

Annotation

The dissertation is submitted for the degree of Doctor of Philosophy (PhD) under the educational program 8D04201 «Law».

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Dissertation title: «**Disclosure of Documents in Civil Procedure: Foreign Experience and Ways to Improve Legal Regulation in the Republic of Kazakhstan**».

General Characteristics of the Research Topic. The dissertation presents a comprehensive theoretical and legal analysis of the institution of disclosure of documents in the civil procedure of the Republic of Kazakhstan, taking into account foreign experience. The research is aimed at identifying the patterns of formation and functioning of disclosure of documents as a procedural guarantee of the principles of adversarial proceedings and equality of the parties, as well as at determining directions for improving its legal regulation in domestic law.

The study is based on a comparative legal analysis of the norms of civil procedural legislation of Kazakhstan, England, Germany, Japan, and the Court of the Astana International Financial Centre (AIFC). The dissertation reveals the relationship between the procedure of disclosure of documents and the fundamental principles of civil proceedings — adversarial proceedings and formal truth — and substantiates its dual nature, manifested in its simultaneous affiliation with the institutions of proof and preparation of a case for trial.

For the first time in domestic civil procedural law scholarship, a theoretical definition of the concept of «disclosure of documents» has been developed, a classification of its types has been proposed, the necessity of a clear distinction between pre-trial disclosure of documents and disclosure of documents at the stage of judicial proceedings has been substantiated, and the author's own vision of ways to improve the legal regulation of this legal phenomenon has been presented. Based on a comparative legal analysis, differences between the disclosure model implemented in Kazakhstan and its English prototype have been identified, which made it possible to reveal gaps and conflicts in the current legislation.

The dissertation develops practical recommendations for improving the legal regulation of disclosure of documents, including proposals for amending a number of articles of the Civil Procedure Code of the Republic of Kazakhstan, establishing legal regulation of pre-trial disclosure of documents as a separate article, as well as clarifying the limits of disclosure and exemptions from the duty to disclose, taking into account the key principles of the administration of justice.

Relevance of the Research Topic. The relevance of the research topic is determined by current trends in reforming civil justice in the Republic of Kazakhstan and the need to enhance the effectiveness of mechanisms for implementing the principles of adversarial proceedings and equality of the

parties. The quality of the administration of justice is a key indicator of the level of the rule of law and one of the criteria for assessing the effectiveness of the judicial system, as reflected in the World Justice Project (WJP) Rule of Law Index. According to WJP data, Kazakhstan demonstrates positive dynamics in the «civil justice» category and ranked 35th among 142 countries worldwide in 2024.

At the same time, despite the progress achieved, unresolved issues remain related to the quality of the administration of justice in civil cases. The National Development Plan of the Republic of Kazakhstan until 2029 sets the task of increasing the rule of law index from 0.54 to 0.60, which requires improving procedural guarantees of a fair trial. One of the instruments capable of contributing to the achievement of these goals is disclosure of documents—an institution implemented in the Civil Procedure Code of the Republic of Kazakhstan in December 2021 based on the English disclosure model.

However, an analysis of the current legal norms and existing practice has shown that the implementation is fragmentary in nature: the duty to disclose documents has not been normatively enshrined in the Civil Procedure Code of the Republic of Kazakhstan; there is no clear legislative distinction between pre-trial disclosure and judicial disclosure; the rules governing disclosure of documents are absent from the chapter regulating preparation of a case for trial; the limits of disclosure and mechanisms of liability for breach of the duty to disclose have not been defined. For this reason, it is premature to speak of the successful implementation and institutionalization of this legal phenomenon.

The absence of comprehensive legal regulation gives rise to problems in the proper functioning of the disclosure procedure as a procedural guarantee of the principle of adversarial proceedings. In addition, limited awareness of law enforcement practitioners regarding the content and purposes of disclosure of documents has been identified: according to the results of a sociological survey, only 39.2% of the surveyed lawyers were aware of the existence of disclosure in common law. This indicates the need for its theoretical comprehension and adaptation, taking into account the specifics of the Kazakh legal system.

The relevance of the topic is further enhanced in the context of globalization and digitalization of justice. In common law jurisdictions, electronic disclosure (e-disclosure) technologies based on the use of artificial intelligence for analyzing large volumes of electronic documents have already been implemented. The digitalization of public services, including justice, is a priority area in the Republic of Kazakhstan, and the integration of such solutions opens new prospects for improving the quality of justice.

Thus, the study of the institution of disclosure of documents has both theoretical and practical significance: it is aimed at improving legislation, ensuring a balance of the parties' interests, reducing the time required for case consideration, and strengthening public trust in the judicial system. The solution of these tasks corresponds to the strategic directions of state policy and the

objectives of increasing the rule of law index enshrined in the National Development Plan of the Republic of Kazakhstan until 2029.

Purpose and Objectives of the Research. The purpose of the dissertation research is a comprehensive theoretical and legal analysis of the essence and content of the institution of disclosure of documents and the development of scientifically substantiated proposals for improving its legal regulation in the civil procedure of the Republic of Kazakhstan, taking into account foreign experience. The objectives of the research are as follows:

- to analyze the correlation between disclosure of documents and the principles of adversarial proceedings and formal truth, and to examine the possibility of establishing the duty to disclose documents as a procedural guarantee;
- to establish the relationship between disclosure of documents and the institutions of proof and preparation of a case for trial in civil procedure;
- to generalize doctrinal approaches to defining the term «disclosure of documents» and to analyze scientific approaches to its definition in order to identify its essential characteristics;
- to formulate a scientific definition of the procedure of disclosure of documents in domestic civil procedure;
- to classify the types of disclosure of documents and analyze their relationship with the features of legal regulation;
- to develop a scientific definition of the procedure of pre-trial disclosure of documents in the context of legal regulation in the Republic of Kazakhstan;
- to study the experience of modern legal regulation of disclosure of documents in England and the experience of borrowing disclosure of documents into the civil procedural legislation of Germany and Japan;
- to identify problematic issues of legal regulation of disclosure of documents in the civil procedural legislation of the Republic of Kazakhstan;
- to analyze the procedure of disclosure of documents in the AIFC Court with an examination of judicial practice, to determine the specifics of legal regulation of disclosure of documents, and to assess the possibility of its functioning within the territory of Kazakhstan;
- to develop recommendations for improving the legal regulation of disclosure of documents in domestic civil procedure in the form of a project of systemic amendments to the Civil Procedure Code of the Republic of Kazakhstan.

Object and Subject of the Research. The object of the research is the set of social relations arising in the course of disclosure of documents in civil proceedings.

The subject of the research includes civil procedural norms regulating the goals, objectives, content, conditions, and procedural order of disclosure in the legislation of England, Japan, and Germany, in the AIFC Court, as well as the

norms of civil procedural legislation of the Republic of Kazakhstan, scholarly research, and materials of domestic judicial practice.

Research Methodology. The study employs both qualitative and quantitative research methods. One of the fundamental methods of scientific research is the general scientific dialectical method. The phenomenon of disclosure of documents cannot be understood without applying a method of cognition of the laws of objective reality, the basis of which is the unity of cognitive, rational, and practical activity.

The law of the transition from quantity to quality is applied in this study when identifying the institutional nature of disclosure of documents in English law. At present, statements that disclosure in the civil procedure of Kazakhstan exists as an institution of civil procedural law science are premature. A quantitative accumulation of norms regulating disclosure in full is required in order for legal regulation to become more effective. Research in this direction will help facilitate this qualitative transition within a shorter time frame.

The systemic approach in civil procedural science consists in the fact that all stages of civil proceedings are structured in a specific order and strict sequence, compliance with which ensures the formal nature of the process. All elements of the process are interconnected and interdependent. It is impossible to rearrange stages of civil proceedings or the procedural sequence of actions. Without preparation, there can be no trial, and without proof, there can be no judgment. Disclosure of documents is traditionally attributed to the stage of proof alongside the submission of documents; however, it should be noted that disclosure of documents is possible only at the stage of preparation for judicial proceedings.

The activity-based approach in civil procedure considers all procedural actions of the parties and the court as a form of activity. Accordingly, the position of scholars who define disclosure of documents primarily as an activity is particularly relevant to this study.

Within the framework of the research, a sociological survey was conducted targeting individuals involved in this field. The survey concerned the procedure of disclosure of documents and the pre-trial protocol and was conducted electronically using the Google Forms platform.

The comparative legal method permeates the entire dissertation research. The method of comparative analysis made it possible to analyze the norms of English law governing civil procedure and the norms of the Civil Procedure Code of the Republic of Kazakhstan in order to demonstrate the significance and importance of the institution of disclosure of documents in civil proceedings. The formal legal method is used to reflect the current state of legal regulation of disclosure of documents with an interpretation of the legislator's intent. To substantiate the practical significance of the research, case studies of civil cases are provided using the qualitative research method of case study.

In addition to the above methods, general scientific formal-logical methods such as analysis, synthesis, induction, and deduction were applied.

Scientific Novelty of the Research. In classical understanding, the institution of disclosure in English law has been the subject of theoretical research in the works of scholars such as N. Andrews, E. Bray, J. Jacob, J. A. Jolowicz, A. Higgins, P. Mathews, H. Malek, J. C. Scherpe, A. Zuckerman, and others. Issues related to borrowing disclosure of documents into German law are addressed in the works of M. Yoshido and J. C. Scherpe, and into Japanese law in the works of K. Huang.

Interest in the research topic has also been demonstrated by Russian scholars of civil procedural law within their dissertation research, including Yu. V. Arkhipova, Yu. V. Kaiser, and A. D. Lozovitskaya. These studies were preceded by fundamental works of such scholars as G. O. Abolonin, O. V. Baulin, E. V. Kudryavtseva, A. A. Lim, V. K. Puchinsky, I. V. Reshetnikova, V. V. Yarkov, and others.

In the science of civil procedural law of Kazakhstan, this dissertation is the first fundamental study in which the legal phenomenon of disclosure of documents is examined comprehensively with an analysis of the problems of its borrowing into domestic civil procedural legislation.

Main Provisions Submitted for Defense

1. The dissertation substantiates the conclusion that the prerequisite for the emergence and development of disclosure of documents in the common law system was the combination of the principles of adversarial proceedings and formal truth. This historical and legal experience demonstrates that with a reduction in the active role of the court and greater freedom of the parties in choosing procedural actions, disclosure of documents serves as a guarantee of equality of the parties in adversarial proceedings. In this regard, an amendment to Article 15 of the Civil Procedure Code of the Republic of Kazakhstan «Adversarial Proceedings and Equality of the Parties» is proposed by enshrining the duty of the parties to disclose documents, which will contribute to ensuring the full implementation of the principle of adversarial proceedings in domestic civil procedure.

2. The dissertation substantiates the thesis that disclosure of documents has an inter-institutional character in civil procedure, being simultaneously an element of two institutions: proof and preliminary preparation of a case for trial. The dual nature of the disclosure procedure objectively requires consolidation of rules on disclosure in Chapter 16 of the Civil Procedure Code of the Republic of Kazakhstan regulating preparation of a case for trial.

3. The dissertation proposes an author's definition of the concept of «disclosure of documents». Disclosure of documents in civil procedure should be understood as the procedural activity of the parties and other persons possessing evidentiary information relevant to the case, carried out at the stage of preparation for judicial proceedings within the time limits established by the court, consisting

in the presentation to each other and to the court of written documents, as well as documents on any material and electronic media, for the purpose of ensuring adversarial proceedings and equality of the parties, reducing the duration of case consideration, and facilitating settlement.

4. The study substantiates the necessity of classifying disclosure of documents, which allows for structuring the diversity of types of this procedure, determining their legal nature and specific features. The dissertation identifies and substantiates the following classifications of disclosure of documents depending on:

- the fact of filing a claim — pre-trial disclosure and disclosure of documents at the stage of judicial proceedings;
- the subject carrying out disclosure — disclosure by the parties and disclosure carried out by persons who are not parties to the proceedings;
- the scope of disclosure — standard and special disclosure;
- the method of implementation — traditional disclosure (on paper) and electronic disclosure.

The proposed classifications have methodological significance for the science of civil procedural law, as they ensure systematization of existing forms of disclosure and provide a basis for comparative analysis and subsequent improvement of legal regulation.

5. Based on the developed classification of disclosure of documents, the study substantiates the identification of pre-trial disclosure of documents as an independent type alongside disclosure at the stage of preparation of a case for trial. In this regard, the following definition is proposed: «pre-trial disclosure of documents is the activity of potential parties to judicial proceedings, ensured by a judicial act, aimed at obtaining or providing documents prior to filing a claim for the purpose of eliminating information insufficiency regarding documents, facilitating pre-trial dispute resolution, proper preparation of the claim, and ensuring a fair trial.» Based on an analysis of the experience of borrowing pre-trial disclosure into the legislation of Germany and Japan, it is proposed to normatively enshrine pre-trial disclosure in the form of a separate article regulating its procedure and limits, which eliminates the need to preserve the existing institution of the pre-trial protocol in its current form.

6. It is substantiated that the legal regulation of disclosure of documents requires clarification of its limits and consolidation of exemptions analogous to privileges in English law, while mechanical borrowing is inadmissible. Adaptation of the institution of disclosure must take into account the characteristics of legal culture and historical traditions of civil procedure in Kazakhstan. In this regard, it is proposed to legislatively establish grounds for refusal to disclose documents and to limit the use of documents obtained during pre-trial disclosure exclusively to judicial proceedings.

7. It is substantiated that the legal regulation of disclosure of documents in the AIFC Court represents a procedure different from the English disclosure

model and adapted to the continental legal system: disclosure is not associated with an automatic obligation to present documents detrimental to a party's position and is consistent with the traditional distribution of the burden of proof. This mechanism is capable of fully functioning within the continental legal system provided that it is comprehensively normatively enshrined and procedurally supported by the court through control of disclosure deadlines, clarification of the parties' duties, and application of sanctions for non-compliance.

8. The dissertation develops and proposes a project of systemic amendments to the Civil Procedure Code of the Republic of Kazakhstan, namely to Articles 15, 46, 72, 73, 73-1, 109, 149, 150, 163, 165, 172, and 202, aimed at expanding the normative regulation of the institution of disclosure of documents (see Appendix A). The proposed amendments include provisions on pre-trial and judicial disclosure of documents, establishment of the parties' duties to disclose, procedural time limits and consequences of their violation, as well as grounds for exemption from disclosure. Implementation of these proposals will improve the legal regulation of the disclosure procedure, facilitate the implementation of the principles of adversarial proceedings and equality of the parties, and enhance the effectiveness of civil proceedings.

Practical and Scientific Significance of the Research. The practical and scientific significance of the research lies in the fact that its results represent a set of systemic amendments to the current domestic civil procedural legislation. In particular, the dissertation develops and proposes a draft of amendments to the Civil Procedure Code of the Republic of Kazakhstan, including Articles 15, 46, 72, 73, 109, 149, 150, 163, 165, 172, and 202, as well as the introduction of an additional Article 73-1 devoted to pre-trial disclosure of documents.

The amendments developed on the basis of theoretical research are aimed at expanding the normative regulation of the institution of disclosure of documents and include provisions on pre-trial and judicial disclosure, establishment of disclosure duties, procedural deadlines and consequences of their violation, as well as grounds for exemption from disclosure. Implementation of these proposals will improve legal regulation of disclosure of documents, facilitate realization of the principles of adversarial proceedings and equality of the parties, and enhance the effectiveness of civil proceedings. Recommendations for improving legal regulation of disclosure of documents were submitted to the Mazhilis of the Parliament of the Republic of Kazakhstan and accepted for further work on improving civil procedural legislation.

Within the framework of this research, an attempt was made to systematize existing scholarly views on the institution of disclosure of documents in both common law and continental legal systems. For the first time, attention is drawn to the experience of countries that have, to varying degrees, received disclosure of documents into their domestic legislation. The research demonstrates the

potential of the institution of disclosure for forming a correct understanding of its essence, goals, and objectives.

In order to prevent negative perception of a foreign element in civil procedure and taking into account the possibility of its further improvement within the existing domestic civil procedural system, current problems of law enforcement practice relating to disclosure procedures are examined and possible solutions are proposed. The conclusions, proposals, and recommendations formulated in the dissertation are aimed at the gradual improvement of disclosure of documents in civil proceedings of the Republic of Kazakhstan.

The results of the dissertation research may be used both in scientific research activities in the context of further development of scholarly views on the disclosure of documents, and in legislative activity aimed at improving the legal regulation of disclosure. The study may also be of interest to members of the judiciary, legal consultants, and advocates, contributing to the improvement of the quality of justice administered in the Republic of Kazakhstan.

Approbation of the research results. The theoretical conclusions and practical recommendations derived from the study were approbated through publications in peer-reviewed scientific journals recommended by the Committee for Quality Assurance in the Sphere of Education and Science of the Ministry of Education and Science of the Republic of Kazakhstan for publishing the main results of scientific research.

In particular, within the framework of the study, the following articles were published:

1. «Pre-action Protocol in Civil Proceedings in England and Kazakhstan: A Comparative Analysis», Bulletin of the Institute of Legislation and Legal Information, No. 4 (71), publication date: December 30, 2022;
2. «On Certain Aspects of Legal Regulation of the Submission of Documents to the Court of the Astana International Financial Centre», Bulletin of KazNU. Law Series, No. 1 (105), publication date: March 15, 2023;
3. «On Certain Theoretical and Legal Aspects of Disclosure of Documents in Civil Proceedings in England and Kazakhstan», Bulletin of the Institute of Legislation and Legal Information, No. 2 (73), publication date: June 30, 2023.

In addition, during the scientific research conducted within the scope of the dissertation topic, scientific articles were published in international peer-reviewed journals:

1. «Disclosure in Civil Proceedings in the UK and Kazakhstan: Comparative Analysis», Statute Law Review, Volume 44, Issue 3, December 2023 (Q3);
2. «Comparative Analysis of Disclosure of Documents in the AIFC Court and English Courts: Impact on Legal Certainty in Commercial Disputes», Social & Legal Studios, 2025, Vol. 8, No. 2, July 2025 (Q3).

Certain problematic issues related to the subject of the research were presented in the form of reports at the following international scientific and practical conferences:

1. XXVIII International Multidisciplinary Conference «Prospects and Key Tendencies of Science in the Contemporary World», Madrid, Spain, March 6, 2023, report topic: «Pre-action Protocol in Civil Proceedings in England»;
2. International Scientific and Practical Conference «75 Years of the Universal Declaration of Human Rights», Minsk, Belarus (Academy of the Ministry of Internal Affairs of the Republic of Belarus, December 8, 2023), report topic: «Disclosure of Documents in the Context of the Right to a Fair Trial»;
3. International Scientific and Practical Conference «Lawmaking and Legal Information: Achievements and Prospects», Astana, Kazakhstan, September 29, 2024, report topic: «On Certain Problems of Borrowing the Disclosure Procedure into the Civil Process of the Republic of Kazakhstan»;
4. XVII International Scientific Conference «Development of Science in the XXI Century», Dortmund, Germany, November 7–8, 2024, report topic: «On Some Issues of Borrowing the Disclosure Procedure into the Civil Process of the Republic of Kazakhstan»;
5. XXI International Scientific Conference «Challenges and Problems of Modern Science», London, Great Britain, April 17–18, 2025, report topic: «The Future of Disclosure and Artificial Intelligence in Civil Litigation»;
6. International Scientific and Practical Conference «Artificial Intelligence and Innovations: New Challenges and Opportunities for Science and Society», Astana, Kazakhstan, April 24–25, 2025, report topic: «Disclosure of Documents and Artificial Intelligence in Civil Proceedings: Realities and Prospects» (published in Proceedings of Turan-Astana University, No. 1/2025).

In addition, the results of the conducted research were approbated in the legislative sphere: an official appeal containing recommendations on introducing amendments to the current civil procedural legislation was submitted to the Mazhilis of the Parliament of the Republic of Kazakhstan. Based on the results of its consideration, an official response was received stating that the proposed amendments were accepted for further work on reforming the Civil Procedure Code of the Republic of Kazakhstan.

Structure of the study. The dissertation consists of an introduction, three chapters comprising nine sections, a conclusion, a list of references, and two appendices. The total volume of the dissertation is 279 pages, including 33 pages of appendices.

The first chapter examines the philosophical and legal prerequisites for the emergence of the institution of disclosure of documents, its relationship with the

principles of adversarial proceedings and formal truth, as well as doctrinal approaches to defining this institution in foreign and domestic procedural scholarship. It substantiates that the combination of the principles of adversarial proceedings and formal truth served as the historical and legal basis for the formation of the disclosure procedure as a procedural guarantee of the adversarial principle. The author reveals the dual nature of disclosure of documents, expressed in its belonging to two procedural institutions — proof and preparation of the case for trial. A methodological classification of types of disclosure is substantiated, the essential features and objectives of disclosure of documents are defined, and the author's definitions of pre-trial disclosure of documents and disclosure of documents at the stage of judicial proceedings are proposed.

The second chapter is devoted to a comparative legal analysis of the regulation of disclosure of documents in England, Germany, and Japan. It examines the key elements of the English disclosure model, including the process of civil procedure reform and trends in the use of artificial intelligence in electronic disclosure of documents. The second section focuses on the civil procedure of Germany, in particular on the procedure of «obtaining independent documents,» which confirms the possibility of requiring disclosure of documents prior to the commencement of court proceedings under certain conditions. Special attention is also given to the specifics of the disclosure procedure in Japanese civil proceedings. Based on the analysis, it is demonstrated that each of the examined jurisdictions has adapted the institution of disclosure of documents in accordance with its legal traditions, which is significant for developing a balanced approach to its reception in Kazakhstan.

The third chapter analyzes the state and practice of application of the rules on disclosure of documents introduced into the Civil Procedure Code of the Republic of Kazakhstan in 2021. Identified problems of implementation are examined, including the absence of a clear distinction between pre-trial and judicial disclosure, gaps in regulating the scope and limits of disclosure, and issues of procedural liability. Special attention is paid to the analysis of disclosure of documents in the Court of the «Astana» International Financial Centre, where an improved disclosure model operates, based on English principles but adapted to the continental legal process. Based on a synthesis of foreign and national experience, specific proposals for amendments and additions to the Civil Procedure Code of the Republic of Kazakhstan are developed.

The conclusion formulates the main findings reflecting the results of the conducted research and presents specific recommendations for improving the legal regulation of disclosure of documents in order to ensure the principles of adversarial proceedings and equality of arms and to enhance the effectiveness of civil justice.