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HISTORY OF LEGAL REGULATION OF THE NOTARY INSTITUTION

The development of legal regulation of the notary institution reflects the path this institution has traversed from ancient times to the present day. The article focuses on identifying the key stages of this development, the characteristics of its evolution, and its impact on society.

The article begins with an overview of the historical context, demonstrating how the notariat began its journey as a component of the legal system even in medieval times. The roles and functions of notaries in different epochs and cultures are highlighted.

Subsequently, the transition to the modernization and standardization of notarial activities during the Enlightenment era and later, when the first forms of legal regulation of this sphere emerged, is analyzed. Special attention is paid to legislative initiatives and reforms aimed at improving notarial services and ensuring their compliance with modern requirements.

The concluding part of the article examines the current state of legal regulation of the notary, focusing on the challenges faced by this field in the modern world, such as globalization, technological innovations, and changes in consumer demands. Prospects for the future development of notarial practice and possible directions for reform are also discussed.

The article is important for both legal professionals and the general public, as it helps to understand the significance and evolution of the notarial institution in the context of societal and legal system development.

Keywords: notariat, development history, standardization, notary, institution.

Мединська А.

Історія правового регулювання інституту нотаріату

Розвиток правового регулювання інституту нотаріату відображає шлях, який цей інститут пройшов від найдавніших часів до сьогодення. Стаття присвячена визначенню ключових етапів цього розвитку, особливостей його еволюції та впливу на суспільство.

Стаття починається з огляду історичного контексту, який демонструє, як нотаріат розпочав свій шлях як складова правової системи ще в середньовічні часи. Висвітлено роль та функції нотаріату в різні епохи та культури.

Згодом проаналізовано перехід до модернізації та стандартизації нотаріальної діяльності в епоху Просвітництва та пізніше, коли з'явилися перші форми правового регулювання цієї сфери. Окрему увагу приділено законодавчим ініціативам та реформам, спрямованим на вдосконалення нотаріальних послуг та забезпечення їх відповідності сучасним вимогам.

У заключній частині статті досліджується сучасний стан правового регулювання нотаріату, акцентується увага на викликах, з якими стикається ця сфера в сучасному світі, таких як глобалізація, технологічні інновації та зміни у запитах споживачів. Також обговорюються перспективи подальшого розвитку нотаріальної практики та можливі напрями її реформування.

Стаття є важливою як для правників, так і для широкого загалу, оскільки допомагає зрозуміти значення та еволюцію інституту нотаріату в контексті розвитку суспільства та правової системи.

Ключові слова: *нотаріат, історія розвитку, стандартизація, нотаріат, інститут.*

The problem statement highlights the necessity of deeply understanding, researching, and studying the modern institution of notariat within the context of its preceding stages of development. In the midst of reforming the entire legal system and the emergence of new normative legal documents, there is an evident need for an objective and thorough examination of its history, analyzing the past from the perspective of contemporary approaches. Such research will facilitate the development of scientific assessments regarding the current notarial process and the proper identification of directions for its reform, enabling the notariat to rightfully occupy its place alongside institutions such as the judiciary, prosecution, and bar in the legal system of Ukraine.

Undoubtedly, we acknowledge the significant transformations that have occurred in the development of the institution of notariat worldwide. Originating for the first time as a form of administrative activity millennia ago in Babylon, the notariat evolved from primitive scribes-office workers who maintained numerous profit-and-loss books and periodically compiled a cadastre of all lands in the country, recording the population and its property, to the complex system that successfully operates worldwide today. However, this development of the notariat has been the subject of numerous scholarly investigations. Therefore, we will focus our attention on the development of the notariat in Ukrainian territories concerning its influence on the protection of civil rights and interests of participants in civil relations.

Analysis of recent research and publications. Recent research and publications have delved into various aspects of the history of notariat, conducted by renowned domestic legal scholars such as Yasinska L.E., Barankova L.O., Chernish V.M., Hulevska G.O., Draganovich L.V., Smyan S.M., Yavornytsky D.I., Subtelny O.P., and many others. The pages of notarial history have also been illuminated in separate works by foreign authors, including Merkushkin G.V., Yudelson K.S., Avdeenko N.I, Kabakova M.A, and others. However, at the same time, articles, brief historiographical paragraphs, sections, and chapters in dissertations and monographic studies by the aforementioned authors generally have a general character, only superficially discussed, and leave many questions unanswered, failing to provide a deeper understanding of the current state of notariat and the essence and stages of its development. Therefore, the topic of notarial history appears unquestionably relevant and timely.

The aim of the research is to thoroughly study and analyze the history of the formation and emergence of domestic notariat in the complex historical conditions of our state.

The main material of the research. Considering this, the topic of the history of notariat appears unquestionably relevant and timely. Like the institution of law, notariat first appeared in Ancient Rome in the 3rd century BCE. The first mentions of the profession of "tabelliones" date back to the time of the Roman Emperor Constantine (316 BCE). These individuals were private officials but were under state control, drafting legal acts, court papers, drafts of legal transactions, and other documents of legal significance for a fee. This, one of the oldest institutions, later acquired the name "notariat." The history of Ukrainian notariat is marked by

peculiarities to the extent to which there was a historical process of development of the Ukrainian nation, state, and law.

Initially, in Rus', the drafting of written documents during the conclusion of legal transactions was an exclusive phenomenon. For instance, in the "Ruska Pravda" (Rus' Law), there is no mention of written documents as evidence of legal relations. The first written legal transactions in Ukraine-Rus' began to appear during the period of feudal fragmentation in the 12th century. These included individual charters and remunerated charters of appanage princes, as well as certain private documents of individuals, primarily concerning the sale and purchase of rights to land and serfs.

In the Principality of Galicia-Volhynia, such documents included the Charter of Prince Ivan Rostislavovich (1134), the "Rukopisaniye" (Handwritten Document) of Prince Volodymyr Vasiliovych (1287), the "Ustavna Gramota" (Charter) of Mstislav Romanovich (1289), and others. Certain types of notarial actions were performed by Galician sealers.

However, the true development of the notarial institution occurred during the Soviet period when it became a state body responsible for formalizing and certifying transactions and acts, as well as certifying facts of legal significance. According to legislation, notariat in the USSR aimed to strengthen socialist legality, protect socialist and personal property, safeguard the personal and property rights of citizens, as well as the rights and legitimate interests of state institutions, enterprises, and public organizations.

Notarial bodies were entrusted with the execution and certification of contracts and transactions, protests of bills, certification of uncontested circumstances, and registration of arrests. The Regulations on Notariat of 1922 laid the foundations for the notariat that operated during the transition from capitalism to socialism [1].

However, in 1923, a new Regulation on State Notariat was introduced, significantly expanding the powers of notarial offices and aligning these powers with the norms of civil legislation. Soviet notariat was incorporated into the judicial system, with the organization and management of notariat entrusted to the bodies of judicial administration. In the 1930s and 1950s, changes were frequently made to notarial legislation, often without corresponding objective prerequisites. Until 1926, notarial activities in the USSR were regulated by the legislation of the union republics. The first all-union act was the resolution of the Central Executive Committee and the Council of People's Commissars of the USSR dated May 14, 1926, "On the Basic Principles of the Organization of State Notariat." Based on this resolution, regulations on notariat were issued separately by each of the union republics.

The functions entrusted to notarial authorities included: certification of transactions, issuance of enforcement orders, protests, certification of the accuracy of document copies and the authenticity of signatures on documents, issuance of pledge certificates, receipt of items into deposit for obligations, protection of inheritance rights, issuance of inheritance certificates, provision of evidence, and issuance of certificates of declaration of a person as missing [2].

Thus, the place of notariat in the system of state bodies was precisely established: notariat was included in the judiciary system. The organization and management of notariat were entrusted to the bodies of judicial administration.

Subsequently, alongside republican legislation on notariat, there emerged legislation of the USSR regulating the organization of notariat and the basic principles of notarial activities. The Basics of Judiciary of the USSR and the Union Republics of October 29, 1924, established a uniform structure of notarial bodies

for all union republics, appointment and dismissal of notaries by gubernatorial and county executive committees of Councils, requirements for candidates for the position of notary, the possibility of performing certain notarial actions by people's courts, as well as regional and district executive committees of Councils. Moreover, it stipulated the necessity of issuing a union law on the basic principles of notariat, which would harmonize republican regulations on state notariat [3].

On May 14, 1926, the Central Executive Committee and the Council of People's Commissars of the USSR issued a resolution "On the Basic Principles of the Organization of State Notariat." It formulated the basic principles of the organization and activities of notarial bodies, as well as the tasks of state notaries, primarily involving verification of the compliance of their actions and documents with the applicable laws. This document established that the certification of agreements and the execution of other actions are carried out by state notarial offices operating in accordance with the legislation of the union republics pursuant to the all-union law. Certain functions of state notarial offices may be entrusted to people's courts and executive committees of local councils by the legislation of the union republics. Notarial actions abroad in the interests of Soviet citizens and organizations are carried out by consular institutions of the USSR.

In the 1960s, a new codification of civil and civil procedural legislation was carried out, followed by updates to marriage and family, collective farm, land, labor, and other legislation in subsequent years. Consequently, certain provisions of previous legislative acts regarding notariat lost their validity, gaps emerged, and there arose a need for legislative regulation of some issues identified by notarial practice and developed by legal science.

By the resolution of the Council of Ministers of the Ukrainian SSR dated August 31, 1964, the Regulation on the State Notariat of the Ukrainian SSR was approved. Accordingly, the 1956 Regulation was recognized as obsolete. Despite some shortcomings (unclear definition of notariat tasks, ambiguity in its activities), the 1964 Regulation was a step forward in the process of improving notarial legislation. The practice of combining the functions of judicial supervision and judicial administration by regional courts did not justify itself. Moreover, burdened with complex and diverse tasks related to judicial administration, regional courts could not devote proper attention to guiding the activities of notarial offices and ensuring timely and correct direction of notarial practice. The assignment of functions not inherent to it to the Supreme Court of the Ukrainian SSR also proved unsuccessful [4].

In 1973, a new all-union act was developed and adopted - the USSR Law "On State Notariat". This law changed the system of legislation sources on notariat, providing for the adoption of laws on state notariat by the union republics (rather than provisions, as was the case before).

This solution aimed to increase the significance and authority of republican acts on notaries, taking into account the nature and essence of the norms to be enshrined in these laws, and also contributed to the role played by notariat among other jurisdictional authorities tasked with protecting the rights and legitimate interests of citizens and organizations. Despite the fact that this law endowed notarial authorities with fairly broad competence, notariat was not a very prominent institution until recently. The formation of market relations, which led to increased civil legal activity, the development of entrepreneurship, civil and international economic turnover, prompted the adoption on September 2, 1993, of the Law of Ukraine "On Notariat", the fundamental novelty of which was the introduction of private notariat into domestic legislation and notarial practice [5].

In conclusion, it becomes clear that after 1917, free notariat radically changed its legal status. The abolition of private ownership of land, means of production, housing doomed the once influential institution to decline.

Deliberate changes were made in the system of notarial legislation, which had a voluntaristic character. It is clear that such changes were made without objective, scientifically substantiated prerequisites and could not lead to positive results. In conditions of the dominance of state ownership, prohibition of entrepreneurial activity and commercial mediation, state monopoly on foreign economic activity, notariat acted as an inconspicuous appendix to the state legal system. It often involved merely formal certification of a relatively small number of agreements and documentation of inheritance. The prestige of the notary position was far from that in Western European countries. It was a low-paid government official occupying the lowest rung in the bureaucratic hierarchy. He was not interested in the results of his work, as the funds received for performing notarial acts were appropriated by the state. Financing of notariat was based on a residual principle [6].

Cases were widespread where unqualified specialists, often without legal education, became notaries. As for the development of the notarial system in the contemporary period, it is worth noting that the political and economic processes that occurred in Ukraine in the late 1980s and early 1990s also affected the notarial system. With society transitioning to market relations, legislative recognition of the equality of all forms of property, and the development of entrepreneurial activity and privatization processes, it became evident that the state notariat was losing its significance and could not fully perform its functions.

There were several explanations for this: firstly, the rather weak organization of notarial bodies, resulting in an extreme overload in the work of state notarial offices; secondly, the loss of interest among notaries in the results of their activities and personal responsibility towards clients, leading to low productivity and efficiency of their work; thirdly, a shortage of qualified personnel in the notarial corps.

Existing low salaries determined the level of legal training among notaries. Lack of skills in the notarial environment regarding the analysis of legislation, as well as fear of deviating from previously accepted instructions, led to an unwillingness to accept and react to legal novelties, resulting in a refusal to authenticate agreements if they went beyond the scope of typical contracts developed in the 1960s and 1970s.

In conclusion, it can be noted that the process of establishing the Ukrainian notariat is ongoing and is undergoing modernization. Notaries, as one of the branches of jurisprudence, are acquiring greater powers, and the range of notary duties in modern society is expanding. Summarizing the historical aspects of the emergence of the notarial system in Ukraine, it can be stated that a notary is a legal expert, advisor, trusted person of participants in legal transactions, guardian of legal protection, guarantor of evidence preservation, and authorized judiciary. Much more could be added to these definitions, but the most accurate definition of a notary, in my opinion, was provided by a representative of the Council of Europe at the Vienna Conference held on February 25, 1995: "A notary is a person who guarantees legal protection. The mission of a notary as a trusted person and arbitrator is to protect agreements and, based on the principle of fairness, to defend the weaker against the stronger, the uninformed against the knowledgeable. Since the historical emergence of the notariat, the interests of the parties have been in the hands of the notary. He protects the activities and property of individuals, the rights of the individual, and property as an inseparable element of the freedom of its

owner. The notary stands guard over human dignity and uses all possible means to ensure access to freedom of decision-making in conditions of complete protection".

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