

Certification of the Authenticity of the Copies of Documents by a Notary: A Comparative Analysis of the Legislation of the Azerbaijan Republic and the Commonwealth of Independent States

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ABSTRACT

The role of notaries on rendering qualified legal aid to physical and judicial persons is great. But in the former Soviet Union Notary was not considered as an authoritative body. After the collapse of the Soviet Union with the development of private ownership, demand for notarial services increased and Notary became an important authoritative body. Before only the State Notaries are permitted to work. But nowadays, except the following republics Tajikistan, Uzbekistan and Turkmenistan, in other Commonwealth of Independent States' republics, Private Notaries are permitted to work. The legislation of the said three republics Tajikistan, Uzbekistan and Turkmenistan do not consider the Private Notary system. Currently notaries committed more than 20 types of notarial acts. One of the most common notarial acts is the certification of the authenticity of the copies of documents. It is often needed the notarized copies of documents for submission to various organizations. After the collapse of the Soviet Union, functioning organizations in the Republic of Azerbaijan accept only copies of the documents certified by a notary public or other authorized persons who were authorized to perform notarial acts. In the Republic of Azerbaijan as the owner of the document, and at his request, the other person with his/her identification may apply for certification of the authenticity of copies of documents in any notary. In the process of certification of the authenticity of the copies of documents the identity of citizens of the Azerbaijan Republic can be determined on the basis of an identity card, passport, driving license, issued by the Ministry of Internal Affairs, the service certificate issued at the place of work or student card.

KEYWORDS: Soviet Union, private, passport, driving license, judicial persons

INTRODUCTION

Since 1993 Republics of Commonwealth of Independent States adopted the following laws on notary:

- 1) Basics of legislation on notaries of the Russian Federation dated 11 February 1993 [1];
- 2) Law of Ukraine "On Notary" dated 2 September 1993 [2];
- 3) Law of the Republic of Uzbekistan "On Notary" dated 26 December 1996 [3];
- 4) Law of the Republic of Moldova "On Notary" dated 11 April 1997 [4];
- 5) Law of the Republic of Tajikistan "On Notary Public" dated 15 May 1997 [5];
- 6) Law of the Republic of Kazakhstan "On Notary" dated 14 July 1997 [6];
- 7) Law of the Kyrgyz Republic "On Notary" dated 30 May 1998 [7];
- 8) Law of Turkmenistan "On Notary Public" dated 30 April 1999 [8];
- 9) Law of Azerbaijan Republic "On Notary" dated 26 November 1999 [9];
- 10) Law of the Republic of Belarus "On Notary and notarial activities" dated 18 July 2004 [10].

With the adoption of new laws on notaries in the Republic of Moldova dated 8 November, 2002 and in the Republic of Tajikistan dated 16 April, 2012, previous laws considered null and void [11, 12].

Articles 64-66 of the Law of Azerbaijan Republic "On Notary" regulates the certification of the authenticity of the copies of documents. These Articles state: "Notaries shall certify the authenticity of the copies of documents issued by institutions, enterprises and organizations, provided that these documents do not contradict the law, have legal value and certification of the authenticity of copies of these documents is not prohibited by law. True copy of the document submitted by the person is certified by a notary in cases where the authenticity of the signature of the person on the original document had been certified by a notary. Authenticity of the copies of the document copy is certified by a notary provided that the authenticity of the copy of the document is certified by a notary or a copy of a document issued by the institution, organization which this document is assigned. In the latter case, a copy of the document shall be made on the institutions, enterprises, organizations blank form, stamped and have a note that the original document is stored in this institution, enterprise, organization".

The following articles of the laws on notaries adopted by the Commonwealth of Independent States republics envisaged certification of the authenticity of the copy of the document:

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- 1) Articles 77 and 79 of the Basics of legislation on notaries of the Russian Federation dated 11 February 1993;
- 2) Articles 75-77 of the Law of Ukraine "On Notary" dated 2 September 1993;
- 3) Articles 65-66 of the Law of the Republic of Uzbekistan "On Notary" dated 26 December 1996;
- 4) Article 67 of the Law of the Republic of Moldova "On Notary" dated 8 November 2002;
- 5) Articles 79-80 of the Law of the Republic of Tajikistan "On Notary Public" dated 16 April 2012;
- 6) Articles 76-78 of the Law of the Republic of Kazakhstan "On Notary" on 14 July 1997;
- 7) Articles 71-73 of the Law of the Kyrgyz Republic "On Notary" dated 30 May 1998;
- 8) Articles 62-63 of the Law of Turkmenistan "On Notary Public" dated 30 April 1999;
- 9) Articles 82-83 of the Law of the Republic of Belarus "On Notary and notarial activities" dated 18 July 2004.

According to the former Law of the Azerbaijan Republic "On Notary Public" dated December 27, 1973 certification of the authenticity of the copies of the passport, the Party-membership card, deputy certificate and military card was forbidden. Currently there are no such restrictions under the Law of the republic of Azerbaijan "On Notary Public". The authenticity of certified copies of the above documents can be verified in both public and private notary offices. The copy of the document is collated with the original.

While certifying the copy of the passport of a foreign citizen, the passport being issued in a foreign language shall be translated into Azerbaijani or another language at the request of the person. It is necessary to verify the authenticity of the translator's signature and the copy of the document. In case Notary knows appropriate foreign language, Notary shall have the right to verify the authenticity of the translation of the passport into Azerbaijani or another language without presence of a translator. This should be pointed out that the authenticity of the translation of the passport into Azerbaijani or other language had been verified by a Notary. It is not allowed to sew certified translation of the passport to the original passport.

While certifying the authenticity of the copies of the documents submitted by the judicial persons Notary shall examine the following requirements:

- 1) the adopted date of the document;
- 2) the signature(signatures) of the authorized person (persons);
- 3) availability of stamp.

Compilation of certain documents issued by legal entities is provided on established model forms. As an example, the following documents:

- 1) certificate of secondary education;
- 2) diploma of higher education;
- 3) diploma of secondary special education;
- 4) birth certificate;
- 5) marriage certificate;
- 6) certificate of divorce;
- 7) death certificate;
- 8) employee record book (labor book).

In the event of the absence of the special document form submitted by a judicial person, the document can be compiled in a clean white sheet of paper format 210x297 mm. These documents shall include a date of issue and number of the document with the stamp in the upper left corner of the stamp paper with the name of the judicial person.

According to the legislation of the Azerbaijan Republic authenticity of the notarially certified copies can be verified, but the authenticity of the mortgage contract copy certified by a bank cannot be verified. According to the article 307.7 of the Civil Code of the Azerbaijan Republic Mortgage contract must be notarially certified. Notary shall not have the right to verify authenticity of the following documents:

- 1) The copies of the documents reflecting the information contradicting the norms of behavior, blemishing the honor and dignity and labor reputation of the physical and judicial person;
- 2) The copies of the documents containing the State secret;
- 3) The copies of the documents containing commercial secret;
- 4) The copies of the documents given to the name of Notary;
- 5) The copies of the documents given on behalf of Notary;
- 6) The copies of the documents given to the name of wife (husband) of a Notary;
- 7) The copies of the documents given on behalf of Notary's wife (husband);
- 8) The copies of the document given to the name of the parents of a Notary;
- 9) The copies of the document given on behalf of the parents of a Notary;
- 10) The copies of the document given to the names of parents of a Notary's wife (husband);
- 11) The copies of the document given on behalf of the parents of a Notary's wife (husband);
- 12) The copies of the document given to the name of children of a Notary;
- 13) The copies of the document given on behalf of children of a Notary;
- 14) The copies of the document given to the name of grandchildren of a Notary;
- 15) The copies of the document given on behalf of grandchildren of a Notary;
- 16) The copies of the document given to the name of grandfathers of a Notary;

- 17) The copies of the document given on behalf of grandfathers of a Notary;
- 18) The copies of the document given to the name grandmothers of a Notary;
- 19) The copies of the document given on behalf of grandmothers of a Notary;
- 20) The copies of the documents given to the name of brothers of a Notary;
- 21) The copies of the documents given on behalf of brothers of a Notary;
- 22) The copies of the documents given to the name of sisters of a Notary;
- 23) The copies of the documents given on behalf of sisters of a Notary;
- 24) The copies of the documents given to the name of uncles of a Notary;
- 25) The copies of the documents given on behalf of uncles of a Notary;
- 26) The copies of the documents given to the name of aunts of a Notary;
- 27) The copies of the documents given on behalf of aunts of a Notary;
- 28) The copies of the documents given to the names of cousins of a Notary;
- 29) The copies of the documents given on behalf of cousins of a Notary;
- 30) The copies of the documents given to the name of wife's (husband's) children of a Notary;
- 31) The copies of the documents given on behalf of wife's (husband's) children of a Notary;
- 32) The copies of the documents given to the name of wife's (husband's) grandchildren of a Notary;
- 33) The copies of the documents given on behalf of wife's (husband's) grandchildren of a Notary;
- 34) The copies of the documents given to the name of wife's (husband's) grandfathers of a Notary;
- 35) The copies of the documents given on behalf of wife's (husband's) grandfathers of a Notary;
- 36) The copies of the documents given to the name of wife's (husband's) grandmothers of a Notary;
- 37) The copies of the documents given on behalf of wife's (husband's) grandmothers of a Notary;
- 38) The copies of the documents given to the name of wife's (husband's) brothers of a Notary;
- 39) The copies of the documents given on behalf of wife's (husband's) brothers of a Notary;
- 40) The copies of the documents given to wife's (husband's) sisters of a Notary;
- 41) The copies of the documents given on behalf of wife's (husband's) sisters of a Notary;
- 42) The copies of the documents given to the name of wife's (husband's) uncles of a Notary;
- 43) The copies of the documents given on behalf of wife's (husband's) uncles of a Notary;
- 44) The copies of the documents given to the name of wife's (husband's) aunts of a Notary;
- 45) The copies of the documents given on behalf of wife's (husband's) aunts of a Notary;
- 46) The copies of the documents given to the name of wife's (husband's) cousins of a Notary;
- 47) The copies of the documents given on behalf of wife's (husband's) cousins of a Notary;
- 48) The copies of the documents given to the name of a colleague of a Notary working at the same office;
- 49) The copies of the documents given on behalf of colleague of a Notary working at the same office;

In a condition that creates suspicion about the authenticity of the copies of the documents submitted to certify authentication Notary according to the article 43, II part of the law "On Notary" of the Azerbaijan Republic shall send this document for expertization. To send the document for expertization Notary shall issue a decree with the following:

- 1) The issue date of a Decree;
- 2) Surname, name, father's name of a Notary who issued a decree;
- 3) Address of the Notary office;
- 4) The title of the document and on whom the document is issued;
- 5) Surname, name, father's name of the person who submitted document to a Notary;
- 6) The reasons of sending the document for expertization;
- 7) What expert office shall examine the document;
- 8) Questions for the expertization solving.

Certifying the authenticity of the copies of the document and extract from the documents, Notary shall sign a document and shall provide a seal office. After certification of authenticity of the copies of documents the following information is registered in Notary Journal "1-S" with ink or ball-point pen:

- 1) name of the document;
- 2) number (if any) of the document;
- 3) a summary of the document;
- 4) the name of the institution and the organization that issued the document;
- 5) the full name of a physical person who is the owner of the document;
- 6) the date of issue of the document;
- 7) if the document has many pages, the number of pages is noted.

If the document consists of a single page, there is no need to mark the number of pages. Certifying some copies of one document each document shall have a separate registry number, the number of copies of documents shall be specified and duties shall be imposed on each document.

Very often it is required to certify authenticity of the copies of educational documents. According to the applicable laws educational diplomas acquired in foreign countries must be recognized by the Ministry of Education of the Azerbaijan Republic. "Samples of the state documents on education and rules of their issue", approved by the Resolution of the Cabinet of Ministers of the Azerbaijan Republic dated 29 April 2010. The ordinance specifies that

the application of the Diploma of Education is invalid without relevant diploma. Therefore, in the case of an application of diploma without a relevant diploma Notary cannot certify authenticity of the copy submitted application of Diploma. Notary should pay attention to the fact that, in accordance with the Rules at the undergraduate and graduate levels of higher education diplomas are set to the following:

- Bachelor's Degree (regular and honors);
- Master's degree (with honors and regular).

Bachelor's and master's degrees are issued to persons who have received education at the undergraduate and graduate levels.

Pursuant to paragraph 127 of the "Instruction on the rules of conducting notarial in the Azerbaijan Republic" dated 11 September 2000, the copy of the document can be compiled by photocopy or printed or written by hand [13]. Notary is responsible for certification of the authenticity of copies of documents as well as for other notarial acts. While verifying certification of the authenticity of the document copy or an extract from the document notary must carefully compare the document with the original. Inscription on the seal of the document should be reflected in a very clear form. To avoid errors in the process of certification of the authenticity of the copy of documents notary should know regulations and rules of clerical work.

Research Methodology

Method of comparative law and historical approach which is of great importance for jurisprudence presented the methodological basis of the research. In articles about the laws of Russia, Uzbekistan, Kazakhstan, Kyrgyzstan and Belarus the term "legal person" is used instead of "enterprises, institutions and organizations". But in governing notary laws of Russia, Uzbekistan, Kazakhstan, Kyrgyzstan, Belarus, Ukraine, Tajikistan and Moldova the term "citizen" is used instead of the term "person".

From the Commonwealth of Independent States, Law of the Republic of Tajikistan "On Notary Public" prohibits notary certification of copies of the following documents:

- 1) passport;
- 2) a military identification card;
- 3) deputy certificate;
- 4) document confirming membership in public associations.

And the Law of Turkmenistan "On Notary Public", along with abovementioned documents prohibit notarization of local government management member's certificate.

The instructions on Notarial acts of Kyrgyz Republic approved by the government of the Kyrgyz Republic of 20 April 2011 prohibits certifying the authenticity of copies of the following documents:

- 1) medical records;
- 2) certificates of registration of individuals engaged in entrepreneurial activities;
- 3) licenses;
- 4) certificates;
- 5) permits;
- 6) accounting documents;
- 7) financial documents;
- 8) customs documents;
- 9) internal documents of the legal entity;
- 10) documents without notary verification and certification, compiled independently by physical or legal person, when checking for compliance with the current legislation is not possible;
- 11) documents containing diagrams, tables, and other graphics;
- 12) documents – having erasures, obliterations, corrections and other features that cast doubt on their reliability;
- 13) documents which are not allowed to be copied [14].

It is interesting that the prohibition of certification of authenticity of copies of certain documents is not reflected in the Law of the Kyrgyz Republic "On Notary", but it is reflected in "Instructions".

Based on the instructions of notarial acts Notaries of the Kyrgyz Republic are allowed to certify the copies of internet-pages.

According to the law only the copies of the document of legal significance shall be verified. But it does not mean that the copy of the expired document shall not be verified. For example, a copy of power of attorney which expired can be certified; as the document even after the expiry of date it can retain the legal significance.

The paragraph 169 of the "Rule of notarial acts committed by notaries of the Republic of Kazakhstan" dated January 31, 2012, indicates the possibility of certification of copies of wills after the submission of the certificate of death of the testator [15].

Conclusions and recommendations

Comparative analysis of the Commonwealth of Independent States countries legislation related to the certification of the authenticity of the copies of the document shows that there are similarities in normative acts related to Notary. But there are also some different features in normative acts on Notary of the said countries. I think

it will be argumentative to ban certification of the copies of some documents that reflected in the law of the Kyrgyz republic "On Notary".

To prevent falsification it will be argumentative if the legislation envisages only certification of the photocopies of the documents by notaries or by the other official persons performing notarial acts which submitted by judicial and physical persons. If abovementioned amendment to Article 64 "On Notary" takes effect, only the photocopy of the document or copy printed after its scanning can be certified.

It will be argumentative that a Notary before certifying the copy of the document acquired in other countries of the Commonwealth Independent States which is not recognized by the Ministry of Education of the Azerbaijan Republic shall send a written enquiry to the educational organization where diploma is acquired about authenticity of the submitted diploma, and only after receiving positive answer to his\her enquiry shall certify authenticity of the copy of the diploma.

It will be appropriate to create electronic information databases at the Ministry of Education of the Azerbaijan Republic about the following graduates of the educational institutions of the Republic of Azerbaijan:

- 1) electronic information database about graduates of higher educational institutions;
- 2) electronic information database about graduates of secondary special schools;
- 3) electronic information database about graduates of technical-vocational schools;
- 4) electronic information database about graduates of secondary schools.

In the event of creation of electronic information database, notaries before certifying the authenticity the copies of diploma, certificate, certificate of secondary complete education, and other documents shall be able to obtain information from electronic information database of the Ministry of the Azerbaijan Republic and examine the authenticity of the original document.

To prevent falsification it will be argumentative if notaries certifying the authenticity of the copies of the state registration acts of civil status certificate, could examine the data in automated information system of the registration acts of civil status established at the Head office of registration and Notary Office of the Ministry Of Justice of the Azerbaijan Republic. It is necessary to provide Notaries with access to this automated information system registration.

It will be argumentative to make amendments to the legislation of the Republic of Azerbaijan about notarial certification of the authenticity of the copies of documents.

- 1) To add part 3 to the Article 64 of the law "On Notary" of the Republic of Azerbaijan the following: "It is admissible to certify the copy of internet page". The certification of the authenticity of the copies of the following documents is forbidden:
 - ✓ medical records;
 - ✓ accounting documents;
 - ✓ financial documents;
 - ✓ customs documents;
 - ✓ internal documents of the legal entity;
 - ✓ documents containing diagrams, tables , and other graphics;
 - ✓ documents – having erasures, obliterations, corrections and other features that cast doubt on their reliability;
 - ✓ documents which are not allowed to be copied.

- 2) To make amendment to the Article 65 of the law "On Notary" of the Azerbaijan Republic with the following:

Notary or relevant executive power body shall have the right to certify the authenticity of the copy of the document in the case of:

- the copy of the document is being certified notarially;
- the copy of the document submitted by the judicial person who submitted this original document".

And in this case the copy of the document shall be compiled in judicial person's printed form sample, with official seal and with record that the original document is stored by this judicial person.

Notary and relevant executive power body shall have the right to certify the authenticity of the copies of document according the established rule.

- 3) To make amendments to the paragraph 124 of "Instruction on the rules of conducting notarial acts in the republic of Azerbaijan" approved by the Resolution 167 of the Cabinet of Ministers of the Azerbaijan Republic dated 11 September April 2000 the following paragraphs:

"Certifying the copy of internet-page document Notary shall write the internet address of the document, details of the document, the headings of the text if it is needed or graphic title of the text.

The copy of the will can be certified after submission of the certificate of death of testator or after submission of notarized copy of the will.

The authenticity of the copy of application of the Bachelor's Degree,-application of the Master's degree, application of the certificate of secondary special school, application of certificate of technical-vocational school shall not be certified without submission of relevant diploma.

Notary shall not have the right to reject certification of the authenticity of the copies of the document which legal term is expired.

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