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DIGITAL NOTARY: CURRENT STATUS AND PROSPECTS

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Abstract. In this article, the author considers the development of digital technologies, the development of an electronic notary system, as well as national and international experience in this area, and the work carried out to create an electronic notary system. There are hypotheses that the global pandemic of a new coronavirus infection (COVID-19) has accelerated the digitization of all areas of the world, including the notarial sphere. The article analyzes the current state of the electronic notary on a global and national scale. Opinions about its prospects are expressed as well. The notary should be recognized as a unique legal institution in the mechanism of regulation of public relations. The number of services they provide is growing day by day. In 2021, we can observe significant changes that will affect notary actions – some of them are planned to be transferred to scientific interdisciplinary research in a remote format. In the conditions of the digital economy, the notary has already quite modern services that fully ensure the rights and legitimate interests of citizens, and help to conduct the necessary transaction, while saving both their time and material costs, without wasting time on trips to unnecessary authorities to receive or deliver the necessary documents. And over time, information technologies will only improve, because the notary does not stand still, and every day more and more changes are being made to legislation that simplifies obtaining certain notary services, and new electronic legal instruments are being introduced, which indicates the constant development of the digitalization process.

Keywords: digital technologies, electronic notary, electronic document, electronic notary archive, notary office on duty.

RAQAMLI NOTARIAT: JORIY HOLAT VA ISTIQBOLLAR

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Annotatsiya. Maqolada raqamli texnologiyalarning rivojlanishi, elektron notarial tizimni takomillashtirish, shuningdek, ushbu sohadagi milliy va xalqaro tajriba, elektron notarial tizimni yaratish bo'yicha olib borilayotgan ishlar o'rganilgan. Koronavirus infeksiyasining global pandemiyasi (COVID-19) dunyoning barcha sohalari, shu jumladan, notarial sohani ham raqamlashtirishni tezlashtirgani haqida farazlar mavjud. Maqolada elektron notariusning hozirgi holati global va milliy miqyosda tahlil qilinadi. Uning istiqbollari haqida ham fikrlar bildirilmoqda. Notarius jamoatchilik munosabatlarini tartibga solish mexanizmida yagona huquqiy institut sifatida e'tirof etilishi kerak. Ular ko'rsatadigan xizmatlar soni kun sayin ortib bormoqda. 2021-yilda notarial harakatlarga ta'sir qiladigan muhim o'zgarishlar kuzatildi – ularning bir qismini masofaviy formatda fanlararo ilmiy tadqiqotlarga o'tkazish rejalashtirilgan. Raqamli iqtisodiyot sharoitida notarius fuqarolarning huquq va qonuniy manfaatlarini to'liq ta'minlaydigan, zarur hujjatlarni olish yoki yetkazib berish uchun keraksiz organlarga borishga vaqt sarflamasdan, vaqt va moddiy xarajatlarni tejashda yordam beradigan zamonaviy xizmatlarga ega. Vaqt o'tishi bilan axborot texnologiyalari takomillashadi, chunki notarius bir joyda turib qolmaydi. Har kuni qonun hujjatlariga tobora ko'proq o'zgartirishlar kiritilmoqda, yangi elektron huquqiy vositalar joriy etilmoqda. Bu raqamlashtirish jarayonining doimiy rivojlanayotganidan dalolat beradi.

Kalit so'zlar: raqamli texnologiyalar, elektron notariat, elektron hujjat, elektron notarial arxiv, navbatchi notarial idora.

ЦИФРОВОЙ НОТАРИАТ: ТЕКУЩЕЕ СОСТОЯНИЕ И ПЕРСПЕКТИВЫ

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Аннотация. В данной статье автор рассматривает развитие цифровых технологий, электронной нотариальной системы, а также национальный и международный опыт в этой области, работу, проведенную по созданию электронной нотариальной системы. Существуют гипотезы о том, что глобальная пандемия новой коронавирусной инфекции Covid-19 ускорила оцифровку всех областей мира, в том числе и нотариальной сферы. В статье анализируется современное состояние электронного нотариата в глобальном и национальном масштабе. Также высказываются мнения о его перспективах. Нотариат следует признавать уникальным правовым институтом в механизме регулирования общественных отношений. Количество оказываемых ими услуг с каждым днем только растет. В 2021 году произошли существенные изменения, которые коснулись нотариальных действий, еще часть из них планируется перевести на дистанционный формат научных междисциплинарных исследований. В условиях цифровой экономики нотариат обладает уже достаточно современными сервисами, которые в полной мере обеспечивают права и законные интересы граждан, помогают провести необходимую сделку, сэкономить при этом как свое время, так и материальные затраты, не тратя время для получения или сдачи необходимых документов на поездки в органы, необходимость в которых исчезла. И с течением времени информационные технологии будут только совершенствоваться, ведь нотариат не стоит на месте, и с каждым днем вносятся все больше изменений в законодательство, упрощающие получение тех или иных нотариальных услуг, внедряются все новые электронные правовые инструменты, что говорит о постоянном развитии процесса цифровизации.

Ключевые слова: цифровые технологии, электронный нотариат, электронный документ, электронный нотариальный архив, дежурная нотариальная контора.

Introduction

In fact, in recent years our country has implemented large-scale reforms that have launched a new stage of development, and at the same time, these reforms are being consistently pursued, which is recognized not only in our country but also in the international community. Similar radical reforms have been carried out in the notary system.

In particular, on May 25, 2018, President of the Republic of Uzbekistan Sh. Mirziyoyev signed a Decree "On measures to further improve the notarial system as an institution aimed at conflict prevention".

The document critically assesses the current state of the notarial institution in the country, noting that the quality and speed of notarial services provided to the population by notaries are low, and the existing bureaucratic hurdles, red tape, bureaucracy, and corruption are declining public confidence in the notary system.

The Decree also implemented a number of changes in the activities of notaries in order to solve the existing problems, based on the realities of practice including:

it was established that the identification of persons applying for notarial acts should be carried out by scanning their fingerprints

and comparing them with the biometric data in the identity document;

the crime of forgery of signatures in notarial documents was also stopped. Now notarization is carried out not only by signing but also by scanning fingerprints using special technical means;

the process of signing wills must be recorded on special audio and video recordings. This helps to avoid disputes over testaments, which are very common in practice, and disputes over the distribution of inheritance between heirs. Audio and video recording of the process of notarial acts is intended not only for cases of making a will but also for cases when citizens sign notarial documents to other citizens due to physical disability, illness, or various other circumstances;

in order to ensure the transparency of the notary qualification examination process, the official website of the Ministry of Justice states that the selection process of candidates for the position of a notary on a competitive basis will be carried out with the introduction of real-time audio and video broadcasting;

it was decided to receive in electronic form the documents required for the registration of the notarial act, collected from various government agencies and organizations.

Materials and methodology

Also, the Decree of the President of the Republic of Uzbekistan dated September 9, 2019, No PF-5816 "On measures to radically reform the notarial system in the Republic of Uzbekistan" provides for many reforms in the notarial sphere, one of the most important of which is the creation of an electronic notarial system. In accordance with the Decree:

notarization of real estate transactions, verification of information on utility debts are only online through the relevant electronic information system;

if the parties are in different regions, it is possible to notarize transactions by videoconference in the notary office in the same area;

the electronic form of some documents in the open information system has the same legal force as the paper form of the document in the implementation of actions not related to the alienation of property;

notarized applications, lease agreements, and powers of attorney in the territory of the Republic can be checked by a unique number without submitting them to a notary;

introduction of electronic queuing and pre-preparation of documents when applying to a notary;

the possibility of obtaining copies of documents available in the notarial archive through the Single interactive portal of public services;

approval of transactions not related to the disposal of property, writing executive letters, registration of documents correctly translated from one language to another using an electronic digital signature;

applications will be processed using electronic digital signatures and videoconferencing.

In addition, the Decree stipulates that by January 1, 2024, transactions that create the right to real property kept in the notarial archives will be digitized.

All the above examples show that in our country the organizational and legal framework for the digitalization of the notarial institution, the creation of an electronic notarial system is being created.

In particular, without leaving home through the Single interactive state services portal or e-notarius.uz, one can make an electronic queue for a notary and get full information about all notarial acts through e-notarius.uz and use the services of a notary calculator to pay state duties and other payments. The creation of the possibility

of independent calculation has created additional conveniences for citizens.

Research findings

Due to the introduction of the electronic system “SMS notification”, citizens have the opportunity to know the legality of the payment for notarial acts.

Now the image of a notary in the image of a handsome man holding a pen and parchment, described by Quentin Massis, is a thing of the past [1]. In the modern world, the dependence of the notarial institution on paper and pen cannot meet the rapidly growing demand of the civil service for notarial services. Notaries are required to be “engines” rather than “brakes” in the activities of participants in civil transactions. Also, the preservation of bureaucracy in the notary system does not correspond to the motto of the head of state “documents move, not citizens.”

The coronavirus pandemic, which began in 2019, and its entry into our country in 2020, and the fact that the pandemic continues to this day, confirms how true the chosen direction is. However, the COVID-19 pandemic has shown that there is still a lot of work to be done in this area [2].

Instruction “On the procedure for notarial acts by notaries” approved by the order of the Minister of Justice of the Republic of Uzbekistan dated January 4, 2019, No 2-mh.

Although paragraph 81 states that transactions can be notarized by videoconferencing, the use of notarial services in emergencies such as pandemics poses a number of problems due to the fact that the parties are located in different regions and the parties must be notary at the time of the transaction. Of course, the demand for notarial services will remain the same, even if there is a decrease or temporary cessation of the activities of participants in civil proceedings due to the introduction of self-isolation during quarantine.

No matter how low the demand for notarial services is, it is advisable to create

opportunities for participants in civil transactions to use such services on a regular basis.

Due to the pandemic, the Republican Special Commission imposed quarantine restrictions on civilians from March 24, 2020, and only about a month later - on April 5, 2020, notaries were allowed to work in accordance with paragraph 5 of the statement of the Republican Special Commission [3]. This has led to the restriction of access to notarial services for participants in civil transactions for so long. This situation requires consideration of the issue of setting up the activities of the notary offices on duty and creating the necessary conditions for their operation.

If we look at the foreign experience in this area, we can see that electronic notary appeared in Europe in the 1980s and has been developing to this day [4].

Review of research findings

An electronic archive of notarial documents operates under the Federal Notary Chamber in the Federal Republic of Germany. Each notary has his own department in this archive. In case of termination of the notary's activity, the right to use the department passes to his legal successor, and in his absence to the territorial notarial chamber. The archive is simultaneously updates the data center of the Federal Notary Chamber and currently covers more than 7,000 notary offices.

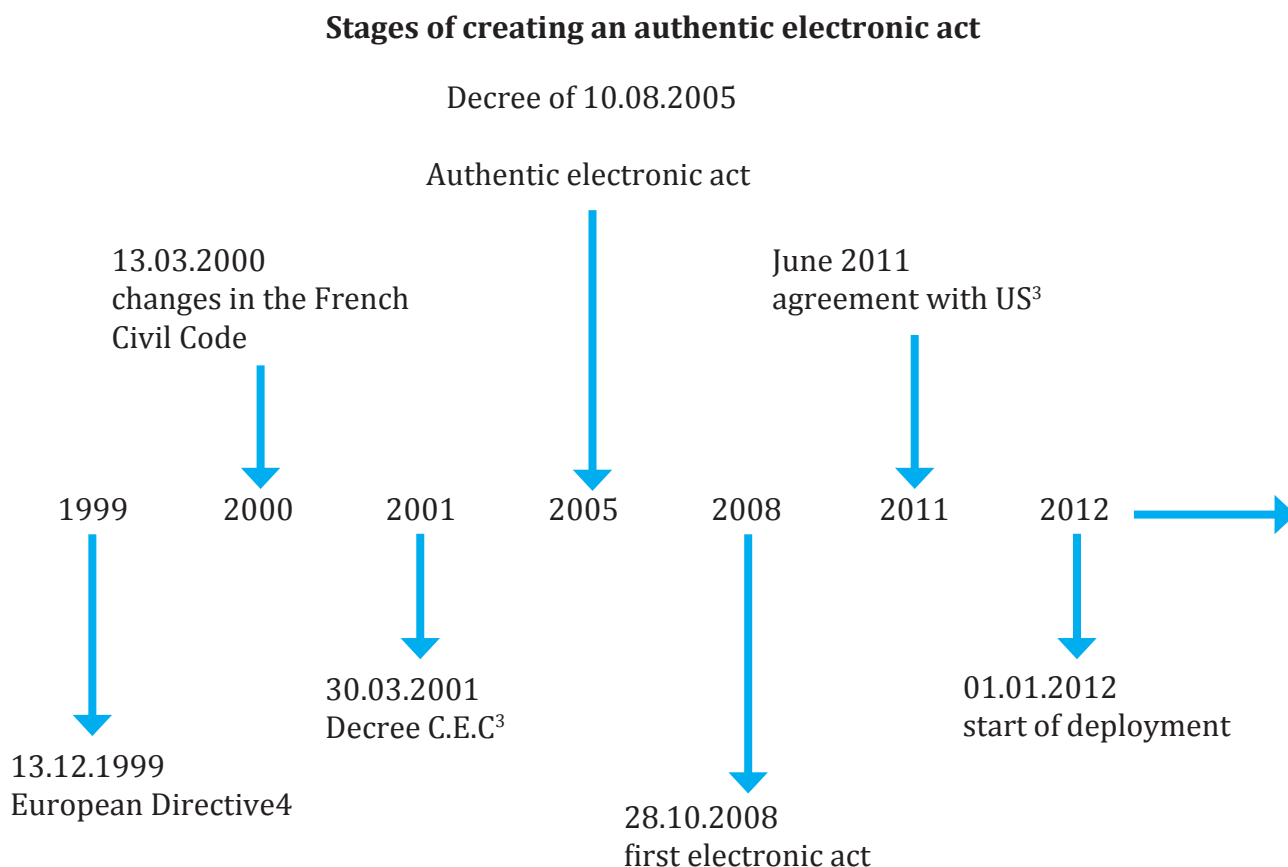
In the FRG, it is currently planned to work on the establishment of remote notarization of corporate law transactions. It is intended to use the services of applications such as Facetime and Skype.

In the Russian Federation, taking into account the needs and wishes of the population isolated due to the pandemic, quarantine and other similar emergencies [10] are being create to establish a notary office on duty so that notaries can operate on a mobile basis [6]. An agreement has also been reached

between the Federal Notary Chamber and the RF Ministry of Justice.

In France, a unique system of electronic confirmation of transactions has been created. Two organizations - Le Conseil supérieur du notariat - the French Supreme Council of Notaries and the Association for

the Development of Notarial Service - played an important role in this. In France, on August 10, 2005, a decree entitled “Authentic Electronic Act” was adopted. The adoption and implementation of this law involved several stages. This can be seen in the following diagram [7]:



In the scheme, the European directive refers to the directive of the European Parliament and the Council of the EU “On the legal framework for the regulation of electronic signatures in the community” (which has now expired).

An authentic electronic act is a type of real document with the same legal force as a paper document, which includes the date of signing, the inviolability of the document, guarantees of protection against forgery, and the identification signature of the notary.

This act:

it is drawn up by the notary together with the client;

it is not considered a paper document;
it has the same legal force as a paper document.

Such documents are stored in a single electronic archive for 75 years. The archive meets the requirements of confidentiality, and storage reliability is guaranteed.

Today, France is considering the possibility of remote execution of transactions between business partners with the participation of a notary.

The issue of electronic notarial documents in Switzerland is regulated by the Resolution of the Swiss Federal Council of September 23, 2011 “On electronic notarized documents” [8].

According to Article 5 of the decision, the consent of both parties is required for the creation and use of the document in electronic form. Also, as long as the document is created in only one - electronic form, its paper form will not be created and stored.

Article 11 regulates the issues of electronic notarization of a document available in paper form. The document and its attachments (if any) are scanned and submitted to a notary. The notary, in turn, certifies the authenticity of the document in electronic form with his electronic signature.

Article 12 deals with the notarization of the authenticity of a document drawn up and certified in electronic form. In this case, the records of the authenticity of the electronic document are included in its paper version, which is traditionally certified by a notary's signature and seal. In this case, the notary only certifies the reliability and authenticity of the document.

Based on the results of the study of national and foreign experience mentioned above, the following conclusions can be drawn:

The transition to the electronic notary system will be gradual. Until the full transition to this system, it is advisable to register notarial documents in both paper and electronic form;

The transition to an electronic notary system will ensure the integration of documents with digital technologies and their long-term safe storage;

Non-use of paper results in cost savings for paper, ink, and other media;

It is possible to read the text of the document in electronic form, in any format;

The pen is replaced by tablets and electronic pens;

The low probability of forgery of electronic digital signatures increases the reliability of notarial acts and serves to prevent future disputes.

Conclusions

At the same time, in order to fully implement the electronic notarial system, it is proposed to:

1. Increase the speed of access to the global information network "Internet". For information, in June 2021, Uzbekistan ranked 118th in the world in terms of mobile Internet speed according to the Speedtest Global Index.

2. Improve the skills of the population in the use of digital technologies, the organization of training courses in this area. As Western European countries began to use electronic systems relatively early, the issue of using digital technology is not a problem for their population. However, in the countries of the former Soviet Union, special attention should be paid to the development of the population's ability to use electronic systems due to the fact that electronic document circulation is not established at all, and the notarial system is insufficiently developed due to limited private property;

3. As a result of the ongoing reforms in our country, a single electronic archive of the Civil Registry Office has been created. The Public Service Agency has taken a number of measures to digitize the information in the paper archives of civil registry offices. The same measures are required for notarial archives. The first steps in this direction were taken by the Decree of the President of the Republic of Uzbekistan dated September 9, 2019 No PF-5816 "On measures to radically reform the notarial system in the Republic of Uzbekistan".

4. Given the lack of an electronic archive of the notarial system, it is advisable to develop a procedure for its organization, maintenance, storage, and operation. An electronic notarial archive is required for an electronic notarial system.

5. Amendments and additions to the legislation, based on the experience of countries such as Russia and Kazakhstan, provide for the operation of the next notary office during quarantine and other similar emergencies.

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