

MORAL AND ETHICAL OBJECTIVES OF NOTARIES' ACTIVITY

МОРАЛЬНО-ЕТИЧНІ ЗАСАДИ ДІЯЛЬНОСТІ НОТАРІАТУ

Markovych Kh.M., Senior Lecturer at the Department of Civil Law and Procedure
Lviv Polytechnic National University

The article is devoted to the theoretical and legal analysis of the moral and ethical principles of notary activity. Attention is focused on the concepts of ethics and morality. The key components and standards of professional ethics of a notary are considered. The foundations of the moral component of the activity of a notary are defined. The main principles and rules of notarial activity are considered. The evolution of the development of legislation in this area is shown. The importance of observing moral principles in the professional activity of a notary is emphasized. Moral principles unite and systematize all moral activity of a notary public. They act as a stabilizing factor and determine the main line of his behavior. Emphasis is placed on the rules of professional ethics, which must be followed by a notary public. The fundamental principles of professional ethics of notaries are comprehensively researched. The features that should be characteristic of every notary are revealed. These include decency, honesty, selflessness, objectivity, and the desire for self-improvement. A notary must be aware of the importance of fulfilling his mission to the individual, society and the state. It was found out that the notary public should contribute to increasing the positive opinion of the public about the notary profession by his behavior and activities. A notary must actively participate in the development of legal relations in society, as well as ensure legality in civil-law relations. It was noted that highly professional, moral and ethical behavior and mutual respect will contribute to the effective performance of professional duties by the notary community. Highly qualified notaries with a high level of legal awareness and a clear understanding of their responsibility can effectively influence the strengthening of law and order in the country. The professional maturity of a notary contributes to the formation of a culture of ethical thinking of a notary, provides guidelines in conflict situations and ensures moral satisfaction from one's own activity.

Key words: ethics, morality, professional ethics, principles, rules, notary, notary.

Стаття присвячена теоретико-правовому аналізу морально-етичних засад діяльності нотаріату. Зосереджено увагу на поняттях етики та моралі. Розглянуто ключові складові та стандарти професійної етики нотаріуса. Визначено основи моральної компоненти діяльності нотаріуса. Розглянуто основні засади та правила нотаріальної діяльності. Показано еволюцію розвитку законодавства у цій сфері. Наголошено на важливості дотримання моральних принципів у професійній діяльності нотаріуса. Моральні принципи об'єднують і систематизують усю моральну діяльність нотаріуса. Вони виступають стабілізуючим чинником та визначають основну лінію його поведінки. Зроблено акцент на правилах професійної етики, яких повинен дотримуватися нотаріус. Комплексно досліджено фундаментальні принципи професійної етики нотаріусів. Розкрито риси, які мають бути притаманні кожному нотаріусу. До них відносимо порядність, чесність, безкорисливість, об'єктивність, бажання самовдосконалюватись. Нотаріус повинен усвідомлювати важливість виконання своєї місії перед особою, суспільством та державою. З'ясовано, що нотаріус своєю поведінкою та діяльністю повинен сприяти підвищенню позитивної думки громадськості про професію нотаріуса. Нотаріус повинен активно долучатися до участі у розвитку правових відносин у суспільстві, а також забезпечувати законність у цивільно-правових відносинах. Відзначено, що високопрофесійна, моральна та етична поведінка і взаємоповага сприятиме ефективному виконанню професійних обов'язків нотаріальною спільнотою. Висококваліфіковані нотаріуси з високою правосвідомістю та чітким розумінням своєї відповідальності можуть ефективно впливати на зміцнення правопорядку в країні. Професійна зрілість нотаріуса сприяє формуванню культури етичного мислення нотаріуса, надає орієнтири в конфліктних ситуаціях та забезпечує моральне задоволення від власної діяльності.

Ключові слова: етика, мораль, професійна етика, принципи, правила, нотаріус, нотаріат.

Formulation of the problem. The main duty of the legal state in the field of protection of citizens' rights is not only to restore violated rights, but also to prevent their violation or challenge. Today, the implementation of such a task in Ukraine is also entrusted to the Institute of Notaries. We believe that the professional duty of a notary has not only a moral basis, but is also endowed with legal properties. The study of the personality of a notary public is incomplete without studying his moral and ethical characteristics. With this in mind, recently the issue of professional ethics of a notary has become more and more relevant.

Each culture has its own understanding of the role of a professional notary, which affects the formation of its general image. Thus, the work of a notary is extremely difficult and requires high qualifications, education, and independence of decision-making.

Analysis of research problem. In domestic legal theory and practice, the issue of moral and ethical principles in notarial activity is still at the initial stage of its development. A significant contribution to the research of the notary institute was made by such scientists as: V. Barankova, Yu. Bysaga, N. Horban, A. Davydenko, V. Komarov, O. Nelin, O. Solomakhina, V. Chernysh. In our research, the scientific works of Yu. Zhelivkhovska, V. Barankova, V. Komarova.

The article's purpose is a comprehensive analysis of the moral and ethical principles of notarial activity.

Presenting main material. Ethics, from the Greek "ethos" – "character", "state of mind", refers to moral assess-

ments that are used in everyday life. Ethics explains morality (lat. mores – customs) as one of the forms of social consciousness, as a social institution that performs the function of regulating people's behavior in all spheres of social life. From the point of view of the normative regulator, which acts as morality in the process of legal activity, it can be considered as a system of requirements for lawyers in connection with the performance of their professional duties (norms of morality, conscience, responsibility, honor). In the modern sense, it is a science that defines morality, its essence, nature and structure, as well as the laws of emergence and development [1, p. 195]. The analysis of professional duty shows that the combination of legal and moral in its content is based on the principle of moral justification of normative prescriptions. In other words, the legal aspect of professional duty should be based on the moral principles of social life.

The notary, realizing the legal and moral requirement of justice, relies on the law. In notarial activity, the principle of legality is generally accepted. The professional ethics of a notary is a relationship and interdependence of legal and moral principles, norms, legal and moral knowledge.

The opinion of V. Komarov is valid and with regard to special requirements that apply not only to notarial activity, but also to the person of the notary in connection with the increase in the importance of the notary. Thus, in their activities, notaries carry out the main tasks of the notary and belong to bodies performing notarial functions. The relationship between the notary and the interested parties is of a fiduciary nature,

and therefore provides for the preservation of confidentiality of information about the property and non-property status of persons applying for the performance of notarial acts. The professional activity of a notary provides preventive legal protection and prevents future violations of the rights and interests of legal subjects and the occurrence of disputes in courts [2, p. 154–155]. Therefore, the issue of professional competence plays a fundamental role in the study of notarial activity, since the notary, being endowed by the state with the appropriate powers, becomes a key figure in the notarial process.

Ethical norms in the notary profession were developed as the notary institution developed. They were completed by formalization in special acts, which are accepted by the notary society. The first principles and formal rules of notarial discipline are reflected in the rules established by the Byzantine emperors, especially Justinian in the 5th century not.

The modern principles of notarial ethics are based on the European Code of Notarial Ethics (Code Européen de D'ontologie Notariale) of 1995. This document includes general norms for all notaries in the European area. The Code provides for basic requirements, such as: loyalty and high moral qualities when carrying out activities; impartiality and independence; trust and professional secrecy; legal and technical competence. The Code stipulates that a notary is a public official, a free professional and must adhere to the ethical rules of his country. As a trustee of his clients, the notary is obliged to keep professional secrets and notarial secrecy. These duties apply to employees, partners under the terms of the legislation of the country where they work.

On 11/17/2007, by decision of the Conference of the Ukrainian Notary Chamber, the Code of Professional Ethics of Notaries of Ukraine was adopted and approved. The Code was based on the Code of Ethics of notaries of Europe and the precepts of the International Union of Notaries. It is intended to contribute to the conscientious performance of their professional duties by notaries, the understanding by the notary community of the public-legal purpose and responsible nature of notarial activity, and, therefore, to increase the authority of the notary and the reputation of notaries [1, p. 196].

A new milestone on the way to reforming the domestic notary was the approval by order of the Ministry of Justice of Ukraine of the Rules of Professional Ethics of Notaries of Ukraine dated 04.10.2013 № 2104/5, which defined the basic principles of the professional activity of notaries, the moral and ethical obligations of the notary, the latter's relations with persons who he was also approached by the notary community [3]. These Rules regulate the most complex issues from the point of view of morality, contain binding norms for notaries and regulate responsibility for professional offenses. The rules of professional ethics of notaries are characterized by a high level of detail and moral and evaluative concepts.

An important condition for the qualified performance of professional duties by notaries is the awareness and use of general moral principles in their activities. Moral principles unite and systematize all moral activity, act as a factor of stability, and determine the main line of behavior.

First of all, the notary must realize that he fulfills his mission, being endowed with the high trust of the state of society. Therefore, he possesses such traits as high decency, honesty, selflessness, objectivity, and the desire for self-improvement. A characteristic feature that indicates the notary's dedication to his work is a heightened sense of justice.

The professional ethics of notaries of Ukraine is based on the following basic principles:

1. The public. A notary performs independent professional activity within the limits of the powers delegated to him by the state. The public nature of notarial activity consists in the performance by a notary of notarial actions and the provision of legal assistance within the limits of the powers delegated to him by the state. The public recognition of notarial actions performed by a notary gives them special evidentiary

and executive power for the future and does not require additional evidence, except for the recognition of such actions as invalid in a court of law.

2. Independence and impartiality. The independence of a notary during the performance of professional activities implies his freedom from any external influence or pressure, unlawful interference in his activities. A notary must not perform an action that could endanger the independence, impartiality, and objectivity of notarial activities. The notary is obliged to avoid any illegal influence on his professional activity, to resist pressure, to be principled in the performance of his professional duties and defense of professional rights, their effective use in the interests of the participants of legal relations. The notary is obliged not to allow compromises in his professional activity that could negatively affect his professional image. The notary must avoid influencing and discriminating against the parties. A notary must not allow the possibility of influence of personal interests, interests of interested persons on his performance of his professional duties. The notary is obliged to prevent the occurrence of a conflict of interests, and in case of its occurrence, to take settlement measures.

3. Legality. In his activity, the notary is obliged to comply with the current legislation of Ukraine, to promote the establishment and practical implementation of the principles of the rule of law and legality, to apply all his knowledge and professional skills for the proper protection and protection of the rights and legitimate interests of individuals and legal entities.

4. Availability. The notary must demonstrate reasonable accessibility to the request of interested persons and notify the person who applied if it is impossible to provide a response to the request within a reasonable time. The notary must fully provide the applicant with the explanations necessary to understand and evaluate the professional services provided to them. The notary must provide information on the amount of all payments related to the performed notarial action at the request of the person. The notary must inform the person who applied to him about the cost of his services. The amount of the fee is determined subject to the establishment of a complete list of necessary documents and actions. If the notary provides for exceeding the cost of his services, he is obliged to notify the person about this. The notary is obliged to ensure the availability of information about the activities of the notary within the limits and in accordance with the procedure established by the laws of Ukraine.

5. Immediacy. The immediacy of Notarial activity involves only personal communication with the person who applied for advice and/or legal assistance, and the handwritten signing of the notarial action performed by the notary using only his own stamp.

6. Notarial secrecy and confidentiality. Disclosure of information constituting a notarial secret is prohibited, except in cases established by the law of Ukraine «on notaries». The notary should avoid talking about the person who applied to him for advice and/or legal assistance, as well as the notarial action performed against him. The notary must not use confidential information in a way that may harm the person who applied to it, or to obtain direct or indirect benefits for himself or another person. The notary must warn the parties to the agreement about preventing the use and disclosure of confidential information to third parties. A notary is prohibited from providing third parties with access to a private key and password to use his Qualified Electronic Signature or other similar means of identifying it. The private key of a Qualified electronic signature must be kept secret. The notary is obliged to ensure confidentiality and notarial secrecy by his assistants (consultants of the state notary office, archive), and other employees. The notary is obliged to provide such conditions for storing documents that are at his disposal and contain information constituting a notarial secret,

which make it impossible for unauthorized persons to access them without his knowledge. The principle of confidentiality is not limited in time.

7. **Honesty.** A notary must adhere to the strictest rules of fairness, objectivity and honesty. A notary must not misrepresent his or her competence or the effectiveness of professional services. The notary informs the person who applied to him about the list of necessary documents for performing a notarial act in order to ensure its legality and reliability. The notary should not use for his own purposes the sums of money, securities or documents accepted for storage, seized during the adoption of measures to protect the inherited property of deceased persons. In particular, he should not invest them at his own discretion. A notary in his activity should not resort to deception, threats, blackmail, bribery, use the difficult financial or personal situation of persons to achieve his professional or personal goals.

8. **Good faith.** A notary must constantly work to improve their knowledge and improve their professional level. A notary is obliged to provide legal assistance to individuals and legal entities competently and in good faith, which implies knowledge of the relevant legal norms and the necessary experience in their application. The notary must ensure the necessary level of competence of his assistants (consultants of the state notary office, archive), employees.

9. **Respect for the profession.** Through their activities and behavior, a notary must assert respect for the notarial profession and community, its essence and purpose, and contribute to preserving and increasing its prestige. Taking care of the prestige of their profession, a notary must ensure a high level of culture of behavior, behave with dignity, restraint, tactfulness, maintain self-control and self-control, and have a decent appearance. A notary must not perform actions aimed at restricting the rights of a person who has applied for a notarial act, as well as the professional rights of a notary, and the independence of the notarial

profession. By his activities and behavior, a notary is obliged to contribute to raising a positive public opinion about the profession of a notary, to participate in the development of legal relations in society within the limits of the powers granted to him [3].

Undoubtedly, established moral standards cannot guarantee the avoidance of unethical situations, but they can serve as an effective mechanism for regulating unethical behavior. Therefore, referring to the norms of Part 3 of Art. 12, we note the institute of liability of notaries for violation of professional ethics. The specified norm provides for the annulment of the certificate of the right to engage in notarial activity in the event of a repeated violation by the notary of the rules of professional ethics [3]. Therefore, the Rules are not only a formal oath of notaries to observe ethical principles in their professional activities, but a real norm, the violation of which entails responsibility.

Conclusions. The activity of a notary is distinguished from other professions by a number of specific properties due to the role they play in society. Protection of the rights and legal interests of individuals and legal entities is part of the daily activities of notaries and their professional duty. Protection of the rights and legal interests of individuals and legal entities is part of the daily activities of notaries and their professionals. The need for notaries to perform these important tasks places particularly high demands on their personal qualities. A notary's performance of his duties at a high professional level requires not only professional knowledge and skills, but must also be based on high moral and ethical principles. Therefore, the main professional requirement for notarial activity is the possession of a system of moral and ethical norms and their strict observance. Professional duty and professional maturity contribute to the formation of a notary's culture of moral thinking, arm him with guidelines in conflict situations, open up ways of moral satisfaction from his own work, act as criteria for self-control.

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