy of electronic documents in the implementation of electronic transactions, participants and electronic registration, ensuring the confidentiality of information and data in the implementation of electronic transactions.

The results are expressed in the following provisions submitted for protection:

1. Based on the analysis of the concept and essence of e-commerce, it is proved that e-commerce and e-commerce are a type of entrepreneurial activity. Also, recognizing that under the legislation of the Republic of Kazakhstan, the term "electronic commerce" is a broader concept than the term "electronic commerce", the author's definition of these concepts and the wording of sub-paragraphs 56) and 57) of Article 1 of the Law of the Republic of Kazakhstan on Regulation of Trade Activities and sub-paragraphs 64) and 66) of paragraph 1 of the Rules of Internal Trade (2015) are proposed the following type:

"e-commerce is a type of entrepreneurial activity for the sale of goods and services to individuals and legal entities through information technology through online stores and an Internet platform, subject to certain conditions";

"e-commerce is a type of entrepreneurial activity for the sale of goods to individuals and legal entities through information technology through online stores and an Internet platform, subject to certain conditions." >

Also, we propose to state the first paragraph of subparagraph 65) of paragraph 1 of Article 1 of the Tax Code of the Republic of Kazakhstan in the following wording:

"electronic commerce is a type of entrepreneurial activity for the sale of goods to individuals and legal entities through information technology through online stores and (or) an Internet platform, subject to the following conditions."

2. It is proved that the essence of e-commerce and e-commerce is the implementation of trading activities through information technologies via the Internet. Based on this, the specific characteristics of e-commerce and e-commerce have been identified, which consist in:

- implementation of this activity through the exchange of electronic data and electronic documents;
- remote interaction.

3. Classification of approaches to legislative regulation of specific characteristics of electronic commerce in Kazakhstan using the EIF ESCATO method, UNCITRAL and Enhanced Integrated Framework (Enhanced Integrated Platform) has been carried out:

1) uniform legislation on the recognition of electronic documents, i.e. the principle of "functional equivalence" of an electronic document to a paper document is recognized and only separate norms regulating elements characteristic of electronic documents are being developed. As an alternative, we note that norms will be developed regulating all elements of the use of electronic documents using a dual-mode approach.

2) a clear approach is applied to the legislative regulation of the use of technologies: clear requirements for the development and certification of electronic signatures, an established list of suppliers, a clear distinction between the originals of electronic and paper documents, paper and electronic copies.

4. The essence of the electronic transaction, as always, is proved by the direction of the legal consequences. In this regard, in Article 151 of the Civil Code of the Republic of Kazakhstan, along with the oral and written form of the transaction, we propose to single out the electronic form and define its content as follows: "an electronic transaction is a form of transaction concluded by exchanging an electronic document and/or an electronic notification using an electronic data carrier."

5. The Civil Code of the Republic of Kazakhstan establishes that the subjects of an electronic transaction are the subjects of a traditional transaction determined by the same legal capacity and legal capacity. However, as for the participants of the transaction, the participants of the electronic transaction, in addition to the traditional buyer and seller of goods, works and services, as well as:

- the certifying provider certifying the authenticity of the EDS;
- we believe that this is a communication service provider providing electronic messaging, whose role is important in ensuring the security and confidentiality of the transaction.

6. It is proved that the legislation of Kazakhstan regulates the procedure for concluding an electronic transaction, which provides for 3 ways: drafting one electronic document, exchange of electronic documents, acceptance in the form of actions in response to the offer.

In addition, having studied the Civil Code of the Republic of Kazakhstan and the Law of the Republic of Kazakhstan on Regulation of Trading Activities, and noting

that although these laws provide a link to an electronic offer, but do not give an exact indication of the form of acceptance, we propose to add the following to paragraph 1 of Article 29 of the Law of the Republic of Kazakhstan on Regulation of Trading Activities: "The buyer who received the offer in electronic form must give his consent to conclude an electronic transaction in electronic form, which is an acceptance of the offer."

7. It is proposed to distinguish advertising from a public offer. Advertising is not an offer, but only a call to an offer. A public offer is an offer made to an indefinite circle of persons by issuing a signed electronic document. Since the advertisement is not a signed electronic document, the response of a potential buyer to the advertisement is not a fact of the conclusion of electronic commerce. At the same time, the will of a potential buyer to conclude an electronic transaction and thereby the fact of concluding an electronic transaction can be proved by additional information - a document on payment for a product or service.

8. Based on the analysis, it is concluded that there is no mechanism in the legislation for certifying an electronic transaction concluded by a notary at a distance, and the rules on state registration of such transactions. In this regard, in the Law of the Republic of Kazakhstan dated July 14, 1997 "On Notaries", the second paragraph of Article 44-1 is proposed to be supplemented with the following norm: "with the consent of the parties to the transaction and the notary, the presence of a notary during an electronic transaction may be ensured by video communication.

9. When performing electronic transactions and in order to avoid counterfeit goods that cause harm human life and health, it is necessary to adopt the Law of the Republic of Kazakhstan "On Trade Secrets", emphasizing the importance of the security of trade secrets.

10. Today in Kazakhstan there is a trend of widespread use of electronic state registration of rights based on electronic contracts, as well as digital handwritten signatures in the implementation of electronic transactions in the field of housing construction. In this regard, for the purposes of legislative regulation of these processes, we propose to make additions and changes to the regulatory legal acts of the following nature:

Subparagraph 31) of Article 1 of the Law of the Republic of Kazakhstan dated July 28, 2007 "On State registration of rights to immovable property" should be worded as follows: "Electronic registration - state registration carried out on the basis of a title document drawn up in electronic form, received by the registering authority through the information system of the legal cadastre, or its electronic copy".

Also, the second paragraph of paragraph 2 of Article 152 of the Civil Code of the Republic of Kazakhstan should be worded as follows: "when making a transaction, it is allowed to use means of facsimile copying of a signature, electronic digital signature, digital handwritten signature, if this does not contradict the legislation or the requirement of one of the participants."

11. In case of non-compliance with the written form of the transaction, based on the norms of the Civil Code of the Republic of Kazakhstan, recognizing the transaction as invalid, in case of non-compliance with the electronic form of the transaction, a separate instruction is provided in the legislation and the following wording of

paragraph 4 of Article 153 of the Civil Code of the Republic of Kazakhstan: "to consider as void an electronic transaction, the content of which is not reproduced on a tangible medium using electronic or other technical means or certified by an electronic digital signature. The use of a digital handwritten signature is allowed in cases where the transaction is subject to state registration and/or the authenticity of the digital handwritten signature can be proved."

Theoretical and practical significance of the results of the dissertation research. The theoretical significance of this work lies in a comprehensive analysis of the legal nature of certain aspects of electronic commerce. For example, it contributes to a deep understanding of electronic transactions and their subjects, confidentiality of information during transactions and consumer protection, validity and invalidity of electronic transactions and other aspects of electronic commerce.

Approbation of the results of the study. Scientific proposals and conclusions, provisions identified during the writing of the dissertation work. It has been tested and published in collections of international, republican, scientific and practical conferences, journals recommended by the Committee for Quality Assurance in the Field of Science and Higher Education of the Ministry of Science and Higher Education of the Republic of Kazakhstan. During the research, 13 scientific articles and research results were published, including 1 in the Scopus database in an international peer-reviewed journal, 5 in scientific publications recommended by the Committee for Quality Assurance in Science and Higher Education of the Ministry of Science and Higher Education of the Republic of Kazakhstan, 3 at international scientific and practical conferences in the CIS and other foreign countries, 3 in international scientific and practical conferences in Kazakhstan, 4 articles have been published at conferences.

The structure of the dissertation work is determined by the designated goals and objectives. The work consists of an introduction, three chapters, a conclusion and a list of references.