



Electronic Evidence in the Civil Proceedings: The Experience of the Republic of Korea

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Abstract

The paper aims to identify the features of electronic evidence in civil proceedings in the Republic of Korea. The author analyzes the current Korean legislation governing the evidence issues, including the digital age. The provisions on the use of electronic evidence, their collection, storage, transfer, and security are considered paying respect to the introduction of a new electronic document management system. When collecting and processing the material, the author uses the theoretical methods of formal and dialectical logic, description, comparison, analysis, and interpretation of legal norms. The author concludes on the relevance of using electronic evidence in civil proceedings in the Republic of Korea in the context of the general requirements for evidence. The paper shows that the clear need for electronic evidence in the digital era to establish the genuine facts of civil cases has positive and negative sides.

Keywords

Civil procedure · Electronic court proceedings · Electronic evidence · Civil proceeding · Republic of Korea

JEL Codes

K10 · K39 · K49

1 Introduction

1.1 A Brief Overview of the E-Litigation Management Process

Before moving on to the topic of the study, it should be noted that the Republic of Korea is one of the leading countries using the digital space in legal proceedings, including the processing of court cases. The first steps towards creating an electronic judicial system were taken in 1979, and then the judiciary turned to the management of the “Korean Institute of Science and Technology (KIST) with a request to conduct a study on the possibilities of electronic justice” (Supreme Court of Korea, [n.d.-a](#)).

Seven years later, the Supreme Court developed a civil litigation program that could use computer technology in civil cases; the Case Management System (CMS) was completed at the start of the new millennium. A little later, in 2010, the Electronic Case Registration System (Supreme Court of Korea, [n.d.-c](#)) was launched—“an electronic judicial system that is part of the Korean judicial system” (Supreme Court of Korea, [n.d.-b](#)). Through a comprehensive e-judicial format, parties and their lawyers have electronic court information access and other options. Besides, they can independently file claims, electronic evidence, and other court documents via the Internet without visiting the courts physically. It allows for tracking the current state of a court case and managing an electronic case (Gronik, 2021) easily and quickly.

Civilization brings humanity to the fact that digital documents rapidly replace hard copies, and COVID-19 confirms this argument. First, electronic documents provide fast and high-quality service to the parties. Second, the maintenance of electronic records of court proceedings allows “reducing the costs associated with filing, distributing, and storing paper documents, and at the same time provide advanced court services, save energy, and realize the new

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trend of establishing green IT” (Supreme Court of Korea, *n.d.-a*).

After a successful pilot test of the ECFS electronic litigation system in 2011, e-litigation was implemented in civil litigation, which allowed the judiciary to become more accessible to the local population at all stages of litigation, “materializing electronic filing and electronic case management” (Supreme Court of Korea, *n.d.-a*).

2 Materials and Methods

The regulatory framework of this includes the current legislation of the Republic of Korea: Civil Procedure Law (South Korea, 2021), Act on the Use of Electronic Documents in Civil Litigation (South Korea, 2020), Rules for the use of electronic documents in civil litigation (Supreme Court of Korea, 2021), and Rules for the collection, analysis, and management of digital evidence (Korea Fair Trade Commission, 2021).

The theoretical basis for the study of the material was the research of such scholars as Rusakova and Frolova (2022), Inshakova et al. (2021), Kupchina (2020), Kang (2019), Ermakova and Frolova (2022), Rusakova et al. (2021). Researchers develop diverse approaches to understanding the phenomenon of “digitalization,” considering its impact on various fields and areas of knowledge. In particular, the issues of the use of digital technologies in the civil justice system, digital evidence, and the problems of their authentication in the civil justice system of the Asia-Pacific countries, the features of the functioning of the electronic judicial system, cybersecurity issues in the civil justice system, the use of artificial intelligence technology in the civil justice system (Kupchina, 2020), and some others.

2.1 Definition of Electronic Evidence under Korean Law

What remains unchanged is that no matter what type or form of evidence these or those data belong to, their presentation needs to be confirmed for the purpose of proof. If it is impossible to confirm the purpose of the evidence due to a large number of submitted materials, their content is difficult to perceive, or the purpose of the evidence is unclear, or the author or the date of the act and others are unknown, then the provision of explanations to the submitted evidence is mandatory. The explanatory note must indicate the document’s title, the date of compilation, the author and purpose of proof, and the original ownership. The purpose of the proof is to establish the main facts to be proved and, depending on the case, the details of the preparation or the facts to be proved in detail along with the case must also be described.

Summarizing the above, and referring to Articles 345–346 of the Civil Procedure Code of the Republic of Korea (South Korea, 2021), when claiming evidence, one must indicate the connection between the evidence and the facts.

Further, we will consider electronic evidence more thoroughly. According to the amendments to the regulation of the Republic of Korea on the collection, analysis, and management of digital evidence No. 2021–39 (Korea Fair Trade Commission, 2021), which entered into force on December 30, 2021, “electronic evidence” refers to information stored or transmitted in digital form and that is of value as evidence of violations of laws and regulations under the jurisdiction of the Digital Commerce Commission. Thus, any “digital data,” that is, information stored on a digital medium or information transmitted electronically over a wired or wireless network, can fall under the characteristics of electronic evidence. The digital medium can be any suitable device for storing digital data. The most common digital media for storing or transmitting electronic evidence can be a computer disk (hard drive), memory card, mobile device memory (smartphone, tablet, and others), server, and mass storage device or digital device.

2.2 Characteristics of Electronic Evidence

In his study, Doctor of Law Kang Mi-young, a researcher at the Institute of Legal Studies of Busan National University, notes that electronic evidence is also a form of general evidence, but they differ from general evidence in that they “do not have a tangible form” (Kang, 2019). Electronic evidence is recorded and stored as digital information. Thus, it is an inanimate object with no form and is difficult to detect and prove. In other words, recognition of the necessary information is possible only through a “reader”—a digital device for displaying text in electronic form.

The complexity of using electronic evidence lies in the fact that via simple combinations of actions, it is possible to copy information that is important for the consideration of the case, and it will be almost impossible to distinguish the original from the copy. Even during the copying process, the content and quality of digital information remain unchanged (Matytsin, 2021).

An unhindered change in the essence of evidence is another circumstance that complicates proving when electronic evidence is the goal. In other words, evidence containing digital information can be modified by editing, deleted, or formatted, knowingly or unintentionally damaging the file or its digital media. Moreover, changes can only be made to the part of the electronic information that is significant as electronic evidence in civil proceedings in a particular case. The problem of the integrity (authenticity) of electronic evidence comes to the fore (Kang, 2019). Furthermore, returning to the difficulty of distinguishing an original

from a copy, it is often difficult to identify a fake. It requires applying the knowledge and assistance of specialists in digital information technology.

3 Results

Regarding personal and public documents in Korea, there is a “presumption of authenticity (Articles 356 and 358 of the Code of Civil Procedure of the Republic of Korea)” (South Korea, 2021); a priori, it is believed that the fact of their authenticity cannot prove these documents presented as evidence. Moreover, the court can request the official place of issue only if there are doubts about the originality of personal documents or documents issued by public authorities. Concerning the proof of the authenticity of a private document, such a presumption does not apply, and the fact of authenticity must be proven. What about the determination of the authenticity of electronic evidence?

Following the Code of Civil Procedure of the Republic of Korea (South Korea, 2021) and the Law on the Use of Electronic Documents in Civil Litigation of Korea (South Korea, 2020), verification of evidence on electronic documents can be carried out in several ways:

- First, by examining evidence for the presence of information about signs, other symbols, drawings, photographs, and alike, using the method of viewing electronic documents using various means of visual rendering—a monitor, tablet, laptop, smartphone, and others. “Rendering” refers to the technology of reproduction of digital materials in all aspects, including the content and format of their storage in other digital media;
- Second, the study of audio or video information evidence by listening to or viewing electronic documents.

When verifying “the authenticity of electronic evidence, a copy of it can be verified in the same way as if it were the original evidence” (South Korea, 2020). Thus, the risk of damage to the original electronic evidence can be avoided. Moreover, even if the parties have tried to erase digital evidence, some unknown copies of it may exist; even if it is completely erased from the storage medium, it is possible to recover it. When examining to identify and establish a change in all electronic evidence or part of it, IT experts use special programs.

However, some electronic evidence may be subject to time limits, such as electronic links limited by a period. We believe that Section 8 of the Korean Code of Civil Procedure applies to such electronic evidence (South Korea, 2021). In particular, Article 375 of the requirements for the security of evidence notes the following: “if the court considers that

there are circumstances that make it difficult to use evidence if it is not checked in advance, then, at the request of one of the parties, the court may order an early examination of evidence under the provisions of section 8” (South Korea, 2021).

The following matters must be disclosed in the evidence preservation statement:

- Supporting facts for evidence;
- Evidence to be preserved;
- Reasons for the preservation of evidence that should be clarified.

At the stage of examining the evidence, all the witnesses involved in a particular civil case, both on the part of the claimant and respondent, and other persons subject to be questioned, are intensively interrogated. In the event of a dispute between the parties, the court seeks to resolve the dispute amicably, using an advisory decision or a mediation system at any stage of the above procedures.

4 Conclusion

During the research, the author discovered the essential features of electronic evidence in civil proceedings in the Republic of Korea. The analysis of the current Korean legislation governing the use of electronic documents in civil proceedings, including the collection, analysis, and management of electronic evidence, revealed that the use of electronic evidence is undoubtedly important to establish the true circumstances in civil cases and determine the admissibility of evidence. However, this type of evidence is “information stored on a digital medium,” and the preservation of its integrity and reliability also requires confirmation.

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