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**DIGITALIZATION AND VIRTUALIZATION OF ECONOMIC JUDICIAL
TRIALS IN THE CONTEXT OF DEVELOPMENT OF DIGITAL ECONOMY
IN UZBEKISTAN**

Digitalization of the economy has been the main trend in the world politics in the last decade. Economic relations in the cyberspace are gaining special focus. Like the virtual world is increasingly becoming part of the real life, the virtual economy is becoming part of the real economy.

The President of Uzbekistan has declared 2020 as a Year of Development of Science, Education, and Digital Economy. Accordingly, broad-scale reforms are underway in all areas of state, public, and private administration in Uzbekistan.

In the context of development of digital economy in Uzbekistan, the need for digitalization is observed in the judicial sphere, or more specifically in the judicial proceedings. Development of judicial proceedings in the cyberspace is especially relevant amid of the universal quarantine, where participants to the trial are not able to participate physically.

To achieve sustainable development, in our opinion, Uzbekistan needs to thoroughly master digital knowledge and information technology, which will be the shortest path in achieving progress. Creating a favorable investment climate is directly related to the effectiveness of the judicial system. The judicial system's development is an important factor in attracting investment in the

economy of Uzbekistan, where the judicial system should effectively exercise its functions and adequately protect the rights and interests of the parties.

In this article we analyze and propose a **new concept** of reforming the judiciary, digitalization and virtualization of economic justice, which will significantly improve the access to justice for individuals and legal entities, and ensure its maximum openness and transparency. We believe that this concept in practical terms implements the principle of independence and impartiality in passing court decisions, which will be a conceptual approach for reviewing not only arbitration, but also civil, criminal, administrative judicial proceedings and will provide a significant impetus to the further development of the judicial system.

It is no exaggeration to say that most of the ministries and agencies, and enterprises of Uzbekistan are still far from the full implementation of digital technologies. We all well understand that formation of a digital economy requires appropriate infrastructure, immense resources and manpower. But despite the difficulties, we should start implementing it now, otherwise it will be too late tomorrow.

Therefore, an accelerated transition to the digital economy will become our priority for the next five years.¹.

It is quite likely that e-litigation is the future of litigation, since it facilitates judicial proceedings for their participants by saving time and money, and are well suited for pandemics.

It would be fair to mention that in Uzbekistan some steps have been taken to enable remote economic legal proceedings. Conducting trials through video conferencing, notifying participants of proceedings through their personal account or e-mail, and filing claims in electronic format are the measures for improving economic judicial proceedings, which allow the participants to remotely perform pre-trial and trial actions.

¹In Uzbekistan, 2020 has been declared as a *Year of the Development of Science, Education and the Digital Economy*. Tashkent, Uzbekistan. 24/01/2020.UzDaily.uz

Notwithstanding the visible successes in improving the judicial proceedings, many provisions of the procedural codes and other regulations governing the use of information technologies in legal proceedings in fact only refer to the concepts such as “telegrams, faxes, teletypes and other means of communication”, which are the concepts from the last century and essentially complicate application of regulations in the modern cyberspace.

We believe that creation of legislative foundations for digitalization and virtualization of legal proceedings would become a huge success, especially in the year of development of digital economy.

Therefore, in order to improve economic judicial proceedings, we propose to introduce the following **conceptual and basic principles and procedures** for economic and other judicial proceedings, taking into account their peculiarities in the legislation of Uzbekistan:

— A statement of claim or an application for court order should only be filed electronically from the email address of the plaintiff or applicant to the email address of the economic court pursuant to the Economic Procedural Code of Uzbekistan (EPC);

- Persons participating in the case should be notified of the time of e-trial by sending the notification to their email addresses or personal accounts;

- Judge’s decision on returning or refusing to accept a statement of claim or application for court order should be send to the plaintiff or applicant to their e-mail or personal account;

– In case of accepting the statement of claim for trial and initiating a case, an electronic notification about the acceptance of the statement of claim for trial and appointing a virtual court session should be sent to the participants’ e-mail addresses or personal accounts by issuing passwords for them in order to enter the virtual courtroom on the economic court’s website;

– A virtual courtroom is closed chat accessible only by the participants of the trial by password. The participant can access the virtual courtroom both from a personal computer or a mobile device with Internet access. At the time of

consideration of the case, the judge checks the e-participation of all participants pursuant to EPC. Upon confirming the presence of all participants in the virtual courtroom, the judge announces the start of the trial;

–The judge does not reveal her full name to the participants of the trial. The judge does not identify herself at any stage of the pre-trial and trial. Violation of this rule will be a ground for disciplinary action against the judge, up to initiation of a criminal case. The judge will be necessarily encrypted by a login. This login will be signed by judge's electronic digital signature (EDS). The login for each trial and for each instance (appeal, cassation and supervisory) should be different. This will prevent the judges from other trials from identifying the judge from the previous proceedings using the login, as it can be seen during the virtual court session;

– The virtual courtroom opens automatically at the appointed time without the permission of the judge and is closed by the digital signature of the judge upon completion of the trial. Participants are allowed to enter the virtual courtroom at the appointed time without the judge's permission. Log out is performed after the trial's closure upon the electronic permission of the judge. If the judge at the appointed time does not confirm his presence with his EDS, this will serve as a ground for the adjournment of the trial on the grounds that the virtual trial did not take place. In turn, the information about the absence of the judge will automatically be reported to the Inspectorate of the Supreme Judicial Council of Uzbekistan;

- During the trial, the participants may not leave the virtual courtroom without the permission of the judge. The virtual courtroom may be left only for technical reasons (e.g. Internet connectivity issues). Repeatedly leaving the chat, regardless of the reasons, will be a basis for considering the case without the party that left. If the participant of the trial does not answer the questions of the presiding judge while being in the chat, the judge may consider that as a refusal to answer the question. Also, the parties can be removed from the virtual

courtroom in case of violation of judicial discipline, which is indicated in the court session records automatically maintained in the chat;

- The virtual courtroom will enable the parties to upload all the necessary or requested by the court documents for examination. If the other party doubts authenticity of any document submitted electronically, then at the request of the other party the judge may order a forensic examination in accordance with Article 80 of the EPC. If the document is recognized authentic upon the examination, the doubting party should bear all costs of the examination;

- To ensure order in the virtual courtroom, the judge controls the chat and he as a presiding judge decides who should take the floor (in this case, the right to write his position in the chat), and then switches the chat to the other party for performing the same action. When one participant is activated, the other participant is blocked, and then the other party is activated, and the first party is blocked. This will enable the court to maintain order during the trial and prevent participants from interrupting each other, as is usually the case in traditional trials;

- If it is necessary to defer the process to another day, the judge announces about the deferment in a chat during the virtual trial;

- Participation of the court clerk is not needed in the virtual trial since the record is maintained in the chat automatically. Following the results of the virtual trial, the judge downloads the chat to a separate electronic file, which will serve as a record of the court session. The parties to the trial have the right to receive the electronic file of the virtual trial by filing an electronic application without paying any state fees;

- The documents presented during the virtual trial (including statements and petitions) must be signed by EDS;

- If there is a need to invite to the trial a specialist, witness, expert or translator or other persons, the participation of which is important for making a fair decision, the judge provides a one-time password for participation in the virtual trial. The password is issued by the technical support center on the basis

of the electronic decision of the judge on inviting or involving of third parties to the case. The login password can be sent to the email address or personal account of the trial participant with a notification of the time and place of the session and instructions on participation in a virtual court session;

- Participation in the virtual trial by audio or video messages is not allowed, except in cases where the participant is blind or visually impaired. If one of the participants to the trial is blind or visually impaired, the court must provide him with a voice reading of the entire trial;

- At the end of the trial, the judge posts the court decision on the case on the virtual courtroom (in the chat) by uploading an electronic file signed by the judge's EDS. The court decision must have an identifiable QR code, which is used by the agency for enforcement of judicial decisions to receive a writ of execution signed by the judge's EDS. The QR code is unique and is issued to identify each court decision;

- In the event the application for issuance of court order is satisfied, an electronic court order signed by judge's EDS and having an identifiable QR code is sent to the personal account or e-mail of the agency for enforcement of court decisions;

- When considering appeal and cassation cases in the economic courts of Karakalpakstan, provinces and Tashkent, or appeal, cassation or supervision cases by the Judicial Board for Economic Cases of the Supreme Court of Uzbekistan, by the judicial board composed of three (five or seven) judges, each of them will participate in the virtual trial with their own logins assigned at the same time and the members of the judicial board will not know each other because they will be anonymized by the means of ciphers. Thanks to this aspect each judge truly will be able to express his own opinion on the dispute, instead of agreeing with the opinion of the chairing judge, which is usually the case. In such case the judges can express their opinions without any hesitation, as they remain encrypted are not afraid of the consequences for disagreeing with the chairing judge's opinion;

- In the same manner will participate the prosecutor, i.e. her identity will be encrypted as well like the judge's identity. The depersonalization of the judge and prosecutor will reduce the human factor in trials. The prosecutor will not be able to discuss the case with the judge outside the courtroom, as he will not be aware of the judge's identity. This factor will serve as an anti-corruption mechanism and help prevent illegal interference in the affairs of a judge and pressure upon her from the prosecutor or other authorities.

Virtualization of litigation in economic courts reduces the time and cost of travel of litigants because the physical presence of participants is not required. The participant will be able to participate at the designated time from anywhere using a personal computer or a mobile device with access to the Internet. The cases of participants coming late to lawsuits for various reasons (like heavy traffic, etc.) will be reduced. As an only excuse for being late to the virtual trial may serve the lack of Internet access. However, in view of the development of the Internet and information technology in Uzbekistan, the risk of a participant being late for this reason is not significant.

In addition, through virtualization of litigations in economic courts, budget funds allocated from the state treasury for material and technical support of the courts will significantly reduce in the future, since the physical presence of courts in the regions may not be needed.

We believe as a result of full implementation of the project for virtualization of trials the costs for maintenance of buildings and personnel will be reduced, which in turn will save the state budget funds.

Application of the above-described conceptual principles of court virtualization will definitely raise the rating of legal proceedings in Uzbekistan and the world community.

Most importantly, virtualization of trials will allow for trials even in quarantine, epidemic, pandemic, since the trial would be carried out remotely (on-line mode).

Confidentiality is of particular importance in this process. The identity of the judge must be kept secret, which will certainly help to prevent interference and pressure upon the judge. If the unscrupulous participant of the trial is aware of the judge's identity, he will certainly look for opportunities to meet with the judge with corrupt intentions to decide the case in his favor. Judicial anonymity will help the judicial system avoid such issues, unless the judge herself seeks contact with the participants. In this regard, the guilt of bribing the judge would primarily lie on the judge herself, since the judge cannot be identified without her will.

The encryption base is a foundation of privacy. Therefore the base should operate outside the judicial system. Cases are distributed among judges automatically depending on judge's workload. Moreover, it is very important to maintain secrecy on distribution of cases among judges. For that reason encryption begins from the moment the case is automatically assigned to the judge. The judge's login must change automatically each time, otherwise the judge may reveal herself to the court's president. The incognito should be maintained in any case and at any stage of proceedings.

Database automation will eliminate any human factor. The database should be maintained by a technical center and should not be under the authority of the court. Otherwise, there is a risk that the judge or other interested person may alter the information in the technical center. Moreover, the technical center should be under the authority of a body that is not part of any of the law enforcement bodies. The implementation of this project requires neither much funding nor much time. We believe this project could especially be piloted under the quarantine.

In addition, virtualization of economic litigation eliminates some of the negative factors that are often encountered in courts. For example, in hearings at the time of making speech by one of the parties, representatives of the other party use facial expressions, nod, point fingers, smile, ridicule and other mimic-gesture to try to influence the judge or the other party. These actions are done in

order to negatively affect the opponents and divert the attention of the court, which is unethical. The judge can also get emotional, especially if she is inexperienced, and pass a wrong decision. One of the advantages of virtual proceedings is the lack of an emotional component, which will naturally contribute to even-minded legal assessment of the facts and the state of affairs in general.

In order to implement the project, a primarily technical work need to be carries out for creation of a virtual courtroom, court chat, issuance of passwords, logins, integration with the existing databases of the Supreme Court of Uzbekistan and other technical steps.

The examination of foreign experience reveals that virtual litigation is currently practiced in a number of countries, such as Kazakhstan, Russia, China, India, the USA, etc.

Thus the research of foreign experience should be started with the countries close to Uzbekistan in terms of development of judicial systems.

Kazakhstan. The experience of neighboring Kazakhstan in this regard is worthy of study not only because Kazakhstan is close to Uzbekistan geographically and historically, but also because among the CIS countries Kazakhstan is a leader in introducing digitalization and virtualization into the judicial practice.

J. Asanov, President of the Supreme Court of Kazakhstan, in 2017 instructed to create a virtual court to eliminate the need for personal attendance of participants in the courtroom, as reported by the Kazinform News Agency.²

Thus the judicial system of Kazakhstan is taking steps for popularizing innovative technologies and digitalizing in the judicial system. The widespread use of advanced IT technologies and integration of information systems has seriously increased the mobility and transparency of justice. One of the paramount IT projects in the judicial system is the Virtual Court Project.

² Creation of Virtual Courts per Zhakip Asanov's Instruction. Astana, KAZINFORM. 26 January 2018. www.inform.kz.

The Virtual Court Project is being piloted under the E-court project, as one of the seven priority areas for development of Kazakhstan's judicial system. It enables the parties to the dispute to directly join the videoconference of the trial and present evidence to the court. For this purpose, installation of the TrueConf application on the smartphone will suffice³.

The Virtual Court Project is used for considering cases, where the parties can fully participate in the trial if they are not able to appear in the court. This is especially true in bad weather conditions, or when one of the parties lives in another city (province, country). While previously a personal presence at the trial was required, now the court can conduct it remotely using new information technologies.

One of the advantages of the 'Virtual Court' mobile application is mobility. The mobile application can be used from home, office, and even while traveling. While device acts as a terminal, any mobile phone, smartphone, tablet, computer, where only the special application 'TrueConf' need to be installed, the main criterion for using is availability of the Internet.

In order for the hearing to be held using the 'Virtual Court' mobile application, one of the parties need to file a petition to the judge considering the case. Then the court clerk assists in changing the necessary settings. The application is easy to master for people of all ages and it is easy to use. At the appointed time, a regular call is received on the mobile phone, which in turn connects the party with the courtroom. The only condition is the need to obtain a permission to record the hearing⁴.

The court by communicating electronically using the messengers like 'Telegram' and 'WhatsApp' can quickly resolve the issues arising in the course of judicial proceedings. By SMS-notifications, citizens can quickly receive information on contact details, samples of applications and petitions, details for paying state fees, etc.

³Lyubov Dobrota. Virtual Court. Kazakhstanskaya Pravda. 29 November 2018.

⁴N.S. Lyakh. Mobile application "Virtual Court". 17 July 2019. www.zakon.kz.

Kazakhstan started practicing virtual proceedings in 2017, while in Russia they were just discussed. This was mentioned in the blog of the well-known lawyer R. Bevzenko on the prospects for reforming general jurisdiction courts, where he spoke out in favor of automating the judge's work, among others, through digitalizing the legal positions of higher courts, which should contribute to uniformity of judicial practice⁵.

Russian Federation. The study of Russia's experience in this area shows that the Russian judicial community had long discussed the issue of virtual litigation, but the implementation of such a project has been commenced only this year. In April 2020, the first ever online hearings of the Supreme Court of Russia were held.

The Supreme Court's press service reported that from now on the parties to online proceedings do not need to go anywhere, as they can attend the court session from home or office.

For that end, the participants to an online session should send to the court a statement and documents confirming their authority in advance and log in through the State Services Portal. After authorization, they receive a link to the virtual courtroom of the Supreme Court, where the case is considered.

That is how the case No. 60-KG20-2 was considered. Consideration of the dispute lasted a little less than an hour, and the meeting itself can be viewed on YouTube. The parties requested identification and to show on the camera the identity documents (passport).

The parties had no objections after the usual procedural rights were explained. The court after obtaining the parties' consent, asking the parties if they had petitions and consideration of the case in the absence of other parties, ruled that the judicial board would consider the case through web-video-conference communication. Then the proceedings continued as usual⁶.

⁵ Virtual Court, Kazakhstan. 23 October 2018. www.kazpravda.kz/news.

⁶ RIA Novosti, with reference to the press service of the Supreme Court of the Russian Federation. 21 April 2020. <https://ria.ru>

China. Testing of online trial technology has been ongoing in China since 2015. It started in the city of Hangzhou, China, and on 28 June 2019 the Supreme Court of China issued the following press release:

“The Beijing Internet Court on Thursday launched a first of its kind online litigation center with an artificial intelligence (AI) virtual judge.

Developed on the basis of intelligent speech and image synthesis technologies, the AI judge will help judges complete repeating core work, including receipt of statements of claim, and thus will allow the professional practitioners to focus on litigation.

The voice, facial expressions and movements of the virtual judge are copied from a real person. It can also provide users with real-time litigation guidance to help them use the online litigation platform.

The innovation is expected to improve the quality and effectiveness of litigation. As the technology advances, the AI judge will most likely act as an assistant capable of conducting intelligent Q&A communication with users based on the data pertaining to professional knowledge and guidance from real judges.”⁷

Dubai (UAE). The courts of Dubai (UAE) for the first time started holding hearings remotely from 19 April 2020. Meetings in videoconference mode will be held in all court levels, including the courts of first, appeal and cassation instance.

Participants of court sessions, including judges, clerks, and lawyers, can take part without leaving their homes to protect everyone from the coronavirus pandemic. The courts will consider all cases except criminal ones from 08:00 to 10:30.

All interested parties can register on the official website of the Dubai Courts, check the listeners’ schedule and connect to the appropriate one by clicking on the camera icon.

⁷The Beijing Internet Court has put into operation the virtual judge with artificial intelligence. Beijing, Xinhua. 28 June 2019. Russian.News.cn.

Obviously, ‘virtual’ trials eliminate territorial barriers, save time and material resources, and provide unhindered and convenient access to justice. The use of modern technology in the functioning of courts provides positive outcomes, and the introduction of advanced technologies allows automating and significantly accelerating judicial proceedings⁸.

In our opinion, in addition to the virtualization of judicial proceedings the principle of transparency should be introduced in the system of economic courts. As a mechanism for implementing this principle will serve introduction of a system of automatic publication of all court decisions made by the courts, in open and free access in the section ‘Bank of Economic Courts Decisions’ of the Unified Portal of the Supreme Court of Uzbekistan.

In terms of integrity of the judicial system, we propose to introduce the principle of transparency in all decisions of the Constitutional Court, the Supreme Court and the entire judicial system from the date of their foundation by digitizing and providing access to everyone on the official websites of the Constitutional Court, the Supreme Court and other courts of Uzbekistan.

In order to prevent violation of the rights of persons to examine the cases materials kept in the archive, an electronic system of court archives should be formed, which, among others, provides for scanning current judicial acts and permanently stored cases in the local courts.

In this regard, there is a need for speedy implementation of modern information and communication technologies in the judicial system, the system of enforcement of judicial acts, and the forensic system, which will form an innovative approach to their development, and improve the quality and timing of the administration of justice, the quality and efficiency of forensic institutions of expertise and ensure the effective enforcement of judgments.

Implementation of the principles we are proposing into the legislation of Uzbekistan, as well as the measures aimed at developing the judicial system, in particular, the virtualization of the judiciary, improving the system for posting court

⁸ Natalia Remmer. Virtual court launched in Dubai. Dubai, UAE. 19 April 2020. Gulf News.

decisions on the Internet, and providing access to these decisions, would require significant strengthening of the material and technical resource base of the judicial authorities.

In our opinion, it will be more difficult to implement the proposed principles of judicial procedure in terms of advocacy, which will require significantly more time than the technical provision of this project.

At the beginning it would be possible to use the above proposals in parallel with the traditional legal proceedings, but the precondition is that the transition should take place within the shortest time possible. Otherwise, these principles will become alternative to the traditional judicial proceedings.

Besides, as part of development of actions for transitioning to legal electronic workflow, preparation and adoption of a law will be required, governing signature of judicial acts by an electronic digital signature by arbitration judges.

We believe that active and immediate implementation of modern information technologies in the judicial system will be one of the main steps for ensuring openness and transparency of justice, ensuring the constitutional right to judicial protection, optimizing the time for consideration of cases and disputes, reducing the number of pending cases not completed and preventing loss of documentation, improving the quality and efficiency of administration of courts, and providing convenient and quick access to information.

In wrapping up, we would like to note that one of the main goals of the state is to build a developed civil society and a stable democracy in the country, which fully ensures human rights, civil and political freedoms. In this regard, taking measures to improve the quality of justice, improve the judiciary and its constant adaptation to modern realities and needs of the state and society should become an integral part of the ongoing democratic process in Uzbekistan.

The set of the proposed measures, if properly implemented, as a whole will contribute to the development of the judicial proceedings in Uzbekistan, which, ultimately, will play one of the determining roles in creating a strong domestic economy and improving the welfare of Uzbekistan's population.