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**THE SPECIFICS OF LEGAL GUARANTEES FOR THE REALIZATION
OF THE RIGHTS OF CITIZENS AND ORGANIZATIONS
IN ADMINISTRATIVE PROCEDURES FOR NOTARIAL ACTS COMMISSION
BY LOCAL GOVERNMENT OFFICIALS AND CONSULAR OFFICIALS**

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Abstract. *This article presents a comparative analysis of two administrative procedures for the performance of notarial acts — by local government officials and consular officials. Conclusions are drawn about the scope of legal guarantees. The possibilities of realization of the constitutional rights of citizens through the performance of notarial acts are noted, which is achieved both by regulating the procedure for the performance of notarial acts and establishing additional mechanisms of control over the quality of actions performed by the Ministry of Justice of the Russian Federation and courts of general jurisdiction, and by extending a number of principles of notarial activity to the activities of local government officials. The author points out that such a statement is effectively provided that consular officials perform such qualified actions as certification of transactions, which presupposes high quality standards of notarial actions and public confidence in this, the only possible, way of performing notarial actions outside the borders of the Russian Federation. As a practice-oriented part of the study, normative legal acts of the current legislation of the Russian Federation are cited.*

Keywords: *Notary, Notarial System, notarial acts, legal guarantees, notarization*

The notarial system, as an institution designed to ensure the protection of the rights and legitimate interests of citizens and organizations through the committing of notarial acts on behalf of the Russian Federation, potentially covers every citizen and every organization. Accessibility of the notarial form of protection is ensured by the mandatory requirement for the number of personnel of notaries — at least

one position of notary in a notarial district¹. The establishment of the legislative minimum for the quantitative composition guarantees the qualitative maximum, based on the mandatory requirement for membership in the notarial chamber of the subject of the Russian Federation, in the territory of which the notary carries out notarial activities — with the aim of compliance with uniform professional standards throughout the territory of the Russian Federation. If there is a vacant position of a notary within a notarial district for a long time, due to the lack of economic feasibility in filling this position, there is a mechanism established to support the notarial system in sparsely populated and hard-to-reach areas by the bodies of notarial self-government (the Chamber of Notaries of the constituent entity of the Russian Federation and the Federal Chamber of Notaries).

All these normative regulators are designed to ensure the accessibility of notarial proceedings throughout the territory of the Russian Federation. At the same time, the vast territories of the Russian Federation with different logistical and transportation infrastructure and the need to commit notarial acts outside the Russian Federation put the issue of accessibility of the notarial form of rights protection on the agenda. The commission of notarial acts by local government officials and consular officials is a way to implement the system of legal guarantees of the rights of citizens and organizations that may have a need to commit a notarial act, which will be unavailable due to objective reasons — the absence of a notary in the locality, or the applicant's presence outside the Russian Federation.

As G. V. Kostikova notes, the difficulties of functioning and development of notarial system in hard-to-reach and sparsely populated areas are due to objective reasons — remoteness of settlements from municipal centers, poorly developed transport and communication infrastructure, low population density, as well as the transition of notarial system from public to private².

Based on the analysis of the legal characteristics of notarial acts committed by notaries and local government officials and consular officials, based on the level of legal guarantees provided, it is possible to distinguish two legal procedures applied in the commission of notarial acts:

- 1) administrative procedure for notarial acts committed by local government officials and consular officials;
- 2) notarial proceedings (notarial procedure for the committing of notarial acts), carried out by notaries engaged in private practice and public notaries.

¹ As of 2020, there are 2184 notary districts in the Russian Federation // Official website of the Ministry of Justice of the Russian Federation. URL: <https://data.gov.ru/opendata/7707211418-notarokrug>. Mode of access: free. Checked. 21.09.2021.

² See: *Kostikova G. V. Nekotorye aspekty soversheniya notarialnykh deystviy na territoriyakh, gde otsutstvuet notaries* [Some aspects of committing notarial acts in territories where there is no notaries] // *Notarius* [Notary]. 2020. No. 2. P. 11.

These legal procedures differ in their legal characteristics and the level of legal guarantees provided. On the one hand, the right to commit notarial acts is vested in a special subject with a volume of unique legal guarantees inherent only to this legal institution, on the other hand, the authority to perform notarial acts is granted by a public-law body, which commits a notarial act “incidentally”, additionally within the framework of administrative procedures.

In this regard, the administrative procedure for notarial acts committed by local government officials and consular officials is an extraordinary way of implementing the rights of citizens and organizations interested in committing a notarial act, and has a number of peculiarities in terms of the implementation of legal guarantees of the rights of citizens and organizations intending to commit notarial acts, but deprived of the opportunity to visit a special subject — the notary.

The administrative procedure for notarial acts committed by local government officials is “codified” at the level of the Order of the Ministry of Justice of Russia from 07.02.2020 No. 16 “On approval of the Instruction on the procedure for notarial acts committed by local government officials”¹ (hereinafter — Order No. 16). Initially, we would like to draw attention to the wording used to characterize the actions of local government officials within the administrative procedure: “notarized document” (Paragraph 20); “notarized document” (Paragraph 21); “signatures on which are notarized” (Paragraph 24); “person applying for a notarized action” (Paragraph 21). Terminologically at the level of a legislative act does not distinguish between the notarial procedure committed by notaries and the administrative procedure for the commission of notarial acts by local government officials. In our opinion, from the point of view of the system of legal guarantees, such terminological identity is inadmissible, as the notarial action as a result of notarial procedure has a different content in all its constituent parts, forming an interrelated system of elements.

The aim of the administrative procedure for the committing of notarial acts is reduced to the observance of the minimum possible volume of guarantees for the observance of the interests of the participants of notarial proceedings and for the realization of the legally defined task to ensure, in accordance with the Constitution of the Russian Federation, Constitutions (Charters) of the constituent entities of the Russian Federation, the Fundamentals, the protection of the rights and legitimate interests of citizens and legal entities by means of committing by **officials of local self-government bodies and consular officials** envisaged by the law.

¹ Order of the Ministry of Justice of Russia from 07.02.2020 No. 16 “On approval of the Instruction on the procedure for the committing of notarial acts by local government officials” // Official Internet portal of legal information of the Russian Federation. URL: <http://www.pravo.gov.ru>. Published: 12.02.2020.

It is possible to identify the following elements that form an interrelated system of elements of legal guarantees in the administrative procedure for the committing of notarial acts by officials of local self-government bodies.

First, it is the “extraordinariness of the administrative procedure”, which is expressed in the establishment of a legally defined list of grounds for which an appeal to a local government official is allowed.

In accordance with Article 1 of the Fundamentals, duplicated in Paragraph 2 of Order No. 16, the following officials are authorized¹ to commit notarial acts:

- 1) in a rural/ urban settlement which does not have a notary public — the chief executive of the local administrative body of the rural/ urban settlement and (or) an authorized official of the local administrative body of the rural/ urban settlement;
- 2) in a locality located on the inter-settlement territory and having no notary public — the chief executive of the local administrative body of the municipal area and/or an authorized official of the local administrative body of the municipal area;
- 3) in a populated locality located within the territory of a municipal district, urban district, which is not its administrative center, in which there is no notary, — an authorized official of the local administration of the municipal district, urban district, if such official, in accordance with his/her job description, performs official duties in this locality.

According to Paragraph 2 of the Order of the Ministry of Justice of Russia dated 30.12.2015 No. 324², officials of local self-government bodies listed in Article 1 of the Fundamentals have the right to perform notarial acts ex officio. By decision of the head of the local government, the committing of notarial acts may be entrusted to one or more local government officials. The body in which the local self-government official is employed, within ten working days from the date of filling the position and (or) from the date of adoption of the relevant act on the vesting of the right to commit notarial acts in the local self-government official, shall send to the territorial body of the Ministry of Justice of Russia a completed form, attaching to it: three specimen signatures of the chief executive of the local administrative body; three impressions of the seal of the settlement or municipal area bearing the State Emblem of the Russian Federation.

Secondly, limitation of the list of notarial acts to be committed (Article 37 of the Fundamentals) and establishment of legislative restriction of the range of potential

¹ We would like to emphasize once again the inaccuracies of legislative technique and the expediency of using the categories — “authority”, “authorized”.

² Order of the Ministry of Justice of Russia dated 30.12.2015, No. 324 “On approval of the procedure and form for recording information on heads of local administrative bodies of rural/ urban settlements and specially authorized officials of local self-government of rural/ urban settlements, heads of local administrative bodies of municipal areas and specially authorized officials of local self-government of municipal areas to execute notarial acts” // Rossiyskaya Gazeta. 2016. January 27, No. 15.

applicants, participants of the administrative procedure for the commission of notarial acts by local government officials.

Local government officials have the right to commit notarial acts only in respect of persons registered at the place of residence or place of stay of persons.

Restriction of the list of notarial acts to be performed is related to the need for high professional competence in a number of the most important socially significant notarial acts, which does not imply double standards due to the different level of professional training of local government officials in the committing of notarial acts. Recent legislative changes indicate a tendency to further restrict the list of notarial acts committed by local self-government bodies¹.

Thirdly, the extension of the content of the principles of notarial activity to the activities of local government officials in the committing of notarial acts. In the framework of the implementation of public powers, local government officials are guided by the basic principles (legality; voluntariness; unity; objectivity; publicity; openness), enshrined in federal legislation². At the same time, the implementation of notarial activity involves the use of the principles of notarial activity, and in case of their competition (publicity and confidentiality) — the committing of an action based on the priority of the principles of notarial activity.

We consider it necessary to highlight the following principles, which should emphasize the provision of the system of legal guarantees of the rights of citizens and organizations in the committing of notarial acts by officials of local self-government bodies:

— the principle of independence of the local government official (Paragraph 4 of Order No. 16). When committing notarial acts, local government officials shall be guided by the Constitution of the Russian Federation, Constitutions (Charters) of constituent entities of the Russian Federation, the Fundamentals, the Civil Code of the Russian Federation, other regulatory legal acts of the Russian Federation, regulatory legal acts of constituent entities of the Russian Federation adopted within the limits of their competence;

— the principle of impartiality of a local government official (Paragraph 7 of Order No. 16). Local government officials may not commit notarial acts in their

¹ Federal Law No. 226-ФЗ of 26.07.2019 "On amendments to the Fundamentals of Legislation of the Russian Federation on Notarial system and Article 16.1 of the Federal Law "On general principles of organization of local self-government in the Russian Federation" amended the edition of Article 37 of the Fundamentals" to exclude the possibility of certification by local government officials of wills and limited the possibility of certification of powers of attorney for the disposal of real estate // Collection of Legislation of the Russian Federation. 29.07.2019. No. 30. Art. 4128.

² Federal Law of 06.10.2003 No. 131-ФЗ "On general principles of organization of local self-government in the Russian Federation" // Collection of Legislation of the Russian Federation. 06.10.2003. No. 40. Art. 3822.

own name and on their own behalf, in the name and on behalf of their spouses, there and their close relatives;

— the principle of assistance in the exercise of rights (Paragraph 6 of Order No. 16). Local government officials are obliged to assist individuals and legal entities in exercising their rights and protecting their legal interests, to explain their rights and obligations, and to warn them of the consequences of notarial acts committed so that legal ignorance cannot be used to their detriment;

— the principle of confidentiality (Paragraph 5 of Order No. 16). Local government officials in the execution of their official duties, as well as persons working in a local government body, are prohibited from disclosing information, publicizing documents that became known to them in connection with the committing of notarial acts, including after the termination of their powers or dismissal, except as provided for by the Fundamentals.

Fourth, the establishment of additional control subjects designed to ensure the unity of quality standards for the provision of notarial services by local government officials. According to the Resolution of the Constitutional Court of the Russian Federation No. 15-II of 19.05.1998, the implementation of uniform quality standards of notarial activities is ensured by notarial self-governance bodies, on which the state assigns responsibility for ensuring the proper quality of notarial actions. Accordingly, the implementation of notarial actions within the framework of administrative procedures requires the definition of a single center of public responsibility and the possibility of participation of notarial self-government bodies in ensuring uniform quality standards.

R. T. Kulishova points out that the rule-making of the Ministry of Justice of Russia on notarial system issues is an objectively demanded attribute of the mechanism of administrative impact on notarial activities, the aim of which is to improve the administrative and legal regulation of existing legal relations aimed at their effective development and ensuring the consistency of social interests¹.

Based on the Order of the Ministry of Justice of Russia from 07.02.2020 No. 15², the territorial body, guided by the information on the presence of violation of legislation on notarial activities in the actions (inaction) of local government officials, conducts an inspection to prevent violation of the rights of citizens and

¹ *Kulishova R. T.* Pravovoy status Ministerstva yustitsii Rossiyskoy Federatsii kak subekta publichno-pravovogo regulirovaniya notarialnoy deyatel'nosti [The legal status of the Ministry of Justice of the Russian Federation as a subject of public-law regulation of notarial activity] // *Notarius [Notary]*. 2018. No. 8. Pp. 3–8.

² Order of the Ministry of Justice of Russia from 07.02.2020 No. 15 "On approval of the Procedure for conducting by territorial bodies of the Ministry of Justice of Russia of the verification of the execution of notarial acts by local government officials" // Official Internet portal of legal information of the Russian Federation. URL: <http://www.pravo.gov.ru>. Published: 12.02.2020.

organizations applying for notarial actions to local government officials, with the aim of organizing the work on notarial actions. The subject of an unscheduled inspection is: 1) compliance by local self-government bodies with the requirements of the Fundamentals when granting local self-government officials the right to commit notarial acts; 2) compliance by local self-government officials with the requirements of the Fundamentals on the range of persons for whom they have the right to commit notarial acts; 3) organization of work on committing notarial acts; 4) compliance by local self-government officials with the rules of notarial record keeping; 5) compliance by local self-government officials with the requirements of the Fundamentals on the range of persons for whom they have the right to commit notarial acts.

Based on the results of an unscheduled inspection, within three working days from the date of its completion, a certificate shall be prepared and signed by the official of the territorial body of the Ministry of Justice of Russia who conducted the unscheduled inspection.

Notarial self-governance bodies shall carry out verification of information on the certification or revocation of a power of attorney by a local self-governance body. The procedure for sending to the Chamber of the Notarial System of the Subject of the Russian Federation information on the certification or revocation of a power of attorney by a local government body is established by Order of the Ministry of Justice of Russia No. 14 of 07.02.2020¹. Having received information about the certification or revocation of a power of attorney, which are made by a local government official, information about them, by virtue of the Order of the Ministry of Justice of Russia from 30.09.2020 No. 225², is entered in the register of notarial acts by an authorized employee of the Chamber of the Notarial System within two working days from the date of their receipt. The Chamber of the Notarial System shall perform automated format and logical control of information on the certification or revocation of a power of attorney by a local government official, as well as verification of compliance of the electronic signature of the local government official with the requirements of the legislation, using the means of the Unified Information System “Notariat”. If the submitted information passed format-logical

¹ Order of the Ministry of Justice of Russia from 07.02.2020 No. 14 “On approval of the Procedure for sending to the notarial chamber of the subject of the Russian Federation information about the certification or revocation of the power of attorney by the local government, whose official certified the power of attorney” // Official Internet Portal of Legal Information of the Russian Federation. URL: <http://www.pravo.gov.ru>. Published: 12.02.2020.

² Order of the Ministry of Justice of Russia from 30.09.2020 No. 225 “On approval of the Procedure for maintaining the registers of the unified information system of the Notaries, entering information into them, including the procedure for correcting technical errors made in such registers” // Official Internet portal of legal information of the Russian Federation. URL: <http://www.pravo.gov.ru>. Published: 05.10.2020.

control and was registered in the register of notarial acts, the information shall be sent to the local government official.

Fifth, endowing the administrative procedure with the property of formalism. The analysis of qualitative characteristics of notarial procedure has allowed us to identify that, unlike other legal procedures, notarial procedures, by virtue of the implementation of the constitutional statements of Article 45 of the Constitution of the Russian Federation, are endowed with an additional volume of legal guarantees and represent a system of consecutive actions (algorithms) aimed at ensuring the realization of constitutional rights in an extrajudicial manner. This involves the establishment of normative regulation of administrative procedure for the performance of notarial acts by officials of local self-government bodies, taking into account the “special public legal status of the Notarial System”¹ and the consequences of the actions performed. In this regard, there are increased requirements to the regulations of the performed actions and their ordering by certain stages.

Initiation of administrative procedure in accordance with the principle of dispositiveness occurs on the basis of free expression of will of the parties. An official of a local government body shall establish the identity of a citizen or a representative of a legal entity who has applied for a notarial act and check the place of residence. At the stage of initiation of the administrative procedure, the applicant shall have a document confirming payment for the notarial action. For the performance of notarial acts for which the legislation of the Russian Federation provides for a mandatory notarial form, the state duty is paid at the rates established by Article 333.24 of the Tax Code of the Russian Federation (TC RF), while for the performance of notarial acts for which the legislation of the Russian Federation does not provide for a mandatory notarial form, the local government official charges a notarial tariff in the amount established in accordance with the requirements of Article 22.1 of the Basics. In this case, unlike notaries, the official realizes not the principle of self-financing of notarial activity, but the principle of reimbursement established by the Tax Code of the Russian Federation.

¹ Resolution of the Constitutional Court of the Russian Federation dated December 23, 1999, No. 18-П “On the case of verifying the constitutionality of certain provisions of Articles 1, 2, 4 and 6 of the Federal Law of January 4, 1999 “On the tariffs of insurance contributions to the Pension Fund of the Russian Federation, the Social Insurance Fund of the Russian Federation, the State Employment Fund of the Russian Federation and compulsory medical insurance funds for 1999” and Article 1 of the Federal Law of March 30, 1999 “On amendments and additions to the Federal Law “On tariffs of Insurance Contributions to the Pension Fund of the Russian Federation, the Fund social insurance of the Russian Federation, the State Employment Fund of the Russian Federation and compulsory medical insurance funds for 1998” in connection with complaints from citizens, public organizations of disabled people and requests from the courts” // Official website of the Constitutional Court of the Russian Federation. URL: <http://doc.ksrf.ru/decision/KSRFDecision30234.pdf>. Mode of access: free. Checked: 12/05/2019.

The bylaws list all possible documents on the basis of which the official shall carry out identity and capacity checks. Procedural rules for the execution of documents are specified separately. The content of notarized documents shall be read aloud to the person applying for a notarized act. Documents executed in a notarized manner shall be signed by the person applying for the notarized action in the presence of an official of the local self-government body performing the notarized action. At the request of the person applying for the notarial act, the official may perform the notarial act by producing the notarial document in electronic form.

Documents executed on paper shall not have erasures or additions, crossed out words or other unspecified corrections and may not be executed in pencil or with the help of dyes easily removed from the paper medium. The text of the notarized document shall be written clearly and distinctly, the amounts, numbers, and terms related to the content of the document shall be indicated at least once in words.

As a result of notarial acts, certificates shall be issued and certifying inscriptions shall be made on documents in accordance with the forms approved by the Order of the Ministry of Justice of Russia¹. At the same time, instead of the word “notary” the certificates and certifying inscriptions shall contain the full name of the position of the official, including the name of the local self-government body, as well as details of the order on granting powers to perform notarial acts, if notarial acts are not performed by the head of administration.

Sixth, establishment of the list of grounds for postponement and refusal to perform a notarial act and the procedure for appealing against a resolution on refusal to perform a notarial act.

As T. V. Yaroshenko points out, the list of grounds for refusal to perform a notarial act is closed, it should be followed by notaries in the performance of their professional duties, without going beyond the limits established by law. However, in the scientific literature this statement is criticized, finding its confirmation in practice².

The reasons for postponement of a notarial act by local government officials coincide in terms of reasons and terms with similar actions of notaries. Whereas the list of reasons for refusal to perform notarial acts is non-exhaustive and differs from the list of reasons for refusal of a notary to perform notarial acts. In accordance with Paragraph 27 of Order No. 16, local government officials shall refuse to perform a notarial act if: 1) the commission of such an action is contrary to the legislation of the Russian Federation; 2) the action is subject to commission by an official of

¹ Order of the Ministry of Justice of Russia from 30.09.2020 No. 226 “On approval of the forms of registers of registration of notarial actions, notarial certificates, certifying inscriptions on transactions and witnessed documents and the procedure for their execution” // Official Internet Portal of Legal Information of the Russian Federation. URL: <http://www.pravo.gov.ru>. Published: 05.10.2020.

² See, e.g.: Yaroshenko T. V. Otkaz v sovershenii notarialnykh deystviy: problemnye voprosy [Refusal to perform notarial acts: problematic issues] // Notarius [Notary]. 2020. No. 2. Pp. 18–21.

a local government body of another settlement, municipal, city district or municipal district (in relation to taking measures to protect inherited property) or a notary; 2) a request to perform a notarial act was applied by an incapacitated citizen, or a representative who does not have the necessary powers, a citizen who does not have registration at the place of residence or stay; 3) the power of attorney does not comply with the requirements of the legislation of the Russian Federation; 4) the documents submitted to perform a notarial act do not comply with the requirements of the legislation of the Russian Federation; 5) the facts stated in the documents submitted to perform a notarial act are not confirmed in the manner established by the legislation of the Russian Federation.

An official of local self-government bodies, at the request of a person who is denied a notarial act, shall, within ten days from the date of application for the notarial act, state the reasons for the refusal in writing and explain the procedure for its appeal. Appeal against a resolution on refusal to perform a notarial act shall be made in accordance with the general procedure established by Chapter 37 of the Civil Procedure Code of the Russian Federation within ten days from the date of commission or refusal to perform a notarial act to the district (city) court at the location of the person authorized to perform notarial acts.

Seventh, establishment of mechanisms of responsibility of local government officials. Despite the absence in Order No. 16 of mechanisms of compensation for damage caused by local government officials by analogy with the “three-stage” model of full compensation for damage caused by the actions of notaries, the state establishes mechanisms of liability of local government officials as one of the manifestations of guarantees of the rights of citizens and organizations that have applied for notarial acts.

As noted by I. E. Kabanova, the effective functioning of the institute of Notarial System is impossible without a system of measures ensuring the responsibility of participants of this type of legal relation. Property liability is a guarantee in the field of protection of rights, freedoms and legitimate interests of both individuals and legal entities¹. In case of damage caused to the person or property of a citizen, as well as damage caused to the property of a legal entity by a committed or imperfect notarial action, in accordance with Article 1064 of the Civil Code of the Russian Federation such damage shall be compensated in full by the person who caused the damage. If the damage was caused by unlawful actions of an official of a local self-government body, the relations of liability are built in accordance with Article 1069 of the Civil Code of the Russian Federation. According to Article 1069 of the Civil Code of the

¹ See: *Kabanova I. E.* Normativnye osnovy imushchestvennoy otvetstvennosti notariusov za prichinenie vreda pri osushchestvlenii imi publichnykh polnomochiy i dolzhnostnykh lits organov mestnogo samoupravleniya pri sovershenii imi notarialnykh deystviy [Normative bases of property liability of notaries for infliction of damage in the exercise of public powers and local government officials in the performance of notarial acts by them] // *Grazhdanskoe pravo* [Civil law]. 2018. No. 1. Pp. 40–42.

Russian Federation, damage caused to a citizen or a legal entity as a result of illegal actions and inaction of municipal bodies or their officials shall be compensated at the expense of the treasury of a municipal entity.

The court, considering the case, must establish the existence of guilt. If the guilt is expressed in the form of intent, the civil liability of the official of the local self-government body is incurred. If we draw an analogy with notaries and cases of bringing them to liability, it is possible to allow compensation of damage by a public entity. As follows from the data of Ingosstrakh insurance company, which compiled a summary of cases of indemnification of damage by entities that insured their professional liability, a mistake was made in the text of the notarial document: instead of the amount of 5.4 million the amount of 1.4 million was specified. The parties did not notice the mistake, the notary did not read the content aloud, and as a result, the parties signed the document¹. The notary became liable and reimbursed the party for 4 million in damages and court costs. This example may also occur in the practice of local government officials who perform notarial acts within the framework of “formalized” procedures.

As we see, the system of legal guarantees is provided, on the one hand, by imposing “restrictions” that do not allow extending the full potential of the notarial form to administrative procedures, on the other hand, by introducing additional mechanisms to ensure an appropriate level of protection of the rights of participants of administrative procedures for the performance of notarial acts.

The scope of legal guarantees in the administrative procedure for the performance of notarial acts by consular officials seems to be less developed in terms of normative consolidation, albeit at the subordinate level, of the possible actions of these subjects.

In accordance with Article 1 of the Consular Regulations of the Russian Federation², consular activity is carried out with the aim of protecting the rights and interests of the Russian Federation, the Russian Federation takes measures to ensure that citizens of the Russian Federation and Russian legal entities enjoy outside the Russian Federation the rights established by the Constitution of the Russian Federation, generally recognized principles and norms of international law, international treaties to which the Russian Federation and the host state are parties, and the legislation of the Russian Federation.

According to Article 13 of the Consular Regulations of the Russian Federation, a consular official is a citizen of the Russian Federation who holds a position of

¹ Notary's liability: insured and real // Official website of the Federal Notarial Chamber. URL: <https://notariat.ru/ru-ru/news/otvetstvennost-notariusa-zastrahovana-i-realna>. Mode of access: unlimited. Checked: 15.10.2020.

² Federal Law of 05.07.2010 No. 154-ФЗ “Consular Statute of the Russian Federation” // Collection of Legislation of the Russian Federation of 12.07.2010. No. 28. Art. 3554.

federal civil service in a consular office or consular section of a diplomatic mission of the Russian Federation and is authorized to perform consular functions. Consular functions are understood as the powers of consular institutions and consular departments of diplomatic missions of the Russian Federation to protect the rights and interests of the Russian Federation, citizens of the Russian Federation and Russian legal entities outside the Russian Federation. There are 13 consular functions in total, among which is the performance of notarial acts (Paragraph 7, Part 2 of Article 5 of the Consular Regulations of the Russian Federation).

Nowadays, the procedure of committing a notarial act by consular officials is regulated by one norm of the Consular Regulations of the Russian Federation and separate norms of Orders of the Ministry of Justice of the Russian Federation. Despite this, the administrative procedure for the commission of notarial acts by consular officials by virtue of the “specificity” of the action involves the presence of additional legal guarantees that form a system of interrelated elements. By analogy with the administrative procedure for the performance of notarial acts by officials of local self-government bodies, the following features can be emphasized:

First, the “extraordinary character of the administrative procedure” implies the possibility of appealing to an official of the consular institution in the presence of only exceptional legal facts. In accordance with Article 1 of the Basics, notarial acts on behalf of the Russian Federation in the territory of other states are performed by consular officials of the Russian Federation authorized to perform these acts. The granting of such powers to consular officials is conditioned by the identity of the task performed with the tasks performed by notarial bodies: protection of the rights and interests of citizens and legal entities entitled to enjoy outside the Russian Federation the rights established by the Constitution of the Russian Federation.

Unfortunately, despite the active use of the category of “territory of other states” in the legislative technique, there is no legislative definition of this term. In accordance with Article 67 of the Constitution of the Russian Federation, the territory of the Russian Federation includes the territories of its subjects, internal waters and territorial sea, airspace above them. The Tax Code of the Russian Federation concretizes the constitutional statements and defines that the term “territory of the Russian Federation” includes artificial islands, installations, and structures¹ over which the Russian Federation exercises jurisdiction in accordance with the legislation of the Russian Federation and the norms of international law².

¹ For example, if a person has a need to perform notarial acts at installations and facilities over which the Russian Federation has jurisdiction, even in the case of proximity of a foreign state, he may rely only on on-site notarial acts.

² See: Slovar terminov, ispolzuemykh v zakonodatelstve Rossiyskoy Federatsii [Glossary of terms used in the legislation of the Russian Federation]. — M.: Izdanie Gosudarstvennoy Dumy, 2014. P. 211.

Accordingly, if a person is outside the state border of the Russian Federation, we consider such a person to be in the territory of a foreign state, and only in this case this person has the need to perform a notarial act. The legal definition of a foreign state is given in Federal Law No. 297 “On the jurisdictional immunities of a foreign state and property of a foreign state in the Russian Federation”¹. In accordance with which a foreign state is understood as: a) a state other than the Russian Federation and its bodies of state power; b) constituent parts of a given foreign state (subjects of a foreign federal state or administrative-territorial formations of a foreign state) and their bodies to the extent that they are authorized to act with the aim of exercising the sovereign power of a given foreign state and act in this capacity.

Secondly, limitation of the list of notarial actions (Article 38 of the Basics, Article 26 of the Consular Regulations of the Russian Federation) of participants of the administrative procedure for the performance of notarial actions by consular officials. The extraordinary character of this procedure implies the exclusion from the possible notarial actions of those that require the provision to the participants of notarial legal relations of a complete system of interrelated elements that form legal guarantees of the rights of citizens and organizations. In this regard, for example, despite the possibility of certifying transactions, the possibility of certifying agreements on the alienation of immovable property located in the territory of the Russian Federation and transactions aimed at the alienation or pledge of a share or part of a share in the authorized capital of a limited liability company established in the territory of the Russian Federation is excluded.

Nowadays, a consular official has the right to perform the following notarial acts: 1) certify transactions (including contracts, wills, powers of attorney), except for contracts on the alienation of real estate located on the territory of the Russian Federation, and transactions aimed at alienation, or pledge of a share or part of a share in the authorized capital of a limited liability company created on the territory of the Russian Federation; 2) attest to the accuracy of copies of documents and extracts from them; 3) attest to the authenticity of the signature on documents; 4) attest to the accuracy of the translation of documents from one language to another; 5) certify the fact that the citizen is alive; 6) certify the fact that a citizen is in a certain place; 7) certify the identity of the citizen with the person depicted in the photograph; 8) certify the time of presentation of documents; 9) make maritime protests; 10) take measures to protect inherited property; 11) certify information about persons in cases provided for by the legislation of the Russian Federation;

¹ Federal Law of 03.11.2015 No. 297-ФЗ “On jurisdictional immunities of a foreign state and property of a foreign state in the Russian Federation” // Collection of Legislation of the Russian Federation. 09.11.2015. No. 45. Art. 6198.

12) certify the identity of the handwritten signature of a visually impaired person with a facsimile reproduction of his handwritten signature.

Unlike legislative restrictions on the powers of local government officials, the powers of consular officials remain unchanged¹ due to the lack of possible alternatives in performing notarial acts in the territory of other states.

Thirdly, the extension of the content of the principles of notarial activity to the activities of consular officials. As noted by N. A. Novikova, among the generally recognized principles of international law, on which, among other things, consular practice is based, the following can be named: the principle of sovereign equality of states, meaning full respect for the legal equality of different states; the principle of non-interference of one state in the internal affairs of another, meaning the impossibility of interfering in the internal competence of an independent sovereign state; the principle of reciprocity, meaning that the host country provides a certain legal regime to the consular officers of the sending state only on the condition that the sending state provides the same legal regime on its territory to the consular officers of the host state; the principle of retorsion, according to which one state has the right to take retaliatory actions to violations of the rights and freedoms of its consular officials on the territory of the receiving state; the principle of non-discrimination, which provides for the establishment on the territory of the host state for persons of one state exactly the same rights, advantages, and privileges as for persons of any third state². The implementation of notarial activity implies vesting consular officials with additional principles of notarial activity when realizing within the consular function of committing notarial acts. It is possible to identify the following principles, which should emphasize the provision of a system of legal guarantees of the rights of citizens and organizations in the performance of notarial acts by consular officials:

— the principle of confidentiality (Paragraph 2 of Article 26 of the Consular Regulations of the Russian Federation). The consular official performing notarial acts is obliged to observe the secrecy of notarial acts. A consular official guilty of

¹ The doctrine even attempts to justify new possible actions of consular officials, such as: providing free legal aid // See, for example: *Voronova O. N.* Rol i mesto notariusov, dolzhnostnykh lits organov mestnogo samoupravleniya i dolzhnostnykh lits konsulskikh uchrezhdeniy v sisteme okazaniya besplatnoy yuridicheskoy pomoshchi [The role and function of notaries, local government officials and consular officials in the free legal assistance system] // *Notarius [Notary]*. 2017. No. 4. Pp. 3–5; On the functioning of the institution of joint wills, see, for example: *Kostikova G. V.* Institut sovmestnogo zaveshchaniya v rossiyskom i zarubezhnom prave [Institute of conjoint will in Russian and foreign law] // *Notarius [Notary]*. 2019. No. 7. Pp. 27–29.

² See: *Novikova N. A.* Kommentariy k Federalnomu zakonu ot 05.07.2010 № 154-ФЗ “Konsulskiy ustav Rossiyskoy Federatsii” (postateynyy) [Commentary to the Federal Law of 05.07.2010 No. 154-ФЗ “Consular Statute of the Russian Federation” (article-by-article)] // *Spravochno-pravovaya sistema Konsultant Plyus [Consultant Plus legal reference system]*. 2011. 95 p.

disclosing the secrecy of notarial acts shall be liable in accordance with the legislation of the Russian Federation. In this case, it is a question of applying the statements of the Basics. Based on the statements of Article 5 of the Basics, it can be concluded that an official of a consular office is prohibited from disclosing information or documents which became known to him in connection with the performance of notarial acts, including after resignation or dismissal, except in cases provided for by the Basics. Based on the content of Article 17 of the Basics, the state is liable for the damage caused by the actions (inaction) of the consular official in accordance with Article 1069 of the Civil Code of the Russian Federation. S. A. Kirakosyan notes that the court may release the notary from the obligation to maintain secrecy if a criminal case is instituted against the notary in connection with the performance of a notarial act. The same obligation is imposed on a consular official (Paragraph 2 of Article 26 of the Consular Regulations of the Russian Federation)¹;

— the principle of impartiality of the official of the consular office (Paragraph 7 of Article 26 of the Consular Regulations of the Russian Federation). An official of a consular office may not perform notarial acts in his own name and on his own behalf, in the name and on behalf of his spouse, his, and relatives (parents, children, grandchildren).

Fourthly, the establishment of additional subjects of control designed to ensure uniformity of quality standards for the provision of notarial services by consular officials. Based on the Order of the Ministry of Justice of Russia dated 29.06.2015, No. 152², the consular office of the Russian Federation, where the official who certified the will or power of attorney works, sends information about the mentioned will or power of attorney through the Ministry of Foreign Affairs of the Russian Federation to the Federal Chamber of the Notarial System in the form of an electronic document signed with a qualified electronic signature. Information shall be sent by the Ministry of Foreign Affairs of the Russian Federation to the Federal Chamber of the Notarial System with the help of software and hardware means of guaranteed delivery ensuring protection of personal data contained in the information in accordance with the legislation of the Russian Federation in the field of personal data.

Having received the information, by virtue of Order of the Ministry of Justice of the Russian Federation No. 225 of 30.09.2020, the Federal Chamber of Notarial

¹ See: *Kirakosyan S.A. Problemy nasledovaniya po zaveshchaniyam, priravennym k notarialno udostoverennym* [Problems of inheritance under wills equivalent to notarized wills] // *Nasledstvennoe pravo* [Inheritance law]. 2017. No. 2. P. 20.

² Order of the Ministry of Justice of Russia of 29.06.2015, No. 152 "On approval of the Procedure for sending to the Federal Chamber of Notaries information on the certification or revocation of a will or power of attorney by a consular institution of the Russian Federation" // Official Internet Portal of Legal Information of the Russian Federation. URL: <http://www.pravo.gov.ru>. Published: 30.06.2015.

System shall automatically perform format-logical control of the information on the certification or revocation of a will or power of attorney submitted by the Ministry of Foreign Affairs of the Russian Federation, as well as verify the compliance of the electronic signature of the Ministry of Foreign Affairs of the Russian Federation with the requirements of the legislation of the Russian Federation regulating relations in the field of electronic signatures. The information submitted by the Ministry of Foreign Affairs of the Russian Federation shall be registered in the register of notarial actions if it has passed format and logical control.

O. V. Filippova, as well as a number of other authors¹, notes the importance of such information security and the possibility of information exchange².

Fifthly, giving the administrative procedure the property of formalism can be called conditional, as in the Consular Regulations of the Russian Federation there is only a wording determining that the consular official performs notarial acts in accordance with the legislation of the Russian Federation on Notarial System. Thus, formally, the specified subject should perform a notarial act within the framework of three mandatory stages, the specifics of which are not normatively regulated.

Sixthly, the list of reasons for postponement and refusal to perform a notarial act and the procedure for appealing a resolution of refusal to perform a notarial act seem to be less developed. Only one reason for postponing the case — the need to request additional information — has been identified. The procedure for issuing a ruling on refusal to perform a notarial act is not developed at all from the point of view of compliance with the terms and procedure for appealing against the refusal to act of an official of a consular office. There is a general wording, enshrined in Paragraph 3 of Article 16 of the Consular Regulations of the Russian Federation, which establishes that the actions (inaction) or decisions of consular officials can be appealed to the Head of the consular office, the head of the diplomatic mission of the Russian Federation in the host state and (or) to the federal executive body in charge of foreign affairs, or in court in accordance with the legislation of the Russian Federation. Paragraph 5 of Article 26 of the Consular Regulations of the Russian Federation establishes that a person who is denied a notarial act, at his request, must be set forth in writing the reasons for the refusal and explained the procedure for its appeal. This implies only a judicial procedure for appealing a notarial act performed, or the refusal to perform a notarial act of an official of a consular office in accordance with Chapter 37 of the Civil Procedure Code of the Russian Federation

¹ See, e.g.: *Yaroshenko T.V.* Primenenie informatsionnykh (elektronnykh) tekhnologiy v notarialnoy deyatel'nosti [Use of information (electronic) technologies in notarial activity] // *Notarius [Notary]*. 2020. No. 1. Pp. 38–41.

² See, e.g.: *Filippova O.V.* Informatsionnye tekhnologii v notarialnoy deyatel'nosti [Information technologies in notary activity] // *Zakon [Act]*. 2019. No. 7. Pp. 73–81.

in compliance with the general procedural terms of appeal to the court established for this category of cases.

T. V. Yaroshenko adheres to the same approach, noting that the Civil Procedure Code in the order of special proceedings provides for a judicial procedure for appealing not only the actions of notaries, local authorities, consular offices, but also persons who occasionally certify powers of attorney and wills¹.

Seventh, the establishment of mechanisms of responsibility of consular officials. Despite the absence in the Consular Regulations of the Russian Federation of mechanisms of compensation for damage caused by consular officials, the state establishes mechanisms of liability. By analogy with consular officials, if there is damage caused to the person or property of a citizen, as well as damage caused to the property of a legal entity, by a committed or imperfect notarial act, in accordance with Article 1064 of the Civil Code of the Russian Federation, such damage shall be compensated in full by the person who caused the damage. If the damage is caused by unlawful actions of a local government official, the liability relations are built in accordance with Article 1069 of the Civil Code of the Russian Federation. When compensating for damage caused by officials in the course of notarial acts, in accordance with the position of the constitutional review body², it should be taken into account that the statements of the Constitution of the Russian Federation and federal legislation guaranteeing everyone judicial protection of their rights and legitimate interests, as well as compensation for damage caused by illegal actions and decisions of state bodies and officials, do not imply the right of a citizen to independently determine the type and measure of responsibility of persons vested with public authority. Legal liability, if it goes beyond the restoration of relations violated by a wrongful act or compensation for the damage caused by this act, is a means of public-law response to offending behavior, in this regard, the type and measure of responsibility of the person who committed the offense should be determined on the basis of public-law interests, rather than the private interests of the victim.

A comparative analysis of two administrative procedures for the performance of notarial acts — by officials of local self-government bodies and officials of a consular institution — allows us to conclude that the scope of legal guarantees

¹ See: *Yaroshenko T.V.* *Primenenie informatsionnykh (elektronnykh) tekhnologiy v notarialnoy deyatel'nosti* [Use of information (electronic) technologies in notarial activity] // *Notarius* [Notary]. 2020. No. 1. P. 15.

² Resolution of the Constitutional Court of the Russian Federation of 08.12.2011, No. 1714-O-O "At the request of the Blagoveshchensk City Court of the Amur region on the constitutionality of Paragraph 3 of Part five of Article 12, Part three of Article 17 and Part one of Article 34 of the Fundamentals of Legislation of the Russian Federation on Notaries" // Official website of the Constitutional Court of the Russian Federation. URL: <http://doc.ksrf.ru/decision/> Mode of access: free. Checked: 05.12.2020.

is not homogeneous, and applicants within the framework of the procedure for the performance of notarial acts by officials of local self-government bodies have greater opportunities to realize their constitutional rights through the performance of notarial acts. This is achieved both by regulating the procedure of notarial acts and establishing additional mechanisms of control over the quality of actions performed by the Ministry of Justice of the Russian Federation and courts of general jurisdiction, and by extending a number of principles of notarial activity to the activities of local government officials. This is despite the fact that consular officials perform such qualified actions as certification of transactions, which implies high standards of quality of notarial actions and public confidence in this, the only possible way of performing notarial actions beyond the borders of the Russian Federation.

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