

# The development of the ideas of “electronic court” and “electronic mediation” in Russian and foreign law

## Irina Vorontsova

Doctor of Legal Sciences, Professor of the Department of Civil Procedure Law of the Kazan Branch of the Russian State University of Justice, Professor of the Department of Civil Procedure of the Saratov State Law Academy, Professor of the Department of Civil and Business Law of the V.G. Timiryasov Kazan Innovation University. ORCID: <https://orcid.org/0000-0001-7248-0419>

## Roza Sitdikova

Doctor of Law. Professor. Department of Business and Energy Law. Kazan Federal University. E-mail: [ms.rs575@gmail.com](mailto:ms.rs575@gmail.com). ORCID ID: 0000-0003-1715-2863.

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**Abstract:** This article focuses on the development and implementation of information technologies in courts of general jurisdiction. It compares the concept of “electronic court” in Russia and abroad and concludes with their different contents. Further, the article also focuses on using the “E-Court” system in Russia and “E-SUD” in Uzbekistan. This article analyzes the main problems hindering the development of mediation in Russia. In the future, mediation may become a key alternative to litigation because it saves time and money, maintains relations between the parties to a dispute, and makes a fair decision based on their sake. The development of mediation directly depends on the improvement of the legislative framework. Based on the identified issues, recommendations that will help to realize the potential of mediation have been proposed. The article aims to analyze the possibilities of developing electronic mediation and offers recommendations on the confidentiality of online mediation.

**Keywords:** E-court. E-justice. Digital technology. Information technology. Agency. Mediation. Electronic (online) mediation. Offline mediation.

**Summary:** **1** Introduction – **2** The concept of e-court: definition and practice – **3** The concept of online mediation and its implementation in Russia – **4** Online mediation in Russia: areas of use and benefits – **5** Countries experience on the use of online mediation – **6** Conclusion – References

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## 1 Introduction

Digitalization of the Russian judicial system as an indivisible information space and the development of information technologies in the Russian civil process was carried out in several stages:

- 1) Federal Target Program “Development of the Judicial System of Russia” for 2002-2006;

- 2) the Federal Target Program “Development of the Judicial System of Russia” for 2007-20011; and, finally,
- 3) the currently being implemented Federal Target Program “Development of the Judicial System of Russia for 2013-2024”.<sup>1</sup>

It is worth pointing out that at each stage, the aims and objectives of the programs were defined and, accordingly, achieved impressive results. The implementation of the last program in the courts of general jurisdiction involves, among other things, the development of information technologies through the implementation of measures to further increase the openness, accessibility, and transparency of court activities through the use of video and audio recording systems of court proceedings, software, and hardware tools for digitization of documents and equipment, informatization of the judicial system as a whole and the introduction of modern information technologies in the activities of the judiciary. It should be noted that the above objectives have been achieved in many respects; however, modern justice, without waiting for the final results of the implemented program in its development, runs far ahead and before contemporary society and, first, before the lawyers pose new questions that meet the spirit of information progress.

Over the last few years, research scientists have been sharing their findings on the development of “e-justice” and “artificial intelligence” in the Russian Federation more and more often. The need for more understanding of the terminology has been noted for a long time.<sup>2</sup>

The elaboration of the concept of “e-justice” was a positive static in the concretization of the meaning of this concept. The definition of this term was first formulated for the first time in the Order of the Judicial Department under the Supreme Court of the Russian Federation dated 26.11.2015 No. 362. According to this order, electronic justice should be understood as a way and form of implementing procedural actions stipulated by law, based on the use of information technologies in the activities of courts, including the interaction of courts, individuals, and legal entities in electronic (digital) form. This order establishes a list of basic concepts and terms used in the regulatory legal acts of the Judicial Department governing the use of information and telecommunication technologies in the activities of courts, Judicial Department offices in the constituent entities of the Russian Federation and Judicial Department institutions, and discloses their content.

<sup>1</sup> Resolution of the Government of 27.12.2012 No. 1406, which approved Resolution of the Government of the Russian Federation of 27.12.2012 No. 1406 (ed. 25.12.2014) “On the federal target program “Development of the judicial system of Russia for 2013 - 2020 years”.

<sup>2</sup> FERREIRA, D.B., GROMOVA, E.A. Hyperrealistic Jurisprudence: The Digital Age and the (Un)Certainty of Judge Analytics. *Int J Semiot Law* 36, 2261, 2023; SOLHCHI, M. A., & BAGHBANNO, F. Artificial Intelligence and Its Role in the Development of the Future of Arbitration, *International Journal of Law in Changing World*, 2(2), 56-76, 2023; FERREIRA, D.B., GROMOVA, E. & TITOVA, E.V. The Principle of a Trial Within a Reasonable Time and JustTech: Benefits and Risks. *Hum Rights Rev*, 25, 47, 2024.

Science also does not leave this issue unattended. Back in 2018, S.V. Vasilkova prepared and defended her dissertation on the topic “Electronic justice in the civilistic process”, where the author proposes that electronic justice should be understood as procedural activity established by law to administer justice in cases under its jurisdiction, in which remote (tele-) communication with the participants of the civilistic process and document less form of data transmission (information, documents, etc.) are carried out using information technologies (Internet, other telecommunication tools, etc.).<sup>3</sup> A certain scientific interest is also represented by the authors’ abstract for the degree of Candidate of Legal Sciences, Yu.A. Kondyurina on the topic “Principles of civilistic process in the system of electronic justice”, where the author offered her definition of electronic justice, under which she understands the application and use of information communication technologies in the civilistic process, allowing to perform procedural actions in electronic form and electronic support of judicial activity.<sup>4</sup> Further, the science of procedural law was offered a study that continues to develop the ideas of digitalization and which also cannot be left without attention. This is a study by Lukonina Yu.A. on the topic “Digital civilistic procedural form: theoretical and applied aspects”, in which the author goes further and makes a proposal on the need to allocate the digital form along with oral and written.<sup>5</sup>

The article aimed at analysis of the possibilities of developing electronic mediation, and offers recommendations on confidentiality of online mediation. To achieve mentioned goal the methods of comparative legal analysis, systemic approach as well as formal-juridical method were used to show the current developments of online mediation in the Russian Federation.

## 2 The concept of e-court: definition and practice

Generally, already since the beginning of the 21st century, the legal sphere of Russian and foreign states has been marked by the active penetration of such concepts as “digital technologies”; “electronic justice”; “electronic court”; “intellectual court”, “intellectual judicial system”; “digital judge”; “private online court”; “electronic mediation” and others.

According to the first, but rather bold assumptions, the “electronic court” is a court of the not-too-distant future. Currently, the electronic court with the official title “E-court” as a prerequisite for technological progress and revolution in law is developed by a group of professional lawyers and programmers (a joint project

<sup>3</sup> VASILKOVA, S.V. Electronic justice in civilistic process, 10, 2018.

<sup>4</sup> KONDYURINA, E.A. The principles of civilistic process in the system of electronic justice, 12, 2020.

<sup>5</sup> LUKONINA, YU.A. Digital civilistic procedural form: theoretical and applied aspects, 10, 2023.

of ELL Partnership and OmniCode). As stated on the official website,<sup>6</sup> E-Court is an intelligent system that, based on Russian law and court practice, asks you questions necessary to solve a court case and, based on your answers, considers the case and creates a professional, objective judicial act. Note that this software product should be perceived as a kind of experiment for a very limited range of cases (family disputes).

However, it is impossible to underestimate this system. Thus, successful active implementation and use of the E-SUD system has been recorded in Uzbekistan. As stated on the official website, in 2013 the Supreme Court of the Republic of Uzbekistan and the United Nations Development Program in Uzbekistan developed and launched the National Information System of Electronic Justice “E-SUD”.<sup>7</sup> The effectiveness of this electronic system can be judged by the following figures: in 2017, 442435 applications to the courts in civil cases were recorded through the mentioned e-justice system, which is estimated at 40% of all cases considered.

However, E-SUD in Uzbekistan is an information system that allows applicants to send their claims to civil courts electronically as well. This follows primarily from the objectives of the E-SUD information system, which are presented on the official website of the national information system of electronic court proceedings “E-SUD” in Uzbekistan. These aims include: improving the efficiency of the functioning of civil courts through the introduction of modern information technologies; obtaining information on the activities of the courts; collecting, processing and storing information on the activities of the courts; providing interactive services in the judicial system; creating conditions for the realization of the constitutional right of citizens to appeal to the courts; ensuring openness and transparency in the activities of the courts; creating conditions for the widespread introduction of fair justice; eradicating bureaucracy; and providing information on the activities of the courts.

Registered users through this system, in addition to the possibility to apply to the courts in civil cases by filing an application or statement of claim, as well as the attached documents in electronic form, can receive information about the date and time of the court hearing; receive court summonses and documents in electronic form; familiarize themselves with the case materials.

Thus, the E-Court in Russia, which is labeled as an electronic court by its developers, and the E-SUD in Uzbekistan have completely different bases for use. There are also known examples of the use of e-court in other states.

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<sup>6</sup> Official website of Electronic court of Uzbekistan, [www.e-sud.ru](http://www.e-sud.ru).

<sup>7</sup> Official website of Electronic court of Uzbekistan, [www.v3.esud.uz](http://www.v3.esud.uz).

### 3 The concept of online mediation and its implementation in Russia

However, as the time flows, new tasks appear and new questions arise. For example, recently in Russia, serious attention has been paid to the problems of development of the mediation institute. The Federal Target Program of Economic Development of Russia until 2024 has fixed the idea of introducing mediation as one of the priority directions of modernization of the regional economy.<sup>8</sup>

Mediation is a process in which parties meet with a jointly elected, impartial, neutral mediator who helps them negotiate in order to reach a mutually acceptable viable solution in the face of different interests between them.<sup>9</sup> Mediation issues are being researched both in Russia and abroad.<sup>10</sup>

At the present time, the problem of finding ways of effective civilized prevention and settlement of disputes arising between participants in civil law turnover is becoming more and more relevant.

The emergence and spread of a new institution in Russia is designed to fulfill a number of functions with the assistance of independent persons - mediators. They determine the conditions, causes, and subject of the dispute, analyze the strong and weak positions of the disputing parties. They also help to find a balance of interests and work on the basis of the voluntary consent of the parties involved to reach a mutually acceptable solution. In addition, mediators stimulate a change in the behavior of the parties in a conflict situation.<sup>11</sup>

Moreover, scientists nowadays see mediation as having a broader purpose. Mediation can be an integral part of a complex of consulting services to business, aimed at solving actual problems of the enterprise. Also, it seems that the mediator can offer the best course of action, help to develop and implement anti-crisis measures, find alternative and non-standard ways out of the situation.<sup>12</sup>

<sup>8</sup> Decree of the President of the Russian Federation of 07.05.2018 No. 204 (ed. of 19.07.2018) "On national aims and strategic objectives of the development of the Russian Federation for the period up to 2024" // Collection of Legislation of the Russian Federation, 14.05.2018, No. 20, Art. 2817.

<sup>9</sup> Federal Law of July 27, 2010, No. 193-ФЗ "On alternative dispute resolution procedure with the participation of a mediator (mediation procedure)" // Collection of Legislation of the Russian Federation. - 2010. - No. 31. - Art. 20.

<sup>10</sup> GALANTER, M., CAHILL, M. «Most cases settle»: Judicial promotion and regulation of settlement, Stanford law review. Stanford, 6, 1353, 1994; ZAITSEVA, L., RACHEVA, S. Mediation and Legal Assistance, Russian Law Journal, 2, 2. P. 145, 2014; GALIAKBAROVA, G., SAIMOVA Sh. Mediation of labour disputes in Kazakhstan in comparative context. Russian Law Journal, 4, 2, 96, 2020.

<sup>11</sup> SUDORGINA, E.V. Mediation in civil and arbitration proceedings, Issues of Russian and international law, 8, 10A, 40, 2024.

<sup>12</sup> PAVLOVSKIY, A. Mediation in Russia. Why do disputing parties so rarely resort to mediation before they go to court? [https://zakon.ru/blog/2020/11/09/mediaciya\\_v\\_rossii\\_pochemu\\_do\\_obrascheniya\\_sporyaschih\\_storon\\_v\\_sud\\_oni\\_tak\\_redko\\_pribegayut\\_k\\_proce?ysclid=ludpkn3lwl606055137](https://zakon.ru/blog/2020/11/09/mediaciya_v_rossii_pochemu_do_obrascheniya_sporyaschih_storon_v_sud_oni_tak_redko_pribegayut_k_proce?ysclid=ludpkn3lwl606055137).

The advantage of the procedure under consideration is its fast speed of conflict resolution, which is due to the absence of the need to collect evidence, call witnesses, conduct an expert examination, etc. In the mediation process, there are no third parties who may or may not make independent claims. All parties to a disputable legal relationship have the opportunity to participate in dispute resolution through mediation as full and equal participants in the negotiation process. In this case, the mediator is not a party to the conflict, but acts as a conciliator helping the parties to make a decision independently and by agreement.

In the context of the COVID-19 global pandemic, almost all spheres were experiencing digital transformation: there was a transition to the online space. The effectiveness of the use of mediation, negotiation, judicial reconciliation procedures should also be achieved through the use of modern information and communication technologies. The need to use digital technologies in mediation is primarily due to the necessity to organize interaction between mediators and consumers of this procedure.

The adoption of Federal Law No. 193-ФЗ dated July 27, 2010 “On alternative dispute resolution procedure with the participation of a mediator (mediation procedure)” opened wide opportunities for the use of mediation settlement in pre-trial proceedings. However, the realization of these opportunities is far from satisfactory and is not so implemented in Russian society as envisaged by the Federal Law and the potential of mediation practices themselves.

One of the priority objectives of the information policy of the judicial system in 2020-2030 is the creation of a unified information space as a set of information interaction between courts at all levels, judicial community bodies and the Judicial Department system. Increasing the level of knowledge about justice should be achieved through: dissemination of information and educational materials (“Electronic Justice”, “Civil rights in court”, “I am a jury”, etc.).

## 4 Online mediation in Russia: areas of use and benefits

Developing these directions, it is impossible not to touch upon conciliation procedures, namely the need to create departments of informatization on mediation, negotiations and judicial conciliation, which would contribute to the formation of legal awareness of citizens about these procedures, which in turn can lead to the relief of judges and the court apparatus.<sup>13</sup> That is why it seems appropriate to involve in the information and education program to ensure the appearance of educational material “Conciliation Procedures”.

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<sup>13</sup> Mediation and Law Center, <https://mediacia.com/>.

The emergence of these electronic services will make it possible to improve the functions of online services again, for example, by introducing programs for notification of mediation participants, which will significantly reduce the costs of notifying the parties.

Mediation can be applied to disputes arising from civil, family and labor relations, as well as to most categories of cases arising from administrative and other public legal relations. This is also an important novelty of expanding the scope of application of conciliation procedures. The conciliation procedure may be conducted at any stage of the process at the request of a party or at the suggestion of the court with the consent of the parties.

It should be noted that it is possible to settle a dispute by conducting mediation by indicating this in a written commitment with reference to the agreement on its conduct to be concluded subsequently, as well as if the parties have undertaken not to go to court within a specified period of time.

According to Paragraph 1 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of June 22, 2021, No. 18 "On some issues of pre-trial settlement of disputes considered in civil and arbitration proceedings"<sup>14</sup> in such cases, mediation becomes a mandatory pre-trial settlement of the dispute (Paragraph 1 of Article 4 of the Law on Mediation).

The observation of the pre-trial procedure can be achieved by sending the party's appeal to the e-mail address, as well as on social networks (Paragraph 13 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of June 22, 2021, No. 18).

Currently, the advantages of online mediation are:

- 1) there is no need to postpone the attempt to resolve the dispute, as the mediation procedure can be realized despite the current restrictions and social distancing;
- 2) during the dispute resolution, the parties can be in any place, thus reducing tension by being in a familiar environment;
- 3) there is no need to travel to the mediator's office, or to the court, or to rent a room for negotiations, thus providing economic benefits to the disputants.

The new rules of conciliation procedures are aimed at creating an effective procedural and legal regulation of conciliation, popularization of conciliation procedures, their more effective use in practice and, as a result, reducing the judicial burden on judges.

<sup>14</sup> Resolution of the Plenum of the Supreme Court of the Russian Federation of June 22, 2021, No. 18, Moscow "On some issues of pre-trial settlement of disputes considered in the order of civil and arbitration court proceedings", Russian Newspaper. 2021. No. 144.

Online services on conciliation procedures can also become an effective platform for the implementation of the legislative initiative to improve access to mediation in electronic form, including in terms of conducting mediation with remote participants, which is why it is necessary to create a service “Conciliation procedures”.

Based on the above, it should be noted that the advantages of online mediation become obvious:

- 1) time;
- 2) absence of attendance problems (distance);
- 3) reduction of the parties’ expenses for participation in mediation;
- 4) lowering the level of emotional background.

Moreover, some researchers have already proposed recommendations for maintaining the confidentiality of online mediation. For example, they suggest: limiting access to meetings by using passwords and mandatory authentication; limiting the possibility of displaying the screen; being vigilant when clicking on links or opening sent documents; not showing anything unnecessary in the frame; making sure that there is nothing unnecessary on the screen before showing it to the participants; checking the settings; trying to follow the updates of the application.<sup>15</sup>

The demand for the institution of mediation in practice will increase. In order for mediation to be actively used, it is necessary to introduce not only voluntary procedures but also mandatory ones.<sup>16</sup>

## 5 Countries experience on the use of online mediation

Mediation is used by different states.<sup>17</sup> As the example, in Turkey, the Law on Labor Courts came into force on January 1, 2018, according to which the use of mediation became mandatory before filing a claim on labor disputes with the court.<sup>18</sup>

<sup>15</sup> ZHDAN-PUSHKINA, D. Online mediation: benefits, preparing for the hearing and ensuring confidentiality, [https://zakon.ru/blog/2022/09/27/onlajnmediaciya\\_preimuschestva\\_podgotovka\\_k\\_slushaniyu\\_i\\_obespechenie\\_konfidentialnosti](https://zakon.ru/blog/2022/09/27/onlajnmediaciya_preimuschestva_podgotovka_k_slushaniyu_i_obespechenie_konfidentialnosti).

<sup>16</sup> PRADO CALDERON, E.B., CAMPAÑA MUÑOZ, L.C., CHUICO PARDO J.P. Mediation in coercive jurisdiction processes, *Russian Law Journal*, Vol. 11. N 13s, 132, 2023.

<sup>17</sup> KUMAR, V. Supply chain dispute resolution through Alternative Dispute Resolution (ADR) mechanism (viz, arbitration, mediation, conciliation, and negotiation) in India, *Russian Law Journal*, 11. N 5s, 367, 2023; HALTALI, A. Mediation and reconciliation under the law, *Russian Law Journal*, Vol. 12. N 1, 235, 2024; AGRAWAL K. Justice dispensation through the Alternative Dispute Resolution System in India, *Russian Law Journal*, Vol. 2. N 2, 63, 2014; MEHNAZ, B., MMUHAMMAD Z., ATAUR, R. Alternative Dispute Resolution: a catalyst for rule of law, democracy, and socio-economic development in developing countries - a case study of Pakistan, *Russian Law Journal*, 11. N 3, 2062, 2023. (4) HAFIZ, U.G., BALQEES, A. An analytical study of intellectual property (IP)-related Alternative Disputes Resolution (ADR) laws and their implications, implementation in United States of America (USA) and Pakistan, *Russian Law Journal*, Vol. 12. N 1, 518, 2024.

<sup>18</sup> ALEKSEEVA, S.A. The voluntary and compulsory mediation: The Turkish experience, *Notary*, 7, 46, 2022.



In the United States, mediation is widely used in civil and commercial disputes. Mediators and arbitrators help the parties to agree on a resolution of the dispute, and decisions made as a result of conciliation can be binding.

In Germany, conciliation is also popular, especially in commercial disputes. Specialized arbitration courts exist there, where disputes are resolved in a more flexible and faster manner than in traditional courts. In addition, conciliation procedures must necessarily precede an application to the court for protection of one's violated right. When filing a lawsuit, the plaintiff must indicate the extrajudicial measures taken to settle the dispute and the reasons that did not lead the parties to a positive result. The judge may, depending on the conciliation procedures previously used, recommend that the conflict be resolved through another conciliation procedure and, if the parties agree to the proposal, suspend the proceedings.

Japan has introduced a system of alternative dispute resolution in consumer protection. An important part of this system is the "consumer dispute resolution commission", which helps resolve disputes between consumers and businesses.

In Belarus and Russia, conciliation procedures are also developing and are commonly used in civil and administrative cases. It is important to note that the practice of mediation can vary greatly even within one country, depending on the region and specific situation.

However, for all the advantages of the institution of mediation (online mediation), as well as taking into account the positive experience of other states, there are a number of problems in the Russian Federation that hinder its development. These include:

Firstly, citizens of our country are somewhat wary of such a method of conflict resolution as mediation, as they do not know or have not heard about such a procedure.

Insufficient awareness of citizens about the existence and essence of this procedure, the lack of advertising of the services of professional specialists, as well as the fact that in the Russian Federation there is no practice of mandatory mediation as a preliminary conflict resolution, as is the case, for example, in the United States, is an organizational obstacle to the popularization of mediation.<sup>19</sup>

The reduced level of legal and conflict resolution culture of citizens of the Russian Federation is a subjective factor that hampers the mediation process. For example, a low level of conflict culture in society leads to high tension and

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<sup>19</sup> PETRENKO, E.G., KLETS, A.O. The institute of modern mediation in foreign countries, Humanities, socio-economic and social sciences, 4, 150, 2022.

conflict in social relations. Also, the low level of conflict culture creates distrust in the mediator as a specialist who can help in conflict resolution and settlement.<sup>20</sup>

The solution to this problem is seen in the active educational work of public authorities at all levels, including local self-government bodies, the media, and mediators themselves.

Secondly, there are economic issues, which, in turn, also lead to the low popularity of the institution in question. These include the cost of professional mediators' services and the unwillingness of the parties to incur additional expenses.

Researchers attribute the high cost of mediation services to economic obstacles, the unwillingness of opponents to pay for conflict resolution, what the authors call "procedural and legal absenteeism of the parties," and the disinterest of judges in using mediation because it jeopardizes their income. However, on the other hand, the state is considering the idea of setting up negotiation rooms in court in order to facilitate the work of the courts and thus reduce their workload.

Thirdly, the problem of mediation development in the Russian Federation is also the lack of enforcement of a mediation agreement, which actually makes it a transaction and reduces the attractiveness of mediation for the parties to a conflict. In order to solve this problem, the best way is to legislate the instrument of enforcing the mediation agreement. This will increase the effectiveness of mediation and improve the situation.

Fourthly, one of the problems is the uncertainty of the scope of application of the law, in particular the question of which disputes can be dealt with through mediation.

Mediation procedures represent an important tool to reduce the burden on courts, speed up dispute resolution and improve access to justice. In the future, further development and dissemination of these procedures, both in Belarus and Russia, as well as in foreign countries, may contribute to a more efficient and fairer resolution of disputes worldwide.

## 6 Conclusion

Despite the existing problems in the development of conciliation procedures, it should nevertheless be noted that they are an effective way to resolve a civil-law dispute simultaneously with the methods realized in the form of judicial protection of violated rights. Their main advantage is that the parties are given the opportunity to independently settle disagreements between themselves, avoiding the assistance of a state body or a third party.

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<sup>20</sup> SHILOVSKAYA, A.L. The legal aspects of mediation in civil and criminal proceedings, Bulletin of the S.Yu. Witte Moscow University, 2, 49, 2023.

Moreover, based on the above, it should be concluded that electronic (online) mediation has a number of advantages over offline mediation.

Summarizing the above, it should be noted that there is a need to develop the following areas in mediation: modernization of the legal framework, clear explanation of the mediation procedure and adjustment of the Federal Law “On alternative dispute resolution procedure with the participation of a mediator (mediation procedure)”;<sup>21</sup> organization and improvement of training and professional development programs for mediators; the need to comply with the procedure for settling pre-trial disputes through a mediation agreement, development of “electronic” mediation; supplementing the mediation procedure with the use of electronic mediation; development of the “electronic” mediation procedure.

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Informação bibliográfica deste texto, conforme a NBR 6023:2018 da Associação Brasileira de Normas Técnicas (ABNT):

VORONTSOVA, Irina; SITDIKOVA, Roza. The development of the ideas of "electronic court" and "electronic mediation" in Russian and foreign law. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, Belo Horizonte, ano 06, n. 11, p. 183-194, jan./jun. 2024. DOI: 10.52028/rbadr.v6.i11.ART11.RU.

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