

<https://doi.org/10.22363/2313-2337-2022-26-2-485-500>

Research Article

## The role of digitalization on the interaction of judicial and notarial authorities in conciliation procedures

Alexander V. Begichev✉

Peoples' Friendship University of Russia (RUDN University), *Moscow, Russian Federation*  
✉begichev100@mail.ru

**Abstract.** The article studies the issues of digital interaction between the court and the notary in the out of court conciliation procedures, which allows establishing new forms of protection of rights and legitimate interests of citizens and legal entities in resolving civil disputes. The author analyzes the possibilities of digital justice and derives the criteria for interaction between the notaries and the court when using mediation agreements concluded in a notarial form. The current state of the human rights activities of the electronic notary in certification of distance mediation agreements has been studied. The purpose of the article is to form an idea of new possibilities of the notary for notarizing remote mediation agreements and forming a promising platform for digital interaction between the notaries and the court, based on the analysis of legal acts and scientific sources. Among the methods applied are comparative legal, description, interpretation, and theoretical methods of formal and dialectical logic. Private-scientific methods including legal-dogmatic, and the method of interpreting legal norms were also used. The study showed that the remote execution of mediation agreements that have the status of enforcement documents, in the context of the increasing influence of digital technologies on the human rights activities of the court and notaries, is gaining importance in protecting the rights of subjects of economic relations, which provides an opportunity to reduce the burden on the court and save costly resources to reach consensus in a legal conflict for shorter time.

**Key words:** online justice, information technology, notaries, mediation agreement, remote certification of transactions

**Conflicts of interest.** The author declares no conflict of interest.

**Information on financing.** The study was funded by the Grant of the President of the Russian Federation No. HIII-3270.2022.2 “Evolution or revolution of civil justice: digitalization through the prism of artificial intelligence”.

*Article received 26th February 2022*

*Article accepted 15th April 2022*

---

© Begichev A.V., 2022



This work is licensed under a Creative Commons Attribution 4.0 International License  
<https://creativecommons.org/licenses/by/4.0>

**For citation:**

Begichev, A.V. (2022) The role of digitalization on the interaction of judicial and notarial authorities in conciliation procedures. *RUDN Journal of Law*. 26 (2), 485—500. <https://doi.org/10.22363/2313-2337-2022-26-2-485-500>

<https://doi.org/10.22363/2313-2337-2022-26-2-485-500>

Научная статья

## Роль цифровизации во взаимодействии судебных и нотариальных органов в применении примирительных процедур

А.В. Бегичев✉

Российский университет дружбы народов, г. Москва, Российская Федерация  
✉begichev100@mail.ru

**Аннотация.** Исследован порядок цифрового взаимодействия суда и нотариата в вопросах применения внесудебных примирительных процедур в период всеобщей диджитализации межведомственного взаимодействия, позволяющей установить новые формы защиты прав и законных интересов граждан и юридических лиц при разрешении гражданско-правовых споров. Автор проводит анализ возможностей цифрового правосудия и выводит критерии взаимодействия органов нотариата и суда при использовании медиативных соглашений, заключенных в нотариальной форме. Изучено современное состояние системы правозащитной деятельности электронного нотариата по удостоверению дистанционных медиативных соглашений. *Цель:* сформировать представление о новых возможностях нотариата по нотариальному удостоверению дистанционных медиативных соглашений и формированию перспективной платформы цифрового взаимодействия органов нотариата и суда, основанных на анализе нормативно-правовых актов и научных источников. *Методы:* сравнительно-правовой, описания, интерпретации; теоретические методы формальной и диалектической логики. Применялись также частно-научные методы: юридико-догматический и метод толкования правовых норм. *Результаты:* Проведенное исследование показало, что дистанционное совершение медиативных соглашений, имеющих силу исполнительных документов, в условиях увеличивающегося влияния цифровых технологий на правозащитную деятельность суда и нотариата, приобретает важное значение в вопросах защиты прав субъектов экономических отношений, предоставляющее возможность снижения нагрузки на суд и экономии затратных ресурсов для скорейшего достижения консенсуса в правовом конфликте.

**Ключевые слова:** онлайн правосудие, информационные технологии, нотариат, медиативное соглашение, дистанционное удостоверение сделок

**Конфликт интересов.** Автор заявляет об отсутствии конфликта интересов.

**Информация о финансировании.** Исследование выполнено при финансовой поддержке Гранта Президента РФ № НШ-3270.2022.2 «Эволюция или революция гражданского судопроизводства: цифровизация через призму искусственного интеллекта».

*Дата поступления в редакцию: 26 февраля 2022 г.*

*Дата принятия к печати: 15 апреля 2022 г.*

**Для цитирования:**

*Бегичев А.В.* Роль цифровизации во взаимодействии судебных и нотариальных органов в применении примирительных процедур // *RUDN Journal of Law*. 2022. Т. 26. № 2. С. 485—500. <https://doi.org/10.22363/2313-2337-2022-26-2-485-500>

## **Introduction**

Modern means of digitalization make it easier for citizens and legal entities to use communicative modes of interaction. To gain an evidentiary form of such activities, the participants in civil turnover must rely on the norms of procedural legislation. Moreover, in order to enhance the stability of economic activity, they must rely on legal guarantees that ensure their right to protection, regardless of the type of presented evidence, and the ways of its collecting and recording.

Reforming modern justice seeks to encourage conflict participants to resolve disputes out of court through conciliation procedures (Rusakova & Frolova, 2022). The notarial procedure for certifying a mediation agreement is the most convenient way to resolve the conflict through mutually beneficial negotiations.

According to the “UNCITRAL Commentary on Mediation (2021)” prepared by the UN Commission on International Trade Law, mediation is an effective and cost-effective mechanism in resolving various civil law conflicts. With its help, the parties can not only prevent an impending conflict and resolve it through negotiations, taking into account the interests of all the parties involved, but also prevent the situation where only one side in the dispute remains the winner. The mediation procedure provides the parties to the dispute with significant advantages: reduction of transaction costs in the implementation of international contracts and the total number of cases where a conflict can result in the business contacts default. Moreover, “in the case of successful mediation, the parties often move from an adversarial approach (“one side against the other”) to a solution-oriented approach (“both sides against the problem”)”<sup>1</sup>.

It is well known that mediation, unlike litigation, requires much less time and financial costs (Rusakova, Frolova & Inshakova, 2021). Moreover, it is the contractual procedure for resolving the dispute that is most consistent with the principles of justice. Thus, having come to an agreement on various issues of mutual activity, the subjects of economic relations can also form a new basis for further business relations, which will positively affect the continuity and interconnectedness of all economic processes in society (Inshakova, Frolova, Rusakova & Kovalev, 2020).

In this article, we will look at the impact of digital technologies on the process of administering justice and identify the limits of the online justice implementation. We will also analyze the current state of the out of court form of the civil rights protection and possibility of a notarial procedure to remotely certify mediation

---

<sup>1</sup> UNCITRAL Commentary on Mediation (2021). Available at: [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/ru/21-07073\\_uncitral\\_mediation\\_notes\\_ru.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/ru/21-07073_uncitral_mediation_notes_ru.pdf) [Accessed 29th January 2022].

agreements. Moreover, we will define the forms of relations between judicial and notary bodies in the context of digital interaction and identify promising opportunities of information technologies for their further development.

### **Limits of Digital Justice Transformation**

In the new conditions of the post-industrial era development, the issue of trust in the judiciary remains in the state bodies' focus of attention. Despite the measures taken and the ongoing reform of the entire law enforcement system, the demand for judicial protection is not decreasing.

The topic of legal proceedings digitalization, raised in practical and scientific circles, is associated with the possibility of simplifying the decision-making procedure and providing unhindered access to legal methods for resolving conflicts to subjects of civil circulation via electronic means of communication and data processing. It is worth noting that these issues developed even before the pandemic boom in the development of information technology.

At the same time, during the period of restrictive measures in the spring of 2020, when access to justice was limited, the key issue of direct participation of citizens and legal entities in the trial as one of the guarantees of the judicial protection availability became acute. The process of online presence of participants in the trial has become a global trend. In some countries (China, Canada, Australia), certain categories of cases take place entirely online. The possibility of remote participation in the trial, which appeared in the domestic procedural legislation, meets the modern demands of society.

At the same time, most of the discussions were focused rather on general theoretical issues (the robot judge and the limits of artificial intelligence) than on the implementation of practical procedural issues of the problem under discussion (Branovitskiy & Yarkov, 2021). In Russian realities, it is still difficult to talk about an all-encompassing process of online justice. At the same time, one must state the irrefutable advantages of this procedure, primarily for the system of arbitration courts. However, we should be very cautious with engaging artificial intelligence in judicial decisions making. Scientists note that an important aspect in solving the problem of relationship between the court and modern technologies is that the widespread introduction of digital technologies into legal proceedings cannot and should not affect the essence of judicial activity, where decision making should be always associated with the judge. Artificial intelligence is just a means in reaching justice; it only acts as an auxiliary tool (Branovitskiy & Yarkov, 2021).

It seems that this approach is justified in its fundamental approach to human psyche functioning. After all, the decision made by the court should not only be legal and lawful, but also relate to issues of morality and justice. Therefore, the main idea of e-justice should be built in the paradigm of “artificial intelligence — a tool in decision-making of natural intelligence”. The final decision itself must be

made by a person (the judge) and under his control. Of course, in cases of “indisputable justice”, it is possible to allow full automation of decision-making according to an understandable algorithm, but with a guarantee of the possibility of an unimpeded and quick review of the decision. Robert Greene, in his fundamental work on the nature of human psychology, noted that, given the complexity of all the phenomena in the world, there are never straight-line solutions to the same problems. It is impossible to build a diagram of a causal chain in advance and get a 100% result, taking into account all the possible consequences; this requires depth of thought, ability to imagine a multi-step chain of change as many steps forward as the mind can (Greene, 2018). Based on this, we believe that only the human mind, capable of critically comprehending all the facts, is able to choose the most correct decision in a particular case involving specific individuals, in order not only to make a just decision, but also (to the greatest extent) contribute to establishing confidence in the judicial system as a public authority based on the core humanitarian principles.

Determining the boundaries of engaging artificial intelligence into legal proceedings, one should make a note, which many scientists agree with — one should not rely on information technology as a panacea for all diseases thus entrusting it the solution of the national problem of maintaining law and order in the society.

According to the opinion of the experts of the Center for the Development of Modern Law published in the analytical report on the use of information technologies in justice, the most promising areas for improving information technologies in the Russian judicial system are associated with the development of automation of legal proceedings. The authors of the report (Kashanin A.V., Kozyreva A.B., Kurnosova N.A., Malov D.V.) assert that informatization of the judiciary due to introduction of modern digital technologies is the most effective way to raise the level of accessibility and quality of justice in the world. The report also notes that application of electronic services in administering justice can significantly speed up the decision-making process and reduce legal costs associated with the need for physical presence in the courtroom and involvement of a qualified judicial representative (Kashanin, Kozyreva, Kurnosova & Malov, 2020). In view of the foregoing, one can partially agree with the authors of the report that the progressive introduction of special automation mechanisms into the judicial process when considering indisputable claims (using artificial intelligence technologies) is a promising issue in Russian justice. The development of legal proceedings in the era of digitalization should not be devoid of human participation, especially at the stage of decision-making and its actual enforcement. It seems that artificial intelligence, which offers the most promising directions for resolving a particular dispute, should be transformed through the prism of human perception of legal processes, taking into account the inner conviction of the judge in the correctness of his decision. This humane goal cannot be ignored when discussing

any doctrinal issues of implementing a digital decision-making algorithm in procedural legislation.

### **Out of court protection of civil rights and information technology**

Despite various efforts on the part of legislators and scientists aimed at optimizing legal proceedings, legal regulation of conciliation procedures is expanding in civil law. And this direction is considered the most promising. In fact, the Federal Law No. 197-FZ of July 26, 2019 On Amendments to Certain Legislative Acts of the Russian Federation supplemented the Civil Procedure Code of the Russian Federation with a chapter providing for the use of conciliation procedures at any stage of the judicial process in civil cases, as well as during compulsory execution of a court decision. The law additionally provides for the possibility of using conciliation procedures at the pre-trial stage of dispute resolution, backing them up with a mechanism of enforcement. In accordance with Part 5 of Art. 12 of the Federal Law No. 193-FZ of July 27, 2010 On Alternative Procedure of Dispute Resolution with Participation of a Mediator (mediation procedure), a mediation agreement reached by the parties as a result of an out of court mediation procedure carried out without submitting a civil dispute to a court or arbitration tribunal, if certified by a notary, has the force of an executive document. Since October 25, 2019, the possibility of notarization of a mediation agreement has been practically implemented by introducing a special article 59.1 of the Fundamentals of Legislation on Notaries and its compulsory execution in the framework of enforcement proceedings (part 1 of article 12 of the Federal Law No. 229-FZ of October 2, 2007 On Enforcement Proceedings supplemented by paragraph 3.1 that notarized mediation agreements or their notarized copies are classified as executive documents). Thus, in terms of conciliation procedures, the notary and the court enter into an interconnected process of protecting the rights of participants in civil law relations.

One cannot by agree with the fact that the notary performs special law enforcement functions in the field of protecting the rights and legitimate interests of citizens and legal entities in regulating pre-trial conflicts; also, it actively participates in their prevention. All this gives reason to say that notarial activity helps to reduce the functional burden on the entire judicial system. In support of this thesis, one can refer to a recent example of the work of notaries in difficult conditions of restrictions due to the spread of the new COVID-19 infection. In accordance with the information of the Federal Notary Chamber dated March 19, 2020 “On the Procedure for the Work of Notary Offices during the Period of Restrictive Measures”, notaries in the Russian Federation continued to carry out their activities in strict accordance with the requirements of state authorities of the constituent entities of the Russian Federation.

According to the President of the Federal Chamber of Notaries K.A. Korsik, under these conditions, the notarial community was able to quickly organize its work on notarial certification of transactions and legal facts. This was significantly facilitated by the preliminary work on the transfer of a number of notarial acts to digital format as part of the implementation of the national project “Digital Economy”. According to statistics for 2020, notarial acts performed in digital format have gained particular importance for the protection of the rights of participants in civil law relations due to the potential of the “electronic notary” (Korsik, 2020a).

Employment of the information space in notarial activities has become an everyday necessity and is significantly useful not only for interdepartmental exchange, but also for citizens and legal entities, especially in business. The global trend of greater digital technologies’ role that help optimize notarial activities is leading to greater load of electronic interaction (Frolova & Ermakova, 2022).

It should be noted that in the course of its activities, the notary in Russia performs a human rights function by creating qualified written evidence. As we have already noted, the notary, being a non-judicial form of protection of civil rights but legally protecting interests of citizens and legal entities, is also a body of preventive justice. The function of the notary is to certify indisputable legal acts and impartially advise persons involved in the performance of a notarial act in order to prevent the adverse consequences resulting in a conflict situation. Thus, the notary carries out activities aimed at preventing disputes (Begichev, 2015). In this paper, we consistently continue to support the idea that the notary contributes to the prevention of disputes by its activity, and in the event of a conflict situation, notarized legal facts greatly facilitate administering justice (Begichev, Grebennikov & Domanov, 2017).

The Ministry of Justice of the Russian Federation also declares the human rights nature of the activities of the notary, emphasizing in its letter dated 13.08.2014 that the notary performs “public legal functions and is called upon to ensure the protection of the rights and legitimate interests of citizens and legal entities by performing the notarial actions provided for by legislative acts in the name of the Russian Federation”<sup>2</sup>.

The essence of the human rights function of the notary is realized in direct interaction with the courts. Notaries record indisputable evidence, which is subsequently submitted to the court for consideration in a particular case. Thus, the notary indirectly contributes to the lawful resolution of the dispute.

The notarial procedure for concluding mediation agreements can be attributed to voluntary jurisdiction, the implementation of which contributes to the maintenance of law and order without the involvement of the judiciary. The

---

<sup>2</sup> Letter of the Ministry of Justice of Russia No. 16-71832 dated August 13, 2014 Clarifications on a Number of Issues in the Field of Notaries. SPS “GARANT” Electronic resource. Available at: <https://www.garant.ru/products/ipo/prime/doc/70617602/> [Accessed 29th January 2022].

preventive nature of the notarial procedure emphasizes the important function of the notary to ensure the protection of the rights and legitimate interests of citizens and legal entities on the basis established in Art. 153.1 of the Code of Civil Procedure of the Russian Federation, the principles of voluntariness, cooperation, equality, and confidentiality.

The procedure aimed at resolving a dispute with the participation of a professional mediator is recognized in the world community as significantly effective (Ermakova, Frolova & Sitkareva, 2020; Ermakova & Frolova, 2022). At the same time, according to the Information on the practice of applying the Federal Law No. 193-FZ of July 27, 2010 On Alternative Procedure of Dispute Resolution with Participation of a Mediator (mediation procedure) for 2015 by Russian courts, “the percentage of dispute resolution with participation of a mediator still remains very low (0.007% and 0.01% of the total number of cases heard by the courts of general jurisdiction in 2015 and 2014, respectively)”<sup>3</sup>.

One of the reasons for low popularity of out of court mediation agreements during this period was the lack of legislative guarantees for enforcing such an agreement. At present, as mentioned above, the legislator has amended this provision; in this connection, there are grounds to hope for the rise in demand for a notarial procedure to conclude mediation agreements. As President of the Federal Notarial Chamber K.A. Korsik noted, “the focus of mediation on solving the acute problem of high workload of courts, as well as on stimulating peaceful settlement of conflicts in various spheres of Russian society speaks of its prospects and relevance” (Korsik, 2020b). Thus, a mediation agreement certified by a notary emphasizes the importance of the notarial procedure in preventive justice and corresponds to the modern level of legal protection of participants in civil law activities.

We would like to highlight the fact reflected in paragraph 2 of the mentioned Information of the Supreme Court on practice of applying the legislation on mediation that mediation agreements were not challenged in courts during the period under review. This circumstance confirms the general conclusion about the prospects of amicable settlement of disputes.

According to Art. 59.1 of the Fundamentals of the Russian Federation Legislation on Notaries, the notary certifies the mediation agreement reached by the parties in accordance with the agreement on conducting the mediation procedure provided for by the Federal Law On Alternative Procedure of Dispute Resolution with Participation of a Mediator (mediation procedure).

Scholars have long tended to adopt the foreign experience of the notarial procedure for certifying mediation agreements due to a number of undeniable

---

<sup>3</sup> Information on the Practice of Application by the Courts of the Federal Law No. 193-FZ of July 27, 2010 On Alternative Procedure of Dispute Resolution with Participation of a Mediator (mediation procedure) for 2015, approved by the Presidium of the Supreme Court of the Russian Federation on June 22, 2016. SPS “Consultant Plus”. Electronic resource. Available at: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_200160/](http://www.consultant.ru/document/cons_doc_LAW_200160/) [Accessed 29th January 2022].



advantages. According to O.A. Ternova, such a procedure is first of all a more efficient and least costly way to resolve conflicts; the special quasi-state status of a notary ensures its independence in performing a notarial act, impartiality in relation to the participants in conflict situation and confidentiality of the mediation procedure; finally, the notarial form of a mediation agreement is a guarantee of legal certainty for the parties to the conflict<sup>4</sup>.

Undoubtedly, these factors are a serious step towards stimulating citizens and legal entities to resolve their disputes out of court. It seems that when reforming the procedural legislation, these agreements should be given a prejudicial character and equate mediation agreements approved by court and mediation agreements certified by a notary. The current legislation on enforcement proceedings has actually put on equal footing the enforcement power of both types of mediation agreements, which is a very important step for the stability of civil circulation.

### **Digital technologies in mediation agreements certification**

The active and widespread use of modern information technologies in the activities of the notaries has been called “electronic notaries”. Enforcement of a number of important amendments in the legislation on the implementation of notarial activities in electronic form on December 29, 2020 has brought the notary to a completely new level. Among them, is the remote certification of transactions, i.e., certification without the joint presence of the parties at the same notary. A mediation agreement certified by a notary can also be carried out remotely, however it is subject to mandatory registration in a special register of “notarial actions performed remotely, and transactions certified by two or more notaries”, which is an integral part of the Unified Notary Information System and is maintained in an electronic form (Article 34.2 of the Fundamentals of the Legislation of the Russian Federation on Notaries — hereinafter the Fundamentals).

The procedure for certifying a transaction involving two or more notaries is disclosed in Art. 53.1 of the Fundamentals. This type of notarial action simplifies receiving notarial services with the help of digital technologies, which is especially convenient at a time when the parties, for various reasons, cannot come to the notary to jointly participate in concluding a mediation agreement. I would like to emphasize that this is especially relevant during the period of global epidemiological catastrophes, such as the spread of the COVID-19 coronavirus infection.

As a rule, the choice of notaries performing certification of a mediation agreement is carried out directly by the participants of such a transaction. It is important to note that according to Art. 59.1 of the Fundamentals, a mediation agreement is subject to notarization only with the obligatory

---

<sup>4</sup> Mediation agreement: how to resolve a controversial legal issue without a trial. Available at <https://tass.ru/obschestvo/7446699> [Accessed 29th of January 2022].

participation of one or more mediators who carry out their activities on a professional basis. Thus, the mediation agreement is signed by the parties and the mediator or mediators participating in the conciliation procedure. The competence of the notary includes checking the powers of the mediator in accordance with the agreement on the mediation procedure and mediator's assurance about its compliance in accordance with the requirements of the Federal Law on the Alternative Procedure for Settling Disputes with the Participation of an Intermediary (Mediation Procedure), on the basis of which, the notary indicates in the certification inscription that the powers of the mediator are checked by him.

According to paragraph 39.1 of the Regulations on the Performance of Notarial Acts by Notaries, which establishes the amount of information necessary for a notary to perform notarial acts, and the method of fixing it", the notary, when certifying a mediation agreement, must establish the following additional information necessary for the performance of a notarial act: (1) existence of an agreement on the mediation procedure; (2) absence of a litigation on the date of execution of mediation agreement (this issue is clarified by assurances of the parties and the mediator); (3) presence of certain obligations whose failure to fulfil led to concluding a mediation agreement (this requirement came into force on December 10, 2021).

As notarial transactions using remote digital technologies is a novelty, it seems necessary to give some clarifications on the procedure for remote certification of a mediation agreement in accordance with the requirements of Art. 53.1 of the Fundamentals of the legislation of the Russian Federation on notaries. A mediation agreement, certified remotely, is made with the passage of a five-step procedure in the following order:

1) "the notary creates a draft mediation agreement in electronic form using the Unified Notary Information System,

2) a copy of the mediation agreement in electronic form is signed by each party to the agreement, as well as by the mediator (one of the mediators) in the presence of a notary with a simple electronic signature, as well as on paper and is stored in the files of the notary's office,

3) The unified information system of the notary ensures the invariability of the text of the mediation agreement in electronic form,

4) a copy of the mediation agreement in electronic form with certification inscription is signed by the notaries who certified it with their qualified electronic signatures and is stored in the Unified Notary Information System,

5) a certified mediation agreement is registered in the register of remotely performed notarial acts and transactions certified by two or more notaries of the Unified Notary Information System".

According to Art. 53.1 of the Fundamentals, a mediation agreement certified by two or more notaries in the specified order is considered an agreement concluded in writing by drawing up one document signed by the parties.

In accordance with the Procedure for the Interaction of Notaries with the Unified Information System of the Notary when Certifying a Transaction by Two or More Notaries, approved by order of the Russian Ministry of Justice No. 222 dated September 30, 2020, the Unified Information System of the notary provides notaries participating in certifying a mediation agreement with access to electronic service for preparing a transaction passport of the Unified Notary Information System; the System provides information about notaries participating in certification of a mediation agreement, persons who applied for a notarial action and persons who took part in the notarial action, a unique identifier of the transaction, the type and text of the transaction with an acknowledgment inscription, the date and time of the transaction certification, as well as electronic documents necessary for the transaction certification.

The generated transaction passport is signed with an enhanced qualified electronic signature of each notary who is engaged in the mediation agreement certification. By means of the Unified Information System of Notaries including videoconferencing, interaction between the participants in the transaction and notaries participating in the certification of the mediation agreement is ensured.

Entries in the Unified Notary Information System are recorded in Moscow time, indicating the date and time of signing by the last notary participating in certifying the mediation agreement, an electronic document containing the text of the transaction with an acknowledgment inscription and signed by a simple electronic signature of each participant in the transaction and the mediator. The same notary also makes an entry in the register confirming the transaction.

After automatic confirmation of the registration of the mediation agreement in the register of remote actions it is deemed completed. Subsequently, the certified mediation agreement may be submitted to the court to confirm the circumstances described in the agreement.

The presence of a notarized mediation agreement exempts the parties from going to court to challenge the facts and circumstances recorded in the agreement and allows to directly address the bailiff service for its enforcement. It should be noted that the legislation of many European countries (Austria, Belgium, Germany, France, Scotland, Morocco, the Netherlands, Switzerland) recognizes the executive power of a notarial act. In these countries, in conciliation procedures, a notary may act as a qualified intermediary without the obligatory participation of a mediator. According to experts, the notary, thus, effectively replaces the courts in resolving various issues, playing a significant role in administering preventive justice<sup>5</sup>. The direct enforcement power of the mediation agreement can significantly reduce the

---

<sup>5</sup> See: Benefits of Notarized Mediation Agreement Discussed at International Conference. Available at: <https://40.notariat.ru/ru-ru/news/preimushhestva-notarialno-udostoverennogo-mediativnogo-soglasheniya-obsudili-na-mezhdunarodnoj-konferencii> [Accessed 29th January 2022].

cost of additional recourse to the court in case of non-performance. This rule is especially important in commercial conflicts<sup>6</sup>.

In addition to the above advantages, mediation agreements certified via remote technologies make it possible to avoid unnecessary contacts between the parties to the agreement due to their possible personal resentment in disputes related to inheritance, as well as family disputes during divorce, determining the procedure for raising children and/or dividing jointly acquired property.

### **Platform for electronic interaction between notaries, judicial authorities and bailiffs**

Currently, the possibility of electronic interaction between the notary and the court, as well as with the bailiff service, is being discussed, and attempts are being made to include notaries in the “Justice” State Automated System.

According to the information provided by the Judicial Department at the Supreme Court of the Russian Federation, an agreement was concluded between the Judicial Department and the Federal Notary Chamber giving rise to the development of special software (Portal for Judges of the Unified Notary Information System); with its help, when considering disputes over hereditary property division, judges can directly receive information from notaries about the inheritance case in the form of an electronic document. As a result of introducing these innovations into practice, the Judicial Department expects that the process of interaction between courts and notaries will be greatly simplified. Moreover, electronic interaction optimizes the costs of notaries for paper production of copies of the inheritance file. The service is not yet operating but the work in this direction is under way. In accordance with the State Assignment of the Federal State Budgetary Institution IAC of the Judicial Department for 2020 and for the planning period of 2021 and 2022, a plan of practical measures to ensure courts with access to electronic services and optimize notary activities has been drafted<sup>7</sup>.

Also, the Federal Notarial Chamber and the Federal Bailiff Service signed an Agreement on Information Exchange in Electronic Form (approved by the Federal Bailiff Service of Russia, Federal Tax Service No. 0001/19/2853/01-01-2 on June 30, 2017)<sup>8</sup>, whose task is to improve the information interaction with data contained in automated information systems in electronic form between the Federal Bailiff

---

<sup>6</sup> See: Davydenko D. Enforcement of Mediation Agreements: What the New Legislation Brings to Civil Circulation. Available at: [https://zakon.ru/blog/2019/7/18/pridanie\\_mediativnym\\_soglasheniyam\\_ispolnitelnoj\\_sily\\_chno\\_privnosit\\_v\\_grazhdanskij\\_oborot\\_novoe\\_zak](https://zakon.ru/blog/2019/7/18/pridanie_mediativnym_soglasheniyam_ispolnitelnoj_sily_chno_privnosit_v_grazhdanskij_oborot_novoe_zak) (дата обращения: 19.01.2022).

<sup>7</sup> See: The Judicial Department and the Federal Notary Chamber launch an online service for judges. Available at: <http://www.cdep.ru/index.php?id=104&item=5558> [Accessed 29th January 2022].

<sup>8</sup> Agreement between the Federal Bailiff Service and the Federal Chamber of Notaries on information exchange in electronic form, approved by the Federal Bailiff Service of Russia, FNP 30.06.2017 No. 0001/19/2853/01-01-2). Available at: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_219643/](http://www.consultant.ru/document/cons_doc_LAW_219643/) [Accessed 29th January 2022].

Service of Russia and the FNP, which ensures a more efficient exercise of powers assigned to them by the legislation of the Russian Federation.

Taking into account that “Justice” State Automated System is actively developing in Russia, which allows interested persons to file an application and a package of necessary documents with the court electronically, and to monitor the state of the court case online, we can assert that in terms of procedural interaction, a solid digital platform has been created to further improve the electronic format for protecting the rights and legitimate interests of citizens and legal entities.

Moreover, it should be noted that “Justice Online” super service is being developed. As Chairman of the Supreme Court of the Russian Federation V.M. Lebedev in his speech at a meeting of the chairmen of the supreme courts of the SCO member states on September 24, 2021 noted, this platform will allow the parties and interested persons of the trial to carry out remotely almost all procedural actions, including filing an application and attachments to it to the judicial authorities, payment of the state fee, familiarization with the digitized materials of the case, participation in the court session via video conference and obtaining a court order<sup>9</sup>.

It seems promising to include the bodies of notaries in this system in order to facilitate the courts in obtaining the necessary information for trial and resolution of the case.

The scientific society has long been discussing the possibility of mediation procedure as a mandatory stage in the pre-trial dispute resolution procedure for certain categories of cases; this will not only relieve the court, but also resolve the dispute with respect to the psychological component of those involved. We do not doubt about harmonious integration of the notary into the system of pre-trial settlement of the dispute in case of positive resolution of this issue. The legal basis for such interaction has already been created. The most important thing in this interaction is that mediation agreement certification creates a notarial act that has the power of an executive document. As the Constitutional Court of the Russian Federation pointed out in Resolution No. 15-P dated 05.19.1998, the performance of the notarial actions provided for by legislative acts on behalf of the Russian Federation (Article 1 of the Fundamentals of the Legislation of the Russian Federation on Notaries) “guarantees probative value and public recognition of notarized documents”<sup>10</sup>.

---

<sup>9</sup> Official website of the Supreme Court of the Russian Federation: The head of the RF Armed Forces spoke about the digital transformation of Russian justice. Available at: [https://www.vsr.fu/press\\_center/mass\\_media/30378/](https://www.vsr.fu/press_center/mass_media/30378/) [Accessed 29th January 2022].

<sup>10</sup> Decree of the Constitutional Court of the Russian Federation No. 15-P of May 19, 1998 On the Case of Checking the Constitutionality of Certain Provisions of Articles 2, 12, 17, 24 and 34 of the Fundamentals of the Legislation of the Russian Federation on Notaries. Available at: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_18805/](http://www.consultant.ru/document/cons_doc_LAW_18805/) [Accessed 29th January 2022].

## Conclusion

The study showed that remote mediation agreements certification meets the requirements of the national program Digital Economy of the Russian Federation and is aimed at facilitating the protection of their rights and legitimate interests of participants in civil circulation in modern environment of information technology development.

It seems appropriate to once again emphasize the importance of a notarial act for maintaining law and order, which in its purpose coincides with the activities of the court: both the court decision and the mediation agreement certified by a notary are binding on the persons concerned.

Based on the research, the author comes to the following conclusions:

1) information technologies in justice administration play an auxiliary role and cannot resolve issues of morality and justice thus limiting the activities of the court,

2) development of an out-of-court form of concluding mediation agreements has come a long way from a simple written agreement with participation of mediators to a notarized agreement, which has gained the force of an executive document with the possibility of its remote certification and transmission in digital format to the court and enforcement agencies (Court Bailiffs Service),

3) there are several factors that contribute to the notarization of mediation agreements using remote digital technologies, including: a) saving time and money, b) possibility of avoiding a face-to-face meeting with the party to the mediation agreement, c) mediation agreement transfer to the bailiff service in electronic form,

4) in terms of conciliation procedures, the notary and the court enter into an interconnected process of protecting the rights of participants in civil law relations.

## References / Список литературы

Begichev, A.V. (2015) Execution of human rights functions of notaries in the judicial process. *Nauchnoe mnenie*. 3—2, 35—41. (in Russian).

Бегичев А.В. Осуществление правозащитной функции нотариата в судебном процессе // Научное мнение. 2015. № 3—2. С. 35—41.

Begichev, A.V., Grebennikov, V.V. & Domanov, V.N. (2017) Human Rights Functions of Lawyers and Notaries as Civil Society Institutions in Russian Federation. *International Journal of Environmental and Science Education — IJESE*. 12 (1), 79—86.

Branovitskiy, K. L. & Yarkov, V. V. (2021) Possible ways of the civil procedure transformation under digitalization and pandemic: predictive justice. *Russian Law: education, practice, researches*. (4), 19—26. [https://doi.org/10.34076/2410\\_2709\\_2021\\_4\\_19](https://doi.org/10.34076/2410_2709_2021_4_19) (in Russian).

Брановицкий К.Л., Ярков В.В. Возможные направления трансформации цивилистического процесса в условиях цифровизации и пандемии: предиктивное правосудие //

- Российское право: образование, практика, наука. 2021. № 4. С. 19—26. [https://doi.org/10.34076/2410\\_2709\\_2021\\_4\\_19](https://doi.org/10.34076/2410_2709_2021_4_19)
- Ermakova, E.P., Frolova, E.E. & Sitkareva, E.V. (2020) New Trends in Developing Alternative Ways to Resolve Financial Disputes. *Journal of Politics and Law*. 13 (3), 280—286. <https://doi.org/10.5539/jpl.v13n3p280>
- Ermakova, E. P. & Frolova, E. E. (2022) Using Artificial Intelligence in Dispute Resolution. In: Inshakova A.O., Frolova E.E. (eds) *Smart Technologies for the Digitisation of Industry: Entrepreneurial Environment. Smart Innovation, Systems and Technologies*. Vol. 254. Springer, Singapore, pp. 131—142. [https://doi.org/10.1007/978-981-16-4621-8\\_11](https://doi.org/10.1007/978-981-16-4621-8_11)
- Frolova, E. E. & Ermakova, E. P. (2022) Utilizing Artificial Intelligence in Legal Practice. In: Inshakova A.O., Frolova E.E. (eds.). *Smart Technologies for the Digitisation of Industry: Entrepreneurial Environment. Smart Innovation, Systems and Technologies*. Vol. 254. Springer, Singapore, pp. 17—27. [https://doi.org/10.1007/978-981-16-4621-8\\_2](https://doi.org/10.1007/978-981-16-4621-8_2)
- Greene, R. (2018) *The Laws of Human Nature*. Kindle Edition. Viking Press.
- Inshakova, A.O., Frolova, E.E., Rusakova, E.P. & Kovalev, S.I. (2020) The model of distribution of human and machine labor at intellectual production in industry 4.0. *Journal of Intellectual Capital*. 21 (4), 601—622. <https://doi.org/10.1108/JIC-11-2019-0257>
- Kashanin, A. V., Kozyreva, A.B., Kurnosova, N.A. & Malov, D.V. (2020) Information technologies in justice: state and prospects. Russia and the world. Analytical report. Moscow. Available at: <http://xn--o1abds.xn--p1ai/wp-content/uploads/2020/07/w-informacionnie-tehnologii-v-pravosudii.pdf> [Accessed 29th January 2022].
- Кашанин А.В., Козырева А.Б., Курносова Н.А., Малов Д.В.* Информационные технологии в правосудии: состояние и перспективы. Россия и мир. Аналитический доклад. М., 2020. Режим доступа: <http://xn--o1abds.xn--p1ai/wp-content/uploads/2020/07/w-informacionnie-tehnologii-v-pravosudii.pdf> (дата обращения: 29.01.2022).
- Korsik, K.A. (2020a) Notaries and justice during the spread of coronavirus infection on the territory of the Russian Federation. *Notarial'nyi vestnik*. (04—05), 2—4. (in Russian).
- Корсик К.А.* Нотариат и правосудие в период распространения коронавирусной инфекции на территории Российской Федерации // Нотариальный вестник. 2020. № 04—05. С. 2—4.
- Korsik, K.A. (2020b) Mediation in the practice of a notary. *Notarial'nyi vestnik*. (9), 2—3. (in Russian).
- Корсик К.А.* Медиация в практике нотариуса // Нотариальный вестник. 2020. № 9. С. 2—3.
- Sinenko, V.S. (2019) The principle of voluntariness of the mediation procedure: content and problems of implementation. *Bulletin of the judicial community of the Belgorod region*. (10), 40—45. (in Russian).
- Синенко В. С.* Принцип добровольности процедуры медиации: содержание и проблемы реализации // Вестник судейского сообщества Белгородской области. 2019. № 10. С. 40—45.
- Rusakova, E. & Frolova, E. (2022) Judicial reconciliation as a way to popularize the jurisdictional form of protection of rights and legitimate interests in modern Russia. *The transformation of social relationships in Industry 4.0. Economic security and legal prevention*. Information age publishing. 147—156.
- Rusakova, E.P., Frolova, E.E. & Inshakova, A.O. (2021) The Procedure of Mediation in the Age of Industry 4.0. In: Popkova E.G., Sergi B.S. (eds.). *Modern Global Economic System: Evolutional Development vs. Revolutionary Leap. ISC 2019. Lecture Notes in Networks and Systems*. Vol. 198. Springer, Cham, pp. 947—953. [https://doi.org/10.1007/978-3-030-69415-9\\_105](https://doi.org/10.1007/978-3-030-69415-9_105)

Zarubina, M.N. (2012) Features and Problems of Implementation of the Principles of Mediation in Russia. *Herald of Civil Procedure*. (6), 180—185. (in Russian).

*Зарубина М.Н.* Особенности и проблемы реализации принципов медиации в России // Вестник гражданского процесса. 2012. № 6. С. 180—185.

**About the author:**

*Alexander V. Begichev* — Doctor of Legal Sciences, Full Professor of the Department of Civil Law and Civil Procedure and Private International Law, Law Institute, Peoples' Friendship University of Russia (RUDN University); 6 Miklukho-Maklaya str., Moscow, 117198, Russia Federation

**SCOPUS ID: 57192663528**

*e-mail:* begichev100@mail.ru

**Сведения об авторе:**

*Бегичев Александр Валерьевич* — доктор юридических наук, профессор кафедры гражданского права и процесса и международного частного права, Юридический институт, Российский университет дружбы народов; Российская Федерация, 117198, г. Москва, ул. Миклухо-Маклая, д. 6

**SCOPUS ID: 57192663528**

*e-mail:* begichev100@mail.ru