

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT  
OF THE RUSSIAN FEDERATION

Judgment  
of 19 May 1998 No. 15-II

in the case concerning the review of the constitutionality of certain provisions contained in Articles 2, 12, 17, 24 and 34 of the Basics of Legislation on the Notary System of the Russian Federation.

Moscow, 19 May 1998

The Constitutional Court of the Russian Federation composed of Presiding Judge N. V. Seleznev and Judges G. A. Gadzhiev, L. M. Zharkova, T. G. Morshchakova, Yu. D. Rudkin, O. I. Tiunov, B. S. Ebzeev, V. G. Yaroslavtsev,

in the attendance of the parties' representatives that brought the case before the Constitutional Court of the Russian Federation A. F. Maloy, PhD in Law, and G. B. Romanovsky, PhD in Law, representatives of O. V. Romanovskaya, and attorney O. V. Grineva, representative of the Vladimir Region Administration,

pursuant to Subsection "a", Section 2 and Section 4, Article 125 of the Constitution of the Russian Federation, Subsections 1a and 3, Sections 2 and 3 of Article 3, Subsections 1a and 3, Section 2 of Article 22, Articles 36, 74–84, 85 (Section 1), 86, 96, 97, 99, 101, 102 and 104 of the Federal Constitutional Law "On the Constitutional Court of the Russian",

in an open hearing, examined the constitutionality of certain provisions of Articles 2, 12, 17, 24 and 34 of the Basics of Legislation on the Notary System of the Russian Federation of 11 February 1993.

The reason for the consideration of the case is requests of the Ezhvinsk District Court of the Komi Republic and of the Vladimir Region Administration, and an individual complaint of O. V. Romanovskaya.

Insofar as the two requests and the complaint concern essentially the same subject matter and pursuant to Article 48 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" the Constitutional Court of the Russian Federation has joined these applications together.

Having heard the report of Judge-Rapporteur L. M. Zharkova, statements by the parties' representatives, the expert opinion of L. F. Lesnitskaya, PhD in Law, and interventions by the following representatives invited to participate in the hearing: B. N. Pirozhkov for the Supreme

Court of the Russian Federation; I. A. Budanov for the Office of the Prosecutor General of the Russian Federation; S. M. Yudushkin for the Ministry of Justice of the Russian Federation; A. I. Tikhenko and N. F. Sharafetdinov for the Federal Notary Chamber; and V. S. Repin for the Public Association Moscow Notary Chamber; and having considered written submissions and other materials, the Constitutional Court of the Russian Federation

e s t a b l i s h e d :

1. The Ezhvinsk District Court of the Komi Republic initiated proceedings in a case following a lawsuit filed against a notary engaged in private practice by the Notary Chamber of the Komi Republic in order to recover the outstanding membership fees. The court concluded that the provisions applicable in the case, namely those of Section 4, Article 2, and Section 1, Article 24, of Basics of Legislation on the Notary System of the Russian Federation establishing mandatory membership in the notary chamber for all notaries engaged in private practice, are inconsistent with Section 2 of Article 30 of the Constitution of the Russian Federation stating that no one may be compelled to join any association or remain in it. As it reached this conclusion, the court suspended proceedings in the case and submitted a request for review of the constitutionality of the above provisions to the Constitutional Court of the Russian Federation.

The Severodvinsk Town Court of the Arkhangelsk Region, relying on Articles 2, 12, 24 and 34 of the Basics of Legislation on the Notary System of the Russian Federation, upheld the Arkhangelsk Regional Notary Chamber's claim for disqualification of O. V. Romanovskaya, who had been deprived of membership in the notary chamber. In her complaint filed with the Constitutional Court of the Russian Federation, O. V. Romanovskaya insists that Section 4 of Article 2 and Section 1 of Article 24 of the Basics of Legislation which were applied in her case violate the principle of equality of human rights and freedoms regardless of membership in public associations, and the constitutional rights to free membership in any association, unrestricted use of one's labor capabilities and free choice of activity and profession. In other words, she claims that the provisions in question are inconsistent with Articles 19, 30 and 37 of the Constitution of the Russian Federation. In addition, the complaint challenges the constitutionality of the provision contained in Subsection 3, Section 5, Article 12 of the Basics of Legislation. The challenged provision empowers the notary chamber to file a motion in court to disqualify a private notary for legislation breaching. According to the applicant, this norm assigns supervisory functions to a public association in violation of Articles 3 and 11 of the Constitution of the Russian Federation which prescribe that state powers shall be solely exercised by bodies of state power and local self-government.

The Vladimir Region Administration believes that all notaries engaged in private practice perform public functions, and therefore their activities, within the meaning of Article 3 (Section 2) and Article 11 (Section 2) of the Constitution of the Russian Federation, should be supervised only by bodies of state power. Consequently, the applicant challenges the constitutionality of certain provisions of the Basics of Legislation on the Notary System of the Russian Federation, which vest the notary chamber with the following organizational and supervisory powers: to decide, together with justice authorities, on creating or abolishing a notary office, to determine the number of notary offices operating in a notary district (Sections 1 and 2 of Article 12); to supervise independently the performance of professional duties by notaries engaged in private practice (Section 1 of Article 34) and to file, in court, motions to disqualify notaries whose actions contravene the legislation of the Russian Federation (Section 2 of Article 17).

Thus, in the present case the subject matter of the review of the constitutionality embraces the provisions contained in Section 4 of Article 2 and in Section 1 of Article 24 of the Basics of Legislation on the Notary System of the Russian Federation, which make membership in a notary chamber mandatory for any notary engaged in private practice, and the provisions contained in Sections 1 and 2 of Article 12, Subsection 3, Section 5 of Article 12, Section 2 of Article 17 and in Section 1 of Article 34 of the Basics of Legislation, which regulate the organizational and supervisory functions exercised by a notary chamber in notary practice.

2. In the Russian Federation, the notary system is intended to protect the rights and legitimate interests of individuals and companies through public notaries and notaries engaged in private practice, who on behalf of the Russian Federation perform a range of notary actions specified in the legislation (Article 1 of the Basics of Legislation), which guarantees the probative value and public recognition of all notarized documents.

As long as notary functions are performed on behalf of the State, notaries have a public status and their activities and operations, including the activities of notaries in private practice, who belong to freelancers, need efficient supervision to be arranged by the State. And so the Basics of Legislation on the Notary System of the Russian Federation prescribe that all subjects of the Russian Federation shall set up notary chambers as non-profit professional associations requiring membership of all notaries engaged in private practice and operating on the principles of self-administration under the federal legislation, respective regional legislation and in accordance with the articles of association (Sections 1, 3 and 4 of Article 24).

The primary public purpose of notary chambers is to supervise the performance of professional duties by notaries engaged in private practice and to file, in court, motions or petitions for their disqualification for breaches of legislation (Subsection 3, Section 5 of

Article 12, Section 2 of Article 17 and Section 1 of Article 34 of the Basics of Legislation). To exercise such powers, a notary chamber requires membership of all notaries engaged in private practice (Section 4 of Article 2 and Section 1 of Article 24 of the Basics of Legislation). This mandatory membership is imposed by the legislator as a precondition for such notaries to practice the profession. Having obtained notary powers for private practice in the manner prescribed by law, a notary, by virtue of the law, becomes a member of a notary chamber acting as a professional association entrusted by the State to ensure proper performance of notary actions.

There are other specific publicly important tasks which are fulfilled by notary chambers. These include: encouraging private notary practice, organizing internship training for candidates seeking notary office, improving notary vocational training, reimbursing expenses for expert examinations ordered by the court in cases involving notaries, and arranging for notary insurance to ensure recovery of damages which might be caused by notary actions (Section 2 of Article 25 of the Basics of Legislation).

It is exactly the public mission of notary chambers that makes it unviable for them to have voluntary membership which is typical for other associations created solely on the basis of common interests pursued by their individual members (Article 30 of the Constitution of the Russian Federation, Article 117 of the Civil Code of the Russian Federation, and Section 1 of Article 3 of the Federal Law “On Public Associations”).

Mandatory membership in a notary chamber, which is required for notaries in private practice as a precondition to practice the profession, infringes neither the constitutional principle of equality nor the constitutional rights to association and free choice of activity and profession (Articles 19, 30 and 37 of the Constitution of the Russian Federation), because the State is empowered to impose compulsory conditions for obtaining and occupying public offices on all citizens planning to perform public activities (notary activities, in the present case).

The Constitutional Court of the Russian Federation expressed a similar legal opinion in its Judgment of 28 January 1997 in the case concerning the review of the constitutionality of Section 4 of Article 47 of the RSFSR Criminal Procedure Code: in order to provide its citizens with various types of legal assistance, the State should impose specific professional and other requirements; it is also within the legislator’s competence to define appropriate conditions for admitting different persons to the legal profession taking into account its public importance.

This is even more justified when public activities are performed on behalf of the State, which is true of notary actions. Moreover, notary chamber membership does not prevent notaries engaged in private practice from participating in creating other associations (public associations, professional unions etc.) based on the principles of voluntary membership. However, those

associations may not exercise organizational or supervisory powers assigned to notary chambers by the Basics of Legislation.

Where a notary engaged in private practice fails to comply with the requirements of mandatory membership in a notary chamber, he commits an offence against the legislation and may be subsequently disqualified by a court decision. Nevertheless, neither membership in a notary chamber nor the related right to private notary practice should be subject to any other non-statutory conditions, particularly to payment of admission fees, which are not specified in the Basics of Legislation.

3. The applicants assert that making notary chambers responsible, in the public interest, for supervising the professional activities of their members and for responding to discovered breaches of legislation, indicates that non-governmental bodies have been entrusted with governmental (supervisory) powers, and therefore it is inconsistent with the provisions of Articles 3 and 11 of the Constitution of the Russian Federation providing that state powers shall be exercised through bodies of state power.

At the same time, the Constitution of the Russian Federation and the constitutional norms mentioned above permit the State to transfer certain powers from executive bodies to public associations involved in fulfilling functions of a public authority. Within the meaning of its Articles 78 (Sections 2 and 3) and 132 (Section 2), such transfer may be carried out if it does not contravene the Constitution of the Russian Federation and the federal laws.

There is no breach of the Constitution of the Russian Federation in the fact that in accordance with the law the State vests notary chambers with certain administrative and supervisory powers in order to ensure guaranteed protection of rights and freedoms in the notary practice. Articles 45 (Section 1) and 48 (Section 1) of the Constitution provide that it is a duty of the state to guarantee protection of rights and freedoms, including the right to qualified legal assistance, without obliging the legislator to follow specific ways to discharge this duty. In particular, the legislator is also empowered to define methods through which notary chambers can supervise the activities of notaries engaged in private practice. The supervision methods specified in the Basics of Legislation on the Notary System of the Russian Federation are in line with the international practice: the European Parliament Resolution of 18 January 1994 defines the notary profession as a public service supervised by the State or a body operating under the regulations and performing the respective powers on behalf of the State.

However, the supervisory powers of notary chambers, which are defined by the challenged provisions of the Basics of Legislation on the Notary System of the Russian Federation (Subsection 3, Section 5 of Article 12, Section 2 of Article 17 and Section 1 of Article 34), do not exclude the possibility of other state bodies exercising supervision over the

activities of both notaries and notary chambers. More specifically, justice authorities register the articles of association of notary chambers and verify their compliance with the law. In cooperation with notary chambers, they also control notaries engaged in private practice in order to make sure that they observe the notary records management rules (Section two of Article 9 and Article 33 of the Basics of Legislation). The fulfillment of statutory responsibilities by notary chambers is under the prosecution oversight (Article 1 (Section 2) and Article 21 (Section 1) of the Federal Law “On the Prosecutor’s Office of the Russian Federation”) and under the control of the state statistics and tax authorities (Articles 32–33 of the Federal Law “On Non-Profit Organizations”). The refusal of a notary to perform a notary action or its improper performance can be challenged in court (Article 49 of the Basics of Legislation). Furthermore, under Article 46 (Section 2) of the Constitution of the Russian Federation and the Law of the Russian Federation “On Judicial Review of Actions and Decisions Infringing on Rights and Freedoms of Citizens”, courts, in any case, have the power to review the lawfulness of actions or decisions made by notary chambers.

4. The Basics of Legislation on the Notary System of the Russian Federation contain an extensive list of matters which are jointly dealt with by justice authorities and notary chambers. These matters include creating or abolishing a notary office and determining the number of notary offices in a notary district (Sections 1 and 2 of Article 12). The Vladimir Region Administration considers the above provisions to be unconstitutional because they do not provide any legal mechanisms to settle conflicts that may arise out of these matters.

The lack of a mechanism for solving conflicts that may arise between a notary chamber and justice authorities out of matters within their joint jurisdiction can actually result in a violation of rights of the persons interested in notary practice, a shortage of notary services and other adverse consequences mentioned by the applicants in the present case. This, however, does not constitute grounds for recognizing Sections 1 and 2 of Article 12 of the Basics of Legislation as non-conforming to the Constitution of the Russian Federation and its Articles 3 and 11. The legislator is responsible for providing a respective mechanism of regulation in the legislation.

Concluding from the above and pursuant to Sections 1 and 2 of Article 71, Articles 72, 74, 75, 79, 87, 100 and 104 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation

h e l d :

1. To recognize the provisions contained in Section 4, Article 2, and Section 1, Article 24 of the Basics of Legislation of the Russian Federation on the Notary System, which establish mandatory notary chamber membership for notaries engaged in private practice as a precondition

for their professional activity involving the performance of public (state) functions, as conforming to the Constitution of the Russian Federation.

2. To recognize the provisions contained in Sections 1 and 2 and in Subsection 3, Section 5 of Article 12, in Section 2 of Article 17 and in Section 1 of Article 34 of the Basics of Legislation on the Notary System of the Russian Federation, which empower the notary chamber to organize all notary activities, in particular to create or abolish a notary office, to determine the number of notary offices operating in a notary district and to supervise the performance of professional duties by notaries engaged in private practice, as conforming to the Constitution of the Russian Federation.

3. While improving the legislation of the Russian Federation that governs the notary system, the Federal Assembly should regulate the mechanism of interaction between the notary chambers and the justice authorities.

4. Pursuant to Sections 1 and 2 of Article 79 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, this Judgment shall be final and shall not be subject to any appeal, it shall come into force immediately upon pronouncement, and shall be directly applicable.

5. Pursuant to Article 78 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, this Judgment shall be published in the Collection of Laws of the Russian Federation and *Rossiyskaya Gazeta*. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

Constitutional Court  
of the Russian Federation