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DOI <https://doi.org/10.32849/2663-5313/2023.1.01>**Kateryna Chyzhmar,**

Doctor of Law, Associate Professor, Chief Researcher at the Department of Scientific-Legal Expertise and Legislative Work, Scientific Institute of Public Law, 2a, H. Kirpa street, Kyiv, Ukraine, postal code 03035, k.chyzhmar@gmail.com

ORCID: orcid.org/0000-0001-8638-7872

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GUARANTEES OF NOTARIAL ACTIVITIES: CONCEPT AND CONTENT

Abstract. Purpose. The purpose of the article is to define the concept and content of guarantees of notarial activities. **Results.** The adoption of legal provisions solely cannot fully ensure the exercise of the rights of participants in legal relations. In practice, frequently there are situations when subjective rights which establish specific legal guarantees cannot be exercised. As a rule, such cases require relevant authorised state and public bodies or their officials to intervene to remove possible obstacles to the actual ensuring of the rights provided for in the provision. In addition, there are a number of legal guarantees, the essence thereof is in the activities of the relevant authorities. These include, for example, the activities of judicial authorities to restore violated rights. Therefore, the activities of the relevant state authorities, as provided for by law, together with the guarantee-provisions, act as a legal guarantee of the rights of the parties to legal relations. The impartiality of a notary is one of the most important features of his or her legal status as an actor of notarial process and is a guarantee not only for the parties concerned, but also for the notary himself or herself. **Conclusions.** Indirect judicial control is exercised when the court considers other civil cases related to challenging notarial transactions and other notarial documents in court, in other cases where the disputed legal relations of the parties are related to the performance of notarial acts. In such cases, the court's assessment of the legality of notarial acts is interim. The court checks whether the notary complied with the requirements of the law when performing a notarial act in order to determine the nature of the legal relationship between the parties to the litigation. In this case, the main purpose of the litigation is to resolve a dispute between the parties. In this case, the court's assessment of notarial acts is usually provided in the reasoning part of the court decision. Therefore, judicial control over the performance of notarial acts as one of the guarantees of notarial activities can be defined as a court's assessment of a notary's compliance with the requirements of the law when performing a notarial act.

Key words: notary office, notary public, duty, notarial acts.

1. Introduction

The guarantees of notarial activities are aimed at separating the notary from other participants in civil legal relations who have applied to him/her, defining him/her as a holder of public power and an independent arbitrator. To guarantee (synonymous with "to provide") means to create an enabling environment for the implementation of something (Skakun, 2001, p. 212). Legal theory actively uses this term.

Legal provisions themselves are legal guarantees, since certain "means and methods" become legal guarantees only through their legal form, through their enshrining legal provisions. The very term "legal guarantees" indicates their legal basis, and the enhancement of guarantees is primarily based on the use of the opportunities provided by the existing legal provisions (Anton, 2005, p. 187).

Undoubtedly, the adoption of legal provisions by itself cannot fully ensure the exercise of the rights of parties to legal relations. In practice, situations often arise in which subjective rights that establish specific legal guarantees cannot be exercised. Usually, such cases require the relevant authorised state and public bodies or their officials to intervene to remove possible obstacles to the actual ensuring of the rights provided for in the provision.

In addition, there are a number of legal guarantees, the essence thereof is in the activities of the relevant authorities. These include, for example, the activities of judicial authorities to restore violated rights. Therefore, the activities of the relevant state authorities, as provided for by law, together with the provisions-guarantee, act as a legal guarantee of the rights of the parties to legal relations.

The purpose of the article is to define the concept and content of guarantees of notarial activities.

2. The concept of guarantees of notarial activities

The general theoretical understanding is that guarantees are ways and means of achieving something. In legal science, general and special guarantees are distinguished. Moreover, general guarantees include such phenomena that do not have their own legal form, but significantly affect the implementation of a particular legal provision. That is, the classical classification, as follows from the analysis of scientific sources, is the division into social, economic, political, ideological and other guarantees (Skakun, 2001, p. 180). Approaches to the understanding of guarantees vary from a complete denial of such an element in law to a detailed study, determination of the structure, classification, and justification as a necessary feature of any legal provision. According to H. Ellinek, the essential feature of the concept of law is therefore not coercion, but a guarantee, one of the types thereof is coercion (Ellinek, 1908, p. 117).

The Law of Ukraine "On Notaries" contains provisions on guarantees of notarial activities. Therefore, it is necessary to first define the essence of notarial activities itself, and then the mechanism for its provision. According to the Constitution of Ukraine (Article 3, part 2), human rights and freedoms and their guarantees mark the content and direction of the state's activities (Constitution of Ukraine, 1996). The state thereby undertakes to create a mechanism for the protection of human rights and to encourage these activities. In addition, the state establishes a special system of bodies whose tasks and functions include law enforcement.

Notarial activities, as we have repeatedly noted, should be viewed as a type of qualified legal assistance. In other words, its focus is law enforcement, mediating state protection. And its guarantees should ensure reliable protection of citizens' rights.

Thus, the guarantees of notarial activities are a legally significant mechanism for ensuring the activities of notary bodies, which is strictly implemented on the basis of the constitutional consolidation of the right of a citizen to qualified legal assistance at both the legislative and law enforcement levels.

The guarantees of notarial activities are aimed at ensuring the observance of the rights of interested parties, as well as the appropriate status of a notary within notarial procedural legal relations as an actor – a holder of public power and at the same time as an independent arbitrator, legal adviser to the parties.

Therefore, guarantees of notarial activities are equally important for all participants of notarial legal relations, as they are intended to ensure compliance with and exclude the possibility of violation of their rights (Barankova, 2010, p. 297).

It should be noted that Law of Ukraine No. 614VI "On Amendments to the Law of Ukraine "On Notaries" has a somewhat one-sided approach to regulating this aspect. Article 8-1, entitled "Guarantees of notarial activities", sets out rules that prevent violations of notaries' rights and protect their activities from unlawful interference and influence. The issue of protecting notaries' rights is outside the scope of the notarial process and should be addressed by notarial legislation only in terms of implementing the principle of independence and impartiality of a notary as an actor of notarial proceedings. Therefore, it should be agreed that the concept of guarantees of notarial activities is much broader than the content of Article 8-1 of the Law (Barankova, 2010, p. 298).

Therefore, since the current legislation of Ukraine on notaries does not clearly define the guarantees of notarial activities, they can be formulated based on the content of certain provisions of the Basic Law. Thus, in our opinion, the following guarantees of notarial activities should be highlighted: 1) impartiality; 2) independence; 3) guidance only by the Constitution and laws, legal regulations of state authorities and local self-government bodies adopted within their competence, as well as international regulations; 4) notarial secrecy; 5) judicial protection of notarial activities. Unfortunately, not all of the above provisions have been directly enshrined in the current legislation on notary office. In particular, the Law "On Notaries" does not contain a separate provision that would enshrine the principle of independence and impartiality of a notary. However, the provisions of these principles of notarial activities can be traced from a number of other provisions of the Law. Let us consider their content comprehensively.

The principle of impartiality of a notary is not clearly defined by the current legislation of Ukraine. Unlike the "Law on Notaries," the current Code of Civil Procedure of Ukraine defines the impartiality of judges as the absence of personal, direct or indirect interest in the outcome of a case or other circumstances that cast doubt on impartiality. Therefore, one of the procedural guarantees for the implementation of the tasks of civil proceedings and the adoption of lawful and reasonable decisions in civil cases is the institution of recusal of a judge, which aims to remove judges whose impartiality is in

doubt from participation in a case. Therefore, the institution of challenge aims to create confidence among the parties and other participants in the process, as well as among citizens present in the courtroom, that the case is considered and resolved impartially and absolutely objectively, which in turn contributes to the increase of the authority of the decisions made by the court and their educational value (Kharchuk, 2010).

When performing his or her duties, a notary shall not allow granting preferences or creating an enabling environment for granting preferences to any persons or groups of persons on the basis of gender, race, nationality, language, origin, property and official position, place of residence and attitude to religion, beliefs, or membership in public associations, professional affiliation and other grounds, as well as to any legal entities, unless otherwise provided by the current legislation of Ukraine (Order of the Ministry of Justice of Ukraine On approval of the Rules of Professional Ethics of Notaries of Ukraine, 2013).

In other words, the provision only establishes a prohibition on the performance of a notarial act. In such circumstances, the notary shall refuse to perform a notarial act. Describing this provision, many representatives of the notary community argue that such a prohibition is aimed at eliminating personal interest in the act. However, it is not difficult to imagine a situation when a notary may act as an interested party in relation to a party to an action. This may be personal friendships, business relations of a close relative of the notary, etc. All these are circumstances that call into question notaries' impartiality.

Furthermore, the legislation does not provide for the institution of notary recusal, in particular, if one of the parties has any information about the notary that indicates his or her interest, they can apply to another notary. But it is good if there are several notaries within one notary district, but what if there is only one notary in the district? Moreover, this circumstance may be discovered later, and it will not be a ground for announcing the action taken illegal.

Therefore, when performing a notarial act, a notary shall not give preference to any of the interested parties. The requirements of impartiality determine the duties of a notary to explain to the interested parties – participants in the notarial act – their rights and duties, the essence and sequence of the notarial act in a comprehensive, complete and exhaustive manner so that legal ignorance cannot be used to their detriment (Law of Ukraine On Notaries, 1993).

Therefore, the impartiality of a notary is one of the most important features of his or her legal status as an actor of notarial process and is a guarantee not only for the parties concerned, but also for the notary himself or herself. In this way, the possibility of exerting influence on a notary with the aim of making an illegal notarial act is excluded, which is evident from the content of Article 8-1 of the Law under consideration.

With regard to the application of the principle of *notary independence*, questions often arise: independence from whom? From him/herself? Here we should proceed from ensuring the functions of the notary. Above, we have already described the notary as an arbitrator of legal relations. For our country, the existence of such a notary – an independent arbitrator – is still a relatively distant prospect. However, the principle of notary independence was proclaimed precisely to create such conditions. A notary shall be free from opportunistic considerations, the political situation and the opinion of the head of the judiciary and other officials.

The legal guarantees of notary independence include, in particular, the indefinite validity of the certificate of the right to practice notary, and the judicial procedure for appealing against notary actions. However, in our opinion, they cannot be recognised as appropriate and sufficient. In this regard, firstly, it would be appropriate to provide for a mandatory judicial procedure for suspension and termination of notarial activities. Secondly, the mechanism of control of notarial activities needs to be significantly improved so that issues of violation of the law in the performance of notarial acts would also be resolved exclusively by the court (Barankova, 2010, p. 217).

For private notaries, the judicial procedure for removal from office also serves as such guarantee. Public notaries are less independent from the judiciary, as they are directly subordinated to it. This is an employment relationship. A notary working in a notary public's office may be dismissed in accordance with labour law.

It should be noted that under the current labour legislation, labour discipline is based on the conscious and conscientious performance of labour duties by employees and is a prerequisite for productive work. It is ensured by: 1) creation of the necessary organisational and economic environment for normal productive work; 2) conscientious attitude to work; 3) methods of persuasion; 4) education; 5) rewards for conscientious work (Labour Code of Ukraine, 1971).

Violators of labour discipline are subject to disciplinary and social influence. Employees

shall work honestly and consciously, timely and accurately comply with the orders of the owner or his/her authorised body, increase labour productivity, improve product quality, obey labour and technological discipline, meet the requirements of regulations on labour protection, safety and industrial sanitation, and to treat the owner's property with care and attention (Labour Code of Ukraine, 1971).

The main duties of employees are: 1) to work honestly and in good faith; 2) to comply with labour discipline and internal regulations: to arrive at work on time, to observe the established working hours, to use all working time exclusively for productive work, to timely and accurately comply with the orders of the owner or his authorised body, etc; 3) to increase labour productivity, timely and diligently perform tasks and orders, meet production standards and standardised production targets, etc.

The Labour Code of Ukraine stipulates that an employment contract may be terminated by the owner or his/her authorised body, in particular in case of systematic failure of the employee to fulfil his/her duties under the employment contract or the Internal Labour Regulations without valid reasons, if the employee has previously been subject to disciplinary or public penalties (Bolotina, Chanysheva, 2001, p. 122). Therefore, the orders of justice officials are mandatory for notaries working in state notary offices. Dismissal for failure to comply with them is quite possible. Furthermore, it will be quite difficult to prove otherwise in court, since formally the truth will be on the side of the justice authority. In addition, informal ties between the judiciary and justice officials should be considered, which are often the cornerstone of final decisions.

The financial basis for notaries' independence should be economic support guaranteed for their activities. The source of funding for the activities of a private notary is the money from performing notarial acts and providing legal and technical services, as well as other financial receipts that do not contradict the current legislation of Ukraine. All funds become the property of the notary, the state only obliges him to pay the relevant taxes and other mandatory payments. In this case, the notary's income serves as a guarantee of financial independence and a guarantee of compensation for damage caused by the notary's actions (Dun, 2009, p. 20).

Therefore, the issue of practical implementation of the independence of the notary office makes it important to address the issue of its financial support, in particular, payment for notaries' services, validity of related services

of the notarial process, taxation of notaries' income, etc.

The need for state regulatory framework for payment for notarial services stems from the very nature of notarial activities. Given that, as we have repeatedly noted, private notarial activities are inherent in private law principles, in addition to public law principles, the issues of the most optimal choice of models, methods of financial support for notarial activities and payment for notarial services are on the agenda. In our opinion, the concept of reforming the financial support for notaries' activities, in particular payment for notarial services, should be based on the search for the most optimal model to ensure both public and private interests.

The issue of the share of the fee for notarial services is relevant, as it is related to the status of notary's income and the problem of its taxation. At the theoretical level, this issue remains controversial. The most widespread proposal is to grant the funds collected for notarial acts the status of means of ensuring notarial activities and property security of citizens and legal entities, which is due to the property liability of a private notary in case of damage caused by illegal actions (Sosymenko, Kolomoiets, Hulievska, 2010, p. 159).

When deciding on the status of funds charged by a notary for performing notarial acts, it is necessary to allow for not only self-financing of notarial activities, but also to determine the issue of property liability for professional activities. If these funds are not granted the status of means of ensuring notarial activities, property interests of individuals and legal entities that have applied to a notary, it is necessary to exclude from the legislation the full financial liability of a notary, preserving it only to the extent of compulsory insurance of the risk of professional liability of a notary.

The notary's independence is also guaranteed by the provision that notarial activities are not entrepreneurial activities and do not pursue the goal of making a profit. However, many spears have been broken around this rule. That is why we will reveal whether a notary is an entrepreneur by his or her status and whether he or she can carry out entrepreneurial activities, and whether notarial activities are entrepreneurial.

Article 1 of the Law of Ukraine "On Notaries" defines the purpose of notaries' duties as providing legal certainty to the rights and facts certified by notaries, and not to make a profit, and the actions that a notary is entitled to perform are provided for by law, not by initiative as in business. In notarial activities, the initiative for a notary to perform a particular

act always belongs to the person who applies for it, not to the notary.

Pursuant to Article 50 of the Civil Code of Ukraine, a natural person has the right to engage in entrepreneurial activity that is not prohibited by law, but the same article stipulates that the Constitution and law may impose restrictions on such right of a natural person to engage in entrepreneurial activity (Civil Code of Ukraine, 2003). One of these restrictions is the prohibition on entrepreneurial activities by a natural person such as a notary. This is stated in Article 3 of the Law of Ukraine "On Notaries", which, among other requirements for persons who may be notaries, includes the following prohibition: "...a notary may not engage in entrepreneurial or advocacy activities..." (Law of Ukraine On Notaries, 1993).

3. Content of guarantees of notarial activities

One of the main guarantees of notarial activities is the guidance of the Constitution and current legislation. But a logical question arises: does the practical implementation of this principle mean that a notary shall take on the functions of evaluating legal regulations? Some legal scholars argue that when applying orders and instructions of ministries and departments, acts of local state authorities and acts of local self-government bodies, the notary shall check whether they have been issued within the competence granted to these bodies and whether they comply with the law (Barankova, 2010, p. 119). Moreover, given the certain chaotic nature of modern legislation, it is currently quite difficult for a notary, like any other lawyer, to assess the legal significance of a bylaw.

The situation is exacerbated by the fact that non-legal grounds for specific cases are also a risk factor. The local judiciary, being dependent on the executive branch or subject to certain corporate interests, and sometimes due to corruption, does not always ignore legal regulations of regional authorities, even if they grossly contradict the current laws of Ukraine. Apparently, it is necessary to correlate the rules governing the relevant legal regulations with the grounds for notary liability. Legislation should be based on the premise that if a body adopts a legal regulation, the burden of responsibility for its "poor quality" should be shared between the body and the executor (Fursa, 1999, p. 111).

It should be noted that the legal literature review reveals that the principle of supremacy of the Constitution and law is frequently identified with the principle of legality. That is why, when describing the guarantees of notarial activities, it is emphasised that a notarial act

shall not be performed if it contradicts the law (Law of Ukraine On Notaries, 1993).

The principle of governance by law relates to the procedural activities of a notary and is primarily a continuation of his/her independence. It is no coincidence that the Law "On Notaries" refers to independence and subordination to the law in the same article (Article 16). The governance by law principle stipulates that a notary shall not allow for administrative or other pressure, and interference in notarial activities is prohibited.

The principle of legality is a universal principle that is broader than the principle of rule of law. According to D. Bakhrakh, the most important aspect of legality is revealed in considering it as a regime of interrelations between citizens and organisations and the authorised actors, which contributes to the rights and legitimate interests of the individual, his/her comprehensive development, formation and development of civil society, and successful operation of the state mechanism (Bakhrakh, 1991, p. 67).

The basis of the principle is laid in the constitutional duty of everyone to observe the Constitution and laws (Constitution of Ukraine, 1996). The implementation of the above guarantees of notarial activities is ensured by restrictions On Notaries's activities, which indicates restrictions primarily on the general legal status of the notary. According to Article 3 of the Law "On Notaries", a notary cannot engage in entrepreneurial or advocacy activities, be a founder of advocacy associations, or be in the civil service or local self-government, in the staff of other legal entities, as well as perform other paid work, except for teaching, research and creative activities (Order of the Ministry of Justice of Ukraine On approval of the Rules of Professional Ethics of Notaries of Ukraine, 2013).

Restrictions are absolute for a notary, in other words, they are valid throughout his or her activities, and the law does not provide for any exceptions (except for scientific, teaching and creative activities). All these restrictions apply to both notaries working in a notary public's office and notaries engaged in private practice (Semakov and Kondrakova, 2001, p. 88).

An important component of the guarantees of the notary offices in Ukraine is notarial secrecy. According to V. Parasiuk, notarial secrecy, along with attorney-client, banking and medical secrecy, is a type of professional secrecy (Parasiuk, 2010, p. 183). As is known, professional secrets are materials, documents, and other information used by a person in

the course of performing his or her professional duties, which may not be disclosed in any form.

The original version of the Law of Ukraine "On Notaries" was limited to stating that a notary is obliged to keep confidential the information obtained in connection with the performance of notarial acts. Further reform of the notary in Ukraine was marked by amendments to the said Law, which expanded the concept of "notarial secrecy". According to Article 8 of the Law of Ukraine "On Notaries", notarial secrecy is a set of information obtained during the performance of notarial acts or when an interested person applies to a notary, including information about a person, his/her property, his/her property rights and obligations, etc. (Law of Ukraine On Notaries, 1993). Therefore, the subject matter of notarial secrecy is any information obtained by a notary in the course of notarial activities.

Another element of the content of the principle of notarial secrecy may be the need to take measures to preserve confidential information by persons to whom such information has been entrusted. This part of the principle of notarial secrecy is implemented in the impossibility of disclosing information that forms the subject matter of notarial secrecy to other persons without the consent of the client. We believe that the duty to "keep notarial secrecy" (Law of Ukraine On Notaries, Art. 8, parts 2, 3, 1993) implies that such secrets cannot be disclosed without the consent of the client, which obviously shall be formally expressed, and we advocate the view of V. Marchenko (2002, p. 35).

Therefore, as we can see, on the one hand, the legislation grants the right to request information and documents in criminal cases, on the other hand, simply in cases that are under the jurisdiction of competent state bodies, and, in addition, if there is a need to obtain intelligence information in the interests of the state and society (Bondareva, 2009, p. 199).

With regards to the principle of keeping notarial secrecy, we propose to highlight such an element of its content as the awareness of persons obliged to keep notarial secrecy, which is the result of their professional activities or involvement in certain specific professional actions (in the case of representatives, witnesses, translators, etc.) From the perspective of the parties obliged to keep secrecy when performing notarial proceedings, providing legal advice or performing technical actions, Article 8 of the Law "On Notaries" refers to all persons listed in Article 1 of this Law, such as notaries and officials of local self-government bodies, consular offices and diplomatic missions of Ukraine, persons authorised to perform acts equated to notarised acts in accordance with

Article 40 of the Law, as well as notary trainees, and other persons who obtained knowledge is the result of their involvement in performing notarial acts (Law of Ukraine On Notaries, 1993). According to M. Bondareva, the rule on confidentiality of information obtained by a person remains in force even in the event of dismissal of an official, officer, retirement, or resignation (in the case of representatives, managers, executors of wills, guardians, etc.). On the other hand, there is obviously complete freedom of expression of the person on whose behalf or in whose interests the action has been taken. This person is free to disseminate secret information regarding notarial proceedings in any way (Bondareva, 2009, p. 199).

Another important component of the principle of secrecy of a notarial act, as well as its guarantee, is that the consequences of unlawful disclosure of information constituting a notarial secret are negative and are associated with bringing the perpetrator to legal liability.

Article 8 of the Law "On Notaries" uses the phrase "breach of notarial secrecy" (part 4) to define the content of the act of a person guilty of violating the principle of notarial secrecy. This strict approach, in the opinion of M. Bondareva, already cited above, does not indicate the logical perfection of this construction, at least because there is a need to interpret the composition of such an offence (Bondareva, 2009, p. 200). In this context, we fully share the approach that the requirement of secrecy of notarial acts means that notarial acts should be performed only in the presence of the person (or persons) concerned, and if necessary, in the presence of those who assist them (representatives of translators, citizens who sign documents for the sick or illiterate, etc.). No unauthorised persons should observe the notarial procedure. The notary is obliged to comply with this requirement regardless of whether he/she performs a notarial act in the office or outside the office. Accordingly, the participants of the notarial process have the right to insist on the creation of conditions that will exclude the disclosure of information that they intend to keep secret (Marchenko, 2002, p. 36).

4. Conclusions

It should be noted that the state vests notaries with certain powers to perform notarial acts and has the right to control the compliance of notary activities with the rules established by it. The current Law "On Notaries" provides for two main types of such control: administrative (Articles 18, 33) and judicial (Article 50) (Law of Ukraine On Notaries, 1993). In our opinion, it is the *judicial control over the legality of notarial acts* that is another guarantee of notarial activities.

Judicial control over the performance of notarial acts is usually divided into direct and indirect control. Direct control is exercised when courts consider cases on appeal against notarial acts or refusal to perform them, notarial acts. This category of cases is considered by the courts in civil proceedings in the form of an action, and the defendant in such cases is the notary who has performed the relevant notarial act (refused to perform it) (Barankova, 2010, p. 13). The outcome of a court hearing of such a case is the court's verification of the notary's compliance with the law when performing a notarial act and the court's conclusion on the legality or illegality of the notarial act (refusal to perform it, notarial deed). Accordingly, the main purpose and the final result of court proceedings in such cases is to protect the rights and legally protected interests of the parties concerned in legal relations with the notary. In this case, the court's assessment of notarial acts is provided in the operative part of the court decision (Zaitseva, Galeeva, Jarkov, 2000, p. 140).

Indirect judicial control, according to I. Shundik, is exercised when the court considers other civil cases related to challenging notarial transactions and other notarial documents in court, in other cases where the disputed legal relations of the parties are related to the performance of notarial acts (Shundik, 2009, p. 97). In such cases, the court's assessment of the legality of notarial acts is interim. The court checks whether the notary complied with the requirements of the law when performing a notarial act in order to determine the nature of the legal relationship between the parties to the litigation. In this case, the main purpose of the litigation is to resolve a dispute between the parties. In this case, the court's assessment of notarial acts is usually provided in the reasoning part of the court decision (Zaitseva, Galeeva, Jarkov, 2000, pp. 141-142).

Therefore, judicial control over the performance of notarial acts as one of the guarantees of notarial activities can be defined as a court's assessment of a notary's compliance with the requirements of the law when performing a notarial act.

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Катерина Чижмарь,

доктор юридичних наук, доцент, головний науковий співробітник відділу науково-правових експертиз та законопроектних робіт, Науково-дослідний інститут публічного права, вулиця Г. Кірпи, 2а, Київ, Україна, індекс 03035, k.chyzhmar@gmail.com

ORCID: orcid.org/0000-0001-8638-7872

ГАРАНТІЇ НОТАРІАЛЬНОЇ ДІЯЛЬНОСТІ: ПОНЯТТЯ ТА ЗМІСТ

Анотація. Мета. Метою статті є визначення поняття та змісту гарантій нотаріальної діяльності.

Результати. Прийняття правових норм саме по собі ще не може повністю забезпечити реалізацію прав суб'єктів правовідносин. На практиці досить часто виникають ситуації, за яких суб'єктивні права, що встановлюють конкретні юридичні гарантії, не можуть бути реалізовані. У таких випадках, як правило, необхідне втручання відповідних уповноважених державних, громадських органів чи їхніх посадових осіб, яке спрямоване на усунення можливих перешкод щодо реального забезпечення передбачених нормою прав. Окрім того, є низка юридичних гарантій, сутність яких полягає саме в діяльності відповідних органів. До них належить, наприклад, діяльність судових органів щодо відновлення порушених прав. Таким чином, діяльність відповідних державних органів, що передбачена законодавством, спільно з нормами-гарантіями є юридичною гарантією реалізації прав суб'єктів правовідносин. Неупередженість нотаріуса є однією з найважливіших ознак його правового статусу як суб'єкта нотаріального процесу та являє собою гарантію не тільки для зацікавлених осіб, але й для самого нотаріуса. **Висновки.** Непрямий судовий контроль здійснюється під час розгляду судом інших цивільних справ, пов'язаних з оспорюванням у судовому порядку нотаріальних правочинів, інших нотаріальних документів, в інших випадках, коли спірні правовідносини сторін пов'язані з вчиненням нотаріальних дій. У таких справах оцінка судом законності нотаріальних дій має проміжний характер. Суд перевіряє дотримання нотаріусом вимог закону під час вчинення тієї чи іншої нотаріальної дії, щоб визначити характер правовідносин, які виникли між сторонами судового спору. При цьому основною метою судового процесу є вирішення суперечки між сторонами. У такому разі оцінка судом нотаріальних дій надається, як правило, у мотивувальній частині судового рішення. Таким чином, судовий контроль за вчиненням нотаріальних дій як одну з гарантій нотаріальної діяльності можна визначити як владну оцінку судом дотримання нотаріусом вимог закону під час вчинення нотаріальної дії.

Ключові слова: нотаріат, нотаріус, обов'язок, нотаріальні дії.

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