

The role of Russian notaries in ensuring digital security of civil circulation

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Abstract — The paper discusses the processes of penetration of digital relations at all levels of interaction of participants within civil circulation. It is noted that the transition to the "digital economy" carries a number of risks, which dictates the need to find a balance between comfortable and quick execution of legally significant actions and their indisputability, inviolability. It is argued that the provision of digital notarial services, which are expressed in a qualitatively new service, high response speed, and the minimum costs, requires the stability of civil circulation, reliable protection of the rights of participants in economic relations and property rights.

The definition of digital security of participants in civil circulation is given. The role of notaries as a legal institution authorized by the state in ensuring digital security is substantiated. The development of notaries in the context of the implementation of notarial activities in digital format is analyzed. A legal assessment of legislative innovations to ensure the protection of the rights of citizens and legal entities in digital reality is provided.

Problems that exist in the field of digitalization of notarial activities are identified. Individual offers on the organizational and legal optimization of the processes occurring in this field are stated.

Keywords — *digital economy, digital security, civil circulation, Unified Notary Information System, electronic notarial acts, remote notary.*

I. INTRODUCTION

At present, digitalization in Russia covers practically all spheres of the life of society, the state, and human. The main goal of digitalization is the creation of a digital economy, which, in turn, forms the basis for constructing qualitatively new models of business, trade, logistics, and production, changes the format of education, healthcare, government, and communications between people, and therefore sets a new paradigm for the development of the state, economy, and society as a whole [1].

The transition to the "digital economy," along with its unconditional advantages, carries a number of risks and dangers, which dictates the need to find a balance between comfortable and quick execution of legally significant actions and their indisputability, inviolability. In other words, guarantees are required to ensure "digital security" of participants in civil circulation, which is understood as a set of measures, including organizational and legal, which are aimed at protecting the authenticity, reliability, confidentiality, and

accessibility of information from unauthorized interference and fraudulent cyber attacks.

It should be emphasized that universal digitalization requires equally active development of the legal sphere, timely adoption of relevant regulatory legal acts, elimination of legal barriers that impede the implementation of information technologies.

It is possible to guarantee the legality and effective protection of the rights of citizens and legal entities with the help of competent, state-authorized institutions, one of which is the notaries.

II. RESEARCH METHODOLOGY

In this paper, based on a legal analysis of the regulations of legislation on the notaries, the organizational and legal measures taken to ensure the digital security of participants in civil circulation are considered. In the context of the digitalization of the activities of the notaries, the existing problems in the legislation and notarial practice on the protection of the rights and legitimate interests of participants in economic relations are identified. Individual offers on the organizational and legal optimization of the processes occurring in this field are stated.

III. RESULTS OF THE RESEARCH

Over the past five years, dramatic changes have taken place in the field of the notaries. To date, the electronic infrastructure, which ensures the safety and security of legally relevant information, increases the speed and quality of notarial services, has been built [2]. The basis for this infrastructure has become the automated Unified Notary Information System (UIS) created in 2014 by the Ministry of Justice of Russia and the Federal Notary Chamber [3], the concept and the purpose of which are entrenched in Article 34.1 of the Fundamentals of Notaries. The first steps to develop a UIS prototype were taken back in 2006 according to the initiative and at own funds of the notaries. In 2009, the "Concept for Informatization of the Non-Budgetary Notaries of the Russian Federation" was approved; in 2010, the regulation on the UIS (2010) and other documents that had laid the regulatory basis for the creation of the UIS were adopted. The right holder and the operator of the system has become the Federal Notary Chamber (FNC). The first notarial act using an enhanced electronic signature of a notary, which is equivalent to a handwritten notarial signature and a seal, was committed

in 2011 [4]. Currently, all Russian notaries work with the UIS through enhanced electronic signatures, the availability of which has become mandatory by law (Article 44.2. of the Fundamentals of Legislation on the Notaries).

At the level of federal legislation, the content of the UIS, the procedure for its operation and technical requirements has been determined by the provisions of Federal Law No.379-FZ. Work details regarding the procedure for maintaining electronic registers have been established by Order of the Ministry of Justice of Russia No.129 dated 17 June 2014.

Initially, according to Federal Law No.379-FZ, the UIS contained three electronic registers: a notary action register, a register of inheritance cases, and a register of notifications of pledged movable property. Particularly, the register of notifications of pledged movable property created by the FNC on behalf of the President of the Russian Federation has become an effective mechanism for checking the credit purity of movable property and preventing fraud associated with the deliberate concealment of pledges. Since 01 July 2017, the fourth register has been launched in the UIS, the register of participants in limited liability companies, which allowed transferring the right to maintain the list of LLC members to the Federal Notary Chamber.

Since January 2017, the procedure for sending notifications of pledges of movable property in electronic form has been improved, which has provided the applicant with two options: to fill out and submit a single notification through a special Internet portal or to use a web service to send an entire package of notifications at once. On 1st of January 2017, an electronic power of attorney verification service was launched, which was in the public domain, enabling any Internet user to verify the reliability and relevance of the power of attorney. In turn, representatives of authorities who have gained expanded access to the service may ensure the content of the document presented to them matches the text of the original, which has once been certified.

Since 1st of January 2018, all notarial actions are recorded in electronic form [5], and on 24 December 2018, the Federal Notary Chamber approved the procedure for the formation of a simple electronic signature, by which a citizen signed a digital document [6]. To obtain an electronic signature, an individual is required to visit special centers and provide a package of certification documents. When a citizen applies for any notarial service, it may affix the electronic signature directly on the notary's tablet [7].

In order to strengthen the guarantee of notarial actions, since 1st of January 2018, the final fourth stage of insurance of the professional liability of the notaries, the Compensation Fund of the FNC, the funds of which are intended to cover extremely severe damage arising from a notary's error, for example, when certifying a transaction involving legal entities, began to function in full [4].

The creation of the UIS allowed solving the very important problem of the interaction of a notary with state bodies and credit institutions: to collaborate with the Ministry of the Interior, Rosreestr, FNC, etc. A lot of attention is also paid to the development of digital exchange between the notaries and

state registrars. The law allows a notary to request details of the owner of the property and copies of relevant documents from the Unified State Register of Immovable Property (EGRN). At the same time, the notary is fully liable for its actions. Since October 2018, in accordance with Federal Law No.408-FZ, the Federal Notary Chamber launched the UIS service, which ensured constant electronic access of notaries to the Unified State Register of the Office of Vital Records. This accelerates the process of obtaining the required information, allows notaries to verify the authenticity of certificates of birth, marriage, change of surname, relationship, etc., as well as increases the effectiveness of the combat against fraudulent schemes involving fake documents when certifying transactions or when registering inheritance rights.

On the one hand, the UIS of a notary actions serves as a reliable repository for the most important data from a legal point of view, and on the other, it serves as a unique high-tech tool that changes the nature of all notarial activities aimed at protecting the rights and interests of citizens and legal entities [8].

The list of digital notarial services is constantly expanding. Currently, there is an opportunity for the instant transfer of a document to another city with the preservation of its legal force. Certification of transactions and notarial actions within corporate legal relations is coming to the fore.

UIS technologies have made it possible to make an appeal to a notary as comfortable and time-saving as possible. All Russian notaries have moved on to work on the "single-window" principle that is, they have begun to receive and send the required documents on their own, saving citizens from unnecessary trouble. If it is required to give legal force to a digital document signed by the parties, the notary may certify it with its enhanced qualified electronic signature (EQES), created using cryptographic means confirmed by the competent authorities, particularly, by the Federal Security Service of the Russian Federation. Thus, customers do not need to receive a qualified electronic signature themselves, which significantly reduces the time for processing transactions. With the growing tendency to replace traditional paper documents in favor of electronic ones, the role of notarial certification, which has been executed electronically, is increasing. In terms of protection against counterfeiting or loss, no paper may compete with its counterpart in digital format.

In addition, the legislator recently has almost three times reduced the cost of the notarial rate. Earlier, filing for registration was paid separately, however, since February 2019, the notaries sent documents to the registrar free of charge.

Since 01 February 2019, the amendments made by Federal Law No.338-FZ dated 03.08.2018 to Articles 55, 72, 73, and 75 of the Fundamentals of the Legislation of the Russian Federation on the Notaries regarding the obligation of a notary to submit applications for state registration of title in electronic form and the documents attached thereto to the body performing state cadastral accounting and state registration of titles came into force.

In turn, the Federal Notary Chamber in its Letter No.488/03-16-3 dated 08.02.2019 explained to the notaries how to submit applications for state registration of title in electronic form. For example, notaries have to deal with preparing, checking, certifying, sending documents online to the Rosreestr and their subsequent issuance.

According to the Rosreestr's Directorate for Moscow, for the first half of 2019, almost 100% of requests from Moscow notaries came to the Moscow Rosreestr in electronic form, while in 2018, this figure was 86% [9].

If a notary public cannot submit documents electronically for reasons beyond its control, it should submit them for registration on paper within no later than two business days from the day the contract is certified. At the same time, the list of reasons, for which it is impossible to submit an application to the Rosreestr, has been approved by the Russian Ministry of Justice.

On 13 August 2019, the amendments to the Federal Law "On State Registration of Immovable Property" came into force, which additionally protected citizens' rights in remote real estate transactions, when documents for buying a house or selling an apartment were submitted in electronic form. Citizens also receive extracts from the state register by e-mail, without a visit to the registration authority. If a notary is involved in the purchase and sale transaction of immovable property, it should verify and confirm the identity of the buyer and the seller, after which the documents with digital signature will go through state registration.

At the state level, systematic work to improve the legislation on notaries is continuing.

At a plenary meeting on 16 October 2019, the State Duma of the Federal Assembly of the Russian Federation adopted in the first reading a draft registration on "digital notary," which has been developed by the Government of the Russian Federation as part of the implementation of the "Digital Economy" program in order to optimize notarial activities, to increase the demand for notarial protection of citizens' rights and legal entities in the development of digital society.

The document, particularly, proposes to establish a list and procedure for performing notarial actions that may be performed in electronic form, that is, remotely, without the appearance of the person who turned to the notary. Such actions will include confirmation of the validity of translating documents from one language to another, transferring documents of some individuals and legal entities to others, taking funds on deposit, collecting money or recovering property from the debtor according to the notary's executive inscription [10].

The draft legislation proposes to establish the possibility of making a remote transaction involving several notaries (including from different constituent entities of the Russian Federation) acting in the interests of each party through an electronic notary system, without the joint presence of the parties: a draft transaction will be created by notaries using the electronic notary system. The authenticity of the will in this case is established and guaranteed by each notary acting in the interests of each party.

The draft legislation also provides for the right of a notary, if a citizen does not have an identity document or if there is any doubt about the identity of a citizen who has presented a document, to identify its personality through the unified biometric system, which is already in force in Russia. Information on a notarial document may be verified through a unified notary information system using machine-readable markings placed on a notary document. For the purpose of a remote contact with a notary, it will be required to submit the necessary documents in electronic form or their scan images using the unified portal of the State Services.

The draft legislation is important and timely for the further development of the digital economy. At the same time, some of its provisions require additional study. Moreover, with its adoption, changes to other legislative acts will be required. Particularly, additional discussion is required for the procedure for identifying individuals when performing notarial actions in electronic form remotely; special attention should be paid to the technology for remote transactions. It is necessary to carefully study the protection of data in order to prevent their leakage to third parties.

In the context of digitalization, it seems appropriate to supplement Article 97 of the Fundamentals of the Legislation on the notaries with the possibility of the notaries accepting documents for storage not only in hard copy but in electronic form as well.

Generally, the adoption of this draft legislation will greatly simplify the receipt of notarial services by citizens. The Law on Digital Notaries will be another step in creating a modern legislative framework in the field of the digital economy and will be included in the so-called "Digitalization Package."

Today, the Russian Notaries sets itself new tasks related to expanding the list of notarial actions that may be committed electronically. The management of the Russian Notaries has announced the launch of another public service that allows finding important information about inheritance matters. Earlier, heirs had to call or visit almost all the notaries in their city in search of a notary engaged in the case of a specific testator, now it is possible just through <https://notariat.ru/ru-ru/help/probate-cases/>.

The introduction of electronic document management also has problematic aspects, such as the psychological unpreparedness of clients for a complete rejection of documents in traditional hard copy. Given this factor, a mixed document management should be provided for in modern notarial office work [11].

Connecting notaries to the biometric system of remote identification of citizens may create a significant problem, i.e., identifying people who are not recognized by the court as incompetent but who are not able to understand the meaning of their actions or direct them at the time of application to the notary (for example, those suffering from a mental illness or who are intoxicated). To solve this issue, it is required to study foreign experience in this field [12].

It should be noted that in real conditions, the complete transition of the notaries to the digital format carries significant threats to data security, security of real estate turnover and

other market sectors. To solve this issue, the organization of notarial archives is required, which is currently not being solved at the state level. In close connection with the issue of organizing notarial archives, there is a large-scale, labor-consuming task of converting archival documents into electronic form. Currently, the relevant draft legislation has been prepared by the Ministry of Justice and agreed with the Federal Archival Agency.

A promising field of notarial digitalization is to solve the issue of combining the functions of the notaries and a blockchain, when a notary may act as an operator of any distributed register system (blockchain), to organize it from the point of view of organizational foundations, and to provide guarantees of the legality of the source data. This would make it possible to combat fraudulent real estate transactions using a digital signature and to provide guarantees of the legality of the source data.

IV. CONCLUSION

Based on the foregoing, it may be argued that the notaries are today the leader in the legal sphere in introducing innovative technologies into its activities. The notaries are able to solve the problems of stability of the "digital turnover," because it incorporates the modern digital infrastructure. The creation of the Unified Notary Information System made it possible to enter the system of interdepartmental electronic interaction, exchange data with state registers, and record all notarial actions "digitally," which excludes the possibility of falsification. The UIS of the notaries acts as the basis for publicly available online services: a register of notifications of pledged movable property, a power of attorney verification service, and a hereditary case search service. Being in great demand among Russians, online notary resources are reliable and most convenient tools for verifying legally relevant information.

The notaries providing legal stability and validity of a civilian is a legal intermediary between a person and a digital society. Modern electronic notarial services are distinguished not only by the convenience and efficiency, but also by reliable protection against forgery of notarial actions, a guarantee of the reliability of all the information contained therein. A notary is the only participant in civil circulation who bears full material liability for its actions: in the case of an error, it guarantees full compensation for the damage incurred.

Despite the existing problems, the notaries are trying to develop their own optimal way to ensure digital security for solving socially significant problems in various fields of the digital economy.

References

- [1] Putin V.V. Pryamaya liniya: Bez tsifrovoy ekonomiki net budushchego. URL: [//ne-nature.ru/sibir/28-peshera-barsukovskaya](http://ne-nature.ru/sibir/28-peshera-barsukovskaya) Data obrashcheniya: 20.09.2019).
- [2] Pisarevskiy Ye.L. Tsifrovizatsiya yuridicheskoy deyatel'nosti v sotsial'noy sfere // Informatsionnoye pravo. 2018. № 4. S. 22 – 28.
- [3] Yedinaya informatsionnaya sistema notariata Rossii (YEIS)// URL: [//ne-nature.ru/sibir/28-peshera-barsukovskaya](http://ne-nature.ru/sibir/28-peshera-barsukovskaya) Data obrashcheniya: 20.09.2019).
- [4] Anosov M. Notariat v «tsifre»: peredovyye tekhnologii ne smogut zamenit' notariusa-cheloveka// «EZH-Yurist» №24 (1025) 2018. URL: [//ne-nature.ru/sibir/28-peshera-barsukovskaya](http://ne-nature.ru/sibir/28-peshera-barsukovskaya) Data obrashcheniya: 20.09.2019).
- [5] Dokumenty na ekrane. Notariusy pereshli na tsifru. URL: <https://rg.ru/2018/01/03/notariusy-pereshli-na-tsifrovoy-dokumentooborot.html> (data obrashcheniya: 20.09.2019).
- [6] Doverim planshetu. Grazhdane smogut oformit' doverennosti v elektronnom vide. URL: <https://rg.ru/2018/12/24/notariusy-smogut-oformliat-elektronnye-doverennosti.html> (data obrashcheniya: 20.09.2019).
- [7] Karlash D.S. Elektronnyy dokumentooborot: voprosy pravovogo regulirovaniya // Pravo i ekonomika. 2019. № 8. S. 22 - 28.
- [8] Yaroshenko T.V. Ponyatiye i rol' notariata v pravovoy sisteme: razlichnyye podkhody // Notarius. 2019. № 1. S. 10 - 13.
- [9] Pochti 100%: notariat predostavlyayet elektronnyy servis moskvicham// Ofitsial'nyy sayt Federal'noy notarial'noy palaty. URL: <https://notariat.ru/ru-ru/news/pochti-100-notariat-predostavlyayet-elektronnyj-servis-moskvicham> (data obrashcheniya: 20.09.2019).
- [10] Prinyaty v pervom chtenii popravki o «tsifrovom notariate» // URL: <http://duma.gov.ru/news/46634/> (data obrashcheniya: 20.09.2019).
- [11] Makhova YU.I. Ispol'zovaniye elektronnykh resursov v notarial'noy deyatel'nosti v Rossii i stranakh YES // Mezhdunarodnyy zhurnal gumanitarnykh i yestestvennykh nauk. 2017. № 10. S. 184 - 188.
- [12] Kostikova G.V. Ustanovleniye deyesposobnosti grazhdan pri sovershenii notarial'nykh deystviy // Notarius. 2019. № 4. S. 3 - 6.