Legal Issues of the Role of the Notarius in Providing the Evidence Required In The Event Of a Case in Vessels or Administrative Authorities

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Abstract

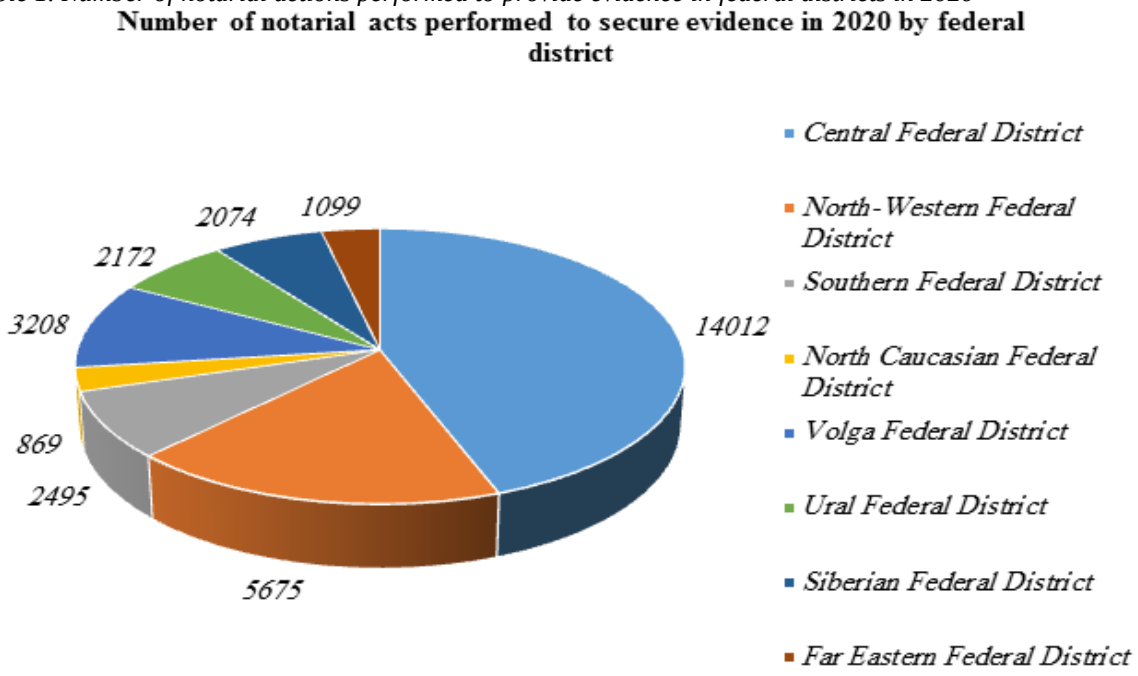
By referring to the compilations and legal books, it is clear that the civil liability of the notary public has not been taken into account and not only there are no independent compilations in this regard, but there is not even a chapter dedicated to this issue in the civil liability books. In the article, the authors studied the role of a notary in providing evidence necessary in the event of a case in courts or administrative bodies, including providing evidence based on information posted on the Internet. The statistical data presented in the article confirm the fact that such notarial action is popular among citizens and legal entities and it is impossible to belittle the role of a notary in solving this problem. The authors have established that today the notarial procedure for providing evidence is regulated by the Fundamentals of legislation on notaries and the norms of civil procedural legislation only in general terms, in connection with which gaps in the procedural regulation of providing evidence by a notary are revealed and notaries have a number of difficulties and problems in providing evidence by them. Thus, the article analyzes the position of the Federal Notary Chamber, according to which, in order to confirm the absence of relevant judicial or administrative proceedings, it is sufficient for the person who applied for the provision of certain evidence to submit a statement with the proviso that there are no cases in the proceedings of the court or administrative authorities, for the resolution of which it is necessary to submit evidence provided by a notary. Attention is also drawn to the fact that in case of reasonable doubts about the reliability of the information provided by the applicant about the absence of judicial disputes, the notary, if technically possible, could resort to using information from these automated information systems.

Keywords: Law, Legal study, notary, providing evidence, notarial action, performing notarial action remotely.

Introduction

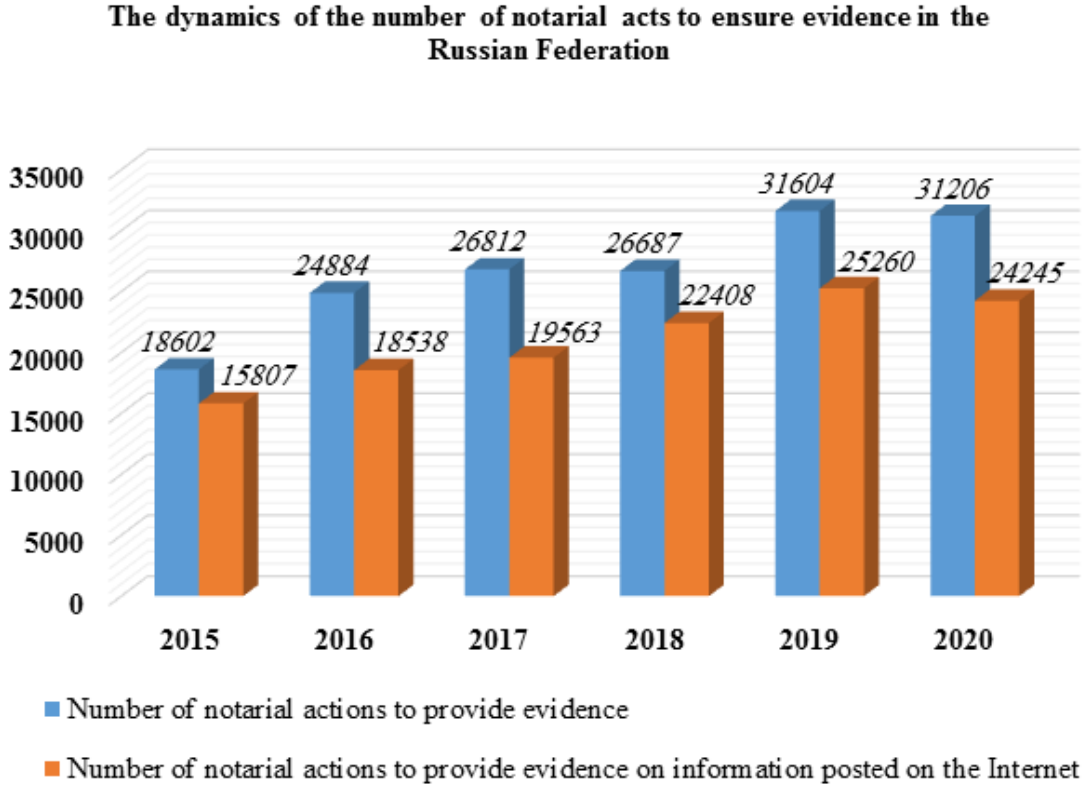
The job of the public accountant for the insurance of the freedoms of residents and lawful elements is developing from one year to another. This reality is affirmed by the way that the rundown of notarial acts performed by public accountants is growing from one year to another. In this manner, legal officials were accused of the commitment to perform such a notarial go about as confirming a legacy contract [1].
Likewise, the Essentials of the Regulation of the Russian League on Legal officials (hereinafter alluded to as the Fundamentals) [2] accommodate the chance of performing such a notarial go about as furnishing a public accountant with proof vital in case of a case in courts or managerial bodies, the ubiquity of which is affirmed by the information of the Service of Equity (Table 1).
In this way, in 2020, the absolute number of activities performed by public accountants of the Russian Alliance to give proof added up to 31,206. Simultaneously, close to half of such activities were committed in the Focal Government Locale, 1/6 section - in the North-Western Bureaucratic Region, the Volga Administrative Area possesses the third spot as far as the quantity of finished notarial activities to give proof.

Table 1. Number of notarial actions performed to provide evidence in federal districts in 2020



According to the Ministry of Justice of the Russian Federation [3], the number of persons applying for such a notarial act increases from year to year. The exception is 2020, which resulted in a slight decrease in the number of notarial actions to provide evidence, including information posted on the Internet, which experts explain by restrictions imposed in connection with the spread of coronavirus infection COVID-19 (Table 2).

Table 2. Dynamics of the number of notarial actions performed to provide evidence, including information posted on the Internet, in the Russian Federation



Thus, in 2014, the number of notarial actions to provide evidence in the Russian Federation as a whole amounted to 16,116, in 2015 – 18,602 actions (+15.4%), in 2016 - 24,884 actions (+33.8%), in 2017 – 26,812 actions (+7.7%), in 2018 – 26,687 actions (-0.5%), in 2019 – 31,604 actions (+18.4%), in 2020 – 31,206 actions

(-1.3%). In addition, the number of notarial actions to provide evidence for information posted on the Internet has also increased almost 2 times over the past 6 years. So, in 2014, their number was 13,948, in 2015 – 15,807 actions (+13.3%), in 2016 - 18,538 actions (+17.3%), in 2017 - 19,563 actions (+5.5%), in 2018 – 22,408 actions (+14.5%), in 2019 – 25,260 actions (+12.7%), in 2020 – 24,245 actions (-4%).

As follows from the statistical data contained on the official website of the Ministry of Justice of the Russian Federation, the number of notarial actions performed in the federal districts of the Russian Federation to provide evidence for the period from 2014 to 2019 has increased significantly (Table 3). For example, in the Russian Federation as a whole, the number of actions performed by notaries to provide evidence has increased by 70% over 6 years. In the Central Federal District, their number increased by 97.7% during this period; in the North-West – by 22.5%; in the South - by 2.5 times; in the North Caucasus Federal District - by 3.5 times; in the Volga Region - by 71.8%; Ural Federal District – by 15%; Siberian – by 53.6%; Far Eastern - by more than 2 times.

Table 3. Dynamics of the number of notarial actions performed to provide evidence in the Russian Federation and federal districts

	2015	**2016**	**2017**	**2018**	**2019**
Russian Federation	**18602**	**24884 (+33,8%)**	**26812 (+7,7%)**	**26687 (–0,5%)**	**31604 (+18,4%)**
Central Federal District	7089	10922 (+54,1%)	11751 (+7,6%)	11821 (+0,6%)	14012 (+18,5%)
North-Western Federal District	4632	6562 (+41,7%)	5529 (–15,7%)	4944 (–1,6%)	5676 (+14,8%)
Southern Federal District	944	1485 (+57,3%)	2044 (+37,6%)	2000 (–3,2%)	2495 (+24,8%)
North Caucasian Federal District	232	322 (+38,8%)	388 (+20,5%)	641 (+65,2%)	869 (+35,6%)
Volga Federal District	1867	2223 (+19,1%)	2453 (+10,3%)	2616 (+6,6%)	3208 (+22,6%)
Ural Federal District	1888	1170 (–37,9%)	1993 (+70,3%)	1972 (–1,1%)	2172 (+10,1%)
Siberian Federal District	1350	1612 (+19,4%)	1729 (+7,3%)	1980 (+14,5%)	2074 (+4,7%)
Far Eastern Federal District	509	588 (+15,5%)	925 (+57,3%)	713 (–22,9%)	1099 (+54,1%)

Methods

The basis for performing the specified notarial action is the appeal of interested persons to the notary with a request to provide the evidence necessary in the event of a case in court or an administrative body. The problem of the admissibility of such evidence remains controversial in the theory and law enforcement practice of Anglo-Saxon law. In particular, provisions on the admissibility of evidence based on hearsay testimony are quite common in the legislation of Hong Kong [4], Australia, England, Ireland, Canada, New Zealand, the USA and other states [5].

According to L. Dave, hearsay testimony is an oral or written statement of a person about a certain fact or event made outside the court session, submitted by a party to the case to the court in order to confirm the circumstances referred to by this party [6]. Until the beginning of the 20th century, such evidence was considered inadmissible in England, but also in Hong Kong, which until 1997 was considered an English colony [7].

Currently, under Hong Kong law, such evidence can be taken into account by the court if the party informs the court about the source and originator of the document and affidavit, about the relevance of the document to the subject of the trial, about the possibility of involving the applicant in the court session for the purpose of cross-examination [8].

The fundamentals provide that the notary does not provide evidence in a case that, at the time of the appeal of interested persons to the notary, is in the proceedings of a court or an administrative body. Accordingly, based on the literal meaning of these provisions of the Fundamentals, the absence of judicial proceedings or administrative production of evidence is the basis for refusing to perform the relevant notarial action.

It should be noted that the notarial act itself to provide evidence can be performed by a notary not only on the day of the person's request for its commission, but on any other day after such an appeal. In addition, it should be taken into account that the proceedings in the relevant case can be initiated both in the system of courts of general jurisdiction (federal courts and magistrates) and in the system of arbitration courts, as well as take place on the territory of another region. At the same time, a person who has applied to a notary for providing evidence, on the same day has the right to file a lawsuit or application to the court in order to protect his rights.

In this regard, it should be assumed that the absence of appropriate judicial or administrative proceedings on a certain date cannot be reliably established on the basis of any official documents.
Meanwhile, in order to solve the problem, the following circumstances must be taken into account.
The main purpose of notarial activity is to ensure the protection of the rights and legitimate interests of citizens and legal entities. The provision of evidence by a notary through an inspection of an information resource on the Internet is carried out in connection with specific facts of posting information of certain content on the Internet that violate the rights and legitimate interests of third parties (for example, posting information on the Internet that violates the exclusive right to the result of intellectual activity or contains information discrediting honor, dignity and business reputation [9]).
When examining a resource on the Internet, the notary records the fact of posting information on the Internet in order to subsequently protect the rights violated due to the publication of such information. It is important to take into account that the information posted on the Internet can be technologically deleted from the information resource at any time, which will lead to the irrevocable loss of the relevant evidence of violation of rights. Considering this, it seems that the inspection of information posted on an information resource on the Internet, in order to fix it as evidence of a violation of the right, is urgent.
According to the Federal Notary Chamber [10], in order to confirm the absence of relevant judicial or administrative proceedings, it is sufficient for the person who applied for the provision of certain evidence to submit a statement with the reservation that there are no cases in the proceedings of the court or administrative bodies, for the resolution of which it is necessary to submit evidence provided by a notary.
In addition, the official websites of the courts on the Internet contain up-to-date information on cases pending in the relevant courts, on the movement of cases, on court sessions, as well as judicial acts based on the results of the consideration of cases [11]. In case of reasonable doubts about the reliability of the information provided by the applicant about the absence of judicial disputes, the notary, if technically possible, could resort to using information from these automated information systems.
In order to provide evidence, the notary interrogates witnesses, inspects written and material evidence, and, if necessary, appoints an examination.

Results and Discussion

When performing procedural actions to provide evidence, the notary is guided by the relevant norms of the civil procedural legislation of the Russian Federation [12]. Accordingly, to date, the notarial procedure for providing evidence is regulated by the Fundamentals and norms of civil procedural legislation only in general terms, in connection with which gaps in the procedural regulation of providing evidence by a notary are revealed and notaries have a number of difficulties and problems when providing evidence with them.
The basics provide that the notary notifies the parties and interested parties about the time and place of providing evidence. At the same time, the Fundamentals allow for the commission of a notarial action to provide evidence without notifying interested parties in cases that do not tolerate delay, or when it is impossible to determine who will subsequently participate in the case.
It should be borne in mind that the applicant applies to a notary for providing evidence in order to protect his right, the violation of which he wishes to record as evidence in the manner prescribed by law.
Since the provision of evidence by a notary is carried out before the occurrence of a trial, there are no "parties" in the procedural sense of this term at the time of the notarial action. At the same time, persons who may presumably act as defendants or third parties in future court proceedings, as a rule, are not interested in providing a notary with evidence confirming the violation of the applicant's rights.
The information posted on the Internet is objectively expressed only in electronic form. By its nature, information on the Internet differs from written and physical evidence, since it can be destroyed by any person in the shortest possible time by deleting it from the Internet.
In our opinion, the notification by the notary of interested persons about the time and place of the inspection of an information resource on the Internet may lead to the loss of evidence, for which the applicant applied to the notary, as a result of which the applicant will lose the opportunity to prove in court the fact of violation of his right.

Summary

Government Regulation No. 480-FZ of December 27, 2019 [13] revised the Essentials, as per which, beginning from December 2020, legal officials will actually want to perform notarial activities from a distance, that is to say, without an individual appearance to the legal official of the individual who applied for notarial activities. Such an open door will be given exclusively in instances of giving proof as examination of data situated in the data and media communications organization "Web". For this situation, the public accountant, as well as undeniably intrigued people, should be directed by the arrangements of Article 44.3 of the Essentials, which will likewise go into force just toward the finish of 2020:

1)the candidate or his delegate ships off the Government Legal official Chamber through the brought together data arrangement of the public accountant, including utilizing the bound together entryway of state and civil administrations, an application for playing out a notarial activity from a distance, endorsed with an upgraded qualified electronic mark of the candidate or his delegate as per Bureaucratic Regulation No. 63-FZ of April 6, 2011 "On Electronic Mark" (hereinafter - the Law on Electronic Mark) [14], with the connection of reports laid out by the regulation of the Russian Organization in electronic structure;
2)The Government Legal official Chamber sends the got application for the presentation of a notarial activity from a distance and the electronic records joined to it to the public accountant who has proclaimed in programmed mode that he is prepared to play out the relating notarial activity from a distance;
3) a legal official who has pronounced his preparation to play out a notarial act checks through the bound together data arrangement of the public accountant and affirms that the predetermined electronic marks have a place with the significant people: (a) the candidate, (b) or the individual (people) from whom the electronic reports start, (c) or the legal official who has ensured the equality of the electronic record to a paper archive;
4)a legal official who has gotten an application for playing out a notarial act from a distance and the records joined to it in electronic structure, shows how much the expense charged for its bonus, considering the necessities of Article 22.1 of the Essentials, demonstrating the installment subtleties of the record for installment and promptly illuminates the candidate or his delegate through the bound together data arrangement of the public accountant about the receipt of the charge for playing out a notarial activity at the email address determined in the application for playing out a notarial activity from a distance, etc.;
5)The public accountant, no later than five working days from the date of receipt of the data affirming the installment of the notarial activity, sends in electronic structure to the candidate or his agent.

Conclusions

Thus, notarial legislation needs more detailed regulation of the procedure for securing evidence [15]. The notary public as a preventive justice body, whose activities are aimed at creating indisputably qualified evidence, should be more actively involved in the process of providing evidence, since the notary's activity in this area contributes not only to the prevention of judicial disputes, but also to the adoption of legal decisions by the court on the basis of indisputable evidence.

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Bibliography

[1] Sboeva, I.M., Gazizullina, L.Z. Legal Nature of the Contract of Succession as a Special Institute of Civil Law of the Russian Federation / I.M. Sboeva, L.Z. Gazizullina // Journal Of Politics And Law. – 2019. - № 5 (12)/ - PP. 151 - 155
[2] Fundamentals of the legislation of the Russian Federation on Notaries (approved by the Supreme Council of the Russian Federation No. 4462-1 on 11.02.1993) // Bulletin of the Council of People's Deputies and the Supreme Council of the Russian Federation. - 11.03.1993. - No. 10. - Article 357.
[3] Official website of the Ministry of Justice of the Russian Federation: https://data.gov.ru/opendata/7707211418-sovernotardeystviy
[4] Law Reform Commission of Hong Kong Report on Hearsay Rule in Civil Proceedings (1996) P. 53. http://www.hkreform.gov.hk/en/docs/rhearsay-e.pdf
[5] Consultation Paper on Hearsay in Civil and Criminal Cases LRC (2010). P 100 – 107. http://www.lawreform.ie/ fileupload/Hearsayfull.pdf
[6] Dave Lau. Civil Procedure in Hong Kong: A Guide to the Main Principles. 2012 (2nd Ed.). P. 227.
[7] C. Tapper, Cross and Tapper on Evidence (Butterworths, 8th edition, 1995) P. 565.
[8] Michael Wilkinson, Eric TM Cheung and Christine N Booth, A Guide to Civil Procedure in Hong Kong (4th edn, LexisNexis 2011). P. 706
[9] Ruling of the Supreme Court of the Russian Federation dated 13.07.2018 No. 305-ES18-8911 in Case No. A40-130255/2017 "On the cassation review of Judicial acts in the Case of recovery of compensation for Violation of the Exclusive copyright to a character of a literary work, the costs of drawing up a notarial protocol of site inspection, the costs of paying the state fee".
[10] Letter of the Federal Notary Chamber dated 13.01.2012 No. 12/06-12 "On the provision of evidence by a notary" // Notary Bulletin. – №4. – 2012.
[11] Federal Law No. 262-FZ of 22.12.2008 "On ensuring access to information on the activities of courts in the Russian Federation" // Rossiyskaya Gazeta. – № 265. – 26.12.2008,
[12] Civil Procedure Code of the Russian Federation No. 138-FZ dated 14.11.2002 // Collection of Legislation Of the Russian Federation. - 18.11.2002. - No. 46. - Article 4532.
[13] Federal Law No. 480-FZ of December 27, 2019 "On Amendments to the Fundamentals of the

Legislation of the Russian Federation on Notaries and Certain Legislative Acts of the Russian Federation" // Collection Of Legislation of the Russian Federation. - 12/30/2019. - No. 2 (Part I). - Article 7798
[14] Federal Law No. 63-FZ of 06.04.2011 "On electronic signature" // Collection of Legislation of the Russian Federation. - 11.04.2011. - No.15. - Article 2036.
[15] Frick, O.V. providing evidence as one of the activities of a notary to certify indisputable facts / O.V.
[16] Frick // Bulletin of OmSU. Series. Right. 2012. No.4 (33). URL: https://cyberleninka.ru/article/n/obespechenie-
[17] Dokazatelstv-kak-odin-iz-vidov-deyatelnosti-notariusa-po-udostovereniyu-besspornyh-faktov (accessed:02.07.2021).