УДК 347

N. Martsenko,
N. Zvenyhoretska

LEGAL AND PROCEDURAL ASPECTS OF NOTARIAL PROTECTION IN UKRAINE AND IN FOREIGN COUNTRIES

The study is relevant due to the constant need to improve the legal system and its significant component, notaries. First of all, this is due to the need to take into account constant changes in society and technological breakthroughs in order to adapt notarial activities to new realities. In addition, the analysis of the theoretical foundations and regulatory framework of notaries in Ukraine in comparison with other countries helps to identify the advantages and disadvantages in national legislation and contributes to the improvement of legal norms. Therefore, the purpose of this study is to provide a theoretical and legal analysis of notarial protection in Ukraine and in certain foreign countries.

This paper analyses the theoretical foundations and legal framework regulating notarial activity and defining the legal status of a notary in Ukraine and in some foreign countries of different legal systems. The article examines the role of the notary as a component of the legal order system, its tasks and peculiarities of organisation. The author identifies the main elements that constitute the legal status of a notary in Ukraine and in foreign countries.

The author makes a comparative legal characterisation of the peculiarities of the legal status of a notary in the Latin and Anglo-Saxon notaries. Particular attention is paid to the legality, objectivity, independence and competence of notaries, who play a key role in ensuring the legal accuracy and legality of transactions. The article also discusses the support of notarial protection in Ukraine through the electronic document management system and electronic digital signature, which ensures the security and confidentiality of transactions.

The article examines the role of notarial activity as a form of protection of subjective civil rights which complements other methods of legal protection. In particular, the author emphasises that notarial protection is a complement to other forms of protection, such as judicial and administrative protection, and identifies the need to analyse the legal status of notaries in other countries in order to improve national notarial legislation. It is proposed to take into account the experience of foreign legislators in rulemaking with a view to theoretical and legislative improvement of the legal status of notaries in Ukraine.

Keywords: *notary, notary, legal status of a notary, protection, form of protection, notarial protection, liability, contract, transaction.*

DOI 10.34079/2226-3047-2023-14-27-100-110

Formulation of the problem. The relevance of this study is manifested in the context of the constant need to improve the legal system, in particular, its component - notaries. Given the constant changes in society and technological breakthroughs, it is necessary to adapt notarial activities to new realities. The study of the theoretical foundations and regulatory framework of notaries in Ukraine in comparison with other countries allows identifying the advantages and disadvantages in national legislation and contributes to the improvement of the regulatory framework. The analysis of the fundamental principles and tasks of the notary, its role in the system of law and order, as well as the comparison of the legal status of notaries

in different legal systems are relevant in terms of finding optimal models for regulating notarial activities in Ukrainian legislation.

The problem of the study is the need to adapt notarial activities to modern challenges, including changes in society and technological breakthroughs. Therefore, the issue of supporting notarial protection in Ukraine with the help of electronic technologies, such as electronic document management and electronic digital signature, is significant. The importance of protecting subjective civil rights through notarial activities is also related to the fact that notarial protection is becoming an effective complement to other forms of legal protection. In addition, further analysis and consideration of foreign experience in lawmaking may help to improve legislation in Ukraine, ensuring its compliance with modern requirements and international standards. All of the above substantiates the need to analyse foreign experience and allows for the development of recommendations for improving the legal status of notaries in Ukraine, including increasing the efficiency of their activities in the context of current challenges, in particular those related to Russia's war against Ukraine.

Analysis of recent studies and publications. The study of the issue of notarial protection is a relevant and widely discussed phenomenon both in the scientific environment and in the practice of law enforcement in Ukraine and in foreign countries. Many scholars and legal practitioners from Ukraine and other countries have made a significant contribution to the study of this issue by examining various aspects of notarial protection in different jurisdictions. Among them, in particular, we should highlight the works of Fursa S.Y., Talpis J. A., Ene Anderson, Gamal I. O., Bondareva M. V**.,** Ilyina Yu.P**.**, Milorava M. and others. However, in the scientific works of the above-mentioned scholars, notarial protection is considered either fragmentarily or through the prism of national legislation, without taking into account the new challenges of digitalisation and systemic changes in national and international legislation. The issues of notarial protection peculiarities in Ukraine and in various foreign countries, which are currently relevant, remain unaddressed, which could identify common trends and highlight differences in legal practice. This approach will help improve the notary system and increase the effectiveness of legal protection of citizens. Therefore, the purpose of this study is to provide a theoretical and legal analysis of notarial protection in Ukraine and in some foreign countries.

Presentation of the main material. Based on the provisions of Article 15 of the Civil Code of Ukraine (Цивільний кодекс України, 2003), every person has the right to protect his or her civil right in the event of its violation, non-recognition or challenge. Article 18 of the Civil Code of Ukraine (Цивільний кодекс України, 2003) provides for the possibility of protecting civil rights through notarial acts. Obviously, notarial protection in Ukraine is an important component of the legal system aimed at protecting the rights and interests of citizens and other participants in legal relations. The protection of rights and interests of participants in civil legal relations by a notary contributes to the protection of subjective civil rights, complementing other methods of protection, such as judicial and administrative. In addition, it is harmoniously integrated into the overall structure of the country's legal environment and plays a key role in ensuring law and order. The fundamental principles of notarial protection, such as legality, objectivity, independence and competence, are the basis of notaries' activities and ensure the legal accuracy and legality of any transactions.

As O. Kot notes, from the point of view of the modern understanding of jurisdiction, the protection of rights can have both judicial and alternative forms, such as administrative and notarial, the latter can reasonably be considered as a separate form of protection of subjective civil rights (Кот, 2017).

According to Art. 18 of the Civil Code of Ukraine (Цивільний кодекс України, 2003), a notary can protect civil rights, for example, by drawing up an executive inscription

on a debt document in cases and in the manner prescribed by law. This aspect is important, as this legal provision establishes the main mechanism for the protection of civil rights through notarial activity. Notarial proceedings, as the main element of notarial activity, have their own rules and sequence, and often lead to the issuance of a notarial deed. This process is aimed at achieving specific goals and depends on the actions of all participants in the notarial procedural relations. The explanation of the Ministry of Justice of Ukraine dated 06.12.2011 (Міністерство юстиції України, 2011) states that a notarial act has its own legal significance, and notarial proceedings consist of successive actions performed in order to give them legal validity.

The notarial process is a complex concept that covers not only specific notarial acts, but also accompanying procedures and legal relations. As is well known, the notarial process begins with the submission of an application for a certain notarial act. This usually takes place at the initiative of one of the parties or, if necessary, with the notary's involvement. After submitting the application, the notary performs a number of actions related to the identification of the applicant, verification of documents and other necessary procedures. Then, he or she performs the necessary notarial act in accordance with the law and at the request of the applicant. This may include certification of documents, drafting of contracts, certification of signatures, etc. An important part of this process is for the notary to comply with all legal requirements and ensure the legality and authenticity of the actions performed. In addition to the notarial acts themselves, a significant part of the notarial process is made up of supporting procedures. This includes preparing documents, consulting the parties, and explaining the legal aspects of a transaction or document. The notary is also responsible for the preservation and archiving of important documents related to the notary's actions (Нотаріальна палата України, б.д.).

Despite the general nature of notarial protection, it has a number of peculiarities, among which it is worth noting its official status, which is determined by its introduction into the legislation of the country and recognition by state authorities as one of the main means of ensuring law and order and protecting the rights of citizens. In addition, the official status of notarial protection implies its legal consolidation in the relevant legislative acts that grant notaries certain powers and establish the rules of their activities. This creates a legal basis for the performance of notarial functions and provides legal certainty to all transactions certified by a notary. At the same time, the state recognition of notarial protection as an official status implies its integration into the system of state bodies, including the justice system.

Thus, an important aspect of the notarial process is its legal regulation. The notarial procedure is based on a set of rules that govern the activities of notaries in the process of performing notarial acts. These rules are established by the country's legislation and ensure standardisation and uniformity of procedures, which helps to protect the rights and interests of citizens.

Ukrainian legislation does not provide a clear definition of the status of a notary, although this issue is regulated by the Law of Ukraine ‘On Notaries’ (Закон України № 3425-XII, 1993). To improve national notarial legislation, it is important to analyse the theoretical and regulatory aspects of the legal status of a notary in other countries with different legal systems. Notarial protection in Ukraine is supported by the system of electronic document management and electronic digital signature, which ensures the security and confidentiality of transactions. Notarial activity can be considered as a form of protection of subjective civil rights that complements other methods of protection, such as judicial and administrative (Фурса, 2012).

In the world of science, there are two main models of modern notaries: Latin and Anglo-Saxon. The Latin notary originated in the countries of the Romano-Germanic legal

system and is based on the adaptation of Roman law and general legal concepts. This model is characterised by certain common features, in particular: a notary receives powers from the state and acts on its behalf and under its control, and therefore the position of a notary is characterised by publicity; one of the main functions of a notary is to make transactions authentic; a notary receives payment for his/her services based on established tariffs; notaries are united in collective bodies, such as notary chambers (Talpis, 2003). In general, the Latin-type notary provides for the status of a free profession for notaries, as clients treat them as an independent and responsible legal advisor, not as a representative of the authorities. This promotes a certain dynamism and flexibility in the interaction with the notary.

Despite the above specifics, it should be noted that the Latin-type notary not only ensures effective protection of the rights and interests of individuals and legal entities, but also plays an important role in maintaining legal stability and trust in the justice system. The carefully regulated activities of notaries, based on the principles of objectivity, independence and confidentiality, help to avoid conflicts and resolve legal issues through voluntary agreement of the parties. This notary model results in a high degree of protection of the legal interests of the parties to legal relations. This is achieved due to the authenticity of documents drawn up by a notary, which have significant judicial force and are recognised by all subjects of private and public legal relations (Piepu and Yagr, 2001). This approach encourages greater trust in the legal system and facilitates the effective resolution of legal conflicts, focusing on the transparency and legality of the actions of parties to legal relations, which is an important prerequisite for maintaining law and order and social stability. The Latin notary is an important element of the legal culture of society, contributing to the formation of a conscious attitude to law and a responsible approach to legal actions by participants in private legal relations.

There are three main variants of Latin notaries in Europe: German, French and mixed (Talpis, 2003). The German model is characterised by limited activity of the notary at all stages of the notarial process. The main work consists in drafting the relevant document and its subsequent certification. The notary does not play an important role in preparing for the notarial act, advising clients and obtaining the necessary documents. In this system, notarial functions sometimes have a formal character that lacks a creative dimension. However, this formalism contributes to the unification of notarial acts and notarised documents, reducing competition between notaries.

In the French model, the notary is proactive and takes the initiative to interact with clients. He or she takes on all aspects of customer service, from collecting the necessary documentation to registering notarial deeds. This model provides for an individual approach to each client in order to achieve the desired legal result (Padilla, 2018). However, such a flexible approach may lead to a reduction in the level of formality, which in turn may lead to an inappropriate attitude to professional duties.

The mixed model of notaries combines elements of both systems and is quite effective as it combines the advantages of both approaches. It allows notaries to be proactive and active in their interactions with clients, which contributes to faster and more efficient resolution of legal issues. At the same time, the level of formality and compliance with professional standards is maintained, which guarantees the reliability and legitimacy of notarial acts. However, it is important to bear in mind that the successful functioning of the mixed model requires notaries to pay great attention to detail and balance between an individual approach to clients and compliance with established procedures and standards.

The notary model demonstrates its effectiveness to a greater extent when analysing the notaries of specific countries. In particular, the organisation of notarial protection in Estonia, which is regulated by the Estonian Notary Act, is worthy of note (Riigi Teataja, 2013). The

adoption of this law formalised the replacement of the existing system of state notaries with Latin notaries. In Estonia, a notary acts as a person performing public legal functions, vested by the state with the authority to regulate legal relations and prevent legal conflicts (Anderson, 2006). According to Estonian law, a notary is a person who performs public law powers granted by the state (in particular, resolves inquiries from interested parties regarding facts and events of legal significance and performs other professional duties to ensure stability and order). A notary does not act as an entrepreneur or civil servant, but performs his duties as an independent specialist under his own responsibility (Anderson, E., 2003).

This approach relies on the notary as an authoritative official with statutory status and powers. The notary is obliged to act in accordance with established rules and standards, ensuring legal compliance and protecting the interests of the parties. His work is aimed at ensuring the stability of legal relations and the implementation of procedures in accordance with applicable law. Thus, the notary acts as a key stabilising factor in the legal system, guaranteeing the reliability and inviolability of legal agreements and documents.

The legislation on notaries of the Slovak Republic stipulates that only notaries are entitled to perform notarial acts (Collection of Laws of The Slovak Republic, 1992). The Law of the Slovak Republic on Notaries defines a notary as a person authorised to perform notarial activities, as well as to provide legal services to individuals and legal entities, draft documents, manage property and represent interests in property matters. According to the legislation of the Slovak Republic, notarial activities cannot be combined with commercial or any other activities for profit (Justice without Litigation, n.d.). In general, the Slovak Republic has a system of public notaries, and notaries have the status of public law officials, despite the fact that they act on their own behalf and bear personal responsibility. Despite the existence of a special legal framework, it should be noted that the issue of the legal status of a notary in this country is not clearly resolved (Asaulyuk, 2006).

In France, the notary system is a component of the public justice system and is called the ‘Public Notary Service’. In the French notary system, the legal status of a notary is defined as a civil servant who is entitled to certify legal facts (Brown, 1953). At the same time, the Ordinance ‘On the Status of the Notary’ (Smithers, 1911), which defines a notary as an official, a representative of a free profession and a guarantor of authenticity, has not ceased to be in force. In general, notarial activity in France is characterised by a kind of paradoxical nature that combines two different aspects in one person: an official with official powers delegated by the state and a person who performs this function within the framework of a liberal status. The special status of a notary is reflected in his or her functional duties and responsibilities to society. The liberal status means that a notary is more than an intermediary in the performance of legal actions, but rather acts as a trustee with responsibility for ensuring the legality and legitimacy of the transactions he or she certifies (French-property.com, n.d.). A notary must carefully check all documents he or she signs and ensure that they comply with the law and the will of the parties, so his or her role is not only to record the fact of transactions but also to ensure their legal validity. However, along with the high status of trust and responsibility, a notary must also meet the requirements of a liberal status. This means that notarial activities are open to competition and regulated by market conditions. The notary has the right to set his/her own fees for the services provided, and also has a certain degree of autonomy in conducting his/her practice. An important aspect of the liberal status is also the notary's liability to the court for his or her actions or omissions (Гамаль, 2008). In the event of violations or errors, the court may impose severe measures, including correction of errors, punishment or removal from office. Such a procedure puts a lot of pressure on the notary, who must constantly adhere to high standards of professional activity and ethical principles.

The status of a free profession implies that clients are more likely to perceive notaries

as independent legal advisers rather than as representatives of the authorities. This is due to the fact that the notary must comply with the obligations to provide advice, as any breach of these obligations may result in serious sanctions by the court. The notary is personally liable for his or her actions and advice, which determines the nationwide nature of solidarity between notaries in France (French-property.com, n.d.).

In the Federal Republic of Germany, the status of a notary is determined by the Federal Notary Regulation of 16 February 1961, according to which the notary actually performs the functions of preventive justice (Federal Ministry of Justice, 2022). The preventive nature of notarial activity significantly relieves the German courts, as notaries can resolve legal issues and conclude agreements between individuals and legal entities without going to court. In addition, the Federal Notary Regulation stipulates that a notary also performs public functions by holding a position delegated on behalf of the state and performing certain public duties. He or she is granted state powers, but is subject to official supervision to ensure the proper performance of his or her professional duties. Interestingly, in Germany, unlike in other countries, most notaries are not state employees, except in certain Länder. In this country, notaries actually perform their duties on behalf of the state and are mostly civil servants (Wolf, 1999**).**

The Anglo-Saxon type of notary, which is typical for most European countries and is based on private practice rather than on state delegation of authority, should be distinguished from the Latin type of notary (Kyianytsia, 2023; Василів та Сорочкіна, 2020). Unlike the Latin type, in the Anglo-Saxon notary system, notaries may be practicing attorneys or other lawyers who perform notarial acts as part of their professional practice (Cerka, Grigiene and Poderyte, 2015). Despite a number of differences, the Anglo-Saxon notary system has its advantages. For example, it offers more flexibility and opportunities for notaries to develop their business, as they can act not only as notaries but also as lawyers or consultants. However, this approach may also create conflicts of interest, violating the principle of objectivity of notarial acts.

Considering the peculiarities of notary organisation in the United States, it is worth noting the absence of this institution as a single specialised state institution. Notaries in the United States do not have specific duties, as in the countries of the continental legal system, where they are officials whose activities are related to the practice of law or may not be related to it (Бондарева, 2006; Ільїна, 2013). The United States has a specific legal status of notaries, which is marked by the fact that they are prohibited from providing legal advice, drafting agreements and other forms of activity that belong to the sphere of professional lawyers (Мілорава, 2005).

In the UK, there is no special legal act regulating the activities of the notary. This suggests that the institution of notaries in the UK is based on legal customs, commercial law, court precedents and statutes containing provisions on the procedure for performing certain notarial acts (Brooke, 1988).

Analysing the organisation and functioning of notaries in the United States of America and the United Kingdom, one can identify significant differences and observe some convergence in principles and approaches. In the United States, notaries are regulated on a state-by-state basis, which leads to a significant diversity in the legislation of this legal area. Notaries in the United States have the right to certify signatures on documents, certify the sources of documents, draw up minutes and perform other actions. In order to become a notary public, you usually need to pass a special exam and obtain a licence from the relevant state authorities. Notaries play an important role in maintaining the credibility of legal documents and transactions, and their functions often include verifying the identity of the signatory as well as the document for subjective validity (Мілорава, 2005).

In the UK, the notary system is more centralised and notaries have less power than their American counterparts. They usually specialise in drafting and notarising certain types of documents, such as contracts or wills. In order to become a notary in the UK, you need to undergo special training and register in accordance with the rules set by the Royal College of Notaries (Brooke, 1988). Despite these differences, in both countries, notaries play an important role in ensuring legal stability and trust in documents. In both systems, there are clear procedures for admission to the notary profession, including education, examination and licensing requirements. In addition, notaries have a high legal status that allows them to perform their duties with great responsibility to the law and society.

In general, in the UK and the USA, the legal status of a notary is not clearly defined at the legislative level. In addition, a notary acts as a person who has a certain dependence on the subjects of civil legal relations to whom he/she provides services on behalf of the state. Also, the notary must take into account not only the requirements of the law, but also legal customs and court precedents (Василів та Сорочкіна, 2020).

Conclusions. Thus, in the world science, there are two main models of modern notaries: Latin and Anglo-Saxon. The Latin notary is based on the adaptation of Roman law and general legal concepts and is characterised by the publicity of the notary's position, authentication of transactions, payment for services based on tariffs and the unification of notaries into collective bodies. This model provides for the status of a free profession for notaries, which promotes dynamism and flexibility in interaction with clients. Today, there are several variants of Latin notaries in Europe, including the German, French and mixed models. Each of them has its own peculiarities and advantages, but the successful functioning of any model requires notaries to comply with professional standards. It should be noted that the Latin notary is an important element of the legal culture of society and contributes to the formation of a conscious attitude to law and a responsible approach to legal actions by participants in legal relations.

Comparing the Latin and Anglo-Saxon types of notaries, one can identify significant differences in their organisation and functioning. The Latin notary system, which is typical for most European countries, is based on private practice and compliance with certain legal standards regulated by the state. Notaries often act on behalf of the state, receiving authority from it and being controlled by it. In contrast, the Anglo-Saxon notary system allows notaries to act as attorneys or consultants, which can provide greater flexibility in their professional activities. However, this can also create conflicts of interest and violations of the principles of objectivity. Overall, despite the differences in organisation and regulation, notaries in both systems play an important role in ensuring legal stability.

This study is important for improving the legislation on notaries in Ukraine, as it provides an opportunity to take into account the diversity of approaches and models of notaries existing in the world. Understanding the peculiarities of the Latin and Anglo-Saxon types of notaries will help to find the best way to develop and reform the notary system in Ukraine. In particular, it is important to ensure that the legal status of notaries is adequate to guarantee their independence and accountability before the law. It is also important to ensure high standards of professional training to ensure the quality and credibility of their work. Therefore, a thorough analysis of international experience in the field of notaries is an important step towards improving notary legislation in Ukraine, contributing to the quality of legal services and trust in the notary system as a whole.

Bibliographic list

Бондарева, М. В., 2006. Англосаксонський нотаріат: особливості організації та функціонування. *Університетські наукові записки,* 3-4, с. 153-159.

Василів, С. та Сорочкіна, О., 2020. Світові системи нотаріату: порівняльний аналіз. *Вісник Національного університету "Львівська політехніка". Серія: Юридичні науки* [онлайн], 1. Доступно: <https://science.lpnu.ua/sites/default/files/journal-paper/2020/may/21501/23.pdf>

Гамаль, І. О., 2008. Сучасний стан розвитку системи нотаріату в Україні. *Актуальні проблеми державного управління*, 2 (34), с. 3–7.

Закон України Про нотаріат № 3425-XII від 02.09.1993. *Верховна Рада України* [онлайн]. Доступно: <https://zakon.rada.gov.ua/laws/show/3425-12#Text>

Ільїна, Ю. П., 2013. Особливості правового статусу нотаріуса в деяких зарубіжних країнах. *Науковий вісник Міжнародного гуманітарного університету. Серія: Правознавство*, 5, с. 148-152.

Кот, О. О., 2017. *Проблеми здійснення та захисту суб'єктивних цивільних прав*. Дисертація. Доктор наук. Київ, НДІППіП.

Мілорава, М., 2005. Нотаріат та нотаріальна діяльність у Сполучених Штатах Америки. *Юриспруденція: Теорія і практика*, 7, с. 50-55.

Міністерство юстиції України, 2011. Роз'яснення: Особливості нотаріального провадження при вчиненні протесту векселя про неплатіж від 6 грудня 2011 року [онлайн] Доступно: <https://zakononline.com.ua/documents/show/332348___332413>

Нотаріальна палата України, б.д. *Міжнародний досвід*. [онлайн] Доступно: <http://npu.in.ua/mizhnarodnij-notariat/mijnarodniy_dosvid/mijnarodniy_dosvid#>

Фурса, С. Я., 2012. *Теорія нотаріального процесу: науково-практичний посібник.* Київ : Алерта.

Цивільний кодекс України № 435-IV, 2003. *Верховна Рада України* [онлайн]. Доступно: <https://zakon.rada.gov.ua/laws/show/435-15#Text>

Anderson, E., 2003. *Status and Role of Notary in Legal System of Estonia. 10th Anniversary of the Estonia Notaries.* Tallinn 2003, pp. 53-62.

Anderson, E., 2006. State Liability without the Liability of State. *Juridica international*, [online], XI, pp.146–157. Available at: <https://www.juridicainternational.eu/public/pdf/ji_2006_XI_146.pdf>

Asaulyuk, O., 2006. Short commentary on the Law of Slovakia "On notaries and notarial activity". *Small Encyclopedia of a Notary,* 2(26), pp. 75-92.

Brooke, R., 1988. *Brooke's Notary. Notarial Office and Practice in England and Overseas*. 10th ed. London, Stevens & Sons.

Brown, L. N., 1953. The Office of the Notary in France. *The International and Comparative Law Quarterly*, 2(1), pp. 60–71. Cambridge University Press.

Cerka, P., Grigiene, J. and Poderyte, E., 2015. Possibility for notaries of Latin tradition to carry mediation function, *Polish Political Science Yearbook,* p. 50-70. DOI: 10.15804/tpn2015.1.03

Collection of Laws of The Slovak Republic, 1992. *ACT of the Slovak National Council of 06 May 1992 on notaries and notaries' activities (Notary Rules).* [online] Available at: <https://www.notar.sk/wp-content/uploads/2021/08/Act-on-notaries-and-notaries-activities-Notary-Rules.pdf>

Federal Ministry of Justice, 2022. *Federal Code for Notaries* [online] Available at: <https://www.gesetze-im-internet.de/englisch_bnoto/englisch_bnoto.html>

French-property.com, n.d. *The Notaire and his role in France.* [online] Available at: <https://www.french-property.com/reference/role_of_notaire.htm>

Justice without Litigation, n.d. *Executive Summary Legal Study*. [online] Available at: <https://ihr-

notariat.at/fileadmin/user_upload/Notariatskammer/JuWiLi/Executive_Summary_legal_study.pdf>

Kyianytsia, L., 2023. Comparative Analysis of Notarial Functions in Ukraine, Poland and Lithuania. *Krakowskie Studia Małopolskie* [online], 4(40). Доступно: <https://journals.indexcopernicus.com/api/file/viewByFileId/1895099>

Padilla, A., 2018. *Notary Public. Handbook.* Sacramento, California [online] Available at: <https://notary.cdn.sos.ca.gov/forms/notary-handbook-2018.pdf>

Piepu, Z.F. and Yagr, Z., 2001. The review of the XXII the International Latin notarial congress. *The notarial reporter, 11*(2), p. 3-13.

Riigi Teataja, 2013. Notaries Act. Passed 06.12.2000. [online] Available at: <https://www.riigiteataja.ee/en/eli/511112013002/consolide>

Smithers, W. W., 1911. History of the French Notarial System, 60 U. Pa. L. Rev. 19. [online] Available at: <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=7217&context=penn_law_review>

Talpis, J. A., 2003. Latin notariat in the face of globalization. *Bulletin of the Verkhovna Rada,* 9, p. 38-39.

Wolf, C. R., 1999. Notaries in Germany. In: Tremml, B., Buecker, B. (eds) *Key Aspects of German Business Law*. Springer, Berlin, Heidelberg. DOI: <https://doi.org/10.1007/978-3-662-08065-8_11>

References:

Anderson, E., 2003. *Status and Role of Notary in Legal System of Estonia. 10th Anniversary of the Estonia Notaries.* Tallinn 2003, pp. 53-62.

Anderson, E., 2006. State Liability without the Liability of State. *Juridica international*, [online], XI, pp.146–157. Available at: <https://www.juridicainternational.eu/public/pdf/ji_2006_XI_146.pdf>

Asaulyuk, O., 2006. Short commentary on the Law of Slovakia "On notaries and notarial activity". *Small Encyclopedia of a Notary,* 2(26), pp. 75-92.

Bondareva, M. V., 2006. Anhlosaksons'kyy notariat: osoblyvosti orhanizatsiyi ta funktsionuvannya [Anglo-Saxon notary: peculiarities of organization and functioning]. *Universytet·s'ki naukovi zapysky,* 3-4, p. 153-159 (in Ukrainian).

Brooke, R., 1988. *Brooke's Notary. Notarial Office and Practice in England and Overseas*. 10th ed. London, Stevens & Sons.

Brown, L. N., 1953. The Office of the Notary in France. *The International and Comparative Law Quarterly*, 2(1), pp. 60–71. Cambridge University Press.

Cerka, P., Grigiene, J. and Poderyte, E., 2015. Possibility for notaries of Latin tradition to carry mediation function, *Polish Political Science Yearbook,* p. 50-70. DOI: 10.15804/tpn2015.1.03

Collection of Laws of The Slovak Republic, 1992. *ACT of the Slovak National Council of 06 May 1992 on notaries and notaries' activities (Notary Rules).* [online] Available at: <https://www.notar.sk/wp-content/uploads/2021/08/Act-on-notaries-and-notaries-activities-Notary-Rules.pdf>

Federal Ministry of Justice, 2022. *Federal Code for Notaries* [online] Available at: <https://www.gesetze-im-internet.de/englisch_bnoto/englisch_bnoto.html>

French-property.com, n.d. *The Notaire and his role in France.* [online] Available at: <https://www.french-property.com/reference/role_of_notaire.htm>

Fursa, S. YA., 2012. *Teoriya notarial'noho protsesu: naukovo-praktychnyy posibnyk. [Theory of the notarial process: scientific and practical guide]*. Kyiv : Alerta (in Ukrainian).

Hamal', I. O., 2008. Suchasnyy stan rozvytku systemy notariatu v Ukrayini [The current state of development of the notary system in Ukraine]. *Aktual'ni problemy derzhavnoho upravlinnya,* 2 (34), p. 3–7 (in Ukrainian).

Il'yina, YU. P., 2013. Osoblyvosti pravovoho statusu notariusa v deyakykh zarubizhnykh krayinakh [Peculiarities of the legal status of a notary in some foreign countries]. *Naukovyy visnyk Mizhnarodnoho humanitarnoho universytetu. Seriya: Pravoznavstvo,* 5, p. 148-152 (in Ukrainian).

Justice without Litigation, n.d. *Executive Summary Legal Study*. [online] Available at: <https://ihr-notariat.at/fileadmin/user_upload/Notariatskammer/JuWiLi/Executive_Summary_legal_study.pdf>

Kot, O. O., 2017. *Problemy zdiysnennya ta zakhystu sub"yektyvnykh tsyvil'nykh prav [Problems of implementation and protection of subjective civil rights].* Dysertatsiya. Doktor nauk. Kyyiv, NDIPPiP (in Ukrainian).

Kyianytsia, L., 2023. Comparative Analysis of Notarial Functions in Ukraine, Poland and Lithuania. *Krakowskie Studia Małopolskie* [online], 4(40). Доступно: <https://journals.indexcopernicus.com/api/file/viewByFileId/1895099>

Milorava, M., 2005. Notariat ta notarial'na diyal'nist' u Spoluchenykh Shtatakh Ameryky [Notary and notary activity in the United States of America]. *Yurysprudentsiya: Teoriya i praktyka*, 7, p. 50-55 (in Ukrainian).

Ministerstvo yustytsiyi Ukrayiny, 2011. Roz'yasnennya: Osoblyvosti notarial'noho provadzhennya pry vchynenni protestu vekselya pro neplatizh vid 6 hrudnya 2011 roku [Explanation: Peculiarities of notarial proceedings when protesting a promissory note for non-payment dated December 6, 2011] [online]. Available at: <https://zakononline.com.ua/documents/show/332348___332413> (in Ukrainian)

Notarial'na palata Ukrayiny, b.d. *Mizhnarodnyy dosvid [International experience].* [online]. Available at: <http://npu.in.ua/mizhnarodnij-notariat/mijnarodniy_dosvid/mijnarodniy_dosvid#> (in Ukrainian)

Padilla, A., 2018. *Notary Public. Handbook.* Sacramento, California [online] Available at: <https://notary.cdn.sos.ca.gov/forms/notary-handbook-2018.pdf>

Piepu, Z.F. and Yagr, Z., 2001. The review of the XXII the International Latin notarial congress. *The notarial reporter,* 11(2), p. 3-13.

Riigi Teataja, 2013. Notaries Act. Passed 06.12.2000. [online] Available at: <https://www.riigiteataja.ee/en/eli/511112013002/consolide>

Smithers, W. W., 1911. History of the French Notarial System, 60 U. Pa. L. Rev. 19. [online] Available at: <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=7217&context=penn_law_review>

Talpis, J. A., 2003. Latin notariat in the face of globalization. *Bulletin of the Verkhovna Rada,* 9, p. 38-39.

Tsyvil'nyy kodeks Ukrayiny № 435-IV, 2003 [Civil Code of Ukraine No. 435-IV, 2003]. *Verkhovna Rada Ukrayiny* [online]. Available at: <https://zakon.rada.gov.ua/laws/show/435-15#Text> (in Ukrainian).

Vasyliv, S. and Sorochkina, O., 2020. Svitovi systemy notariatu: porivnyal'nyy analiz [World notary systems: a comparative analysis]. *Visnyk Natsional'noho universytetu "L'vivs'ka politekhnika". Seriya: Yurydychni nauky* [online], 1. Available at: <https://science.lpnu.ua/sites/default/files/journal-paper/2020/may/21501/23.pdf> (in Ukrainian)

Wolf, C. R., 1999. Notaries in Germany. In: Tremml, B., Buecker, B. (eds) *Key Aspects of*

German Business Law. Springer, Berlin, Heidelberg. DOI: <https://doi.org/10.1007/978-3-662-08065-8_11>

Zakon Ukrayiny Pro notariat № 3425-XII vid 02.09.1993 [Law of Ukraine On Notary No. 3425-XII dated September 2, 1993]. *Verkhovna Rada Ukrayiny* [online]. Available at: <https://zakon.rada.gov.ua/laws/show/3425-12#Text> (in Ukrainian)

Стаття надійшла до редакції 19.04.2024 р.

Марценко Н.
Звенигорецька Н.

ПРАВОВІ ТА ПРОЦЕСУАЛЬНІ АСПЕКТИ НОТАРІАЛЬНОГО ЗАХИСТУ В УКРАЇНІ ТА У ЗАРУБІЖНИХ КРАЇНАХ

Проведене дослідження є актуальним у зв'язку з постійною потребою в удосконаленні правової системи та її вагомої складової нотаріату. Передусім, це пов'язано із необхідністю врахування постійних змін у суспільстві та технологічних проривів задля адаптації нотаріальної діяльності до нових реалій. Крім того, аналіз теоретичних основ і нормативно-правової бази нотаріату в Україні порівняно з іншими країнами допомагає виявити переваги та недоліки в національному законодавстві і сприяє вдосконаленню правових норм. Тому метою проведеного дослідження є теоретико-правовий аналіз нотаріального захисту в Україні та в окремих зарубіжних країнах.

У даній роботі проаналізовано теоретичні засади та нормативно-правову базу, що регулює нотаріальну діяльність та визначає правовий статус нотаріуса в Україні та у деяких зарубіжних країнах різних правових систем. У статті досліджується роль нотаріату як складової системи правопорядку, його завдання та особливості організації. Визначено основні елементи, що становлять правовий статус нотаріуса в Україні та у зарубіжних країнах.

Здійснено порівняльно-правову характеристику особливостей правового статусу нотаріуса в нотаріаті латинського та англосаксонського типів. Особлива увага приділяється висвітленню законності, об'єктивності, незалежності та компетентності нотаріусів, які відіграють ключову роль у забезпеченні юридичної достовірності та законності правочинів. Обговорюється підтримка нотаріального захисту в Україні за допомогою системи електронного документообігу та електронного цифрового підпису, що забезпечує безпеку та конфіденційність правочинів.

Досліджено роль нотаріальної діяльності як форми захисту суб'єктивних цивільних прав, яка доповнює інші методи правового захисту. Зокрема, акцентовано увагу на тому, що нотаріальний захист є доповненням до інших форм захисту, таких як судовий та адміністративний, і визначено необхідність аналізу правового статусу нотаріусів у інших країнах для удосконалення вітчизняного нотаріального законодавства. Запропоновано врахувати досвід нормотворчої діяльності закордонного законодавця з метою теоретичного та законодавчого вдосконалення правового статусу нотаріуса в Україні.

Ключові слова: *нотаріат, нотаріус, правовий статус нотаріуса, захист, форма захисту, нотаріальний захист, відповідальність, договір, правочин.*