
The Importance of Substantive Law Norms for Legal Guarantee System Development

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Abstract

Modern notarial activity is regulated by a large number of legal regulators that have different industry affiliations. The norms of civil law are of dominant importance due to the special mission of the notaries which is “civil circulation stability creation.” In addition to the norms of the material branches of law, there are also special procedural norms - the norms of notarial law, aimed at a special procedural form development, an analogue of the “procedural form” in order to ensure the indisputable implementation of rights and legitimate interests of citizens and organizations both in the present and in the future.

Keywords: the system of legal guarantees; notarial activity; notarial law norms; intersectoral relations.

1. INTRODUCTION

There are no special monographic studies (Nuriev, 2007) devoted to the norms of notarial law, as well as there is no definition of notarial law norm. The norms regulating social relations related to notarial acts are mentioned cursorily in the works devoted to the study of certain aspects of notarial law. However, there is no consensus in these studies concerning the definition of norms related to the performance of notarial acts.

2. METHODS

The methodological basis of the study was the general provisions of civil procedural law and notarial law as humanities. The following methods of scientific knowledge were used in the study: intersectoral, dialectical, and sociological method.

3. RESULTS AND DISCUSSION

The domestic doctrine provides several approaches to the definition of special rules governing notarial activities. So, analyzing the norms regulating notarial activities, E.B. Tarbagaeva divides them into two groups. The first are the norms regulating the procedure for certain notarial act performance, however, as the author points out, these norms do not lose their main branch registration and are the norms of other branches of law. The second group is the norms that define the organization of the notary as a system of bodies that ensure the notarial protection of rights and legitimate interests. E.B. Tarbagaeva refers the second group of norms to the norms of notarial law on the subject and method (Tarbagaeva, 2006).

V.V. Yarkov considers it more justified to include both the organization of notaries and notarial proceedings in the subject of notarial law (i.e., understand the rules governing notarial activities), and the specifics of their implementation in conjunction with the implementation of civil, family and other law norms included in the scope of notarial activities, since the activities of participants in notarial proceedings are carried out with the active assistance of a notary and are under his control (Yarkov, 2017).

In our opinion, taking into account the theoretical heritage by F.N. Fatkullin (Fatkullin & Fatkullin, 2000), the following criteria characterizing the norms of notarial law can be distinguished. First, it is necessary to determine the specific subject of the legal norm regulatory impact. Having analyzed the existing points of view, we can conclude that nowadays there are two approaches to determine the subject of notarial law regulatory impact. According to the first approach, the norms of notarial law are understood as the norms regulating the organization of notarial bodies. According to the second approach, the norms of notarial law are both the norms regulating the organization of the notary bodies, and the norms regulating the rules of individual notarial act performance. In our opinion, the third approach is necessary, namely, the norms of notarial law should be defined as procedural legal norms, and only the indicated norms regulating the procedure for certain legal procedure performance by a notary provide a complete and holistic regulation of a complex branch of notarial law along with the norms of other branches of law. An example is the act of issuing a certificate of ownership concerning a share in the common property of the spouses, which is an act of exercising the rights of participants in family legal relations, entailing the transformation of the joint property of the spouses into a shared property (focused on achieving a specific legal result) through the performance of notarial actions by a notary. Thus, the subject of notarial law legal norm regulatory impact is the rules for notarial act performance within the framework of substantive legal procedures.

Secondly, the rule of law contains a certain system of rules of conduct, each of which has a specific addressee. Thus, the norms of notarial law have a well-defined addressee - a notary and the persons who have applied for notarial acts.

Thirdly, there should be an indication of legal norm purpose and subject composition. The purpose of the legal norms of notarial law is to protect the rights and legitimate interests of citizens and legal entities by notarial act performance.

Fourthly, the rule of law does not always come from state power and is an authoritative obligatory prescription of the state. As an example, we can cite the Professional Code of the Russian Federation Notaries, adopted by a resolution of Notary Chamber Representative Assembly of the Russian Federation Subjects. This Assembly provides both the duties of a notary and the measures of professional influence. Moreover, this code is mandatory for all notaries engaged in private practice during notarial act performance.

4. CONCLUSIONS

Thus, the norm of notarial law should be understood as procedural norms that establish the procedure to perform notarial actions established (sanctioned) by the state and (or) the notarial community bodies in order to protect the rights and legitimate interests of citizens and legal entities.

Moreover, based on this definition, we can single out a new additional system-forming feature of complex legal branches - the presence of own procedural legal norms. So, all researchers, studying complex branches, point to the presence of the main branches of law norms in these legal entities, however, along with the indicated norms, each complex branch must also have its own procedural legal norms that provide a targeted regulatory character for complex legal branches.

5. SUMMARY

With the revival of the Latin notary system in the Russian Federation, the system of notarial law norms acquires the character of a service system in relation to the system of civil law norms. The potential of notarial law norms starts to serve the needs of civil circulation once again and ensures the existence of a special procedural form. Thus, the study allowed us to identify a new additional system-forming feature of complex legal branches - the presence of own procedural legal norms (Valeev & Nuriev, 2019; Nuriev & Khodzhiev, 2015; Anas, 2018; Damir et al., 2018).

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