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PHILOSOPHICAL AND THEORETICAL ASPECTS OF COURT-NOTARY INTERACTION: CURRENT RELATIONSHIPS IN THE PROVISION OF EVIDENCE

Alexander BEGICHEV [1,2*] | Evgenia FROLOVA [1,3]

1 Peoples' Friendship University of Russia (RUDN University), Moscow, Russian Federation
2 Kutafin Moscow State Law University (MSAL), Moscow, Russian Federation
3 Far Eastern Federal University, Vladivostok, Russian Federation
* *Correspondence*
Alexander BEGICHEV, 6 Miklukho-Maklaya st., Moscow, 117198, Russian Federation
E-mail: begichev100@mail.ru

Abstract: The article examines the modern relationship between the interaction of the court and the notary when taking measures to ensure evidence. In particular, it is indicated that when providing evidence, these bodies are guided by the norms of civil procedural legislation and implement similar goals aimed at fixing factual circumstances of legal significance in a procedural form. It is emphasized that their competence touches, moreover, the notary, as it were, replaces the court in the implementation of interim measures. One of the tasks of the effective activity of the notary is to relieve the judicial system from the consideration of local and time-consuming issues, which are solved, as a rule, without the application of the principle of adversarial parties, including the provision of evidence on the Internet. Thus, the potential of unloading the court is excluded from its competence to solve problems that do not relate to the administration of justice.

Keywords: competence of the court, justice, notary, providing evidence, notarial procedure.

Introduction

The certification activity of the notary prevents the occurrence of disputes about the law, the resolution of which is attributed to the competence of the court. The notary certifies indisputable facts, which he can verify directly or on the basis of relevant documents. If there are no documents confirming a particular legal fact, then it can be established by the court in the framework of special proceedings.

The notary and the court are in close contact within the framework of the implementation of preliminary and subsequent control over the legality of civil turnover. For example, when performing a notarial action to provide evidence, a notary, like a court, is guided by the norms of civil procedural legislation. And in this area, their competence touches, moreover, the notary, as it were, replaces the court in the implementation of interim measures. There are also a number of other notarial actions that historically were the exclusive competence of the court, but over time were delegated to the notary for unloading the court (execution of executive inscriptions, certification of facts and mediation agreements).

Competence refers to the scope of authority of an authority or a person that is established by law, the implementation of which is their duty in the public interest. Both courts and notaries are

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engaged in human rights activities, which have a lot of similar features. However, their activities are traditionally divided into disputed jurisdiction - the resolution of disputes about law and undisputed jurisdiction - the certification and fixation of undisputed rights (Rozhkova et al., 2015, p. 36).

Currently, the issue of improving the procedure for optimizing the interaction of the notary and the court in matters of their overlapping competencies in such an important institution of civil procedure as the provision of evidence does not cease to be relevant. Of course, "the courts are the main, central in the totality of public authorities ensuring justice ... since the temporal factor in the judicial activity of judicial bodies cannot be underestimated in any case: after all, a vector of improving the justice mechanism is being formed here, ensuring justice, protecting the violated rights and legitimate interests of those whose justice has been destroyed and its restoration is necessary" (Kleandrov, 2022, p. 8). At the same time, it is worth understanding the function of the notary as an activity aimed at achieving similar goals, but in an indisputable jurisdiction. Thus, the legal implementation competence of the notary and the court has a similar goal-forming structure.

In law enforcement practice, there is an understanding that guarantees of almost any constitutional rights (the right to protection (The Constitution of the Russian Federation, 1993, Article 46), the right to receive qualified legal assistance (The Constitution of the Russian Federation, 1993, Article 48)) they are associated only with the judicial method of protection, which is not quite correct, since this judgment detracts from the role of other methods of both protection and realization of constitutional and other rights, freedoms and legitimate interests of citizens and legal entities (Degtyarev, 2006, p. 12). Therefore, it would be correct to include in the guarantees of these constitutional rights and the right to access a notary, as a guarantor of the stability of civil legal relations. This condition will facilitate the unloading of vessels in matters of undisputed jurisdiction. The activity of a notary carries a great social function of the state (Begichev, 2015, p. 26), contributing to the out-of-court settlement of disputes, since it is aimed at preventing conflicts, thanks to the pre-performed verification of all the terms of the contract before signing it in order to resolve problems that may arise in the future, and the use of alternative means of settling disputes through reconciliation and mediation (the issue of further regulation), as well as establishing facts of legal significance, and providing the evidence necessary for the lawful resolution of the dispute in the judicial process.

Methodology

The effective activity of a private (extra-budgetary) notary, which in Russia de facto fully implements the state policy on the legal protection of the rights and interests of citizens and legal entities by performing notarial actions, is aimed at implementing the following tasks:

1. Strengthening legal security when certifying transactions and fixing legal facts;
2. Formation of favorable conditions for the development of economic relations (Frolova & Rusakova, 2022, p. 66);
3. Complete exclusion of encumbrances on the state budget for the maintenance of notary offices, archive storage, remuneration of employees, the work of notary chambers, the introduction of new forms of interdepartmental interaction, the functioning of information systems, etc.
4. Unloading the judicial system from the consideration of controversial issues.

According to Article 103 of the Fundamentals of the Legislation of the Russian Federation on the notary, the provision of evidence is carried out by a notary according to the rules of civil procedural legislation. Thus, only the appeal to one category of actions performed by the court – the provision of evidence, allows us to state the existence and binding relationship of institutions such as the court and the notary. Moreover, this is due not only to the needs of judicial practice, but also to the direct indication of the law (Mizintsev, 2012, p. 41).

The procedural features of the consideration and resolution of issues related to the provision of evidence are dictated precisely by the absence of a dispute about the law in them and, consequently, parties with opposing legal interests in the case. These circumstances in cases of undisputed proceedings were pointed out by V. K. Puchinsky (2022, p. 46).

However, it is worth noting that the modern

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interpretation of Article 102 of the Fundamentals of the legislation of the Russian Federation on the notary allows the applicant to apply for evidence at any time – both pre-trial and during the consideration of the case in court. The judicial procedure for securing evidence also allows the applicant to choose the time to file the relevant petition. At the same time, these two methods are not opposed to each other and are considered as equal. To be more precise, the notarial procedure for providing evidence complements the judicial one and currently prevails due to objective reasons due to the elementary accessibility of notary offices.

If there are a number of restrictions for the pre-trial procedure (according to the Arbitration Procedure Code of the Russian Federation, after interim measures, the applicant must file a lawsuit in court within 15 days, otherwise the interim measures are automatically removed), then out of court, by contacting a notary, interim measures are retained indefinitely.

As for the judicial procedure for fixing them, in fact, the adversarial process is not carried out, the judge only examines and fixes the evidence in a procedural form on the basis of the application received by the court. In this case, as Mikhailova E. V. (2022) notes, it is difficult to attribute the activities of the court to justice (p. 40).

And here we come to the key issue: the potential of unloading the court is in withdrawal from its competence to resolve issues that do not relate to the administration of justice! Since in these matters, as mentioned above, the notary is precisely the very human rights body capable of resolving legal cases in an undisputed jurisdiction. The key point in evidence cases is the absence of adversarial parties.

Of course, not all types of evidence support are carried out without elements of a procedural contest (for example, interrogation of a witness), but most of them. In particular, those of them in which the notary can record the evidentiary value of already existing facts, for example, located on the Internet, by examining the monitor screen of Internet pages without giving them a legal assessment.

The law enforcement practice of notaries poses an important problem, so that when considering issues of expanding the competence of the notary, the Regulations for Notaries to Perform Notarial Actions, which establish the amount of information necessary for a notary to perform notarial actions and the method of recording it, prescribe the necessary procedural aspects of the notarial action performed to provide evidence.

Considering the issue of expanding the competence of notaries, it is worth noting that the key changes in the competence of notaries occur in the digital sphere. The notary is actively integrated into the digital environment by performing certain actions remotely and remotely (The Fundamentals of the Legislation of the Russian Federation on the Notary, 1993, Article 44.2). In connection with the development of the "digital notary" in the competence of the notary, a new format for securing evidence without a personal appearance to the notary has appeared, which has been positively received in society. According to art. 44.2 Fundamentals of the legislation of the Russian Federation on the notary to apply to the notary for the implementation of the provision of evidence on the Internet is possible in a remote format.

Given the workload of the courts and the lack of technical ability to apply for the provision of evidence in a remote format, the notarial form of legal protection may become more in demand and gradually this method may displace the judicial procedure for providing electronic evidence.

It should be emphasized that the evidence provided by a notary, according to Article 61 of the CPC of the Russian Federation (2022) and Article 69 of the APC of the Russian Federation (2022), does not require additional proof at a court hearing. Thus, notaries provide citizens and legal entities with indisputable evidence to guarantee the protection of their rights and legitimate interests.

Main Study

According to its orientation, the action to provide evidence is carried out in order to certify a legal fact by recording information of evidentiary value for civil proceedings, which determines the nature of the actions of the notary to perform this notarial action.

In 2022, notaries made over 37 thousand proofs, 70% of them are the recording of information on the Internet (*Information about the notary of the Russian Federation for 2022*, 2022); over the past 10 years, the number has

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increased by 2 times. The practice developed by notaries, overwhelmingly happens, is positively perceived by the courts. It seems that on this issue there is a question of coordinated development of recommendations on the interaction of the court and the notary, one of the goals of which is to generalize the current practice and warn notaries from making all kinds of mistakes. As a result, such recommendations should help courts, notaries, as well as persons who apply to them for qualified legal assistance.

The notary's task in providing evidence is to assist courts and administrative bodies in carrying out their activities. This notarial action, on the one hand, saves time and effort of participants in civil legal relations, and on the other, relieves courts and administrative bodies from considering issues of an indisputable nature. For a long time of performing this notarial action, the notary has proved its effectiveness in solving the issues put before it. To date, notaries provide 500 times more evidence than courts of all levels. This speaks volumes, including (1) the need for such a form of protection of the rights of participants in civil turnover, and (2) the confidence of judges in this activity of notaries. In the practice of courts, there are definitions that oblige participants in the process to apply to a notary to provide evidence (indirect delegation of authority), both during the consideration of the case and in the pre-trial procedure.

In civil law relations, there are various and sometimes unpredictable situations in which a notary acts as the only impartial professional who has in his arsenal an effective legal tool for fixing the violated rights of the applicant (or, conversely, confirming compliance with the requirements of the legislation and/or the terms of the contract). There are also such problems when a notary cannot and does not have the right to replace a court in choosing the method and limits of recording evidentiary information due to a subjective attitude towards them. The notary's subjective opinion on the necessity and other conditions for the presentation of evidence cannot complicate the procedure for securing or lead to a refusal to perform a notarial action. Moreover, it seems that the procedure for securing evidence should be based on the principle of conflict-free and absolute trust in the actions of the notary as an impartial person.

With a wide range of procedural tools, the notary should choose those that:

1) contribute to avoiding the dispute;
2) lead to the commission of securing evidence with the least difficulty;
3) are understandable to all persons involved in the production of evidence.

Considering the problems of interaction between the court and the notary, it should be noted that the notary's functionality is narrower than that of the court. Thus, a notary has no right to provide other evidence other than those specified in Article 103 of the Fundamentals of the Legislation of the Russian Federation on the notary, for example, to view and describe video recordings, listen to and transcribe audio recordings. At the same time, there are reasons to believe that a limited list of types of evidence should not be taken literally. The opposite opinion has been repeatedly expressed in scientific discussions. Given that interested parties do not always have the technical ability to download audio and video files and then save them to the alienated machine media attached to the protocol, it seems that a huge layer of evidence will be lost, and the refusals of notaries to provide such evidence will cause reasonable misunderstanding and dissatisfaction of citizens and legal entities. Moreover, an arbitrary ban or restriction of a notary in procedural actions, without a direct indication in the law, is a direct connivance to violators of the law, in which the courts are not interested, including those performing a conciliatory function aimed at the triumph of the law. Courts almost always ignore such requests of applicants, and notarial protocols are accepted unhindered. Often, notarial protocols with transcription help resolve a conflict situation at the pre-trial stage.

It is important to note the following circumstance. Due to the absence of a direct reference to other types of evidence in this article, there is no direct prohibition on the possibility of examining audio and video recordings that are posted on the Internet, which is confirmed in judicial practice. So, in the resolution of the Federal Arbitration Court of the Moscow District dated 11.05.2010 No. KG-A40/3891-10 in case No. A40-897-51/08-51-773 it is stated that "a notary has the right to inspect audio and video recordings posted on the Internet, since there is no direct prohibition in the legislation on the possibility of such an inspection" (there are others, later, court decisions). Representatives of the judicial community

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of different levels have also pointed out this possibility both in private conversations and in public.

Consideration of the issue of inspection of the video recording, coupled with an inspection of the Internet site on which the video is posted, based on the needs of the applicant, can be carried out in two directions:

a. search for the desired video on the Internet, copy it and save it on an electronic media (CD-R, DVD-R, USB flash drive) attached to the protocol of inspection of evidence;
b. search for a record on the Internet, copy it, view and decrypt a video recording with frame-by-frame fixation of video information, save it on an electronic data carrier and attach it to the protocol of inspection of evidence.

Judicial and notarial practice tends to implement the first option of viewing video recordings on the Internet as the most preferable, including for reasons of material and time costs, but does not exclude both options.

In view of the uncertainty of this issue, notaries should refrain from direct inspection of audio and video recordings as an independent type of evidence support. At the same time, once again, we would like to note the need to expand the competence of a notary to provide evidence by "listening to an audio recording and watching a video recording", in parallel with this, it should be proposed to the subjects of legislative initiative to amend procedural laws, primarily the CPC of the Russian Federation (2002) (Article 64) and the APC of the Russian Federation (2002) (Article 72), having supplemented them with the following sentence: "The provision of evidence is also carried out by notaries in accordance with the procedure provided for by the legislation on notaries". Taking into account the development of new technologies in notarial activity, as well as the demand for this type of evidence, this will benefit not only the notary and applicants, but also the courts.

The next problem that should be paid attention to is the actions encountered in notarial practice for the inspection of written or material evidence by fixation associated with the fixation of the circumstances of the purchase of goods acting as evidence. In this case, attention is drawn to the fact that, as a general rule, a notary is not entitled to make a control purchase. This position is absolutely correct, but requires some explanation. Indeed, a notary should not independently carry out the formation of evidentiary information, since according to art. 47 Fundamentals of the legislation of the Russian Federation on the notary, he does not have the right to perform a notarial act in his own name and on his own behalf. Similarly, it should be pointed out that a notary, having registered in a social network group, does not have the right to provide evidence, since he enters the network on his own behalf. However, a notary, in order to give objectivity to the legitimate actions of the applicant when receiving written or material evidence (for example, correspondence at the post office; purchase of goods in a store, pharmacy; ordering goods in an online store), may be present at the specified actions of the applicant with the entry of these facts in the protocol. In the established long-term practice, this procedural fixation is very important for clients and, at the same time, did not cause legitimate complaints from the judicial authorities. In this regard, it seems that the legislation on the provision of evidence in a notarial procedure requires improvement by providing the notary with the opportunity to record the facts of the origin (if possible) of evidence.

Article 102 of the Fundamentals of the Legislation of the Russian Federation on the notary does not clearly regulate the form of the applicant's appeal to the notary with a request to provide evidence. At the same time, in paragraph 8 of the Regulations for Notaries to Perform notarial Actions, which establishes the amount of information necessary for a notary to perform notarial actions and the method of recording it (approved by the Order of the Ministry of Justice of the Russian Federation No. 156 dated 30.08.2017 (2017)), it is indicated that attesting the authenticity of the applicant's signature on the application for providing evidence is not required. It is proposed to supplement this paragraph with a provision that, at the request of the applicant, this application can be notarized (the authenticity of the signature is notarized), taking into account the circumstances of the inspection and to reduce tension during the inspection of evidence placed outside the notary office, and with the participation of many conflicting parties and participating persons.

It seems that this proposal requires a detailed explanation. When making an application, as an important procedural document, which is the on-

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ly basis for providing evidence, in a simple written form, not infrequently accusations were received from interested persons against notaries in "making an application retroactively" and interest on the applicant's side. Moreover, when carrying out an inspection outside the premises of a notary office (for example, construction sites, shops, pharmacies, warehouses, retail premises, etc.), interested persons require the notary to explain the reason for being in a particular place and provide justification for the inspection of evidence. Practice shows that a notarized statement removes any doubts about the actions of a notary and increases his prestige as a public person. It should also be borne in mind that if it is impossible to conduct an inspection, the applicant will have a notarized application and a corresponding act in his hands, which can also be submitted to the court in the future as independent and only evidence confirming certain facts (reasons for the failure of a notarial action), fixing, including illegal, actions of the other party or interested persons. As an option, the following text of the proposal is proposed: "However, if the applicant insists on a notarized application for securing evidence or this is dictated by the need to present it to the parties or interested persons for access to the place of inspection of written or material evidence, the notary should notarize the authenticity of the applicant's signature".

The issue of providing a copy of the application to the parties and interested parties remains open. Taking into account the provisions of Article 5 of the Fundamentals of the Legislation of the Russian Federation on Notaries ("Information (documents) on notarial actions performed can only be issued to applicants - persons who applied for these notarial actions"), it seems that copies (copy) of the application and information cannot be transferred to these persons, but at the same time the notary must familiarize them with the main the provisions of the statement.

In notarial practice, even at the stage of notifying interested persons and witnesses, problems may occur that lead to the inability to provide evidence. It seems that the degree of completeness of the information reflected in the notification depends on the circumstances of a particular action to provide evidence. It should be borne in mind that receiving a detailed notification may negatively affect the safety of evidence. In notarial practice, there was a case when sending a notice to a trading organization resulted in the destruction of several thousand labels violating the photographer's copyright in one day in all stores of a large retail chain located in the city. Without taking into account such circumstances, a notary may be accused of intentional actions that contribute to the destruction of evidence. Also, witnesses do not always agree to provide information about the upcoming interrogation to the participants of the trial in advance, referring to the fact that pressure is being exerted on them. Thus, the notary's duty follows from paragraph 4 of Article 103 of the Fundamentals of the legislation of the Russian Federation on the notary – "The notary notifies about the time and place of providing evidence ...", and all other information concerning the provision of evidence must be left to the discretion of the notary based on the circumstances of the case and taking into account the opinion (approval) of the applicant, with the sole the purpose is to preserve the evidence and the possibility of fixing it without compromising the quality for presenting it in its original form to the court.

The notary in matters of notification of the parties and interested parties may doubt their proper receipt. As a general rule, proper notification is considered such in accordance with the Civil Procedure Code of the Russian Federation, the Agro-Industrial Complex of the Russian Federation, the Federal Law "On Postal Communications" and other regulatory acts, taking into account judicial practice. In contentious issues related to the proper notification of the parties and interested parties, as well as in connection with requests received from them to postpone (postpone) or refuse to provide evidence, the applicant's opinion should be sought and the further procedure for providing evidence should be agreed with him. By the way, the basics of the legislation of the Russian Federation on the notary do not specify the reasons for non-appearance (valid or not), it does not matter. The notary's task is only to inform (notify) about the date and time of providing evidence to all interested participants. Often the parties or interested persons ask to postpone the procedure for securing on various grounds with reference to the norms of procedural legislation (CPC RF, APC RF). This point should be clarified: in the notarial procedure, the deposition is carried out according to

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the rules of the Fundamentals of the legislation of the Russian Federation on the notary (art. 41), while the initiative comes only from the notary. If the notary considers it possible to postpone the notarial action, he has the right to do so.

The provision of evidence without notifying one of the parties and interested parties is carried out only in cases that do not tolerate delay, or when it is impossible to determine who will subsequently participate in the case. At the same time, it is unacceptable to ignore the requirement of the law to notify the parties and interested parties on other grounds, for example, at the request of the applicant. The notary, guided by Article 16 of the Fundamentals of the Legislation of the Russian Federation on the notary, must in this case explain about the possible occurrence of adverse consequences – the destruction of evidence. If the applicant insists on notifying the parties and interested persons, the notary, before notifying them, must warn the applicant about the consequences of such actions.

Cases that do not tolerate delay, as a rule, include the provision of evidence on the Internet (site inspection), because the information posted there can be destroyed at any time. This is evidenced by numerous judicial practice. For example, the Intellectual Property Rights Court Ruling (2017) of March 29, 2017. No. C01-244/2017 in case No. A43-4569/2016 notes that, taking into account the specifics of the Internet and the possibility of promptly removing information from the site, for the fixation of which the person applied, the procedure for providing evidentiary information posted on the Internet, for objective reasons, should be carried out immediately in order to fix it immediately. Otherwise, if the notary notifies the interested persons (violator) of the time and place of providing such proof, this procedure will not be able to be implemented. Thus, the court provides a logical justification that the notification of the interested party may contribute to the destruction of information on the Internet, respectively, the actions of a notary who knows about such a potential possibility can be regarded as deliberate actions aimed at destroying evidence.

It is important to note that paragraph 22 of the Resolution of the Plenum of the Supreme Court of the Russian Federation (2017) No. 57 dated December 26, 2017 "On some issues of the application of legislation regulating the use of documents in electronic form in the activities of courts of general jurisdiction and arbitration courts" indicates that "evidence confirming the dissemination of certain information on the Internet, before the interested person the court may be provided by a notary. When assessing such evidence, the court has no right to declare inadmissible the evidence provided by a notary only on the basis that the notary did not notify the owner of the site or another person who allegedly posted information related to the subject of the dispute on the Internet (Article 67 of the Civil Procedure Code of the Russian Federation, Article 71 of the APC of the Russian Federation, Article 84 CAS RF)". This position of the Plenum requires careful study and literal interpretation, without distorting the meaning. It seems that the Plenum contains a recommendation to the notary to carry out actions to identify the owner of the site (for example, by tracing) or from the client's application, as well as to identify the person who posted the disputed information on the Internet; after which the notary must evaluate the information received taking into account all possible risks and circumstances of the case and then the notary should make a reasonable and a reasoned decision to summon or refrain from summoning these persons.

Notarial and judicial practice ambiguously refers to the issue of calling interested participants when examining e-mails (email). Some researchers believe that the examination of correspondence in an electronic mailbox on the Internet cannot be indisputably attributed to cases requiring urgent inspection, since, as a rule, interested persons do not have the opportunity to influence the contents of the mailbox or restrict access to it; the notary should evaluate the stated reasons for the urgent inspection. Others hold a slightly different point of view and consider this statement controversial, because it is not clear how a notary should assess these reasons. In notary practice, there have repeatedly been cases when correspondence in an electronic mailbox disappeared for unknown reasons, sometimes even on the way to the notary office. It is a well-known fact that the Internet itself is a vulnerable resource. Moreover, no one is immune from the illegal actions of hackers acting with both special and general (to harm everyone) intent. In modern conditions of geopolitical perturbations, this circumstance has become more than relevant.

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The same arguments should be given when discussing the following opinion that it is not necessary to notify interested parties also when examining messages on telecommunication devices, including smartphones, tablets transmitted via telephone or the Internet, if, due to the features of the software used, messages can be deleted by the sender or are automatically deleted after a certain period of time. This conclusion is unclear, as it leads to critical judgment and legitimate questions: how should a notary know the features of the software? A notary can take on an arbitrary risk of evaluating such features without a specialist? All disputable situations in this case should be covered by a general and understandable presumption about the unreliability of electronic evidence contained on electronic devices.

In notarial practice, it is not uncommon for a person involved in providing evidence to not speak Russian, and the notary also does not speak the necessary language to communicate with such a person, then an interpreter should be involved for such a person. It is important to clarify here that the presence and call, as well as the payment for the services of an interpreter, is carried out only by the applicant and at his expense. The notary also has the right to carry out these actions independently (Part 9 of art. 22 Fundamentals of the legislation of the Russian Federation on Notaries), having received the applicant's preliminary approval for these actions with the further obligation to pay all expenses incurred by the notary, which will contribute to the efficiency of the actions and convenience for the applicant. However, this does not exclude the possibility of a reason for accusing the notary of bias (interest), in connection with which the notary should use this procedural right carefully and as an exceptional measure, as a forced necessity. Approval can be recorded both in the application and in the record of recording information.

In accordance with the civil procedural legislation (for example, Article 167 of the CPC of the Russian Federation, 2022), a person participating in the case has the right to ask the court to consider his application to provide evidence and to inspect in his absence. Taking into account the fact that the rules on the notarial procedure for providing evidence in part of the procedure are blank, the question is natural whether this action is permissible on the part of the notary. It seems that this contradicts the Fundamentals of the Legislation of the Russian Federation on Notaries, since the applicant, like other persons summoned by a notary, must be present in person when performing a notarial act (see, in particular, Article 42 of the Fundamentals of the Legislation of the Russian Federation on Notaries, etc.). Without the personal participation of the applicant, only remote notarial actions can be performed (Article 44.3 of the Fundamentals of Legislation of the Russian Federation on the notary), including providing evidence on the Internet (Article 103 of the Fundamentals of the Legislation of the Russian Federation on the notary). In notarial practice, especially when examining evidence on the Internet, there are cases when various issues arise during the inspection regarding the need to fix certain evidence, which the notary, promptly considering, ensures the completeness of the inspection. It is almost impossible to predict the necessity and sufficiency of the examined evidence. There is no way to draw the applicant's attention to the erroneous algorithm of his actions or take into account other nuances, taking into account the circumstances of the case and the information that became known in connection with this examination. Actions or inaction of the notary without taking into account the applicant's opinion (including the alleged one, since he trusts the notary's professionalism) lead to the formation of distrust of the notary, on the part of the applicant and the court, and create the ground for a conflict situation.

It should be noted that the procedural actions carried out by the court and the notary on similar issues, which include the provision of evidence, have small differences related to the specifics of the activities of these bodies. So, in notarial practice, the question arises about the legality of inclusion in the protocol (resolution), information about explaining to interested persons (parties to the case) their rights to familiarize themselves with the protocol and submit comments on it. It seems that the implementation of this condition in the notarial procedure will be erroneous, due to a misunderstanding of its principle of indisputable justice. In the notarial process, unlike the judicial one, there is no adversarial nature. Consequently, comments cannot be considered by a notary according to the rules of the CPC of the Russian Federation and the APC of the Russian Federation, and there is no such action in the notarial procedure (here the following correspond-

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ing questions arise: the time limit for familiarization, bringing comments and considering them). Comments and petitions may relate directly to the examination, interrogation and appointment of expertise. These concepts should be distinguished. With this in mind, and also in order to avoid conflicts, it is not necessary to oblige a notary to follow this rule, and parties and interested parties should not be given the opportunity to familiarize themselves with the protocol and sign it. Here, too, there is a natural request from such a participant to require an instance of the protocol for himself. However, Article 5 of the Fundamentals of the Legislation of the Russian Federation on Notaries prohibits them from issuing this document.

The implementation of this condition calls into question the actions of the fundamental principles of independence and impartiality of the notary. After all, civil procedural legislation in such cases provides an opportunity for the interested participant to have time to familiarize himself with the protocol and submit relevant comments, which the court must consider and make an appropriate determination based on its internal conviction, taking into account the assessment of all the circumstances of a separate procedural action. In the notarial procedure, these issues go beyond the scope of the notarial action and are not provided for, and, therefore, are prohibited by law.

It should also be taken into account that the parties and interested persons have a different interest in this procedure for securing evidence, different from the applicant's interest, and they try in every possible way to prevent the commission of securing evidence, which can lead in overwhelming cases to the impossibility of its commission, including inconsistency of information entered into the protocol, etc. Such a controversial situation should not be allowed, this is the main postulate of the notary. It is important to note that the notary can explain to interested persons their right to provide evidence on their application and taking into account their vision of the circumstances of the case.

The following debatable question arises from the different interpretation of the possibilities of the notary and the court. According to Article 229 of the Civil Procedure Code of the Russian Federation, the protocol specifies all received statements, objections, comments from persons involved in providing evidence. The signature of the applicant and interested persons is not required; the protocol is signed only by the judge and the court secretary (Article 230 of the Civil Procedure Code of the Russian Federation). In notarial practice, there is a tradition that the protocol is signed by the applicant, at whose request the proof was provided, and the notary. In a different order of execution of the protocol, for example, with the production of signatures of other persons who participated in the notarial act, or a note about their refusal to sign the protocol, can lead to both problems of implementation of this provision and problems of challenging the reliability of all information contained in the protocol. In this case, the following questions arise that require clarification. All persons must sit and wait for the notary to print the protocol; what is the procedure for collecting all participating persons if the protocol is complex and is issued for more than one day; how to calculate the production time of the procedural document in order to carry out the call of all involved persons? There is reason to believe that this is an unnecessary problem and not a mandatory procedure (signature of the parties and interested persons in the protocol), delaying the process of drawing up the protocol, as prescribed by Article 102 of the Fundamentals of the Legislation of the Russian Federation on Notaries, and leading to artificial problems and conflicts. It is enough to record the fact of their appearance on a separate sheet with their signature, identification and verification of authority before the start of the examination (appointment of an expert examination, interrogation of a witness), with the reflection of these circumstances in the relevant protocol. If the inspection is long and the notary has announced a break, then the specified procedure must be repeated. In the protocol, you can also indicate the presence of the summoned persons throughout the examination (appointment of an examination, interrogation of a witness) or only part of it. This technique has been tested by many years of practice and tested by various courts and has not caused any complaints. It complies with civil procedural legislation and does not lead to far-fetched inflating of the conflict.

It seems appropriate to clarify the difference between carrying out the inspection procedure and performing a notarial action, which covers the first and includes the procedure for registra-

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tion of the protocol (the date of the inspection and the date of the notarial action may differ due to the significant amount of work on the preparation of the protocol and its final form). According to art. 50 Fundamentals of the legislation of the Russian Federation on notaries, a notarial act is considered to have been performed at the time of its registration in the register, therefore, with a large amount of work on drawing up a protocol and other objective reasons entailing the registration of a protocol for several days, the registration of a notarial action is carried out on the day of the end of its registration in compliance with all the rules.

Conclusion

Thus, the parallel consideration of the issue of providing evidence, which has developed in modern law enforcement practice, allows interested parties to choose the body that will provide evidence. The notary office is the most flexible and accessible. At the same time, the notarial method of fixing evidence does not replace the judicial procedure, but serves the purpose of promptly fixing information of evidentiary value. At the same time, taking into account statistical data, the legal procedure for the extrajudicial (notarial) provision of evidence contributes to the unloading of the court when solving issues not related to the administration of justice.

The tendency to a significant preponderance of the notarial order in this matter over the judicial one in no way violates the principle of the administration of justice only by the court, since in matters of providing evidence, we are not talking about justice, but about judicial jurisdiction, which will be determined by the legislator at his discretion. Moreover, the established procedure allows the courts to resolve more complex disputes more efficiently and in a short time, which will play a positive role in protecting the rights and legitimate interests of citizens and legal entities.

Further improvement of the legislation on notaries should be aimed at expanding the notary's ability to provide evidence by "listening to audio recordings and watching video recordings", in parallel with this, the CPC of the Russian Federation (Article 64) and the APC of the Russian Federation (Article 72) should be supplemented with an indication of the possibility of providing evidence in a notarial manner. This supplement will serve the interests of both courts and citizens and legal entities.

In order to increase the stability of civil law relations, it is necessary to develop joint recommendations on the provision of evidence by notaries, consistent with the actions of the courts, with the provision of the latter by local delegation of competence to provide evidence to the notary on the basis of a court ruling. This is especially true in the notarial procedure for providing "electronic" evidence, including those posted on the Internet, due to the lack of procedural time for such a procedure by the courts.

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