

TO THE QUESTION ABOUT THE HISTORY OF UKRAINIAN NOTARY

ДО ПИТАННЯ ПРО ІСТОРІЮ УКРАЇНСЬКОГО НОТАРІАТУ

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The notary institution, as an integral part of the life of society, requires special attention. It plays a vital role in implementing human rights and law enforcement functions within limits established by law to perform notarial acts. Referring to the history of notaries allows us to take a broader look at the possibilities of solving the problems of reforming the national notary in Ukraine. The article is devoted to studying the main stages of the formation of a notary in Ukraine. The primary attention is paid to the process of formation and development of the notary institute and the identification of the peculiarities of its activity in each historical period. The article investigates the development of Ukrainian notaries in four stages. It was noted that the first development of a notary in Ukraine was the princely stage. It included the existence of Kyivan Rus and the Galicia-Volyn state. It was found that the Collection contained the norms of civil, criminal, commercial, and procedural law. The central place among the norms of civil law in «*Ruska Pravda*» is occupied by the standards regulating the issues of property and possession. During the Cossack stage of Ukrainian state formation, the procedure for concluding contracts, wills, and their registration was established. This stage laid the foundation for the legal regulation of notarial activity in the Ukrainian Hetmanate. It was noted that the formation of market relations, strengthening of civil activity of the population, and development of entrepreneurship led to the adoption of the Law of Ukraine «*On Notary*». An analysis of some of its provisions is carried out. The article focuses on another innovation of the Ukrainian notary – establishing the Ukrainian Chamber of Notaries. Its purpose and principal tasks are considered. It was found that the main task of the notary bodies was to provide legal validity to the acts of all historical stages of the development of the notary. It is investigated that the procedure and form of concluding acts, the structure and competence of the bodies that performed notarial acts have undergone significant development.

Key words: notary, history of notary, notarial acts, stage.

Інститут нотаріату як невід'ємна частина життєдіяльності суспільства вимагає особливої уваги. Він виконує важливу роль у здійсненні правозахисної та правоохоронної функцій, у встановлених законом межах, по вчиненню нотаріальних дій. Звернення до історії нотаріату дозволяє ширше поглянути на можливості вирішення завдань щодо реформування вітчизняного нотаріату в Україні. Стаття присвячена дослідженню основних етапів становлення нотаріату в Україні. Основну увагу приділено процесу формування, розвитку інституту нотаріату та виявленні особливостей його діяльності у кожному історичному періоді. У статті досліджено розвиток українського нотаріату в чотири етапи. Відзначено, що першим у розвитку нотаріату на території України був княжий етап. Він включав існування Київської Русі та Галицько-Волинської держави. З'ясовано, що Збірка містила норми цивільного, кримінального, торгового та процесуального права. Центральне місце серед норм цивільно-правового характеру в «*Руській правді*» посідають норми, що регулюють питання власності й володіння. Під час козацького етапу українського державотворення було встановлено порядок укладення договорів, заповітів та їх реєстрації. Цей етап заклав основи правового регулювання здійснення нотаріальної діяльності в Українській гетьманській державі. Відзначено, що формування ринкових відносин, посилення цивільно-правової активності населення, розвиток підприємництва обумовили прийняття Закону України «*Про нотаріат*». Здійснено аналіз окремих його положень. У статті зосереджено увагу на ще одній новачці українського нотаріату – заснуванні Української нотаріальної палати. Розглянуто її мету та основні завдання. З'ясовано, що основним завданням нотаріальних органів було надання юридичної вірогідності актам всіх історичних етапах розвитку нотаріату. Досліджено, що порядок і форма укладення актів, структура і компетенція органів, що вчиняли нотаріальні дії зазнали суттєвих змін та істотного розвитку.

Ключові слова: нотаріат, історія нотаріату, нотаріальні дії, етап.

Formulation of the problem. The modern institution of the notary cannot be sufficiently deeply understood and investigated without connection with the previous stages of its development. In the context of reforming the legal system and the emergence of new legal documents, there is an obvious need for an objective and thorough study of history and analysis of the past from the standpoint of new present approaches. Studying the formation and development of the notary institute over the centuries in the national territory is invaluable. It contributes to the development of essential assessments of the current state of the notary institution and the correct definition of the directions of its reform.

Analysis of research problem. Many scientists have studied the formation of notaries in Ukraine. In our work, we focused on four key stages of the construction of the national notary. The theoretical and legal basis of our study was made up of the results of such scientists as: V. Barankova, Y. Bysaha, G. Gulyevska, A. Davydenko, Yu. Zhelikhovska, Y. Ilyina, V. Komarov, O. Nelin, L. Radzievska, M. Skotar, N. Shevchenko, L. Yasinska.

The article's purpose is to study the origin, formation, and development of the notary institute of Ukraine in historical retrospect.

Presenting main material. The emergence of the notary is inextricably linked with the development of civil turnover and the need to assist in protecting private property. Notary, as an institution of civil society, is designed to ensure the indisputability of property rights of man and citizen.

Historically, the notary is a component of the legal system of almost any country because the functions performed by the notary are necessary for society.

Scientists studying the Ukrainian notary's historical development identify four key stages: princely, Cossack, national-democratic, and modern. Each of these stages had its characteristics and features.

The first stage in the development of a Ukrainian notary was the princely stage. The first information about notarial activity on the territory of Ukraine was in the times of Kyivan Rus.

One of the essential prerequisites for the emergence of notarial activity in Kievan Rus was a sufficiently high economic development, the expansion of civil circulation, and the growth of the number of legal transactions. The development of the law of obligations.

As a rule, at that time, property obligations were carried out orally using symbolic forms. However, some types of contracts required witnesses or a representative of the state [1].

A similar opinion was supported by O. Nelin, pointing out that in Kievan Rus at that time, there was no need for a notary. According to the «*Pravda Yaroslav*» (30–40 years of the XI century), it was established that disputes on contracts were resolved by a court consisting of 12 people. The court interrogated witnesses of the concluded agreement. It can be assumed that civil law transactions were concluded orally, and the fact of their commission was confirmed by witnesses in court [2, p. 15].

G. Gulevska notes that the first stage of the history of Ukrainian notaries began in the XV century. Then there were corporations of professional clerks who executed transactions. These transactions are associated with transferring rights to certain types of property [3, p. 24].

The first written transactions in Ukraine-Rus began to appear in the period of feudal fragmentation in the XII century. Their main content was to certify the purchase and sale of rights to land and people. The oral form of the transaction no longer met the needs of the time. The so-called Dyaks could fill the need to draw up documents in writing. Initially, they were people of a free profession. With the development of the order system, they became obligatory members of the state bodies. They undeniably influenced the course of judicial and administrative cases [4, p. 18].

Other scientists also believe that the beginning of notarial activity on the territory of Ukraine dates back to the times of Kievan Rus [5, p. 113]. According to its content, certain types of actions must be certified by other people. However, no particular body or persons were supposed to carry out such certification at that time. The corresponding legal development of this institution is also noted in other sources, particularly the Lithuanian Statute, the Council Constitution, and the Rights by which the Little Russian people are judged. For the first time, the term «notary» is used in the Galician Civil Code (§ 233, 582, etc.). Notaries are already widely used in the Assembly of Little Russian Laws. Thus, by its provisions, the cases in which a notary can make a «gift record» (§ 312, 313) and the liability that may arise for this are established. The issue of the participation of a notary public in civil relations takes on a new development already in the Code of Laws of the Russian Empire [4, p. 113].

L. Yasinska notes that in Kievan Rus and Western Europe, the «right of the seal» at the early stage of its formation somewhat stopped the development of the notarial activity. Soon, however, the universalization of the «right of the seal» led to the establishment of the notary institution in its modern organization [6, p. 59]. The need for notarial functions was related to the low level of education of the population and the increase in demand for legal services.

The Cossack stage of Ukrainian state formation (1648-II, half of the 18th century) was distinguished by the middle of the 18th century. Written agreements were largely ignored. Although later, when the system of mandatory attendance, registration, and recording of private acts in government (court) books emerged, Ukrainian law memorials and documents appeared that regulated court relations and notarial activity.

However, the notary institution received its real development in the Soviet period, becoming a state body responsible for the registration and certification of transactions and acts, as well as the certificate of facts that have legal significance.

According to the legislation, the notary in the USSR aimed to strengthen socialist legality, protect socialist property and personal property of citizens, protect individual and property rights of citizens, as well as the rights and legitimate interests of state institutions, enterprises, and public organizations [7, p. 23]. Notarial bodies were entrusted with the execution and certification of contracts and transactions, the execution of promissory notes, certificate of undisputed circumstances, and registration of arrests. The 1922 regulation on the notary public laid the foundations of the notary public, which functioned in the conditions of the transition from capitalism to socialism.

With most of Ukraine's annexation to Russia, the Russian legal and administrative system spread to Ukraine was observed. Simultaneously with the judicial reform in Russia in 1864, the notary was also reorganized, which led to the spread of a single, universal notary as a form of public activity of independent notaries. They were authorized representatives of the state.

An essential stage in the development of the notary was the adoption on April 14, 1866, during the reforms of Emperor Alexander II, «Regulations on the notarial part». In general, the Regulation was a progressive normative act because it established a system of notarial bodies and determined their competence [8].

On March 23, 1918, the Council of People's Commissars adopted a resolution that repealed the «currently valid Regulation on the notarial part» and introduced a new Regulation on the municipalization of notary offices.

Thus, the stage of the Ukrainian national-democratic revolutions (1917–1921), according to N. Shevchenko, was associated with the wars for independence, backwardness, and the ruin of the economy [2, p. 135].

In the USSR law of 1973, the following innovations regarding the organization and activity of notarial bodies found their consolidation and further development: for the first time at the all-Union level, the tasks of the state notary were defined, which were important for the proper implementation of the notarial function, the improvement of practice and the development of legal theory; the principles of legality, observance of the secrecy of performed notarial actions, the national language of notarial records are established; the scope of judicial control over notarial activities has been expanded; for the first time, the main issues of the application of Soviet notarial legislation to foreigners, as well as the application of foreign law, international treaties and agreements regarding notarial activity, were settled; foreign enterprises and organizations, as well as foreign citizens and stateless persons, regardless of whether they lived in the USSR or not, were given the opportunity to apply to state notary offices [9, p. 158].

With the transition of society to market relations, the legal recognition of the equality of all forms of ownership, and the development of entrepreneurial activity and privatization processes, it became apparent that the state notary is losing its importance and cannot fully fulfill the functions assigned to it. There were several explanations for this: firstly, the relatively weak organization of notary bodies. As a result, extreme overload in the work of state notary offices; secondly, notaries lose interest in the results of their activities and personal responsibility to the client and, accordingly, low productivity and efficiency of their work; thirdly, the shortage of qualified personnel in the notary corps. Existing low salaries determined the level of legal training of notaries [10, p. 16].

A turning point in establishing legal support for notarial activity in Ukraine was the adoption in 1993 of the Law of Ukraine «On Notary» (from now on – the Law.). Its adoption is due to the formation of market relations, which caused the strengthening of civil and legal activity of the population, the development of entrepreneurship, and civil and international economic turnover. The new Law laid the foundation for developing the domestic notary system and notarial activity. This legislative act remains in force today. The main novelty of the Law was the introduction of a private notary in domestic legislation and notarial practice.

According to Yu. Zhelikhovska new impetus to the development of the notary institution was given by the declaration of independence of Ukraine on August 24, 1991. We associate the current stage of Ukrainian statehood with this date. With the adoption of the Law «On Property» and some other laws, the competence of state notaries was significantly expanded, the number and scope of notarial actions increased [9, p. 158].

In terms of its structure and content of the legal regulation of notarial actions, the new Law fully adopted the previously effective legislation. The analysis of the specified legislative acts in the part of the rules for the performance of individual notarial acts and the application of the legislation of foreign states even indicates the uniformity of their legal regulation

regimes. The new provisions relate to the organization of the notary and do not affect the power of performing notarial acts. They provide for the introduction of a private notary, more detailed regulation of the legal status of a notary, the admission of persons to notarial activity, and the creation of state notarial archives [11, p. 29].

V. Komarov, researching the emergence and development of notarial bodies, made the following conclusions: the emergence of bodies performing notarial functions is always determined by a sufficiently high level of development of the state's economic life; notarial activity always has a public legal character. Public power, and therefore the quality of the indisputability of rights, facts, and documents, is ensured by granting the notary public authority [11, p. 29].

Another innovation in the history of the Ukrainian notary was the establishment of the Ukrainian Notary Chamber (UNP), a voluntary public organization of notaries. It was created in 1993 at a conference of notaries and registered by the Ministry of Justice of Ukraine. In 2013, the Ukrainian Notary Chamber was reformed into the Notary Chamber of Ukraine, which is still active today. The main goal of the Ukrainian Notary Chamber is to unify on a professional basis the efforts of notaries to satisfy and protect legitimate social and other common interests, to promote the improvement of their professional level, and to improve legal assistance.

The task of the Ukrainian Notary Chamber is to increase the role of the notary in the conditions of the formation of market relations in Ukraine; attributing the prestige of the notary profession; creation of requirements for the active activity of UNP members based on the unity of professional interests; realization of their rights; promoting

the development of international relations, to strengthen scientific and professional contacts of members of the Chamber, exchange of experience, cooperation with international notary organizations. Regional branches of the UNP have been established in all regions of Ukraine [12, p. 7].

At all historical stages of its development, the main task of notarial bodies was to provide legal certainty to acts. However, the scope of their functions changed in one or another period. In particular, this is characteristic of the history of this institute in Ukraine. The conditions for the birth of the domestic notary arose with the formation in the 9th century of Kyivan Rus. The procedure and form of concluding acts, the structure and competence of the bodies that performed notarial acts during the 10th - early 19th centuries underwent evolution: from formal certification to state-legal ones. As the history of its formation and development shows, the domestic notary gravitates more towards public rather than private legal foundations. Throughout the different accounts of the development of the state and law of Ukraine, the bodies called to perform notarial functions were and remained a component of its legal system. The gradual development of notarial activity was conditioned by the growth of economic potential, civil turnover, and the expansion of the range of objects and subjects of private property.

Conclusions. Significant development of the notary institution dates back to the times of the Russian Empire. However, throughout its existence, the Ukrainian notary tends to be the international notary of the Latin type. Despite certain shortcomings in the organization of the notary, their work often turned into a profitable family business. In general, the public and the state highly appreciated the activities of notaries throughout the historical period.

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