

Principles of notaries: comparative legal analysis of the legislation of the Russian Federation and foreign countries

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Abstract. The institution of notaries is one of the most important systems of the legal system of any state. Despite this importance, various legal systems treat notaries in different ways: starting from the Anglo-Saxon system (which includes the USA, Japan and some other countries), where the approach to this activity is absolutely free, ending with the Latin system (Germany, Russia), where the notary acts as a precautionary "justice". In the presented scientific work, the institute of notaries in Russia is analyzed, the basic principles are highlighted and a comparative analysis is carried out with the notarial legislation of other countries.

Keywords: notary; legal system; principles of notaries, comparative analysis.

Russian notaries differ from similar representatives from other countries. Many countries use the Latin (free) notary system. This system differs from the Russian one in that a notary who carries out his public activities, having previously received an opportunity from government authorities, carries out such activities as a person of the free profession.

But also, many scientists who have studied the development of notaries in Russia draw attention to the fact that the principles that apply to Latin notaries were also in the system of Russian notaries. For example, referring to the sources of pre-revolutionary notarial law, namely the provision of April 14, 1866, it can be established that it legitimized some of the basic principles of the Latin system:

- for the first time, professional lawyers appeared who performed public functions;
- represented the interests of the state;
- but at the same time, this phenomenon was controversial, since the status of a civil servant was determined.

In general, the notary in Russia today is designed to protect those rights of citizens that are provided for by the Constitution of the Russian Federation and other legal acts.

But despite the importance of notaries for the entire system of legislation of the Russian Federation, not a single legislative act provides for the very concept of this institution. Based on this circumstance, different scholars offer a different interpretation of the definition of a notary:

- notary is a system of special bodies;
- notaries are special notarial acts, etc.

The Federal Law "Fundamentals of the legislation of the Russian Federation on notaries" only lists the concepts of notaries and notarial acts, without disclosing them as such.

Also, like any system-forming institution in the system of domestic legislation, the notary assumes the following basic principles [1]:

- The principle of legality.

This principle assumes that every lawyer performing notarial activities must strictly obey all the regulatory legal acts of the Russian Federation.

- Protection of the interests of persons who applied for a notarial act.

This principle means that a notary is obliged to provide services to individuals and legal entities in order to exercise their legal rights, as well as protect their legitimate interests. Also, the notary is obliged to provide advice to such persons in order to prevent harm to third parties.

- Compliance with the secrecy of the performed notarial actions.

This principle is similar to advocate secrecy: the law obliges a notary to keep secret all information that was obtained from a person in the course of carrying out notarial activities. The subject that can exempt from the protection of secrets is the court of the Russian Federation, otherwise the law provides for legal liability for unauthorized disclosure of such secrets.

- Compliance with the national language.

This principle means that notarial proceedings are conducted only in the language that is enshrined in domestic legislation, as well as in the legislation of the republics that are part of the Russian Federation. Otherwise, an interpreter must be provided to a person who does not know this language.

- Independence.

This principle means that a notary, carrying out his direct activities, must be guided only by the current domestic legislation of the Russian Federation. The influence of any third parties on the exercise by the notary of his powers is excluded. This principle is also a guarantee for all notarial activities in the Russian Federation.

- Self-financing.

This principle means that all notarial activities should be carried out at the expense of the notary's funds. To implement the principle, the legislator has provided for special notary tariffs, reflected in the legislative framework of the Russian Federation.

- Dispositiveness.

This principle means that persons who are involved and interested in a certain legal outcome of the case have free and independent use of all funds belonging to them within the framework of notarial proceedings.

- Impartiality of a notary.

This principle intersects with the fundamental principles of the administration of justice, namely the equality of all participants before the law. In notarial activities, this means that a notary in the process of carrying out his activities is obliged to equally protect the rights of all participants in such legal relations. In other words, the notary's disinterest in any outcome of notarial proceedings should be ensured, only proceeding from the norms of legislation.

This principle characterizes the notary as one of the central systems that protect the legal rights of citizens. For this, the legislator has endowed with autonomy, independence and self-financing. But such conditions do not exist in all foreign progressive countries.

So, for example, in the USA there is another system of notaries [2]. One of the first differences that catches your eye in comparison with the notarial activity of the Russian Federation is that in the USA a notary does not have to be a qualified lawyer. Based on their notary public, a notary is a witness who enjoys a certain degree of trust.

Also, in the USA, due to their peculiarities of the legal system, each state determines its own legislation in relation to notaries. And in order to become a notary, you only need to reach the age of 18 and post a pledge. Unsurprisingly, the state of Florida has about 360,000 notaries, which equates to 1 notary for every 42 residents.

That is, such principles as the protection of the interests of individuals and the observance of notarial secrets in the United States do not exist due to the fact that a notary in America is just an honest citizen with a good reputation for fixing any oaths.

Interesting for analysis is the institution of notaries in France [3]. So, a French notary, together with his assistants, provide full support for the service: they themselves are obliged to collect all the client's documentation, draw up it, negotiate with other persons and register any transaction. In other words, a notary in France is a private organization that transforms a transaction into a legally authentic form.

In the Netherlands and Switzerland, notaries have a mixed model [4]. A notary is also a qualified lawyer who carries out specialized activities. But before starting such activities, the notary is obliged to make a contribution to the public insurance service, which is a state fee.

Also, in case of any errors on the part of the notary in the execution and work with documents, he is responsible in proportion to the property registered for him. That is, on the one hand, in this institution of the notary there is a state principle, but the responsibility is personal and with all property.

The notary system in Germany is, according to the author, sufficiently developed and meaningful for the challenges of today. This German institute has some advantage over both foreign colleagues and Russian ones:

- notary in Germany is an institution of preventive justice. This is explained by the fact that the signature of a notary in court proceedings has more evidentiary force than the signature of individuals.

- execution of documents certified by the signature of a notary can be carried out without judicial participation.

- notarial secrets can only be disclosed in court and only with the consent of all parties, and not only by a court demand.

- a high threshold for acquiring the status of a notary. In Germany, in order to become a notary, you must have all the requirements of a "judge". The status of a judge is the status of a notary [5].

In conclusion, I would like to say that the institution of notaries in Germany is one of the best in the world system. The powers that are vested in notaries, in conjunction with the requirements that are presented to candidates, form a strong apparatus that can both facilitate the work of some state authorities and improve the practical component of notarial activities. One of the most favorable outcomes for the Russian notary system is the "adoption of experience" from German colleagues and subsequent optimization for domestic notarial legislation. This fact will make notaries in the Russian Federation, if not better, then on a par with German notaries.

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