

Digital Tools to Facilitate the Implementation of Mediation in Criminal Proceedings

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Abstract: The article is devoted to the issues of digitalization of criminal proceedings in general and conciliation procedures of restorative justice in particular. Mediation, as a form of resolving a criminal conflict, is used in many countries of the world and does not lose its relevance, being an alternative form of resolving a criminal conflict in cases of minor and moderate severity, aimed at restoring social balance by reconciling the accused and the victim, restoring his violated rights. In the context of the digital transformation of criminal proceedings and the expansion of the use of electronic and digital tools, mediation in criminal proceedings can take new forms that contribute to increasing the level of citizens' access to justice, their interactive interaction and improving the efficiency of legal proceedings in general. The conducted research of the international experience of digitalization of interaction between the state and citizens in criminal proceedings shows not only the variety of electronic resources used in criminal proceedings, but also allows us to predict new architectures of criminal proceedings in small and medium-gravity criminal cases that meet the spirit of modern times. The authors have developed a model of the pre-trial procedure for the termination of a criminal case, which provides for the possibility of implementing a conciliation procedure using digital tools, allowing to terminate a criminal case for a minor crime using a universal multifunctional portal in which each of the subjects of the criminal process interactively implements their procedural rights and obligations, and the final decision is made by the court.

Keywords: Digital Technologies. Mediation. Reconciliation of the Parties. Criminal Proceedings. Mediator. Model of Termination of a Criminal Case.

Summary: **1** Introduction – **2** Methodology – **3** Conciliation Procedure in Criminal Proceedings – Author's Vision – **4** Digital Tools in Criminal Proceedings – **5** Digital Tools in Conciliation Procedures of Criminal Proceedings: Realities and Prospects – **6** Conclusion – References

1 Introduction

The recommendations of the Committee of Ministers of the Member States of the Council of Europe of September 17, 1987 approved the idea of out-of-court settlement of criminal law conflicts. Taking into account these provisions, it is impossible not to note the institution of termination of a criminal case in connection with the reconciliation of the parties, which is enshrined in Russian legislation, the legal regulation of which is carried out by criminal and criminal procedure legislation.

The termination of a criminal case and the release of a person from criminal liability in connection with the reconciliation of the parties are «compromise measures in the fight against crime» or «alternative measures» that allow achieving the goals of criminal justice in certain cases in a different way, that is, bypassing the traditional scheme of the state's reaction to the crime committed.

It is well known that alternative dispute resolution methods are widely used in all branches of law. At the same time, in order to increase the prevalence and effectiveness of mediation procedures, digital tools of varying complexity are being actively introduced into them.

Legal systems of different countries allow the use of digital technologies in conflict resolution in many legal areas. Thus, the use of separate digital tools and online platforms¹ as methods of out-of-court conflict resolution is allowed when considering civil law disputes related to commerce,² sports betting,³ in arbitration practice,⁴ when resolving family, medical⁵ and educational disputes.⁶ The so-called mediation procedures implemented through special software allow, thanks to their algorithms, to offer the parties a recommended solution, reduce court costs and restore violated rights and legitimate interests as soon as possible.

Criminal procedural relations differ significantly from private-legal relations, and require a special approach of the state to restore public relations violated by

¹ TARTUCE, F., BRANDÃO, D. Mediação e conciliação on-line, vulnerabilidade cibernética e destaques do ato normativo no 1/2020 do Nupemec/SP. *Cadernos Jurídicos*, São Paulo, ano 21, n. 55, p. 153-162, jul./set. 2020, p. 156.

² CAI, W., & GODWIN, A. CHALLENGES AND OPPORTUNITIES FOR THE CHINA INTERNATIONAL COMMERCIAL COURT. (2019). *International & Comparative Law Quarterly*, 68(4), 869-902. doi:10.1017/S0020589319000332.

³ FERREIRA, D.B., GROMOVA, E.A., FARIAS, B.O. de, GIOVANNINI, C.J. Online Sports Betting in Brazil and conflict solution clauses. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, Belo Horizonte, ano 04, n. 07, p. 75-87, jan./jun. 2022. DOI: 10.52028/rbadr.v4i7.5.

⁴ FERREIRA, D.B., GIOVANNINI, C., GROMOVA, E., da ROCHA SCHMIDT G. Arbitration chambers and trust to technology provider: Impacts of trust technology intermediated dispute resolution proceedings. *Technology in Society*. (2022), vol. 68, 101872. <https://doi.org/10.1016/j.techsoc.2022.101872>

⁵ WANG, M., LIU, G. G., ZHAO, H., BUTT, T., YANG, M., & CUI, Y. The role of mediation in solving medical disputes in China. (2020). *BMC health services research*, 20(1), 1-10. doi.org/10.1186/s12913-020-5044-7.

⁶ <http://sprc.ru/educational-organizations/> [Accessed 11 October 2023].

a crime. This rule also applies to such grounds for exemption from criminal liability as reconciliation with the victim. Despite the vector of digital transformation of the criminal process, it is necessary to assess the admissibility and rationality of the use of digital tools in the framework of conciliation proceedings.

2 Methodology

To achieve the goals set in the article, a set of research methods was used, namely logical analysis and synthesis, induction and deduction, comparative legal and systemic. Of particular importance in the preparation of the study are the logical method, comparative legal and content analysis.

Logical and comparative legal methods were used to analyze the essence of the institution of mediation in criminal proceedings, the level of regulation of mediation procedures and the permissibility of using digital tools in the course of their implementation, including existing foreign experience. The use of logical rules of deduction made it possible to identify the problems of the legality of the use of online platforms, the admissibility of the use of electronic evidence and other digital tools in the course of resolving a criminal law conflict through reconciliation of the parties.

Content analysis of websites with information posted on them about mediation (restorative) procedures implemented by states in criminal proceedings allowed us to conclude about the presence or absence of such programs in various states, to identify individual features of the use of digital tools in the mediation process.

3 Conciliation Procedure in Criminal Proceedings – The Author’s Vision

Being a form of encouragement in criminal proceedings, the institute of mediation is aimed at the speedy restoration of public relations, rights and interests of the victim violated by a crime of small or medium severity and reconciliation with the person who committed the crime.⁷ Thus, the overall goal of the conciliation procedure, regardless of the stage of the criminal process, is to achieve social balance. As noted by Ashworth A. in criminal proceedings, there are two interrelated paradigms of goal-setting: the «punishment paradigm», where the key goal of the criminal process is the application of punishment (repressive measures) and the restoration of «peace» between the state and the criminal; the goal of the «restorative

⁷ RUSMAN, G. The active position of the court is the basis for the successful application of alternative measures in criminal proceedings. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, Belo Horizonte, ano 04, n. 07, p. 89-101, jan./jun. 2022. DOI: 10.52028/rbadr.v4i7.6.

paradigm» is not to punish the person who committed the crime, but to restore the rights of the victim and, ultimately, the rights of states.⁸

The world criminal procedure practice widely applies elements of restorative justice. Its essence is the exemption from criminal liability of a person who has committed a crime of small or medium gravity, provided that socially useful actions are performed. The main purpose of restorative justice is to restore justice, to ensure the peaceful resolution of the criminal law conflict. The positive practice of using restorative justice programs shows what limitations and negative side effects the use of punitive approaches (punishments) leads to.⁹

In science and practice in many countries, it is customary to use the English term diversion (deviation, departure) to denote a compromise way of combating crime. Reconciliation with the victim is a model of «alternative measures» of the criminal process, the so-called «simple mediation» (mediation (Latin *mediatio*) – mediation in a dispute by a third party not involved in the dispute). This is a specific mechanism for resolving the conflict that arose after the commission of a crime, expressed in the totality of legally significant actions of its participants under the supervision of the State.

Mediation programs for the resolution of criminal law conflicts with the participation of a mediator are actively used in Brazil,¹⁰ Germany,¹¹ Kazakhstan,¹² Canada,¹³ China,¹⁴ Russia,¹⁵ the USA,¹⁶ France¹⁷ and other countries.

The termination of a criminal case in connection with the reconciliation of the parties and the release of a person from criminal liability, currently provided for in article 76 of the Criminal Code of the Russian Federation and Article 25 of the Criminal Procedure Code of the Russian Federation, can be considered a Russian version of the institution of “simple mediation”. In this case, the termination of the criminal case, subject to the conditions specified in the law, depends only on two closely related grounds: reconciliation with the victim and making amends for the harm caused to him. The forms of the harm caused and the ways of its smoothing should be determined by the victim himself. Taking into account the fact that the

⁸ ASHWORTH, A. The criminal process. An evaluative study. Oxford: Clarendon Press (1994), p. 34-35.

⁹ HOWARD, Z., The Little Book of Restorative Justice (2002), p. 15. 76 p.

¹⁰ <https://www.gov.br/senapp/en/pt-br/assuntos/sinape> [Accessed 12 October 2023].

¹¹ <http://classic.austlii.edu.au/au/journals/BondLawRw/2001/16.html> [Accessed 12 October 2023].

¹² <https://www.mpc-info.kz/ru/sudebnaya-mediatsiya> [Accessed 12 October 2023].

¹³ <https://www.justice.gc.ca/eng/cj-jp/rj-jr/index.html> [Accessed 12 October 2023].

¹⁴ YAN Zhang, YIWEI Xia. Can Restorative Justice Reduce Incarceration? A Story From China. (2021). *Justice Quarterly*, 38:7, p. 1471-1491, doi:10.1080/07418825.2021.1950814.

¹⁵ <http://sprc.ru> [Accessed 14 October 2023]

¹⁶ https://www.ncjrs.gov/ovc_archives/reports/national_survey/natsurv3.html [Accessed 14 October 2023].

¹⁷ FAGET, J. The Double Life of Victim-Offender Mediation in France. <https://arbitrationlaw.com/library/double-life-victim-offender-mediation-france-wamr-2005-vol-16-no-7> [Accessed 12 October 2023].

victim is an individual who has suffered physical, property, moral damage by a crime, as well as a legal entity in the event of damage to his property and business reputation by a crime, each of these types of damage may correspond to a certain method of compensation. On the basis of article 25 of the Criminal Procedure Code of the Russian Federation, if the victim makes a statement that reconciliation has taken place, the criminal case may be terminated.¹⁸

The approach of the Russian legislator, generally consistent with the European concept of «simple mediation», has one important feature: the absence in the procedural legislation of any «mediation measures» to reconcile the parties. After all, the persons conducting the proceedings only passively record that the reconciliation took place, without being obliged to take active steps to achieve this goal.

It is worth emphasizing that mediation relations are tripartite. They involve the person who committed the crime, on the one hand, and the victim, on the other. At the same time, control over the procedure and its legal consolidation is carried out by the state through an authorized state body or officials. At the same time, the actions of the subjects of reconciliation generate procedurally significant consequences. The concept of «persons involved in reconciliation» is broader, since it includes various procedural figures directly involved in the reconciliation procedure (such, for example, may include an interpreter if one of the parties does not speak the language of the proceedings).¹⁹

Taking into account the need to make appropriate changes to the criminal procedure legislation of Russia in order to consolidate the mediator as a participant in conciliation proceedings in criminal proceedings and before diving into the identification of elements of the digital transformation of this procedure, we will outline our vision of the reconciliation procedure itself.

The nature of mediation production determines the specifics of interpersonal interaction when using it. Meetings should be based on a person-centered dialogue, in which empathy, empathy and support are put in the first place. The neutrality of the intermediary is also a prerequisite. The mediator independently establishes the rules of negotiation, compliance with which allows you to maintain a friendly atmosphere. His task is to facilitate negotiations and translate the flow of mutual accusations into recognition of the unfairness of the current situation. Due to the techniques of paraphrasing, highlighting constructive grounds in statements, active listening, the ability to work with strong emotions and the like, the mediator helps the parties to express their feelings and at the same time helps to reduce

¹⁸ GOLOVKO, L.V. New grounds for exemption from criminal liability and problems of their procedural application (1997). *State and Law*. № 8. p. 79-82.

¹⁹ TSENEVA, V.V. Exemption from criminal liability in connection with reconciliation with the victim: abstract of the dissertation of the Candidate of Legal Sciences (2002). Tomsk. p. 22.

aggressiveness and awaken the humanity of the participants of the meeting. Overcoming the stereotypes of the victim and the criminal by the participants of the meeting, the opportunity to see each other as experiencing and sympathetic people are the main conditions for the restorative nature of the reconciliation procedure as an alternative way to resolve the criminal conflict, allowing to reach a mutually acceptable agreement and implement a plan to remedy the situation. The terms of the agreement adopted during the meetings are formulated on the basis of the proposals of the participants, and are not imposed on them from the outside, which is the actual guarantor of their subsequent implementation.²⁰

Conciliation proceedings are highly psychologized. The confrontation of the interests of the accused and the victim here reaches the utmost tension. Each side, willingly or unwittingly, seeks to impose its point of view, leading to the conclusions desired for itself. In the course of conciliation proceedings, previously raised doubts may be eliminated and new questions may arise. The participants of the conciliation proceedings are not limited in the time of discussion of conflict points (with the exception of the general period of time allotted for the implementation of conciliation proceedings), they have the right to constantly express their own opinion. However, the mediator is obliged to prevent deviations from the substance of the case, insults to the other party, intrusion into the intimate aspects of her life, that is, to fully perform the functions of monitoring the direct conduct of negotiations.

Along with the «professional» control by the mediator, conciliation proceedings may also be subject to social control by persons present during the procedure. Their presence increases the social responsibility of the behavior of all participants in the conciliation procedure, places increased demands on the general culture of its conduct. The mediator, if he considers it necessary, may invite relatives of any of the parties, work colleagues, or other persons capable, in his opinion, of influencing the result to meetings held during the conciliation proceedings. The parties themselves can do the same. However, the behavior of the persons present is not always objectively neutral, because usually they are persons sympathetic to any of the parties. The support of those present can make the behavior of one of the parties more pretentious, suppress the activity of the behavior of the other party. In this case, again, the role of an intermediary is important, who is able to limit the excessively tendentious behavior of those present by his intervention.

All information is perceived by the mediator and other participants in the conciliation procedure orally, in terms of immediacy. The immediacy of contact

²⁰ VINITSKY, L.V., RUSMAN, A.A., RUSMAN, G.S. Termination of the criminal case in connection with the reconciliation of the parties at the stage of preliminary investigation. (2011). Moscow. p. 127.

between the mediator and the parties is also connected with paraverbal means of influence – here facial expressions, gestures, pantomimics, emotional and expressive features of speech play an essential role. Pauses, intonation, verbal difficulties, external manifestations of uncertainty – confidence, confusion – composure, nervousness – calmness can have a certain influence on the direction of the conciliation procedure.

Conciliatory production develops as an interaction not only of individuals, but also of small social groups, while the processes of intra-group and intergroup dynamics, intra-group cohesion and intergroup antagonism acquire significant importance. A lawyer, in case of such participation, being a representative of his client, fully defends the interests of the latter, providing him with the necessary legal assistance, creates a background of social protection. Having a common goal, the party and its representative are actively united, they actively interact – the party informs its representative about all the nuances of the case, about the possible behavior of persons interested in the outcome of the case, about the reserve amount of information. Reconciliation must take place directly between the accused and the victim, therefore, all active actions in the process of conciliation proceedings must be performed by them. The lawyer, as a representative of the party, although he has all the information, cannot take a direct part in the reconciliation. There should be a direct reconciliation between the person who committed the act and the person who suffered from it.

In the settlement of interpersonal relations, the mediator's reflexivity, his ability to adequately model various life situations, to see himself in the position of others, to carry out social-role identification, to avoid hasty judgments on the external signs of various circumstances is especially significant. After all, depending on how the mediator directs the course of conciliation proceedings, its further result depends in most cases. It is also essential to clearly define the positions of the parties on what they expect from the conciliation procedure as a whole. In the course of conciliation proceedings, these positions may change significantly. In any case, changes in the position of the party are subject to discussion in order to decide on their adoption. Thus, the will of the parties significantly affects the direction and nature of the conciliation proceedings.

The activity of the parties' behavior depends on their attitude to the requirements of the other party, on their ability to discuss the circumstances of the case, ask questions, make specific proposals. The mediator is called upon to coordinate the actions of the parties, contribute to their efforts, assist the parties in discussing controversial issues, and provide the parties with equal opportunities during the negotiation process. The mediator needs considerable awareness of the psychology of people in order to prevent the transition of the conciliation procedure

to the level of bickering of the parties. During the conciliation proceedings, the party should be able to fully substantiate its claims.

If a party agrees with the facts from which the other party proceeds, then the interaction of the parties becomes conflict-free. In case of non-recognition of these facts, the confrontation of the parties acquires the character of conflict interaction. At the same time, all the means and techniques used by the parties have not only informational, but also suggestive effects. The opinion of the mediator should also be trustworthy, depending on various circumstances, including his social status, public prestige, fame, significance, communication experience, conducting conciliation procedures and others. At the same time, it is important for the mediator to negotiate and make proposals in such a way that they do not have the nature of suggestions and do not affect the will of the persons involved in the conciliation proceedings.

Due to the position of the mediator and the parties, their relations acquire the character of cooperation. The mediator receives informative and motivational information from the parties. The parties mostly receive only incentive information – proposals. Although in some cases, the parties may also be interested in information of an informative nature. For example, the victim necessarily wants to know why he was the victim of a crime. The mediator, on the other hand, needs informative information to correctly direct and stimulate the behavior of the parties.

The most important condition for the interaction of the participants in the conciliation proceedings is mutual understanding: adequate mutual reflection of the goals and motives of behavior, the meaning of the existing circumstances, understanding of the terminology used. The mediator must monitor the speech of the victim and the accused, so that they understand each other. There are often cases when the accused and the victim are representatives of different strata of society, as a result of which the terminology used in the conversation is also different, or due to an insufficient level of education, the person simply cannot clearly formulate his position.

The validity of the conclusions and proposed solutions is emphasized by various speech techniques: special intonation, rhythmic organization, giving speech a sublime, pathetic tone. Moreover, the formulation of conclusions and proposals is the prerogative of the mediator. It is he who announces the agreed proposals, thereby giving the parties the opportunity to hear them from the outside and think about them again.

In the case of conflicting interaction between the parties, the discussion takes on the character of a polemic, a confrontation of reason – the factor of social distancing (the degree of perceived difference between one's social group from the one to which other participants in the interaction belong), interpersonal and

intergroup discrimination is exacerbated. Information is concentrated around the dominant values in these groups. Information is deformed by likes and dislikes. The speeches of the parties acquire a subjective one-sidedness. The insufficiency of the material is compensated by emotional assessments, outpouring of feelings, appealing to sympathy from the mediator.

The key to successful reconciliation will be an absolutely neutral and impartial mediator. On the one hand, he should exercise restraint in order not to identify himself with any of the participants in the process, and on the other hand, try to focus the attention of the parties on the committed act and ways to eliminate its consequences. Of course, questions about personal relationships, as well as emotional assessments of behavior, cannot be avoided during conciliation proceedings. The mediator must clearly understand the ambiguity of the situation. It is necessary to allow any of the participants in the reconciliation process to «talk out», and at the same time, not to allow them to move away from the issue of resolving the conflict that has developed after the commission of a particular act.

The effectiveness of the interaction of the participants in the conciliation proceedings depends on a number of factors, including: the circumstances of the committed act, personal, professional and other qualities of the victim and the accused, the professionalism of the mediator, the establishment of communicative and emotional contact between them, their verbal and semantic understanding, situational intuition, and so on.

In order to achieve a positive result of reconciliation, the mediator independently decides on the number of necessary meetings and their order. In this case, the whole procedure is limited only by the total time allotted for its implementation.

If the parties have come to a settlement of the conflict, agree to reconcile and have negotiated the terms of such reconciliation, there are grounds for drawing up a final document, which may be a reconciliation agreement – a written document drawn up by the mediator during the conciliation proceedings, containing a brief description of the circumstances of the crime committed, an indication of the recognition by the accused of the validity of the charges brought against him, as well as circumstances and conditions of reconciliation, under which the parties consider it possible to terminate the criminal case.

In order to avoid violation of the principles of criminal proceedings, the rights and interests of its participants, the issue of termination of the criminal case against the accused based on the results of mediation should be resolved only by the court. In pre-trial proceedings, exemption from criminal liability can be carried out by contacting the investigator with a corresponding petition to the court with a reconciliation agreement attached to it. Having considered these materials, having made sure that there are factual and legal grounds for termination of the criminal

case, the court decides to terminate the criminal case against the accused or to refuse to satisfy the petition.

4 Digital Tools in Criminal Proceedings

Digital technologies in the criminal process should be understood as a system for the collection, investigation and subsequent presentation of evidentiary information.²¹

The use of digital technologies in criminal proceedings is primarily aimed at ensuring citizens' access to justice, which is reflected in the openness of the justice system and increasing the level of communication of participants in the process. In addition, it becomes possible to provide the necessary documents and petitions, receive notifications via e-mail, specially designed digital platforms, participate in individual investigative actions (for example, interrogation, confrontation) and court sessions through video technology.

In order to identify the elements of digitalization of the mediation procedure, it is necessary to analyze the existing international experience of digitalization of criminal proceedings.

The report of the European Commission of the Council of Europe on the effectiveness of justice for 2020 highlights trends in information and communication technologies that have become an integral part of the provision of judicial services, including decision-making, electronic communication and remote court proceedings.²²

The Criminal Procedure Code of the Federal Republic of Germany provides for the possibility of petitions and their justification in criminal proceedings in the form of an electronic document with a qualified electronic signature.²³ Germany also provides for the use of electronic communication at all stages of the work of courts, prosecutor's offices and the police. Procedural document flow in criminal cases and materials is carried out through closed communication channels in encrypted form, including cross-border interaction with other EU countries.²⁴

²¹ VASILENKO, A.S., FILIPPOV, V.M., SIMONOVA, M.A., KOVALENKO, S.A. Probabilistic Model of Implementing Mediation into Russia's Criminal Procedure in the Conditions of Society's Digital Transformation (2020). In: Popkova, E., Sergi, B. (eds) Scientific and Technical Revolution: Yesterday, Today and Tomorrow. ISC 2019. Lecture Notes in Networks and Systems, vol. 129. Springer, Cham. doi.org/10.1007/978-3-030-47945-9_140.

²² https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?ObjectId=0900001680a00a07 [Accessed 16 October 2023].

²³ GOLOVNIENKOV P., SPICA, N. §41a The Criminal Procedure Code of Germany: scientific and practical commentary and translation of the text of the law (2012). Universitätsverlag Potsdam.

²⁴ MASLENNIKOVA, L.N., SUCHINA, T.E. Experience of Criminal Proceedings Digitalization in the Federal Republic of Germany and Possibilities of its Use in the Criminal Proceedings Digitalization in Russia (2020) *Actual Problems of Russian Law*, 15(6):214-224. doi.org/10.17803/1994-1471.2020.115.6.214-224.

France has a Law on the Digital Republic No. 2016-1321 adopted on October 7, 2016, which declares the openness of public data, providing access to fundamental documents, databases of economic, social, sanitary and environmental interest, and the state as a whole is entrusted with a new mission – a public data service.²⁵ National legislation in the framework of civil proceedings provides for the possibility of electronic document management through the IP WEB information system as an alternative method of traditional document management.²⁶

On the territory of the countries belonging to the Commonwealth of Independent States, procedures for conducting legal proceedings in electronic order have also been introduced at the legislative level and are used. Thus, in 2019, the Intergovernmental Council of the Eurasian Economic Union approved the Concept of Cross-border information Interaction, according to which information interaction between economic entities of the member states is carried out using mechanisms for ensuring information interaction, including through mechanisms for documenting information in electronic form.²⁷ Within the framework of this concept, common approaches to the implementation of electronic interaction between business and government bodies have been developed, it is fixed that the subjects of the participating countries will be able to interact with each other electronically using an electronic digital signature, which will significantly simplify economic interaction and create the necessary foundation for increasing investment activity in the member countries of the Eurasian Economic Union, so it is in the Union itself.²⁸

This trend towards digitalization can also be traced in the legislation of individual CIS countries. From the point of view of the introduction of digital technologies into criminal procedural activities, the experience of the Republic of Kazakhstan and the Republic of Azerbaijan is interesting.

The Criminal Procedure Law of Kazakhstan provides for the possibility of conducting legal proceedings in electronic format, on which a reasoned decision is made by the person conducting the criminal process, taking into account the opinions of participants in criminal proceedings. The said resolution may be

²⁵ PILIPENKO, A.N. France: Towards Digital Democracy // *Right. Journal of the Higher School of Economics*. 2019. No. 4. pp. 185-207. DOI: 10.17323/2072-8166.2019.4.185.207 / LUZHINA, A.N. Digital Justice Reform: France and Russia (2022) *Social sciences and humanities. Domestic and foreign literature*. No. 3. p. 110-119. DOI: 10.31249/rgpravo/2022. 03.10.

²⁶ KONSTANTINOV, P.D. The influence of Information technologies on the principles of civil procedure (comparative legal research on the example of Russia and France): abstract of the dissertation of the Candidate of Legal Sciences (2022). Ekaterinburg, p.130.

²⁷ Legal Portal of the Eurasian Economic Union https://docs.eaeunion.org/docs/ru-ru/01422708/icd_12082019_7 [Accessed 16 October 2023].

²⁸ RUSAKOVA, E.P. The impact of digitalization on civil proceedings in Russia and abroad: the experience of China, India, Singapore, the European Union, the USA, South Africa and some other countries: *dissertation of the Doctor of Law* (2021). Moscow. p.112.

appealed, and if it is impossible to continue the proceedings in electronic form, its transition to paper format is allowed.²⁹

The Criminal Procedure Code of the Republic of Kazakhstan allows the electronic format of the process in pre-trial investigation. For example, a citizen has the right to report a criminal offense in the form of an electronic document signed by the person from whom it originates (part 1, Article 181).

It is allowed to coordinate and approve the actions and decisions of officials conducting a pre-trial investigation by certifying the resolution with an electronic digital signature (paragraph 6 of part 1 of Article 193). The body conducting the investigation has the right to take and send procedural decisions to the prosecutor for approval or approval, as well as notify the prosecutor of the decisions taken and send copies of them, other materials of the criminal case in electronic format, with the exception of information requiring confidentiality (part 3 of Article 42-1).

To ensure electronic criminal proceedings in the Republic of Kazakhstan, an automated database has been created – the Unified Register of Pre-Trial Investigations (hereinafter – ERDR), which contains information about the reasons for the start of pre-trial investigation, procedural decisions and actions taken on them, the movement of criminal proceedings, applicants and participants in the process.

This digital platform provides for the module «Electronic Criminal case», within which the functionality allows you to organize the preparation, management, dispatch, receipt and storage of an electronic criminal case. The electronic criminal case itself is conducted by the prosecution body in electronic format, including by entering an electronic document and attaching documents to the ERDR on the basis of procedural decisions and actions taken by an official, signed with an electronic digital signature. This service allows you to create electronic documents on existing templates and pdf documents; to sign documents by participants in criminal proceedings using an electronic digital signature or a signature tablet; to carry out SMS notification; to implement electronic interaction with the court in order to ensure the processes of consideration of criminal cases and materials in electronic format; to carry out electronic interaction with experts, specialists on the appointment of research and obtaining conclusions in electronic format.³⁰

²⁹ Article 42-1 of the CPC of the Republic of Kazakhstan 04.07.2014 №231-V / https://online.zakon.kz/Document/?doc_id=31575852&pos=1217;-46#pos=1217;-46&sdoc_params=text%3D%25D1%258D%25D0%25BB%25D0%25B5%25D0%25BA%25D1%2582%25D1%2580%25D0%25BE%25D0%25BD%25D0%25BD%25D0%25BE%25D0%25B5%26mode%3Dindoc%26topic_id%3D31575852%26spos%3D1%26tSynonym%3D1%26tShort%3D1%26tSuffix%3D1&sdoc_pos=1 [Accessed 17 October 2023].

³⁰ Order of the Prosecutor General of the Republic of Kazakhstan dated 03.01.2018 No. 2 «On approval of Instructions on conducting criminal proceedings in electronic format» / https://online.zakon.kz/Document/?doc_id=34195283&pos=27;-46#pos=27;-46 [Accessed 17 October 2023].

Along with the above, the Information System «Unified Register of Pre-Trial Investigations» provides an opportunity to interact with interested persons, suspects, victims, other persons involved in criminal proceedings, including a defender, translator, expert / specialist, witness, witness, mediator. Within the framework of this service, you can submit an application for a criminal offense, specifying in it the date and time of the commission of the criminal offense, its plot; the region and district of the application body; the body of criminal investigation. When submitting an application in electronic format, the user is warned about criminal liability for knowingly false denunciation by putting an appropriate mark in the field. The available functionality allows you to check the status of the submitted application (its acceptance or rejection by a law enforcement agency), its registration,³¹ send a petition for a criminal offense; request access to the materials of the criminal case (it is possible to request a list of materials from authorized persons) and get information about the decisions taken on the criminal case and materials to them. It is planned to develop a module for filing a complaint on a criminal offense.³²

Within the framework of criminal proceedings, there are also: 1) the procedural possibility of ensuring the participation of a defender in a criminal case by sending an appropriate resolution in the form of an electronic document through the unified information system of legal aid (article 68); 2) a statement of a civil claim, as well as a refusal of such in the form of an electronic document (part 5 of Article 167, part 2 of article 169); 3) provision of the minutes of the main court proceedings at the request of the parties in the form of an electronic document certified by the electronic digital signature of the presiding judge and the secretary of the court session (part 8 of Article 347), as well as the possibility of submitting comments on the protocol through electronic document management (article 348).

In the case of an appeal in the format of electronic court proceedings, it is allowed to file a petition for the restoration of the time limit for appeal (Article 419); the possibility of familiarizing with the appeal claims of the parties through the Internet resource of the court that decided the appealed decision; as well as the right to file objections to appeal claims in electronic format (article 420).

Mediation procedures in the criminal proceedings of the Republic of Kazakhstan, in the implementation of which these digital tools can be used, are allowed from the moment of registration of a report on a criminal offense and until the verdict enters into force (part 4 of Article 85).³³

³¹ <https://qamqor.gov.kz/offence> [Accessed 17 October 2023].

³² https://erdr-public.kgp.kz/resources/download/user_guide.pdf [Accessed 16 October 2023].

³³ Law of the Republic of Kazakhstan dated 28.01.2011 No. 401-IV «On mediation» / https://online.zakon.kz/Document/?doc_id=30927376&pos=356;-44#pos=356;-44 [Accessed 17 October 2023].

Along with the digital systems listed above, elements of artificial intelligence have been introduced in the Republic of Kazakhstan as a tool of the Digital Analytics of Judicial Practice service, through which a computer analyzes many judicial acts and provides analytics on a specific situation.³⁴

At the moment, the Judicial Cabinet project has been implemented in Kazakhstan on the principle of organizing a single window of access to the services of the courts of the Republic in electronic form. With the help of this service during the criminal process it is possible: 1) filing complaints about actions / omissions and decisions of officials conducting criminal proceedings; 2) filing a private complaint; 3) initiating a review of judicial acts on newly discovered or new circumstances; 4) statement of objection; 5) application for familiarization with the case materials; 6) other statements and documents.

Along with this, this digital portal provides an opportunity for the user to track cases with his participation that are in production; to correspond with the court and with the party to the dispute; to issue an electronic power of attorney, as well as to use templates of various procedural appeals (statement constructor), including, for example, petitions for settlement of a dispute (conflict) by mediation.³⁵

The functionality of the Judicial Cabinet allows participants in criminal proceedings to apply remotely with a petition for mediation: the corresponding module contains information about the author of the appeal; information about the case (the procedural status of the petitioner; his address; the court to which he is being filed; information about the defendant; the number of the criminal case; the text of the petition itself and information about the mediator who is charged procedure). Before submitting this petition, the applicant is explained the provisions of the current legislation on the application of mediation in criminal cases and the consequences of the application (release of a person from criminal liability).

The Criminal Procedure Code of the Republic of Azerbaijan provides for an information system «Electronic Court», on the platform of which electronic criminal proceedings are conducted, as well as proceedings in courts in the order of judicial supervision. The current procedure provides not only for the exchange of procedural documents and other materials with the courts electronically, but also for integration with the information systems of other bodies conducting criminal proceedings.³⁶

³⁴ «Artificial intelligence helps judges of Kazakhstan» / The official website of the Supreme Court of the Republic of Kazakhstan, news from 02/23/2023 <https://sud.gov.kz/rus/massmedia/sudyam-kazahstana-pomogaet-iskusstvenny-intellekt-pravoru-23022023-g> [Accessed 17 October 2023].

³⁵ http://contract.atameken.kz/template/kopiya__hodatajstvo_ob_uregulirovanii_spora_konfliakta_v_poryadke_mediacii-1565936483600.html?2 [Accessed 17 October 2023].

³⁶ Article 51-1 of the Criminal Procedure Code of the Republic of Azerbaijan dated 14.07.2000 No. 907-IQ / https://online.zakon.kz/Document/?doc_id=30420280&pos=1050;-44#pos=1050;-44 [Accessed 18 October 2023]; Decree of the President of the Republic of Azerbaijan dated 01.06.2020 No. 1043

The software package of the system includes, among others, an electronic cabinet, a unified database of final court decisions, an electronic document management subsystem, a subsystem of electronic audio and video protocols of trials and a videoconference subsystem that provides participants in the process with the opportunity to participate in the meeting without appearing at the meeting and creating the possibility of monitoring it in real time.

The electronic cabinet provides the participants of the process with the opportunity to get acquainted with the progress of the process in the case (in which they participate), the decisions made, the status of their execution, the presence of complaints or protests, and also allows you to send or receive procedural documents, petitions. In addition, the named system provides: control over compliance with procedural deadlines in court cases and has the functionality of warning about the expiration of deadlines; systematized storage of information; the use of artificial intelligence in judicial activities; organization of an electronic cabinet that allows the participant to receive information about the progress of the case.³⁷

Electronic document management involves the use of both enhanced electronic signatures and certified electronic signature tools. From the point of view of the mechanics of making a decision, the information system generates drafts of court documents and compiles them in an automated form, which, after checking for compliance with legal requirements, the judge certifies with an enhanced electronic signature.

In the criminal proceedings of the Republic of Azerbaijan, at the legislative level, the court provides for the placement of procedural documents and other information for their transfer to persons who have been registered in the information system, as well as to the state prosecutor in their electronic offices. At the same time, such persons can send procedural documents that they are entitled to provide, also through the «Electronic Court» (Articles 51-1.6-51-1.8).

At the stage of sending a criminal case to the court, it is also provided that a copy of the approved indictment, the final protocol on simplified pre-trial proceedings, the decision on the use of compulsory medical measures, confirmed by an enhanced electronic signature, is placed in courts where the information system is used (Articles 292.1, 297, 476). In court proceedings, the public prosecutor has the right to provide the court with electronic procedural documents on such procedural actions as a statement of challenges and petitions; presentation of evidence to the court; statement of objections against illegal actions of the defense

«On approval» of the Regulations on the Electronic Court Information System / https://online.zakon.kz/Document/?doc_id=34574697 [Accessed 18 October 2023].

³⁷. Decree of the President of the Republic of Azerbaijan dated 01.06.2020 No. 1043 «On approval» of the Regulations on the Electronic Court Information System/ https://online.zakon.kz/Document/?doc_id=34574697 [Accessed 18 October 2023].

party; change in the qualification of the act, etc. (article 84.6). This system is already used in 80% of courts of the Republic of Azerbaijan,³⁸ its mobile version for citizens has been developed.³⁹

Digital technologies are also widely used in criminal proceedings in the Asia-Pacific region. One of the leaders in the use of artificial intelligence in criminal proceedings is the People's Republic of China, where there are clear conceptual ideas about such interaction. For example, the Shanghai Intelligent Criminal Case Processing System (System 206) uses algorithms for analyzing legal and judicial acts, neuro-linguistic programming, graphic image recognition, video processing, speech analyzer, etc. At the same time, the «System 206» is an intelligent assistant that does not perform the process independently and its main role is auxiliary.⁴⁰

The principle of «similar decisions in similar cases» proclaimed in China is provided by existing technological solutions and algorithms that allow identifying similar cases considered in the past. Artificial intelligence can quickly establish existing patterns in databases containing millions of court decisions, analyze them, as well as the decision made in the current case, informing the judge on what parameters it differs from existing precedents. This conclusion of artificial intelligence is also available to supervisory authorities.⁴¹

In the People's Republic of China, digital means are actively used to conduct online proceedings in civil and administrative cases («smart» court and «mobile» court, Internet court, micro-court), operating on the basis of artificial intelligence and blockchain. In the context of criminal proceedings, the use of these digital platforms is very limited and online justice is applied only in the order of expedited proceedings, consideration of issues of mitigation of sentences and parole.⁴² Since 2016, an online mediation platform has been operating in China, allowing for both pre-trial mediation and conciliation court procedures.⁴³

In Japan, there is a tendency to actually use the capabilities of artificial intelligence in the framework of forensic and criminological tasks, as well as the

³⁸ <https://www.trend.az/azerbaijan/society/3709781.html> [Accessed 18 October 2023].

³⁹ <https://www.e-huquq.az/ru/news/sud/6851.html> [Accessed 18 October 2023].

⁴⁰ RAKHOVSKY A.F. The use of artificial intelligence in China's criminal process (2021) Technologies of the XXI century in jurisprudence: *Materials of the Third International Scientific and Practical Conference, Yekaterinburg, May 21*. p.69-77. EDN PRJOFX.

⁴¹ DRAGILEV, E.V., DRAGILEVA, L.L., DROVALEVA, L.S., PALAMARCHUK, S.A. Informatization of the judicial system of China // *Legal science*. 2022. No.8. pp. 54-59.

⁴² DANSHIN, A.V. Ma Siu Method as a Principle of the Socialist Judicial System with Chinese Specifics: history and Modern Understanding (2023) *Lex Russica*. No 9 (202). p.133-145. DOI: 10.17803/1729-5920.2023.202.9.133-145. KONOPII, A. S. Digital transformation of the state and the rights of China (2021) *North Caucasus Legal Vestnik*. (3), p.72-77. DOI: 10.22394/2074-7306-2021-1-3-72-77 A. NEPEYVODA, N. Justice at your fingertips: China's experience https://zakon.ru/blog/2020/5/2/pravosudie_na_konchikah_palcev_opyt_knr_83633 [Accessed 20 October 2023].

⁴³ NEPEYVODA, N. Justice at your fingertips: China's experience https://zakon.ru/blog/2020/5/2/pravosudie_na_konchikah_palcev_opyt_knr_83633 [Accessed 20 October 2023].

analysis of a large volume of procedural documents of judicial practice to assist courts in the correct criminal legal qualification of the act.⁴⁴

The above highlights the evidence of the widespread spread of information technologies in the field of judicial proceedings in many countries of the world. This trend takes new forms and provides new opportunities for participants in criminal procedural legal relations.

5 Digital Tools in Conciliation Procedures of Criminal Proceedings: Realities and Prospects

Based on the vision of the conciliation procedure outlined above and taking into account the studied international experience of the introduction and development of digital technologies in criminal proceedings, we will analyze which digital tools are effective and rational in mediative criminal procedural relations.

Currently, an important point of effective initiation and implementation of mediation procedures in criminal proceedings is the availability of information about the procedure itself, possible intermediaries (mediators), the conditions and consequences of such a procedure.

Initial information about the right to petition for the termination of a criminal case in connection with the reconciliation of the parties, the victim, suspect, accused receive from the person investigating the crime. But the investigator has no obligation to acquaint the participants of the process with non-procedural procedures. The relevant websites or pages on the websites of courts or investigative bodies can cope with this task. A positive example is the page on the website of the Lipetsk Regional Court of the Russian Federation.⁴⁵

The current Russian criminal procedure legislation does not provide for mediation procedures as a form of resolution of a criminal case, however, it provides for the possibility of termination of a criminal case in the form of reconciliation with the victim. This procedure is restorative in nature and is close to the institution of mediation by nature, although it does not provide for the participation of a neutral mediator (in the pre-trial stage, the official conducting the preliminary investigation has the right to terminate the criminal case in connection with reconciliation with the victim; in the trial stage, the court).

One of the first technological issues that should be resolved by the participants of the conciliation proceedings is acceptable and desirable ways of notifying about

⁴⁴ SUMIN, A.A., KHIMICHEVA, O.V. Artificial Intelligence in the Criminal Procedure of the States of the Asia-pacific Region: A General Overview (2020) *International Criminal Law and International Justice*. No. 2. pp.18-21. EDN RGILWR.

⁴⁵ http://oblsud.lpk.sudrf.ru/modules.php?name=docum_sud&rid=53 [Accessed 20 October 2023].

the progress of the case, summoning to the investigator or to the court, meeting with the mediator. There is no doubt that today the most convenient way to notify participants in criminal proceedings by an investigator, court or mediator is to use messengers, e-mail or SMS messages. It significantly speeds up the receipt of information by the subscriber, allows you to make sure that the subject of the notification receives the necessary information.

According to the Russian criminal procedure legislation, such a notification method is permissible only if there is a subject of notification – a victim, suspect, accused, witness. This method of notification is actively used, and empirical studies show that participants in the process often prefer notification via SMS messages or messengers.

Electronic documents are becoming increasingly common in criminal proceedings. Moreover, it can be evidence in a criminal case, other documents, for example, characteristics, certificates, responses to requests received by the investigator in electronic form, a protocol of the investigative action printed using a computer, and others. Currently, the legislation of the Russian Federation, unlike some other countries, provides for the formation of a criminal case in paper form. Accordingly, all documents received or generated in electronic form must be translated into analog format, that is, printed out. The possibility of electronic document management rationalizes the work on a criminal case of both professional participants in the process – the investigator, the head of the investigative body, the supervising prosecutor, the court, and persons involved in criminal proceedings – the victim, the suspect, the accused, as well as the defender.

In the presence of appropriate secure digital platforms, it would be easier to get acquainted with the materials of the criminal case, and within the framework of the mediation procedure, it would be more expeditious to submit documents confirming compensation for damage to the victim, apologizing, reducing the public danger of the suspect, the accused.

Significant, from the point of view of the effective implementation of the mediation procedure, would be the possibility of using electronic documents by the mediator, avoiding the preliminary paper form from the compilation. Undoubtedly, the official form of such documents and the procedure requires the use of an enhanced digital signature.

Currently, most of the documents submitted to the courts of general jurisdiction in Russia are translated into electronic format by scanning, which clearly does not simplify the work with documents. At the same time, the translation of the document into digital format allows participants in the proceedings to access the document through the use of a personal account, which simplifies the process of

familiarization with the case materials. Currently, the archives are being modernized and electronic archives are being created.⁴⁶

Video conferencing and web video conferencing systems are one of the acceptable and effective digital tools in conducting conciliation procedures. The first is characterized by the locality of the system, the second allows the use of video communication via the Internet.

It is worth agreeing with our Brazilian colleagues, who note that the use of virtual rooms (web video conferences) during reconciliation is practical and convenient, since it allows you to organize meetings without travel expenses and without being distracted for a long period from your daily affairs. Video technologies increase the dynamics of interaction between participants in conciliation proceedings, as a result, we have fewer rescheduling of scheduled meetings.⁴⁷

It is impossible not to mention the psychological component. The victim is not always ready to meet face to face with the accused. In this case, physical remoteness makes it possible to feel safer. Especially in cases where one of the participants in the reconciliation procedure is a minor. At the same time, the physical presence of the victim and the person who committed the crime in different places may not always have a positive effect. Apologizing in person, remorse sometimes has a stronger effect than monetary compensation for the damage caused.

Thus, the use of videoconferencing and web video conferencing systems in the mediation procedure is aimed at procedural and financial savings. We must not forget about the importance of ensuring the security of video communication during meetings of participants in the conciliation procedure, because in addition to the secrecy of the investigation, there is a danger of disclosure of personal data, privacy. Only secure platforms should be used for this.

We have outlined the realities of using digital tools in mediation procedures in criminal proceedings, but before proceeding to the discussion of promising tools that allow digitalization to expand to existing procedural forms of resolving criminal law conflict through mediation procedures, it is necessary to identify, in our opinion, some significant points.

First. Digitalization of all spheres of public life is inevitable and is an element of objective reality. In this connection, science has new tasks to prepare a theoretical basis and develop the main provisions governing the use of modern technologies in legal proceedings. A deep understanding of both the possibilities and risks of

⁴⁶ SHEREMETEV, I.I. Using digital technologies in criminal cases in court: reality and prospects. (2019). *Lex Russica*. p. 117-131. doi.org/10.17803/1729-5920.2019.150.5.117-131.

⁴⁷ OLIVEIRA, H.M. de; DIAS, P.C. Audiências de conciliação e mediação por videoconferência no Estado de São Paulo: benefícios e desvantagens segundo relatos empíricos dos conciliadores e mediadores judiciais. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, Belo Horizonte, ano 04, n. 08, p. 146-186, jul./dez. 2022. doi: 10.52028/rbadr.v4i8.8.

using digital technologies is required, especially in criminal proceedings, where the fundamental rights of citizens are affected and their freedoms are restricted.

Second. It is rightly noted that digitalization should not become a goal, but a means to achieve the goal.⁴⁸ Information systems, services, portals, artificial intelligence, video conferencing, etc., in the framework of criminal proceedings, being optional tools only ensure the functioning of the court, the work of law enforcement officers and the participation of citizens in the administration of justice. The authors of this study do not share the opinion about the possibility of a complete replacement of a human judge in such a complex area as criminal proceedings, but allow for a significant simplification of existing procedures for crimes of low public danger.

The third. Based on the previous statement, we note that digitalization of both criminal proceedings in general and conciliation procedures in particular inevitably entails a certain transformation of the existing architecture of the criminal process and some changes in the concept of building justice.⁴⁹ The possibility of spreading information technologies, including at the pre-trial stage of criminal proceedings, poses the task of widespread digitalization of the activities of the preliminary investigation bodies and their interaction with citizens involved in the criminal process (the accused, the victim, the defender, the victim's representative). A universal and multifunctional portal is required, in which everyone who becomes a participant in criminal proceedings receives relevant information in his personal account, including information about his procedural status, the dynamics of the case, decisions taken, complaints and petitions filed, etc.

The need to change the existing paradigm of the criminal process is primarily associated with the introduction of electronic legal proceedings technologies and its elements (such as electronic document management, video conferencing system, various integration, digital and electronic portals, services, digital platforms), allowing for simplified, remote use of conciliation procedures both in the pre-trial stage and in the court proceedings.

It is rightly noted that the key moment in the transformation of pre-trial proceedings should be the electronic interaction of the state and society (population) in the new digital reality.⁵⁰ Let's focus on the last statement in more detail.

⁴⁸ MASLENNIKOVA, L.N., SUCHINA, T.E. Experience of Criminal Proceedings Digitalization in the Federal Republic of Germany and Possibilities of its Use in the Criminal Proceedings Digitalization in Russia (2020) *Actual Problems of Russian Law*, 15(6):214-224. doi.org/10.17803/1994-1471.2020.115.6.214-224.

⁴⁹ MASLENNIKOVA, L.N., SUCHINA, T.E. Experience of Criminal Proceedings Digitalization in the Federal Republic of Germany and Possibilities of its Use in the Criminal Proceedings Digitalization in Russia (2020) *Actual Problems of Russian Law*, 15(6):214-224. doi.org/10.17803/1994-1471.2020.115.6.214-224.

⁵⁰ MASLENNIKOVA, L.N. Transformation of Pre-trial Proceedings in the Initial Stage of Criminal Proceedings, Ensuring Access to Justice in the Industry 4.0 Era (2019) *Actual Problems of Russian Law*. (6):137-146. doi.org/10.17803/1994-1471.2019.103.6.137-146.

Recall that the current Russian legislation does not provide for the use of mediation in its pure form, but there is some hybrid form of it – the termination of a criminal case in connection with reconciliation with a victim in criminal cases of minor gravity or so-called obvious crimes that do not pose a great public danger. Seeing the mediation potential in the existing procedural form, we believe that it is possible to use the level of information technology development and use digital tools to terminate criminal cases of this category in a simplified form and remotely.

For obvious crimes that do not pose a high public danger, there may be a simplified form of resolving criminal cases with the help of an appropriate electronic resource, using the example of the existing functionality of the «Judicial Cabinet» (Republic of Kazakhstan) and the «Electronic Court» (Republic of Azerbaijan).

In the pre-trial stage, when submitting a petition by participants in the criminal process for conciliation procedures, the investigator or inquirer makes a procedural decision, which has the right to terminate the proceedings in a criminal case or refuse to do so (Chapter 29 of the Criminal Procedure Code of the Russian Federation). However, in order to ensure the rights and legitimate interests of citizens involved in criminal proceedings, the termination of a criminal case, including with the use of conciliation procedures, requires the authorization of the court. Judicial verification of the grounds for termination of the criminal case, the validity of the existing charges and the actual circumstances of the criminal case ensures the legality of this procedure, its objectivity and impartiality, respect for public interest and the balance of rights of participants in criminal proceedings. Simplification of the judicial procedure for the termination of criminal cases at the stage of preliminary investigation is possible through the use of a digital platform that provides for a special module for the implementation of conciliation procedures in a criminal case and judicial authorization.

Termination of a criminal case in connection with reconciliation with the victim under Russian law implies compliance with the following mandatory conditions: 1) a minor crime has been committed; 2) the accused/ defendant is brought to criminal responsibility for the first time; 3) the damage caused by the crime has been compensated; 4) the victim has declared the termination of the criminal case; 5) the defense agrees to terminate the criminal case on this basis (Article 25 of the Criminal Procedure Code of the Russian Federation, article 76 of the Criminal Code of the Russian Federation).

Taking into account the existing procedure in Russia for the conciliatory form of termination of a criminal case, the authors of this study propose a digital transformation of this procedure, which is possible within the framework of a special digital platform through which the state interacts with its citizens. We are talking about the need to develop the functionality of interaction between citizens

and the state in criminal cases in the form of a special module on the application of conciliation procedures and their judicial authorization. The model of this module looks like this:

- the victim has the right to apply for a conciliation procedure in a criminal case using a digital platform;
- before submitting an application to the initiator of the conciliation procedure, the legal consequences of such a petition are explained in an accessible and understandable form that does not require special legal knowledge, which the applicant must personally indicate in the mandatory field of the module;
- this petition is submitted to the personal offices of the participants in the criminal case, who have the right to agree with it and support it by sending the appropriate consent to termination (the accused, the defender, the victim's representative, the prosecutor), with the possibility of providing evidence of compensation for damage or reconciliation, or to send their objections to it;
- if the suspect, the accused agrees to the termination of the criminal case by the conciliation procedure and sends the appropriate notification in response to the received petition, his rights and legal consequences of the termination of the criminal case on this basis must also be explained to him;
- the defender of the suspect/accused must find out the position of his client before the latter sends any legally significant message on the application. It is necessary to provide an algorithm in which the lawyer and his client confirm the agreed position on the application, as well as confirmation that the suspect / accused has received legal assistance from the defender on the application under consideration (for example, the presence of mandatory fields in the module forms for clarification and consultation, which both the defender and his client must confirm). In the absence of such information, a statement from the defense cannot be sent in response to the received petition;
- the investigator or inquirer conducting the preliminary investigation, in the personal account on the platform, send the received petition, as well as information from the materials of the criminal case necessary for making a decision (on bringing to criminal responsibility, characteristics at the place of residence of the accused, evidence of damages, etc.) on jurisdiction to the court, using the functionality of the platform;
- the parties, as well as the supervising prosecutor, and the head of the preliminary investigation body are notified of the direction of such a

petition to the court, having received a corresponding notification in the personal account;

- in court, the distribution of petitions among judges occurs randomly by analogy with the mechanics of the distribution of criminal cases aimed at ensuring the objectivity and impartiality of the court;
- the judge accepts such a petition for consideration and can make a decision on it without calling the parties, authorizing the termination of the criminal case by making a decision. If necessary, the judge should also be able to request and receive additional materials of the criminal case or other information necessary for him to make a decision;
- the digital platform should provide for the technical possibility of participating in the remote trial of participants in the proceedings using a personal account, if necessary, to hear the parties or verify the validity of the charges;
- the decision made by the court can be appealed by the parties also through the portal itself.

The proposed model of a simplified procedure for the termination of a criminal case with the use of conciliation procedures is allowed only for obvious crimes of minor gravity that do not pose a high public danger. Such a procedure makes it possible to resolve «simple» criminal cases in optimal and economically feasible forms, in which the parties have exhausted the conflict, and the victim has received compensation.

Earlier in the study, we pointed out that, as a rule, the initial information about the right to petition for the use of conciliation procedures is received by the participants in the proceedings from the person investigating the crime. However, officials and the court do not have a procedural obligation to clarify the available legal possibilities for terminating a criminal case. In this connection, in order to avoid unjustified condemnation of a person who is being brought to criminal responsibility for the first time and who has compensated for the damage to the victim, we believe it is possible to use the experience of recommendation algorithms within the framework of the proposed module. If a criminal case has been initiated for a minor crime, and it is seen from the personal data about the suspect / accused that he is being brought to criminal responsibility for the first time, evidence of damages is presented on the digital platform, then in the personal account of both the participants in the criminal process and the official conducting the proceedings (as well as the court in the proceedings of which such a petition or criminal case is pending), a corresponding notification should appear that according to the available parameters, a decision on a conciliation procedure may be made in this criminal case. Such a technological solution will help to avoid

any abuse by officials, as well as ensure the implementation of existing legal opportunities by the parties.

Within the framework of the proposed model, the technological process of identifying a participant in the proceedings is proposed to be solved based on the existing practice of technical solutions using an enhanced qualified electronic digital signature. Such a technological solution will help to avoid any abuse by officials, as well as ensure the implementation of existing legal opportunities for the parties.

6 Conclusion

Mediation as a form of resolution of criminal law conflicts is very widespread in many states. In one form or another, mediation elements are also manifested in the framework of the Russian criminal procedure legislation, (termination of a criminal case in connection with reconciliation of the parties) generally corresponding to the European concept of «simple mediation» with one significant feature in the form of the absence of a professional mediator.

The existing reality of widespread digitalization of life cannot but affect the order of interaction between society and the state, including in the framework of criminal proceedings. This leads to the search for new legislative and technological developments aimed at expanding electronic interaction of participants in criminal proceedings, taking into account the specifics of these legal relations and their high social significance. This requires a revision of the existing paradigm of criminal proceedings, namely, the possibility of remote implementation of conciliation procedures as a form of resolution of a criminal case.

The identified need for the transformation of criminal proceedings served as a determinant for the development of a new model of the pre-trial procedure for the termination of a criminal case, providing for the possibility of implementing a conciliation procedure using digital tools. The peculiarity of this model lies in the exclusively judicial authorization of the termination of a criminal case; the possibility of resolving the issue using a universal multifunctional portal in which each of the participants in the criminal process registers and implements their procedural rights and obligations.

The proposed model assumes a change in the architecture of Russian criminal proceedings, since it allows the resolution of criminal cases for obvious, «simple» crimes in a simplified, remote manner using the functionality of a digital platform and within the personal account of each of the participants in the process, using a special module for the implementation of conciliation procedures in a criminal case and judicial authorization.

The procedure proposed in this study makes it possible to resolve obvious criminal cases in optimal and economically feasible forms, in which the parties have exhausted the conflict, and the victim has received compensation. This principle ensures not only the economic feasibility of the state's activities, but also contributes to the implementation of its public function aimed at the speedy resolution of the criminal law conflict in reasonable forms. On the other hand, the proposed model also contributes to the implementation of the dispositive principle of the adversarial principle, since the parties have the right, but are not obliged to initiate a conciliation procedure and independently make a decision on it. The authorization of this procedure by the court is aimed both at ensuring the rights and legitimate interests of all participants in the process, and at maintaining a balance of private and public interests.

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