

Features of notarial activity as an object of control and supervision

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Abstract. *The article focuses on the fact that today in the legal literature various approaches to the interpretation of the content, essence and signs of notarial activity are presented. Based on the analysis of scientific views of scientists and norms of current legislation, the author's definition of notarial activity as an object of control and supervision is proposed. Characteristic features of this activity are highlighted.*

It was concluded that notarial activity is a system of notarial actions regulated by the legislation of Ukraine, as well as other organizational, managerial and other measures, means and operations that meet the regulatory requirements and are carried out in a strict legally defined manner by state and private notaries, by other authorized entities, which are collectively directed to the implementation of the notary's tasks and ensuring its work on the territory of Ukraine and its individual localities.

It is argued that the characteristic features of notarial activity as an object of control and supervision are the following: 1) the result of notarial activity has a high degree of legal significance, because it directly affects the rights and legal status of individual individuals and legal entities; 2) it is an activity of a public nature, in connection with which it is equated to the process of performing state functions, and therefore it is subject to strict state regulation; 3) the performance of notarial activities is entrusted to special subjects, notaries, who are subject to special conditions regarding their qualifications, skills, knowledge and abilities; 4) notarial activity has a procedural nature, and therefore is strictly regulated by the norms of legislation.

Key words: *notary, notarial activity, supervision, control, object of supervision and control.*

Problem statement. Ukrainian notary has deep historical roots. Thus, along with the formation of primitive society, certain relations between people arose, which were characterized not only by the formation of unity of social views, but also by the emergence of disagreements between individuals and groups of people. This ultimately necessitated the emergence of notary as an important legal institution. Today, the notary of Ukraine is an integral, independent legal institution, the work of which is aimed at certifying law and facts of legal significance. Therefore, given its important social and legal significance, in order to ensure the legal and effective functioning of the notary, it is important to exercise effective supervision and control over notarial activity.

State of the study. Certain problematic issues related to the supervision and control of notarial activity in Ukraine have been studied in scientific works: I.P. Holosnichenko, P.V. Dikhtiiivskyi, S.V. Kivalov, L.V. Koval, Ye.B. Kubko, V.F. Opryshko, O.P. Riabchenko, R.A. Usenko, Kh.P. Yarmaka and others. However, despite the significant theoretical contribution, a number of problematic issues are insufficiently developed in the scientific literature, in particular, those related to the definition of the features of notarial activity as an object of control and supervision.

Purpose and objectives of the study. The purpose of the article is to reveal the features of notarial activities as an object of control and supervision. To achieve this goal, it is necessary to solve the following tasks: to clarify the essence of the concept of "notarial activity"; to analyze the provisions of current legislation regulating notarial activity in Ukraine.

Scientific novelty of the study. The scientific novelty of the article is that it further elaborates the theoretical approach to generalizing the list of characteristic features of notarial activity as an object of control and supervision.

Presentation of the main material. As is well known, accessibility of notarial services and notarial mediation for citizens is an important factor in resolving legal issues, which contributes to the widespread use of this tool among the population [1]. At the same time, the Law of Ukraine "On Notaries" does not contain a definition of notarial activity, but repeatedly refers to this term. The logic of the provisions of the Law implies that this is a set of notarial acts performed by notaries and other officials in cases provided for by the regulatory and legal provisions [2]. However, if we turn to the scientific field, scientists only partially support the position of the legislator, giving the category of "notarial activity" additional features and broader content.

Thus, according to I.P. Fris, notarial activity is a professional non-business activity of a person who has the status of a notary or a person who is authorized to perform certain notarial acts, regulated by law and other regulations, related to the certification of rights and facts of legal significance, other actions to give them legal certainty, as well as providing citizens and legal entities with qualified legal advice [3, p.48]. In the author's opinion, in the operational aspect, notarial activity is a specific legal activity of authorized persons, which is a system of operations regulated by law, including clarification of its legal basis, study of the documentary base, decision-making, performance of a notarial act and its recording in

the registers, as well as issuance of documents. Based on this, notarial activity can also be defined as a set of actions regulated by law and performed in a consistent manner. The features of notarial activity are that it: 1) carried out on behalf of the state; 2) carried out by specially authorized entities [3, p.48].

According to M. Dolynska, notarial activity is carried out by the relevant entities authorized by the state to perform notarial acts. The essence of notarial activity lies in the actions of notary bodies aimed at performing notarial acts in the interests of individuals and legal entities that apply to them for legal assistance, which results in the certification of rights and facts of legal significance. The functions of notarial activity, according to the scientist, can be divided into two large groups: social, which characterize the place of the notary in the system of civil jurisdiction and the legal system of Ukraine, and notarial-special, which reflect the features and specifics of notarial activity in relation to the participants of the notarial process. Depending on the nature and content of the impact on civil legal relations, the functions of the notary are divided into regulatory, security and control functions. Based on the identified features, M.S. Dolynska summarizes that notarial activity is a type of legal activity that has a preventive (warning) character and contains a set of constantly or systematically performed public actions aimed at legal consolidation of indisputable civil rights and facts (giving official force to legal rights, legal rights, facts and documents) performed by notary and quasi-notary bodies in order to ensure the protection of the rights and legitimate interests of individuals and legal entities that have applied for notarial acts and legal assistance [4].

Thus, to date, the legal literature presents various approaches to the interpretation of the content, essence and features of notarial activity. Within the framework of most concepts, scholars provide broad definitions of the category that are not limited to the content of notarial acts. It should be remembered that notarial activity is, first of all, an expression of the functioning of a large notary institution, which involves not only notarial acts, but also numerous organizational, documentary, consulting operations and activities, the main purpose of which is to ensure the quality and legal provision of notarial services to interested parties. Therefore, we should agree with the position of most scholars regarding the breadth of the definition of notarial activity, which covers many legal activities, including the performance of notarial acts.

Along with the feature of complexity, the uniqueness of notarial activity, including as an object of control and supervision, is revealed in its high degree of legal significance. Thus, the result of the latter directly affects the rights and legal status of individual individuals or legal entities, as well as their ability to realize the relevant legal interests. For example, by issuing a certificate of inheritance, a notary or other authorized person actually opens up the possibility for a person to freely use, dispose of and own inherited property in full to the extent and in the manner prescribed by the legislation of Ukraine [2]. Another example is the notary's right to

make an executive inscription on documents establishing a debt in order to collect money or reclaim property from the debtor. A notary shall make an executive inscription if the submitted documents confirm the indisputability of the debt or other liability of the debtor to the creditor and provided that no more than three years have passed since the date of the right of claim. The executive inscription actually becomes an additional guarantee of reimbursement of the debtor's debts under the relevant written transaction, which minimizes the number of formal procedures for the protection of the creditor's rights and interests [2].

The special legal significance of the results of notarial activity is determined by its other feature - public importance. According to the position of the Supreme Court of Ukraine, set forth in the Resolution of November 12, 2020 in case No. 200/3452/17: "A notary is a public person who is authorized by the state to certify rights and facts of legal significance and perform other notarial acts in order to give them legal certainty. When performing notarial acts, a notary shall act impartially and may not act in the interests of any of the persons participating in the notarial act. A notary performs notarial acts on behalf of the state" [5]. Therefore, the performance of notarial activity: firstly, is equated with the performance of state functions; secondly, the state recognizes notarial acts issued as a result of a notarial act as legal and reliable, and ensures their protection and further implementation; thirdly, it forms a universal system that normalizes the realization of private interests of specific entities with the interests of the state and society [6, p. 692; 7].

An important feature of notarial activity is the subjective composition of its realization. The latter, in accordance with the provisions of the Law of Ukraine "On Notaries", is entrusted to officials authorized by law, who can be divided into two groups. The first is represented by notaries. Article 3 of the Law states that a notary is an individual authorized by the state to perform notarial activity in a state notary office, state notary archive or independent professional notarial activity, in particular, to certify rights and facts of legal significance and perform other notarial acts provided for by law in order to give them legal validity. A notary may be a citizen of Ukraine who has been awarded a higher legal education degree of at least a master's degree, who speaks the state language in accordance with the level determined by the Law of Ukraine "On Ensuring the Functioning of the Ukrainian Language as the State Language", has at least six years of experience in the field of law, including at least three years as a notary assistant or consultant of a state notary office, has passed a qualification exam and received a certificate of the right to practice notary. A person with a criminal conviction, unless such conviction has been expunged or removed in accordance with the procedure established by law (except for a rehabilitated person), a person whose legal capacity is limited, or a person recognized as incapacitated may not be a notary. A person who is granted the right to engage in notarial activity for the first time shall take an oath in a solemn ceremony at the relevant territorial body of the Ministry of Justice of Ukraine [2].

In addition to notaries, in exceptional legally

regulated cases, notarial activity is also carried out by: local government officials; diplomatic missions or consular offices of Ukraine; chief physicians, their deputies in the medical department or doctors on duty of these hospitals, other inpatient health care facilities, as well as heads of hospitals, directors or chief physicians of homes for the elderly and persons with disabilities; captains of sea and river vessels flying the flag of Ukraine; heads of search or other expeditions; commanders (chiefs) of military units, formations, institutions or military educational institutions; heads of penitentiary institutions or pre-trial detention centers [2].

It should be noted that notarial activity is regulated by the state under the current legislation. In this context, state regulation combines conditions and measures to ensure the efficiency, legality and quality of the notary's work, as well as the ability of notaries and other persons authorized by law to fully and freely exercise their powers. Article 2-1 of the Law of Ukraine "On Notaries" states in this regard: "State regulation of notarial activity consists in establishing the conditions for admission of citizens to the practice of notary, the procedure for suspension and termination of private notary activity, revocation of a certificate of the right to practice notary; exercising control over the organization of the notary, conducting inspections of the organization of notarial activity of notaries, their compliance with the procedure for performing notarial acts and compliance with the rules of notarial record keeping" [2].

In the same context, it is important to pay attention to a special list of guarantees of notarial activity that are not available in other areas. We emphasize that guarantees are a system of socio-legal and state conditions and special means by which life in society is carried out and the realization of its key rights and legitimate interests by each of its representatives is ensured. Every democratic state seeks to build a comprehensive system of guarantees for the realization of the rights and freedoms of its citizens, as they provide a real opportunity to exercise the rights and freedoms granted by law [8, p.132].

This aspect does not ignore the sphere of notarial activity, where, along with special state requirements and measures of strict regulation, there are special conditions that protect the process of exercising rights and obligations by authorized subjects from unlawful influence and obstacles. According to Article 8-1 of the Law of Ukraine "On Notaries", the state guarantees and ensures equal conditions of access to citizens to engage in notarial activity and equal opportunities for notaries in the organization and performance of notarial activity. Any interference in the activity of a notary, in particular with the aim of preventing him/her from performing his/her duties or inducing him/her to commit illegal acts, including extortion of information constituting notarial secrecy from him/her, his/her assistant, other employees who are in labor relations with the notary, is prohibited and entails liability in accordance with the law. The search, seizure, and inspection of the workplace (office) shall be carried out on the basis and in accordance with the procedure established by law. Seizure (withdrawal) of

registers of notarial acts and documents transferred to a notary for storage in accordance with the procedure provided for by this Law, as well as the notary's seal, is not allowed. Such registers of notarial acts, documents or the notary's seal may be submitted to the court upon a reasoned court ruling only for inspection and shall be returned by the court immediately after inspection [2].

It is important to emphasize the strictly established procedural form of notarial activity. As noted by M.A. Yakub, O.M. Perunova and L.V. Leontieva, the procedural form is a set of conditions established by law in which both the activity in general and each individual procedural action (or a set of such actions) are carried out and each decision in the case is made, which indicates the relationship and sequence of actions taken and decisions made. The procedural form (procedural order) forms a detailed regulated stable legal definition, a strictly binding stable legal regime of office work [9, p. 869]. All of the above is fully inherent in the process of notarial activity.

For example, Chapter III of the Law of Ukraine "On Notaries" defines an exhaustive list of rules for notarial acts, which include requirements for the place, time, scope and other aspects of their performance. In addition, there are special rules for registration and recording of notarial acts. In this regard, Article 52 of the Law states: "All notarial acts performed by notaries or officials of local self-government bodies shall be recorded in the registers for registration of notarial acts after the notary makes a certification inscription on the document or signs the document issued by him/her. Each notarial act is registered under a separate serial number. The number under which the notarial act is registered is indicated on the document issued by the notary or in the certification endorsement. The register for registration of notarial acts shall be tidied and the sheets shall be numbered. The number of sheets in the register must be certified by the signature of an official of the relevant territorial body of the Ministry of Justice of Ukraine and its seal. Each notary keeps a separate register. An entry in the register shall be made clearly, legibly, with all the columns provided for in the established form. No erasures, additions, or other unauthorized corrections or pencil entries are allowed. The entry in the register is evidence of a notarial act. The procedure for maintaining registers for registration of notarial acts and their form are established by the Ministry of Justice of Ukraine." [2].

Conclusions. Thus, the study allows us to conclude that notarial activity is a system of notarial acts regulated by the legislation of Ukraine, as well as other organizational, managerial and other measures, means and operations that meet the regulatory requirements, carried out in a strict legally defined manner by public and private notaries, other authorized entities, which together are aimed at implementing the tasks of the notary and ensuring its work in the territory of Ukraine and its individual localities.

The characteristic features of notarial activities as an object of control and supervision are as follows: 1) the result of notarial activity has a high degree of legal significance, as it directly affects the rights and legal status

of individuals and legal entities; 2) it is a public activity and therefore equates to the process of performing state functions, and therefore it is subject to strict state regulation;

3) notarial activity is entrusted to special subjects, notaries, who are subject to special conditions regarding their qualifications, skills, knowledge and abilities; 4) notarial activity is of a procedural nature, and therefore is strictly regulated by law.

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