

Comparative Analysis of Notarial Functions in Ukraine, Poland and Lithuania

Introduction

In accordance with the principles of the International Union of Notaries (UINL)^{2*}, all notaries must strive to establish common principles of notarial activity. Since Ukraine, Poland, and Lithuania are close geographically and are united by other close ties, citizens of all these countries may have issues that will need to be resolved in a notarial manner outside the country of their citizenship. Thus, it is appropriate to compare how the notary function is carried out in these countries, since the national legislation of each of them has its own characteristics. The purpose of the study is to determine the functions of the notariat in Ukraine, Poland and Lithuania, their differences and common features, to establish additional functions of the notary, to study the procedure for performing the notarial function and its purpose. To achieve the goal, such tasks were set as researching the functions and powers of notaries in Ukraine, Poland, and Lithuania, as well as additional functions of notaries in these countries, identifying actions that are performed according to the same principles, as well as distinguishing features. Both general theoretical and special methods became the methodological basis of the research. The method of comparative analysis makes it possible to determine the implementation of notarial functions in the studied countries. The dialectical method provided an opportunity to reveal the nature and content of the notarial functions.

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² The International Union of Notaries (UINL) is a non-governmental organisation. It aims to promote, co-ordinate and develop the function and activities of notaries throughout the world. It assures their dignity and independence in order to provide a better service to people and society in general. Available at: <https://www.uinl.org/mission>.

It should be noted that the notariats of all these countries by their nature belong to the Latin type of notariats. In the article *World Notary Systems: A Comparative Analysis* Solomia Vasylyv, Olena Sorochkina point out that in most Eastern European countries (such as Slovakia, Poland, Estonia, Lithuania, Latvia) after reforms at the end of the 20th century began to take shape the Latin type of notariats³.

The study is relevant because it is important to consider the approaching of the functions of notariats of different countries. Notariats of Ukraine, Poland and Lithuania are currently members of the International Union of Notaries, which promotes convergence of the notary function of all members of the union. In addition, notariats of Poland and Lithuania are members of the Council of the Notariats of the European Union, therefore, taking into account the European integration processes in Ukraine, the comparison of notarial functions in these countries is quite relevant.

The notary is an important institution in all these countries, as it strengthens their legal systems, provides guarantees to the participants of civil legal relations regarding the inviolability of their rights and protection of their interests, and reduces the number of legal disputes that may arise in civil legal relations.

Notary function in Ukraine, Poland and Lithuania

Issues of notary activity in Ukraine are covered by the Law of Ukraine "On Notariat", the Civil Code of Ukraine and other laws. According to Article 1 of the Law of Ukraine "On Notariat", notariat in Ukraine is a system of bodies and officials entrusted with the duty to certify rights, as well as facts of legal significance, and to perform other notarial actions provided for by this Law, with in order to give them legal credibility, notaries may be required by law to perform other actions, other than notarial, in order to give them legal credibility, notaries may conduct mediation in the manner determined by law, provided they undergo basic

³ S. Vasylyv, O. Sorochkina, *Svitovi systemy notariatu: porivnialnyi analiz*. *Visnik Naціонального університету "Львівська політехніка"*, Серія: *Юридичні науки* 2020, 7, № 1, p 136, <https://science.lpnu.ua/sites/default/files/journal-paper/2020/may/21501/23.pdf>.

mediator training⁴. Article 34 of the Law of Ukraine “On Notariat” establishes that notaries, in particular, certify contracts, wills, powers of attorney, take measures to protect inherited property, issue certificates of the right to inheritance, issue certificates of ownership of a share in joint property of spouses, issue certificates on the acquisition of property from public auctions, conduct an description of the property of a natural person who is recognized as missing or whose whereabouts are unknown, issue duplicates of notarial documents kept in the notary’s files, impose and remove a ban on the alienation of real estate, certify the accuracy of copies of documents and extracts from them, certify the authenticity of the signature on the documents, certify the accuracy of the translation of documents from one language to another, certify the fact that a natural or legal person is the executor of the will, certify the fact that the natural person is alive, certify the fact of the natural person’s stay in a certain place, certify the time of presentation of documents, accept deposits of money and securities, make executive inscriptions, make protests of bills, make sea protests, accept documents for storage, and may also perform other notarial actions specified by law⁵. The Civil Code of Ukraine, as the main legislative act in civil legal relations, defines the areas in which notarization of contracts or other transactions is mandatory. The basis of such transactions are transactions related to real estate and other valuable property, also the competence of the notary is to establish guardianship over the property of a natural person who has disappeared, in addition in Ukraine a mandatory notarial form is defined for wills, lifelong support contracts, inheritance contracts.

Family legal relations in accordance with the Family Code of Ukraine can also often be regulated by voluntary conclusion of an agreement and its subsequent notarization, this applies, in particular, to marriage contracts, contracts on the division of joint real estate of spouses, contracts on issues of raising children and their support.

In the legal system of Ukraine, the principle of civil law notarial system is established, where a notarized document has legal force and official recognition and can be refuted only in a court of law. In addition,

⁴ On Notariate, The Law of Ukraine, № 3425-XII, 2.09.1993, <https://zakon.rada.gov.ua/laws/show/3425-12#Text>.

⁵ On Notariate, op. cit.

according to Articles 219, 220 of the Civil Code of Ukraine, non-observance of the notarial form for transactions for which such a form is provided by law entails their invalidity⁶.

With the help of information from state registers, to which the notary has access, before the performance of a notarial act, checks provided by law are carried out regarding the absence of obstacles (encumbrances) to the performance of a notarization of a certain contract or other notarial act.

According to Article 49 of the Law of Ukraine “On Notaries”, a notary refuses to perform a notarial act if the performance of such an act is contrary to the legislation of Ukraine, information and documents necessary for the performance of a notarial act have not been submitted; the act must be performed by another notary; there are doubts about that the natural person who applied for the performance of a notarial act is aware of the meaning, content, legal consequences of this act or this person is acting under the influence of violence; the request for the performance of a notarial act was made by a person who has been declared incapacitated in accordance with the established procedure, or the authorized representative does not have necessary powers and in other cases established by law⁷.

It is worth noting that compliance with the principle of notarial duty of confidentiality established by Article 8 of the Law of Ukraine “On Notariat” when performing notarial acts is one of the duties of the notary and persons involved in the notarial act, including notary assistants, technical staff, as well as witnesses, if their presence is required by a notarial act. Disclosure of such confidentiality is possible only in cases specified by law at the request of competent authorities in connection with the conduct of cases pending in their proceedings.

In the cases specified by law, the notary carries out a control function regarding payment by natural persons who apply for the performance of notarial acts, taxes or other fees, as well as performing the function of the subject of primary financial monitoring, carries out the necessary procedures for verifying the agreement in accordance with the re-

⁶ The Civil Code of Ukraine, Code of Ukraine № 435-IV, 16.01.2003, <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

⁷ On Notariate, op. cit.

quirements of the Law of Ukraine “On Prevention and Counteraction to Legalisation (Laundering) of Criminal Proceeds, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction”^{8*}.

At the same time, the notarial function in both Poland and Lithuania is very similar to the one performed in Ukraine.

According to the definitions of the Polish National Council of Notaries a notary public is appointed to perform actions for which the parties are obliged or wish to provide a notarial form (notarial activity). Within these powers, he acts as a public fiduciary, using the protection afforded to public servants. The notarial acts drawn up by him have the character of an official document. The role of notaries is to prevent litigation by ensuring certainty and security of agreements. A notary, unlike representatives of other legal professions who provide legal services to their clients, acts not only on behalf of a specific entity, but must balance the interests of all parties to a notarial act. Therefore, when performing a notarial act, the notary must ensure that the rights and interests of the parties and other persons for whom the performance of the notarial act may cause legal consequences are properly protected. The notary is obliged to provide explanations to the parties regarding the actions performed, and acts and documents must be clearly and transparently drawn up. A notary is prohibited from performing a notarial act if he has doubts about the ability of the participant of the notarial act to freely make decisions and express will. A notarial authentic instrument constitutes a document certifying that a person concerned has performed a specific legal transaction. Polish law expressly provides for cases where a notarial authentic instrument is required and where it can be drafted if requested by parties to the transaction. A notary refuses to perform a notarial transaction that is contrary to the law. Notaries are prohibited from performing notarial actions in cases where there are doubts as to a party's capacity to perform legal transactions. In their capacity as tax remitters, notaries calculate, charge and transfer the following taxes onto accounts of competent tax authorities: inheritance and donation

⁸ * On Prevention and Counteraction to Legalisation (Laundering) of Criminal Proceeds, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction, The Law of Ukraine, № 361-IX. 6.12.2019, <https://zakon.rada.gov.ua/laws/show/361-20#Text>.

tax, as well as civil law transactions tax. In addition to that, they charge and transfer onto accounts of competent tax authorities the value added tax (VAT) on their fees (on notarial fees), as well as court fees for applications for entry in the real estate and mortgage registry, submitted via an ICT system. The latter fee is then transferred by a notary who has charged it onto an account of a competent district court. Furthermore, within the same remit, notaries also prepare relevant tax returns and lists of fees paid, which are provided for in separate regulations, and submit them to competent tax authorities⁹.

According to the data of the Polish portal Notariat a notary is a public servant whose task is to certify certain documents so that they can be considered as legal documents. In the case of some contracts, it is advisable to keep the form of a notarial deed, as this ensures that everything is in order, and no one will question the provisions of specific documents. As for other documents, they must be notarized, otherwise the document will have no legal force at all. For example, a loan agreement can be concluded in a notarial form, but it is not necessary. However, the property division agreement, the so-called prenuptial agreement, must be concluded in notarial form, because otherwise it will not have legal significance, and therefore will not be valid. You should always contact a notary when the subject of sale or gift is rights to real estate, such as a house or a plot of land. The already mentioned prenuptial agreement must also always be notarized. If we separate the ownership of premises from an apartment building, we always do it in a notarial form. We must act in the same way when real estate is the subject of inheritance proceedings. A notary will also need to be consulted when we do anything with the right of perpetual usufruct, sell the right of cooperative ownership of the premises, convert our right of cooperative ownership of the premises into common ownership. A notary is required when concluding a partnership agreement, a limited liability company and all capital companies, i.e. a limited liability company and a joint-stock company that has a statute instead of a contract. Nevertheless, Polish legislation does not provide for a very long list of contracts that must be notarized. These are mainly business contracts and conversion of property rights to

⁹ Polish National Council of Notaries. Notary, <https://krn.org.pl/notariusz-1>.

real estate. Of course, a notary can participate in the conclusion of any contract and this should be remembered if you have doubts about the actions you have taken and the documents you are creating¹⁰.

In accordance with Article 79 of the Law of Poland "On Notariat", a notary performs the following actions: draws up notarial acts, prepares certificates of the right to inheritance, takes measures regarding the European Certificate of Inheritance, carries out activities related to the management of the inheritance of the enterprise of a natural person and with a temporary representative in the part of the entrepreneur's wife's participation in the enterprise, prepares certificates, drafting of minutes, prepares protests of promissory notes and checks, accepts for safekeeping money, securities, documents, data on IT media specified in the regulations on computerization of the activities of entities performing state tasks, maintains registers of shareholders of ordinary joint-stock companies and carries out related activities, prepares extracts, copies and extracts from documents, prepares drafts of acts, declarations and other documents at the request of the parties, submits applications for entry into the land mortgage book together with documents, which is the basis for making an entry in the land and mortgage book¹¹.

Article 80 of the Law of Poland "On Notariat" specifies that acts and documents must be drawn up by a notary in an understandable and transparent form, when performing notarial activities, the notary is obliged to ensure the proper protection of the rights and legitimate interests of the parties and other persons for whom this activity may cause legal consequences, the notary is obliged to provide the parties with the necessary explanations regarding the performed notarial act¹².

According to Article 81 of the Law of Poland "On Notariat", a notary is obliged to refuse to perform a notarial act that is contrary to the law¹³.

Similarly, the notary is obliged to maintain the confidentiality of notarial acts, in accordance with Article 18 of the Law of Poland "On No

¹⁰ NOTARIAT, https://notariat.edu.pl/jakie-umowy-musza-byc-zawierane-u-notariusza_ivrm.a.

¹¹ On Notariate, The Law of Poland, 14.02.1991, <https://lexlege.pl/prawo-o-notar-iacie/rozdzial-1-przepisy-ogolne/1704/>.

¹² Ibidem.

¹³ Ibidem.

tariat”, the notary is obliged to keep confidential the circumstances of the case that became known to him as a result of the performance of a notarial act¹⁴.

Notariat of Lithuania is also close in its essence to the notariats of Ukraine and Poland, but has its own characteristics. According to Article 1 of the Law of Lithuania “On Notariat”, a notary is a group of notaries who, in accordance with this Law, have the right to establish indisputable subjective rights and legal facts of individuals and legal entities or other organizations and their subdivisions, to ensure the protection of the legal interests of these persons and state¹⁵.

Lithuanian Chamber of Notaries defines transaction authentication as the main notarial function. Transactions are defined as actions by individuals to create, change or cancel civil rights and duties. Transactions can be unilateral, for example, powers of attorney, wills, statements, consents, and bilateral – purchase and sale agreements, gift agreements, loan agreements, mortgage agreements, marriage contracts, etc. By authenticating the transaction, the notary shall ensure that the transaction is concluded in free will of the parties involved, the facts are in line with reality, the transaction does not contradict the rights and legitimate interests of the parties and complies with the requirements of the laws and other regulations. The notary must ascertain the capacity of natural persons and check the legal personality of legal entities involved in the transactions, clarify the essence and consequences of the transaction to the parties involved. The notary shall approve the transaction only upon obtaining documents required under the procedure provided for in the laws, upon performance of established obligations. The notary shall make an acknowledgment entry in the transaction to be authenticated, sign it and seal the transaction with the seal or stamp containing coat of arms of the State. Documents authenticated by the notary are official written evidence having *prima facie* power (higher evidential power). Legislation and case law generally recognize that facts in notarised documents are determined and do not have to be verified until such docu-

¹⁴ Ibidem.

¹⁵ On Notariate, The Law of Lithuania, № I-2882, 15.09.1992, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.1695/asr>.

ments (parts thereof) are declared null and void under the procedure provided for in the laws¹⁶.

Pursuant to Article 26 of the Law of Lithuania "On Notariat", notaries perform the following notarial actions: approve transactions, issue certificates of inheritance rights, issue certificates of ownership of a part of joint property of spouses, certifies the authenticity of extracts from documents and extracts from them, certifies the authenticity of signatures on documents, asserts that a natural person is alive and present in a certain territory, accepts for storage wills and wills equated to wills, agrees on the time of submission of documents, submits statements of one physical and legal entity persons to other individuals and legal entities, accepts sums of money on a deposit account, accepts maritime protests, protests promissory notes and checks, executes executive records for notarized transactions resulting in monetary obligations, as well as protested or unprotestable promissory notes and checks, makes executive records on forced collection of debt at the request of the mortgage (collateral) creditor, prepares or approves documents regarding the authenticity of the information submitted to the register of legal entities, and assures that the legal entity can be registered in connection with the fulfilment of the duties established by the legislation or founding deed, and the circumstances stipulated in the register of legal entities, confirms the compliance of the constituent documents of legal entities with the requirements of the law, confirms documents with a certificate (apostille) in the order established by the Government of the Republic of Lithuania, performs other notarial actions provided for by law¹⁷.

Article 45 of the Law of Lithuania "On Notariat" stipulates that a notary certifies deeds for which a mandatory notarial form is established by the Civil Code, and in cases provided for by the Civil Code, by other laws. A notary can confirm those transactions that are permitted by law in oral form or for which a simple written form is established by law¹⁸.

Lithuanian legislation also defines the same principles regarding refusal to perform a notarial act and observance of notarial confidentiality.

¹⁶ Lithuanian Chamber of Notaries. Notarial functions, <https://www.notarurumai.lt/en/chamber-of-notaries/notarial-functions/674#c-12/t-62>.

¹⁷ On Notariate, 1992, op.cit.

¹⁸ Ibidem.

It is noticeable that Lithuanian legislation stating that a capable adult natural person may submit a preliminary instruction on how to address matters related to implementation of his/her property and personal non-property rights and duties in cases where in the future he/she is declared incapacitated in a certain area or as having limited capacity in a certain area. In a preliminary instruction, a person may list persons, which he/she would like the court to appoint or not to appoint as guardians or carers if he/she is declared incapacitated in a certain area or as having limited capacity in a certain area, express his/her will on a place of residence (placement in guardianship (care) institution), indicate a specific person, which would deal with the matters of implementation of his/her property and personal non-property rights and duties, and other instructions. Preliminary instructions must be prepared in a notarial form and can be found in the Register of Legally Incapable Persons and Persons with Limited Legal Capacity. Information about the submission of preliminary instruction and content thereof is confidential until the preliminary instruction comes into force. Preliminary instruction comes into force after the court decision, by which the person is declared incapacitated in a certain area or as having limited capacity in a certain area, becomes final and binding and is valid for a period specified in a preliminary instruction. When preliminary instruction comes into force, all persons and institutions performing operations with respect to implementation of property and personal non-property rights and duties of a person submitting a preliminary instruction must follow the provisions of preliminary instruction, except in cases where compliance with the preliminary instruction due to changed circumstances no longer serves the interests of a person submitting such preliminary instruction¹⁹. In this way, another type of legal relationship is determined, which individuals can settle by contacting a notary.

Both the notaries of Poland and notaries of Lithuania, when carrying out their activities in relation to actions defined by law, conduct procedures aimed at prevention of money laundering and terrorist financing. Such procedures are determined by the Law of Poland «On Counteract-

¹⁹ Lithuanian Chamber of Notaries. Notarial functions, <https://www.notarurumai.lt/en/chamber-of-notaries/notarial-functions/674#c-12/t-41>.

ing Money Laundering and Terrorism Financing»²⁰ and the Law of Lithuania On the Prevention of Money Laundering and Terrorist Financing²¹.

Registration and other functions of a notary

In addition to the actual notarial function described above, a notary in Ukraine is required by law to perform other functions that may be related to the notarial act performed, or may be performed by the notary separately, independently of notarial acts. This is how the law defines the special powers of a notary, such as, for example, the state registrar of real estate, the state registrar in the field of business, etc.

The most significant of such functions are the functions related to state registration of real estate and the functions related to state registration of legal entities and individual entrepreneurs. So by the Law of Ukraine «On State Registration of Corporeal Rights to Real Estate and Their Encumbrances» Article 31²² defines, that the state registration of rights as a result of a notarial act with real estate, an object of unfinished construction, which results in the obtaining, transfer or cessation of property rights or their encumbrances simultaneously with the performance of such a notarial act, is carried out by the notary who performed the corresponding notarial act²². As a result, the transfer of ownership of real estate and its registration in state registers is ensured on the day of notarization of a certain type of contract or issuance of a certificate of the right to inheritance. Similar provisions are included in the Law of Ukraine »On State Registration of Legal Entities, Individual Entrepreneurs and Public Organisations«²³, which provides, in certain cases, for

²⁰ On Counteracting Money Laundering and Terrorism Financing, The Law of Poland, 01.03.2018, <https://lexlege.pl/ustawa-z-dnia-1-marca-2018-r-o-przeciwdzialaniu-praniu-pieniedzy-oraz-finansowaniu-terroryzmu/>.

²¹ On the Prevention of Money Laundering and Terrorist Financing, The Law of Lithuania, № VIII-275. 19.06.1997, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/2c-647332ba5111eb91e294a1358e77e9?jfwid=twcznlk4w>.

²² On State Registration of Corporeal Rights to Real Estate and Their Encumbrances, The Law of Ukraine № 1952-IV, 01.07.2004, <https://zakon.rada.gov.ua/laws/show/1952-15#Text>.

²³ On State Registration of Legal Entities, Individual Entrepreneurs and Public Organisations, The Law of Ukraine № 755-IV, 15.05.2003, <https://zakon.rada.gov.ua/laws/show/755-15#Text>.

the registration of changes about a legal entity by a notary who has performed the relevant action, immediately after it is performed.

It can be stated that this is one group of powers granted to notaries as state registrars, in addition, in accordance with the mentioned laws, a notary can carry out state registration of both real estate and legal entities or individual entrepreneurs, regardless of whether he performs any notarial acts or no. That is, in this case, the notary acts in the same role as any other state registrar with the same functions and powers. It is worth noting that the powers of state registration also belong to the state registrars of local self-government bodies, and documents for such registration are submitted through centres for provision of administrative services created under them.

Polish legislation, on the contrary, as well as Lithuanian legislation, does not provide for the performance of registration actions by a notary, but due to the fact that the participation of a notary is mandatory when certifying real estate transactions, he must inform the competent authorities that certain changes have occurred in the status of real estate. According to Article 23 of the Law of Poland «On Land and Mortgage Registers and Mortgages» maintenance of land and mortgage registers is within the competence of district courts. Maintaining land and mortgage registers is the responsibility of district courts. Court activities in the field of keeping land and mortgage registers may be performed by court referendaries²⁴. In turn, in accordance with Article 36 of the aforementioned Law courts, government administration bodies and local government units, as well as notaries preparing deeds of inheritance certification, notify the court competent to keep the land and mortgage register of any change in the owner of the real estate for which the land and mortgage register is established. If the court receives a notification, it will ex officio enter a warning that the legal status of the real estate disclosed in the land and mortgage register has become inconsistent with the actual legal status. The notice of entry of a warning contains instructions on the obligation to submit an application for disclosure of ownership rights within one month from the date of delivery of the notice²⁵.

²⁴ On Land and Mortgage Registers and Mortgages, The Law of Poland, 6.07.1982, <https://lexlege.pl/ustawa-o-ksiegach-wieczystych-i-hipotece/>.

²⁵ Ibidem

As for the registration of legal entities, in Poland they are registered in the National Court Register. The application for admission must be submitted through the Portal of Court Registers (only if the contract was concluded with a notary) or in the S24 IT system (only if the company contract is concluded on the basis of the contract template available in S24). An application for entering a limited liability company into the National Court Register is submitted to the district court, which is registered at the registered office of this company²⁶.

At the same time, the legislation defines the role of the notary in the creation of legal entities. The limited partnership agreement is concluded in the form of a notarial deed – this applies to the partnership agreement as a whole, i.e. all provisions of the partnership agreement. A subsequent change to the limited partnership agreement also requires the form of a notarial deed. It is also possible to conclude a limited partnership agreement without the participation of a notary, using the template agreement provided in the ICT system²⁷.

As in Poland, in Lithuania the notary does not directly register real estate or legal entities. Where property right to real estate, restrictions to this right and legal facts arise from the conclusion of notarised transaction, the application to register property rights, restrictions to these rights and legal facts and documents substantiating the occurrence of property rights, restrictions of such rights and legal acts are transferred by the notary to the territorial registrar of the State Enterprise Centre of Registers by means of remote communication. The clients no longer need to go to State Enterprise Centre of Registers²⁸.

Article 46 of the Law of Lithuania “On Notariat” stipulates that contracts on the transfer of ownership of a real estate also indicate that the ownership of a real estate is transferred to the acquirer from the moment of the transfer of the object, and the parties to the contract can

²⁶ Information and service website for entrepreneurs. Registration of a limited partnership in the National Court Register, <https://www.biznes.gov.pl/pl/opisy-procedur/-/proc/1501>.

²⁷ Information and service website for entrepreneurs. Limited partnership – basic information, <https://www.biznes.gov.pl/pl/portal/00164#2>.

²⁸ Lithuanian Chamber of Notaries. Notarial functions, <https://www.notarurumai.lt/en/chamber-of-notaries/notarial-functions/674#c-12/t-62>.

use the agreement on transfer of ownership rights to real estate, rights to real estate to third parties only if the fact of the transfer of ownership rights to the transfer of the object is registered in the state register in accordance with the procedure established by law on the basis of an acceptance-transfer act or other document. Information about the approved contract is transferred by the notary to the administrator of the state register within 24 hours from the moment of approval of the contract in accordance with the procedure established by legal acts²⁹.

Registration of legal entities in Lithuania is carried out by the State Enterprise Centre of Registers, but as mentioned above, according to the law, the functions of a notary include drawing up or approving documents regarding the authenticity of the information submitted to the register of legal entities and assuring that the legal entity can be registered in connection with the performance of duties established by legislation or the founding deed, and the circumstances provided for in the register of legal entities, laws or founding documents have occurred, confirms the compliance of the founding documents of legal entities with the requirements of the law. The Register of Legal Entities registers enterprises, institutions and non-governmental organizations and collects detailed data on Lithuanian legal entities, as well as branches and representative offices of foreign companies and organizations³⁰.

Mediation procedure and notariats of Ukraine, Poland and Lithuania

Also common to all mentioned notariats is the notary's right to mediate, although both in Ukraine and Lithuania these powers are quite new.

In Ukraine, notaries are granted the right to act as mediators after passing appropriate training. At the same time, the notary does not have any special powers in the field of mediation, but acts like any other mediator who has been trained in accordance with the law and can perform this activity alongside the notarial one. That is, the legislation does not provide in which spheres a notary must act as a mediator.

²⁹ On Notariate, 1992, op. cit.

³⁰ State Enterprise Centre of Registers. Legal Entities, https://www.registrucentras.lt/jar/index_en.php.

According to Article 16¹ of the Law of Ukraine “On Notariat”, the Notary Chamber of Ukraine trains notaries in the field of mediation, maintains and publishes registers of notaries who have undergone training in the field of mediation³¹.

Illia Yuriichuk determines that in Polish law, there is no legal definition of mediation. However, based on the main purpose of the mediation and opinions of the Polish jurisprudence, mediation is an attempt to bring a mutually satisfactory solution to the conflict, through the voluntary third party negotiation. Such negotiations are facilitated by an impartial and neutral mediator and help the parties reach an agreement. This form of dispute resolution is an alternative to judicial interference. In the matter of the requirements to become a mediator, Polish law is very liberal. The Polish law does not define the age, nor the qualification and profession that a mediator should have. Usually, it is enough to have completed training in mediation (but the law does not demand it in a straightforward matter) and be registered in the list of permanent mediators (made by social organizations and universities) to be able to provide mediation on the order of a court³².

At the same time, according to Practical guide to cross-border notarial mediation Notarial mediation delegated by a judge a used procedure in Poland³³, which in turn determines certain interrelationships between judicial procedures and the notary.

Until recently, the issue of mediation by notaries was studied in Lithuania, Paulius Cerka, Jurgita Grigienė, Evelina Poderyte in the article Possibility for notaries of Latin tradition to carry mediation function point out that notaries and bailiffs cannot provide these services, and lawyers may do so only when solving commercial disputes. Majority of the European Union countries has established in their national legislation

³¹ On Notariate, The Law of Ukraine, № 3425-XII, 2.09.1993, <https://zakon.rada.gov.ua/laws/show/3425-12#Text>.

³² I. Yuriichuk, Mediation in Poland: fast facts. MEDIATS Project, 2019, <https://mediats-chnu.com/mediation-in-poland/>.

³³ Practical guide to cross-border notarial mediation. Published within the framework of the European project “Mediation for Notaries – Notaries for Mediation”, coordinated by the Council of the Notariats of the European Union (CNUE) and co-funded by the European Union Justice Programme (2014–2020). <https://www.notariesofeurope.eu/wp-content/uploads/2018/10/guide-mediation-en-min.pdf>.

the possibility for the notaries to apply alternative dispute resolution – mediation in their activities. And come to the conclusion that Functions of Latin notary are very close to principles of mediation. Notary's function to provide mediation services is in compliance to Latin notary principles³⁴.

According to information from the website of the Lithuanian Chamber of Notaries legal amendments in Lithuania, effective as of January 1, 2020, open way for resolution of matrimonial disputes through mediation, a service provided by notaries, as well as other certified mediation specialists. "The Law on Mediation amendments introducing mandatory mediation in matrimonial cases was no news to notaries. Notary's profession by itself considers finding solutions which benefit all parties of dispute. Mediating in disputes it is professional nature of notary", Marius Stračkaitis, President of Lithuanian Chamber of Notaries, said. According to the law, mandatory mediation is applicable to cases of divorce, adjudication of child support and place of residence and other matrimonial disputes³⁵.

However, unlike the procedures for mediation by a notary in Ukraine and Poland, Lithuanian legislation defines certain conditions under which mediation by a notary can be carried out.

According to Article 20² of the Law of Lithuania "On Notariat" notaries can provide mediation services in accordance with the procedure established by law. The provision of intermediary services should not prevent a notary from performing notarial acts. The notary must determine the priority of notarial actions. When providing mediation services, the notary must avoid conflicts of interest or other circumstances that may raise doubts about his objectivity and impartiality when performing notarial acts. When performing notarial acts and providing mediation services, the notary must limit the performance of notarial acts from providing mediation services. A notary public cannot provide mediation services in disputes arising from those relations in respect of which he

³⁴ P. Cerka, J. Grigienė, E. Poderyte, Possibility for notaries of Latin tradition to carry mediation function, 2015, pp. 50, 69, 70. DOI: 10.15804/tpn2015.1.03.

³⁵ Lithuanian Chamber of Notaries. Lithuanian notaries now provide mediation in matrimonial disputes, <https://notarurumai.lt/en/news/lithuanian-notaries-now-provide-mediation-in-matrimonial-disputes/647>.

has already performed notarial acts. A notary public may also not perform notarial actions in relation to those relations from which he has already provided mediation services in a dispute arising from them³⁶.

Thus, the actions of the notary on the performance of notarial actions, which are of primary importance, and the actions of the notary who carries out the mediation procedure are completely distinguished. This, in turn, appears to be a very correct provision, considering that a notary, when performing notarial acts, must act in an undisputed legal relationship and avoid disputes.

Conclusions

Undoubtedly, the function common to all mentioned above notariats is to ensure non-dispute in civil legal relations through official notarization of acts. It is based on the principles of establishing the will of individuals to commit a certain type of act, carrying out all checks prescribed by law, notarial confidentiality and the notary's duty to refuse to perform a notarial act if it is contrary to the law.

The national legislation of each country determines which acts are subject to mandatory notarization, but at the same time, in all the mentioned countries, if the participants in a civil relationship wish to regulate their relations, they can do so in a notarial manner, if this does not contradict the requirements of the law.

Also, the legislation of all three countries provides for the duties of a notary in the field of prevention of money laundering and terrorist financing and control over the payment of necessary taxes and fees in cases specified by law.

The difference in the powers of notaries of Ukraine, compared to notaries of Poland and Lithuania, is that the Ukrainian law stipulates the duty of a notary to carry out state registration of ownership rights to real estate based on the result of a notarial act, while in Poland or Lithuania, a notary only sends a corresponding message to the competent body for registration. In turn, if we consider these powers of notaries of Ukraine, then they are designed to ensure the inseparability of the transfer of ownership with the execution of a notarial act regarding such a transfer.

³⁶ On Notariate, 1992, op. cit.

In all three countries, a notary, along with the powers of a notary, can carry out mediation procedures (out-of-court dispute settlement), while the regulation of this issue in Lithuania deserves attention, since according to the law, these powers are demarcated and the simultaneous activity of a notary in two statuses is not allowed.

It should be noted that in Ukraine, the legislation does not provide for the possibility for natural persons to issue any orders regarding the appointment of persons who can make decisions in the event of incapacity or limited legal capacity of a natural person, while such a possibility is provided for in the legislation of Lithuania. The establishment of such mechanisms is valuable for the ability of a person to freely, at his discretion, make orders regarding the future exercise of his rights, therefore it is important to study the experience of implementing such procedures in other countries for the further possible creation of such mechanisms in the legal system of Ukraine.

Last but not least to sum up, the activities of the notaries of the specified countries, as well as the influence of different legal systems and global processes on the organization of the activities of the notaries at the national level in each individual country, are subject to further in-depth study.

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Abstract

The article determines the functions of the notariat in Ukraine, Poland and Lithuania, their differences and common features, to establish additional functions of the notary, to study the procedure for performing the notarial function and its purpose. It was determined that the function common to all mentioned above notariats is to ensure non-dispute in civil legal relations through official notarization of acts, that the legislation of all three countries provides for the duties of a notary in the field of prevention of money laundering and terrorist financing and control over the payment of necessary taxes and fees in cases specified by law. It was established that in all legal systems notaries, along with the notarial function, can be mediators, but with their own characteristics. It was determined what functions are inherent to notariat of Ukraine, in contrast to the notariats of Poland and Lithuania. It was established that the national legislation of each country determines which acts are subject to mandatory notarization, but at the same time, in all the mentioned countries, if the participants in a civil relationship wish to regulate their relations, they can do so in a notarial manner, if this does not contradict the requirements of the law.

Keywords: Notariat, civil relationship, notarization, powers of notaries, registration of real estate, mediation in the notariat