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RESEARCH ARTICLE

FORMATION OF "E-JUSTICE" SYSTEM IN THE ECONOMIC COURTS OF THE REPUBLIC OF UZBEKISTAN.

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Abstract

This article analyzes some of the problems arising in the process of consideration of cases in the economic courts of the first instance and e-justice issues and peculiarities of their application in practice. It was put forward the suggestions and recommendations to improve the economic procedural legislation, including the Economic Procedural Code of the Republic of Uzbekistan.

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Introduction:-

The legal basis for the introduction of information and communication technologies in the activity of the courts in Uzbekistan are the Decree of the President of the Republic of Uzbekistan "On the further implementation and development of measures of modern information and communication technologies" № 1730 dated March 21, 2012, the Decree of the President of the Republic of Uzbekistan "On measures to radical improvement of social protection of the judiciary" №4459 dated 2 August 2012 and the Resolution of the Cabinet of Ministers "On measures for the implementation of the activities of the courts of modern information and communication technologies" № 346 dated 10, 2012.

The Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated December 10, 2012 "On measures for the implementation of the activities of the courts of modern information and communication technologies" defines the following main tasks of implementation of modern information and communication technologies in the activity of the courts:

- Raising the level of computerization and effective use of computer technology in the operation of the courts;
- The creation of information systems and resources that enhance the efficiency of proceedings before the courts, as well as the expansion of the list and improving the quality of interactive services provided to business;
- Raising the level of computer literacy and improving practical skills of judges and court staff on the use of the modern computer technology and information and communication technologies;
- Information security and secure of circulation of documents in the system of courts.

The above-mentioned resolution of the Cabinet of Ministers approved a program for the implementation of the activities of the courts of modern information and communication technologies, which defines the measures to make proposals for the organization of electronic litigation, including video, audio fixation trials, as well as new types of shorthand trials. In this program, in order to increase the number of information resources and improve the quality of online services provided by the modernization of web-resources activities of courts with a view to ensuring the provision of treatment opportunities to the court, the petition and the documents attached thereto by means of electronic data interchange and to enable the notification of participants the trial and sending them judicial acts and other correspondence through electronic data exchange.

An important stage in the development of automated information systems in the proceedings in the Republic of Uzbekistan was the creation of individual sites (www.oxs.uz, www.economical-court.uz) of the Supreme Economic Court of the Republic of Uzbekistan, which included the "Database of decisions" and "Electronic reception".

It should be noted that today in the world there is such electronic publication system of judicial acts as the Public Access to Court Electronic Records, Case Management / Electronic Case Files (USA), Canadian Legal Information Institute (Canada), British and Irish Legal Information Institute (United Kingdom), Elektronisches Gerichts- und Verwaltungspostfach (Germany), Supreme court of Japan (Japan).

Attention should be paid also to such Internet portals devoted entirely to "e-justice" issue, as the European portal "E-justice» (European e-Justice Portal, <https://e-justice.europa.eu>), the European Judicial Network civil and commercial matters (European Judicial Network in civil and commercial matters, <http://ec.europa.eu/civiljustice>).

The court session in the videoconference:-

Law of the Republic of Uzbekistan dated 14 May 2014 "On amendments and additions, as well as the annulment of certain legislative acts of the Republic of Uzbekistan" amendments to the Economic Procedural Code (further-EPC).

One of the major problems encountered in the practice of the courts - is the absence in the hearing of the parties. For this reason, it carries a certain number of cases. In many cases this is due to the fact that the distance between the party (parties) and the court large enough and the cost of travel lawyer comparable to the amount of claim. As a result, violated the basic principles of justice: equality of the parties, equality before the law and the courts. As a result, presence of the parties receives a significant advantage. In order to remedy this situation from September 1, 2014 court session of the economic court may be held in videoconference. This means that the person involved in the case and other participants of the economic proceedings shall be entitled to participate in the hearing in the videoconference (article 126¹ EPC).

On the right of individuals to participate in the hearing in videoconferencing mode is indicated in the ruling of the court on the preparation of the case for trial. It is sent to the persons participating in the case, other participants of the economic proceedings and the corresponding economic court, with the assistance of which they may participate in such meeting.

Economic court, which assists in holding the trial in videoconference is required to give a power of attorney, certifying the credentials of the representatives of the persons participating in the case and other participants of economic justice, as well as presented in the hearing of written evidence to the economic court considering the case. In the case of the hearing in the videoconference in the report shall indicate the information about it.

Along with state duty and costs associated with the proceedings (postage costs associated with the direction of judicial decisions, the amount payable for the examination, appointed by the economic court, call witnesses, examination of evidence at the scene) in court costs included the costs of the trial in videoconference. The sum of these costs is determined by the economic court, and shall be collected from the persons involved in the case, according to the results of the proceedings in proportion to the satisfied claims.

The economic court has the right to postpone the consideration of the case if during the court session in the videoconference is not possible to install video conferencing.

According to the Supreme Economic Court of the Republic of Uzbekistan, the number of trials conducted in videoconferencing mode of economic courts in 2015 is 5237 cases. During this period of economic courts electronically received 57967 applications and complaints.

Electronic appeal to the economic court:-

In order to ensure delivery to the economic court pleadings, motions and other documents annexed to it in electronic form via the information system, the Law of the Republic of Uzbekistan from April 30, 2013 "On amendments and additions to some legislative acts of the Republic of Uzbekistan" the Economic Procedural Code Uzbekistan appropriate changes and additions have been made. In particular, Article 1 was supplemented of treatment opportunities to the economic court in electronic form via the information system. Also, in the corresponding articles of the code, establishing requirements for the form and content of the application, amended, providing an indication of phone numbers, fax numbers, e-mail address of the claimant or his representative. (art. 104, 112 EPC). The same supplement also applies to comments on the statement of claim (art. 119 EPC). If, according to the previously valid version of article 124 EPC, the persons participating in the case, sent by registered mail with return receipt requested, but now, according to a supplement in addition to a registered letter with acknowledgment of receipt or handing them a receipt, they may be notified by means of communication providing fixation of the fact of notification. Also, if the person involved in the case, previously reported economic court telephone and fax numbers, e-mail address, if they change, they must inform the economic court new evidence, including in electronic form via the information system (art. 121 EPC). In article 153 of the EPC have been amended to provide the direction of a separate act submitted economic court of the persons participating in the case, and others which it relates, in electronic form via the information system. In electronic form via the information system may also be sent to determine that, in accordance with this Code may be appealed. Similar opportunities are applicable in respect of judgments of courts of appeal and cassation instances (art. 171, 189 EPC).

The above innovations in the economic procedural legislation can more efficiently and effectively build internal organizational and procedural relationship between the courts and in the courts, as well as between the courts on the one hand, and citizens and organizations on the other.

Audio-video fixation:-

Using a system of audio-video fixation, primarily aimed at improving the quality and simplification of court proceedings logging procedures. The audio-video fixation of court proceedings can eliminate the need for drawing up reports in paper form. In addition, the audio-video fixation system serves to increase the discipline process participants and judges.

Audio-video fixation trial minimizes the non-procedural contacts and thus can serve as a measure of anti-corruption policy of the judicial system. In general, the introduction of audio-video fixation system will simplify the business process, optimize and automate the proceedings, and save money, as well as to respond to modern challenges and to strengthen the rule of law.

In general, the introduction of audio-video fixation system automates the economic proceedings, which will not only contribute to the transparency and efficiency of commercial courts, but also the development of a favorable business environment.

In addition, the publication of judicial decisions on the Internet, increasing the transparency and efficiency of the proceedings, must also be taken into account the issue of confidentiality.

It must be emphasized that the introduction of a system for depersonalization judicial acts in the publication on the Internet will ensure uniformity of judicial practice.

However, for effective use of audio-video fixation system is necessary to improve the legislative framework allowing legitimate use of audio-video recording as evidence. In this regard, it is appropriate to develop proposals for amendments and additions to the Economic Procedural Code to consolidate and ensure the sustainability of the use of this technology in the courts of the Republic.

World ranking:-

During the years of independence Uzbekistan has carried out economic liberalization, introduced market mechanisms, the conditions for dynamic development of entrepreneurship by reducing bureaucratic barriers. At the same time the rapid development of market relations leads to an increase in the number of commercial disputes, which requires the implementation of transparency and efficiency of justice mechanisms.

According to the Supreme Economic Court, if in 2013 the number of cases handled in the first instance economic courts of the Republic of Uzbekistan amounted to 235,150 cases, it has grown to 348,192 cases, or 48% in 2015. The above data indicate increased volume load on the economic courts.

Note that an effective system of justice, ensuring effective and equitable resolution of economic disputes, will help to maintain a favorable investment climate and increase private-sector confidence that their legitimate rights and interests are protected. This will help to improve the position of Uzbekistan in the global ranking of the World Bank «Doing Business», as well as in other international rankings.

"Enforcing Contracts" is one of the 10 indicators in the index of ease of doing business (Doing Business). Effective and transparent legal proceedings, the availability of effective protection of the rights and interests of entrepreneurs instruments will contribute to the confidence of the private sector and investors that their legitimate rights and interests are protected under the agreement.

Indicator contract enforcement estimates the time and cost to resolve a commercial dispute in the local court of first instance. Data collection is carried out by analyzing the Code of civil procedure and other normative documents regulating the activity of the courts, and through interviews conducted with local lawyers who specialize in litigation, and judges. At the end of 2016 in the "Doing Business" rating of Uzbekistan took 32 place on the index, "Enforcing Contracts".

According to the quality of the index methodology proceedings, single country has implemented a number of good practices in the judicial system in four areas: the structure of the judiciary and judicial proceedings, the effectiveness of court cases, the level of automation of the work of the judiciary, alternative methods of dispute resolution.

Table №1. Quality index justice system (0-18) - "Doing Business" 2016

Index	Country						
	Uzbekistan	India	Japan	USA	Germany	Russia	The Republic of Korea
Total	7.5	7.5	7.5	15	12	12.5	13.5
court structure and proceedings (0-5)	3	3	3	5.0	4.5	4.5	3.5
case management (0-6)	1	0.5	1	4.5	2.5	5	4
court automation (0-4)	2	2	1	3	2	0	4
alternative dispute resolution (0-3)	1.5	2	2.5	2.5	3	3	2

Doing Business measures the time and cost for resolving a commercial dispute through a local first-instance court. The quality of judicial processes index, evaluating whether each economy has adopted a series of good practices that promote quality and efficiency in the court system. The data are collected through study of the codes of civil procedure and other court regulations as well as questionnaires completed by local litigation lawyers and judges.

Quality of judicial processes:-

The quality of judicial processes index measures whether each economy has adopted a series of good practices in its court system in four areas: court structure and proceedings, case management, court automation and alternative dispute resolution.

Court structure and proceedings index:-

The court structure and proceedings index has four components:

1. Whether a specialized commercial court or a section dedicated solely to hearing commercial cases is in place.
2. Whether a small claims court or a fast-track procedure for small claims is in place.

3. Whether plaintiffs can obtain pretrial attachment of the defendant's movable assets if they fear the assets may be moved out of the jurisdiction or otherwise dissipated.
4. Whether cases are assigned randomly and automatically to judges throughout the competent court.

Case management index:-

The case management index has six components:

1. Whether any of the applicable laws or regulations on civil procedure contain time standards for at least three of the following key court events: (i) service of process; (ii) first hearing; (iii) filing of the statement of defense; (iv) completion of the evidence period; and (v) submission of the final judgment.
2. Whether there are any laws regulating the maximum number of adjournments or continuances that can be granted, whether adjournments are limited by law to unforeseen and exceptional circumstances and whether these rules are respected in more than 50% of cases.
3. Whether there are any performance measurement reports that can be generated about the competent court to monitor the court's performance, to monitor the progress of cases through the court and to ensure compliance with established time standards.
4. Whether a pretrial conference is among the case management techniques used before the competent court and at least three of the following issues are discussed during the pretrial conference: (i) scheduling (including the time frame for filing motions and other documents with the court); (ii) case complexity and projected length of trial; (iii) possibility of settlement or alternative dispute resolution; (iv) exchange of witness lists; (v) evidence; (vi) jurisdiction and other procedural issues; and (vii) the narrowing down of contentious issues.
5. Whether judges within the competent court can use an electronic case management system for at least four of the following purposes: (i) to access laws, regulations and case law; (ii) to automatically generate a hearing schedule for all cases on their docket; (iii) to send notifications (for example, e-mails) to lawyers; (iv) to track the status of a case on their docket; (v) to view and manage case documents (briefs, motions); (vi) to assist in writing judgments; (vii) to semiautomatically generate court orders; and (viii) to view court orders and judgments in a particular case.
6. Whether lawyers can use an electronic case management system for at least four of the following purposes: (i) to access laws, regulations and case law; (ii) to access forms to be submitted to the court; (iii) to receive notifications (for example, e-mails); (iv) to track the status of a case; (v) to view and manage case documents (briefs, motions); (vi) to file briefs and documents with the court; and (vii) to view court orders and decisions in a particular case.

Court automation index:-

The court automation index has four components:

1. Whether the initial complaint can be filed electronically through a dedicated platform (not e-mail or fax) within the relevant court.
2. Whether the initial complaint can be served on the defendant electronically, through a dedicated system or by e-mail, fax or SMS (short message service).
3. Whether court fees can be paid electronically, either through a dedicated platform or through online banking.
4. Whether judgments rendered by local courts are made available to the general public through publication in official gazettes, in newspapers or on the internet.

The index ranges from 0 to 4, with higher values indicating a more automated, efficient and transparent court system. In Korea, for example, the initial summons can be filed online (a score of 1), it can be served on the defendant electronically (a score of 1), and court fees can be paid electronically as well (a score of 1). In addition, judgments in commercial cases at all levels are made publicly available through the internet (a score of 1). Adding these numbers gives Korea a score of 4 on the court automation index.

Alternative dispute resolution index:-

The alternative dispute resolution index has six components:

1. Whether domestic commercial arbitration is governed by a consolidated law or consolidated chapter or section of the applicable code of civil procedure encompassing substantially all its aspects.
2. Whether there are any commercial disputes-aside from those dealing with public order, public policy, bankruptcy, consumer rights, employment issues or intellectual property-that cannot be submitted to arbitration.
3. Whether valid arbitration clauses or agreements are enforced by local courts in more than 50% of cases.
4. Whether voluntary mediation, conciliation or both are a recognized way of resolving commercial disputes.
5. Whether voluntary mediation, conciliation or both are governed by a consolidated law or consolidated chapter or section of the applicable code of civil procedure encompassing substantially all their aspects.
6. Whether there are any financial incentives for parties to attempt mediation or conciliation (for example, if mediation or conciliation is successful, a refund of court filing fees, an income tax credit or the like).

Quality of judicial processes index:-

The quality of judicial processes index is the sum of the scores on the court structure and proceedings, case management, court automation and alternative dispute resolution indices. The index ranges from 0 to 18, with higher values indicating better and more efficient judicial processes.

The data details on enforcing contracts can be found for each economy at <http://www.doingbusiness.org>.

In view of the foregoing, it seems appropriate to make the following **suggestions**.

1. It is necessary to define the regulatory load on the judges. Most load of judges is one of the factors, which primarily affects the legitimate, informed and quality decision-making. High load of judges to resolve cases will persist as long as there will not be approved in accordance with established procedure rules scientifically based load per judge. It is also necessary at the legislative level to ensure the implementation in the law enforcement practice different kinds of pre-trial settlement of disputes, as well as promote the development of alternative methods of dispute resolution.

2. EPC establishes the possibility of the postpone. Thus, according to article 131: "The Economic Court has the right to postpone the consideration of the case where it can not be discussed in this meeting, including as a result of absence of any of the persons involved in the case, witnesses, experts, submission of additional translators or need evidence or in the event of failure to establish video conferencing during the court session in the mode of video conferencing. "

In the EPC the term of postpone of cases is not installed. It is proposed that the trial may be delayed for the time necessary to eliminate the circumstances that gave rise to postpone, but no more than 15 days.

3. According to the article 135 of EPC economic court decision must be lawful and justified. This provision does not contain the term fair. According to the the Civil procedural code of the Republic of Uzbekistan the decision, ruling, a court order must be lawful, justified and fair. The judge, before working for the first time, do solemnly swear to be fair. It would be logical to assume that the validity of the judge should be expressed in legal acts and economic procedure must contain the principle of fairness judgments.

4. Among the key issues to be resolved at the legislative level, it is necessary to allocate:

- improvement of the institute proper notification in the exchange of information in electronic form;
- legal recognition of electronic communications;
- the recognition of electronic documents admissible evidence;
- the organization of access to judicial acts.

Conclusion:-

It should be noted that the introduction of electronic means in legal proceedings is able to bring it to a higher level of development, to create conditions for the system control movement of the case, including the definition of the mode of passage before a court of his excitement before the decision, keeping the case management schedule, monitoring

the progress of the case, ensure effective communication with representatives of the parties, a continuous assessment of the system, the automation of business process management, which ultimately will increase the efficiency of justice.

An increasing number of cases, increasing the load on judges, can not and should not be dealt with only by increasing the number of judges, court staff. Use of information technologies in legal proceedings can significantly reduce the load on judges, financial costs, increase the attractiveness of the judiciary as a modern and equipped with a branch in the eyes of the people.

It is necessary to adopt a number of laws aimed at ensuring openness and transparency of justice, improving the efficiency and quality of cases, access to justice.

The main objectives of the changes are improving the efficiency of the courts, judicial introduction of interactive services, increasing the level of legal literacy of the population and access to justice, reduction of unnecessary bureaucratic obstacles in the courts, as well as the introduction of paperless courts.

In order to expedite proceedings, minimize the loss of time and financial resources of the court and the parties in the case, and to prevent violations of the order of courtroom protocol and submission in connection with the complaint, it is appropriate to amend the Economic Procedural Code of the Republic of Uzbekistan.

The accumulated experience of "e-justice" in Uzbekistan allows to speak about his new perspectives and efficiency of its use.