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THE INFLUENCE OF COURT JUDGMENTS ON DIGITAL CONTRACTING IN THE KYRGYZ REPUBLIC

A BÍRÓSÁGI ÍTÉLETEK HATÁSA A DIGITÁLIS SZERZŐDÉSKÖTÉSRE A KIRGIZ KÖZTÁRSASÁGBAN

AKYLBEK DZHUSUPOV¹

ABSZTRAKT ■ A kutatásomhoz, mely a Kirgiz Köztársaság digitális szerződéseivel foglalkozik, hazám és az Európai Unió bírósági ítéletei/határozatai szilárd alapot nyújtanak a jogi keretek elemzéséhez, a hiányosságok kezeléséhez, valamint a nemzeti és nemzetközi jogrendszerek közötti összehasonlítások elkészítéséhez. Habár a bírói gyakorlat a szerződéses kapcsolatok utolsó szakasza az üzleti partnerek között, és csak kevesen fordulnak hozzá, mégis új perspektívát kínál ugyanazokra a problémákra, különösen jogi háttérrel rendelkező személyek számára. A bírósági ítéletek létfontosságúak a jogi kutatásban, mivel elméleti és gyakorlati betekintést egyaránt nyújtanak. Dolgozatomban igyekeztem feltárni a bírósági ítéletek hasznosságát a tudományos kutatásban, a munkám szempontjából legrelevánsabb ítélettípusokat, és tájékoztatást adni konkrét esetekről.

KULCSSZAVAK: digitalizáció, digitális szerződés, Kirgiz Köztársaság, EU esetjog, bírósági ítélet

ABSTRACT ■ For my research on Digital Contracting in Kyrgyz Republic, the court decisions/resolutions from my home country and European Union provide a robust foundation to analyze legal frameworks, address gaps, and draw comparisons between national and international legal systems. Although, the judicial practice is the last stage of contracting relationship among businesses when only a few parts of the participants apply it provides you another vision to the same issues, specifically from persons with legal background. Court judgments are vital in legal research, offering both theoretical and practical insights. In my paper I tried to explore the utility of court judgments in academic research, the types of judgments most relevant to my work, and inform about specific cases.

KEYWORDS: digitalization, digital contract, Kyrgyz Republic, EU case law, court judgement

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1. INTRODUCTION

My topic is aimed to ensure commercial companies and consumers to sign contract using the electronic means if they are trying to use the modern technologies and reduce their time and resources while having a digital relationship. Therefore, the digital contracting is useful for majority of them, however only minor of them will go to judicial panel to resolve their legal issues arising from the contracts. However, even though not all commercial players want to deal with court officials, the court judgments are critical for scientific research in law for following reasons:

1. Judicial decisions interpret and clarify legal provisions, providing a practical understanding of how laws function in real-world situations. This interpretation is essential for identifying inconsistencies or ambiguities in statutes.
2. Judgments reflect the evolution of legal principles over time, showcasing how courts adapt to societal changes, technological advancements, and international obligations.
3. In common law jurisdictions and increasingly in civil law systems, judicial decisions create precedents. These precedents guide future rulings, offering researchers a reliable basis to predict legal outcomes.
4. For topics with cross-border implications, such as digital contracting, court judgments from different jurisdictions enable comparative legal analysis. This approach is invaluable for identifying best practices and assessing their applicability in other contexts.
5. Judgments provide empirical evidence of how laws are enforced, interpreted, and challenged. They highlight gaps in legislation and administrative practices, informing policy recommendations.

Given the focus of my research on digital contracting and its integration into the global market, several types of court judgments are relevant. For instance, the decisions from Kyrgyz Republic's courts are central to understanding the domestic legal framework for digital contracting. They highlight existing legal challenges, particularly in areas like consumer protection, contract enforcement, and dispute resolution. Of course, there are also insights from the Constitutional Court of the Kyrgyz Republic. For instance, the illustrated ruling on the statute of limitations, plays a crucial role in ensuring that legal frameworks align with fundamental civil rights and principles. These judgments are vital for analyzing procedural safeguards and judicial access in digital contract disputes.

Since my main idea of the thesis is supporting the model of Law of the European Union, the ECJ's rulings are instrumental in shaping the EU's legal standards,

including consumer rights, e-commerce regulations, and digital contracts. At the same time, the decisions from jurisdictions with advanced digital economies, such as the United States or the United Kingdom, offer additional perspectives on legal challenges and innovative solutions in digital contracting.

The following are the selected court judgments which I found relevant to my research:

1. The Supreme Court of the Kyrgyz Republic's resolution (2015) and cases from the district courts of the Kyrgyz Republic. They show how to present digital information as electronic evidence which is essential in digital contracting.
2. Kyrgyz Republic's Constitutional Chamber Judgment on February 17, 2016, concerning the constitutionality of Paragraph 2 of Article 215 of the Kyrgyz Civil Code (2016)²:
It stressed the constitutionality of the statute of limitations in the Kyrgyz Civil Code. The ruling underscores the need for procedural flexibility, especially in time-sensitive sectors like digital contracting. It informs my recommendation for adaptable limitation periods in Kyrgyz law.
3. Case C-565/22, ECJ, Request for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Supreme Court, Austria)³ on consumer rights in subscription-based contracts, focusing on automatic renewals and the right of withdrawal. This judgment demonstrates the EU's emphasis on consumer protection, a critical aspect of digital contracting. It supports my argument that Kyrgyz law should adopt clear rules on automatic renewals to enhance transparency and fairness in e-commerce.
4. L'Oréal v. eBay (Case C-324/09, ECJ),⁴ discusses the liability of online platforms for intellectual property violations by third-party sellers. This case highlights the role of intermediary platforms in digital contracting and the need for clear liability rules. It supports my argument for regulating online marketplaces in Kyrgyz law.

² The judgment delivered by the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic (currently the Constitutional Court) on February 17, 2016, concerning the constitutionality of Paragraph 2 of Article 215 of the Civil Code of the Kyrgyz Republic, based on the appeal filed by Kochkorbaeva N.B. and the Open Joint-Stock Company "Pharmacia" (Решение Конституциональной Палаты Верховного суда Кыргызской Республики по делу о проверке конституционности пункта 2 статьи 215 Гражданского кодекса Кыргызской Республики в связи с обращением Кочкорбаевой Н. Б. в интересах открытого акционерного общества «Фармация») (KGZ).

³ ECLI identifier: ECLI:EU:C:2023:735.

⁴ ECLI identifier: ECLI:EU:C:2011:474.

5. Several cases on E-Signatures in the United States on enforcement of electronic signatures and contracts under the ESIGN Act. U.S. case law highlights the practical challenges of implementing e-signature laws, offering lessons for Kyrgyzstan in establishing robust mechanisms for digital authentication.

Further I am going to provide the detailed analysis of some of the abovementioned cases. Because these court judgments contain rich empirical data on legal practice and societal realities. Judgments provide real-life examples of how laws are applied, making theoretical concepts more tangible and practical, highlighting the challenges and complexities of legal implementation. The judicial practice often addresses novel and emerging legal issues, such as those arising from technological advancements, globalization, and social change. By analyzing these judgments, researchers can identify and analyze new legal challenges and contribute to the development of innovative legal solutions.

2. MAIN RESEARCH

2.1. The Supreme Court and district courts of the Kyrgyz Republic

As for judicial practice, in Kyrgyz Republic, contracts, documents and information posted on the Internet frequently serve as evidence if they presented in printed copies. The Supreme Court of the Kyrgyz Republic addressed the admissibility of printed web information use in court to ensure the correct and uniform application of legislation.⁵ Specifically, paragraph 13 states that “*the plaintiff may present a notarized copy of the Internet page on which the disputed information was posted*”. This resolution is important for other courts because they should follow the explanation of the main court. Although, this resolution has not established specifically for the usage in digital contracting disputes, however, it contains insights for my research.

The same idea of notarial verification of the screenshots was shared in article “Social networks. How to use them as evidence in court”.⁶ However, the Resolution of the Kyrgyz Supreme Court does not include a classification of this type of

⁵ Resolution of Supreme Court on judicial practice in resolving disputes on the protection of honor, dignity, and business reputation 2015 (*О судебной практике по разрешению споров о защите чести, достоинства и деловой репутации*) (KGZ) N.4.

⁶ A. A. АБДЫКАЛЫКОВ: Social networks. How to use them as evidence in court. *Yuridicheskaya nauka*, 2024 (11), 313–317. DOI: 10.24412/2220-5500-2024-11-313-317.

evidence. By the meaning of the Civil Procedure Code of the Kyrgyz Republic, they are classified as written evidence, as electronic evidence is not provided for as an independent type of evidence.

Also, such type of presenting the electronic evidence occurred in judicial cases like:

- (1) B.E.V. vs N.A.N., Blockstroy LLC, Information Agency “24.kg” in Lenin district court of Bishkek (GD-2756/16B1 dated December 23, 2016);
- (2) A.A.D. against Information Agency “24.kg” in Sverdlovsk district court of Bishkek (GD -2756/16B1 dated November 25, 2016);
- (3) General prosecutor on behalf of the President vs Idinov N.A. and PF “Pro Media” in October district court of Bishkek GD -1347/17.B2 dated July 04, 2017.

Based on the aforementioned, it is obviously that in some case, the reliability of electronic evidence requires significantly more digital information. Specifically, beyond the notarization of content, meta data may be required, such as information regarding the source and sender (subscriber number, IP address), reliable confirmation that a social media profile belongs to a specific individual, as well as other data pertinent to the case.

2.2. The Constitutional Court of the Kyrgyz Republic

This analysis draws upon the judgment delivered by the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic (currently the Constitutional Court) on February 17, 2016, concerning the constitutionality of Paragraph 2 of Article 215 of the Kyrgyz Civil Code, based on the appeal filed by Kochkorbaeva N.B. and the Open Joint-Stock Company “Pharmacia”.⁷ The judgment examines an essential aspect of civil procedure — statutes of limitation — which has implications for both general civil and contractual disputes, including those involving digital contracts. Although not directly centered on digital contracting, this case provides

⁷ The judgment delivered by the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic (currently the Constitutional Court) on February 17, 2016, concerning the constitutionality of Paragraph 2 of Article 215 of the Kyrgyz Civil Code, based on the appeal filed by Kochkorbaeva N.B. and the Open Joint-Stock Company “Pharmacia” (Решение Конституционной Палаты Верховного суда Кыргызской Республики по делу о проверке конституционности пункта 2 статьи 215 Гражданского кодекса Кыргызской Республики в связи с обращением Кочкорбаевой Н. Б. в интересах открытого акционерного общества «Фармация») (KGZ).

foundational insights into time limitations and access to judicial remedies, which are crucial in the context of modern commercial contracts, particularly in a digital economy.

In 1998, a medicine supply contract was concluded between a company and a state body. Due to alleged abuse of contract provisions, the company failed to meet its obligations within the prescribed timeframe, leading to significant fines imposed by the state body. Subsequently, the company initiated legal proceedings to invalidate the contract, citing procedural defects in its conclusion. However, the courts rejected the claim, stating that the company had exceeded the “three-year statute of limitations” for filing such a lawsuit.

The company argued that its “constitutional right to judicial protection” was violated, as it was barred from contesting the contract due to the expiration of the limitation period. The case raised the critical question of whether the prohibition on restoring a missed statute of limitations period under Article 215(2) of Civil Code infringed the constitutional guarantee of judicial protection.

After hearing all parties, including representatives of the Parliament and the Government, the Constitutional Chamber observed that the provision in question effectively prevented individuals and entities from accessing the judiciary to protect their rights once the statute of limitations had expired. The Chamber emphasized the following points:

- **Violation of Judicial Protection:**
The inability to restore the limitation period, even in cases where legitimate reasons prevented timely action, constituted a limitation of the constitutional right to judicial protection.
- **Impairment of Commercial Rights:**
For businesses, the inability to pursue claims after the limitation period restricted their ability to seek remedies for infringements, thus undermining fairness in the commercial legal environment.
- **Constitutional Incompatibility:**
The contested provision was found to contradict the constitutional guarantee of judicial protection. The Chamber ruled that the law must allow exceptions to limitation periods when valid circumstances are present.

This case strengthens the argument that constitutional court decisions can significantly influence the legal framework for commercial disputes, including those involving digital contracts. By addressing the issue of time limits and emphasizing fairness in access to justice, the judgment underscores the importance of ensuring judicial access for all entities, including digital businesses, and clarifying procedural safeguards in contract law to promote a level playing field.

For Kyrgyz Republic's integration into global markets, particularly in the digital realm, this judgment highlights the necessity of balancing procedural efficiency (via limitation periods) with the protection of fundamental rights. This principle could guide reforms to enhance the clarity and enforceability of digital contracts, ensuring they align with international standards.

Although this case also does not specifically address digital contracting, it raises important questions relevant to my research:

1. Time-sensitive nature of Digital Contracts: Given the fast-paced environment of digital commerce, statutes of limitation must be reasonable and adaptable to the unique challenges of this sector.
2. Judicial Review: The judgment demonstrates how courts can clarify and adapt legal provisions to ensure fair treatment of contractual parties, which is critical for fostering trust in digital markets.

In conclusion, the Constitutional Chamber's (currently it is a Constitutional Court) judgment contributes to the development of a legal framework conducive to equitable commercial practices. For my research, this case offers a lens through which to explore how Kyrgyz Republic can refine its procedural and substantive laws to support a robust, transparent, and fair digital contracting environment.

2.3. EU case-law

To support the hypothesis of my research we can refer to the case of European Court of Justice (ECJ) under C-565/22: Request for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Supreme Court, Austria).

This particular case, C-565/22, is important because it deals with a crucial aspect of digital contracting: consumer rights and automatic renewal of contracts. Since the ECJ is the highest court in the European Union and its rulings have a significant impact on the interpretation and application of EU law across all member states. The major issue in this case is whether a new right of withdrawal arises for consumers when a subscription contract is automatically renewed.

The ECJ made several important points in its ruling:

1. Consumers have only one right of withdrawal when they first enter into a distance subscription contract;
2. No new right of withdrawal arises when the contract is automatically renewed;
3. Businesses must provide clear and explicit information about the automatic renewal and the upcoming payment obligation.

Keeping in mind that my research is about “Digital contracting in Kyrgyz Republic. Steps to integrate into the global market based on EU Law” this judgment can be useful for my research in following ways:

- Understanding EU consumer protection standards: The case highlights the importance of clear and transparent information for consumers, especially when it comes to automatic renewal of contracts. This principle can be applied to the Kyrgyz context to ensure that consumers are not misled or deceived by online retailers.
- Identifying potential challenges in cross-border e-commerce: The case raises concerns about the use of automatic renewals, which can lead to unintended consequences for consumers. Similar issues may arise in cross-border e-commerce of the Kyrgyz Republic actors. Because through digital contracts my home countries’ company are able to sell goods or services for the customer from neighboring states.
- Informing policy recommendations: The judgment can provide valuable insights for policymakers in Kyrgyz Republic who are developing regulations for digital contracting. By incorporating EU best practices, Kyrgyz Republic can create a legal framework that protects consumers and fosters a thriving e-commerce market.

So, in Kyrgyz Republic we should also establish as a core rule that once the free trial ends and the consumer enters into a paid subscription, they cannot use their right to withdraw again. However, the company offering the service must be very clear about the terms of the subscription, including:

1. The duration of the free trial;
2. The fact that the subscription will automatically renew after the trial period;
3. The cost of the subscription after the trial period;
4. If the company fails to provide this information clearly, the consumer may still have the right to cancel the subscription.

The judgment supports the hypothesis that EU case-laws can serve as a valuable model for Kyrgyz Republic. By adopting similar principles, Kyrgyz Republic can create a legal framework that protects consumers and promotes fair competition in concluding the digital contracts. Additionally, the case highlights the importance of addressing the specific challenges of cross-border e-commerce, such as the use of automatic renewals and language barriers.

3. CONCLUSION

Since court judgments provide authoritative interpretations of legal texts, including treaties, statutes, and constitutions, the legal practitioners could identify inconsistencies or gaps in existing legislation, guiding reform proposals. Court decisions often highlight policy issues that need legislative or administrative attention. For instance, the ECJ's rulings on consumer protection can inform similar initiatives in Kyrgyzstan. By analyzing how courts have interpreted and applied legal provisions in specific cases, researchers can gain a deeper understanding of the law's meaning and scope. One of the main characteristics of a case study is to examine a given case in its "natural environment".⁸ After all it helps legislators to make amendments to existing legislative acts in order to make it clear or provide some additional options to act for commercial parties or consumers.

Moreover, by comparing judgments from different jurisdictions, I can assess the feasibility of adopting foreign legal standards in Kyrgyz law. Since the Kyrgyz Republic has the Continental Law system, we have more common elements in Law than with other legal systems. Therefore, the comparison of the EU Case-law and Kyrgyz court judgement is a good way to get some insights additional to those coming from the national court practice.

However, the legal principles from one jurisdiction may not always be directly applicable to another due to differences in cultural contexts, and economic conditions. Especially, in jurisdictions like the U.S., can make it challenging to identify the most relevant cases. Legal standards evolve over time, and judgments may become outdated, requiring constant vigilance to ensure the relevance of cited cases. A reference to a decision in judicial decisions may, therefore, not be automatically operationalized as providing information on the role of that individual decision in a legal system as some sort of objective importance, but it may, to a certain extent, be used to analyse the system's ideas about the overall role of judicial decisions in legal argumentation.⁹

Since court officials are experienced lawyers the court judgments are a cornerstone of legal research, offering valuable insights into the interpretation, application, and evolution of laws. According to RONALD DWORKIN, Professor of Law and Philosophy at New York University "every legal interpretation reflects an underlying theory about the general character of law, one of them assumes that legal practice is best understood as

⁸ MATEUSZ STĘPIEŃ: Using Case Studies for Research on Judicial Opinions: Some Preliminary Insights. *Law and Method*, 2019/11/19, 10.5553/REM/000045.

⁹ TEREZIE SMEJKALOVÁ: Importance of judicial decisions as a perceived level of relevance. *Utrecht Law Review*, 2020 (1).

*an instrument of society to achieve its goals*¹⁰. For my research on digital contracting, these judgments provide empirical evidence, comparative perspectives, and policy guidance. By analyzing decisions from national, constitutional, and foreign courts, I aim to develop a comprehensive legal framework that aligns Kyrgyz law with global standards while addressing the unique challenges of the digital economy.

Currently, the legal landscape in the Kyrgyz Republic lacks a robust body of high-court judgments and resolutions to provide a clear and straightforward basis for resolving digital contract disputes. Consequently, it is imperative for academics and legal practitioners to collaborate and assist the Supreme Court of the Kyrgyz Republic in issuing a resolution that establishes guidelines for adjudicating disputes in the digital sphere. Such a resolution is fundamental for advancing the digitalization of the national economy.

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¹⁰ RONALD DWORKIN: *Law's Empire*. Cambridge, Massachusetts, Belknap Press, 1988, ISBN 9780674518360.