

An Assessment of the principles of control over notarial activities in Ukraine

Evaluación de los principios de control de la actividad notarial en Ucrania

Uma avaliação dos princípios de controlo das atividades notariais na Ucrânia

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Abstract

Understanding the principles of control over notarial activities is impossible without first examining their historical origins. These principles have long been a cornerstone of Ukraine's national legal tradition. Although the specific principles of notarial oversight were not explicitly outlined in the *Ruska Pravda*, it was during that period that the ideological, cultural, and ethical foundations for the development of national public service were established. It is essential to recognize that moral and ethical principles must remain a fundamental component of the notary profession, as they play a crucial role in overseeing notarial activities in Ukraine. Ethical leadership, which is of paramount importance in both higher education and civil service, should be rooted in strong moral character and responsible management. The principle of digital transparency in the oversight of notarial activities has emerged as a means of enhancing public administration efficiency, reducing administrative costs, improving the quality and accessibility of public services, and combating corruption. Additionally, ensuring the high professionalism of notaries involves developing specialized skills, such as working with veterans and military personnel, engaging in public activism, and fostering legal education through interaction with the public as part of the Notary Chamber of Ukraine's initiatives.

Finally, the principle of judicial oversight over notarial activities, with a focus on protecting human rights and freedoms, naturally stems from the provisions of the Constitution of Ukraine and the European Code of Notarial Ethics. This oversight serves as a safeguard for the rights and freedoms of citizens.

Keywords: Principles, control over notarial activities, administrative and legal framework, notarial ethics, digital transparency, professionalism, court, judicial control, legal proceedings.

Resumen

Para comprender la esencia de los principios, es importante comprender los orígenes y las tradiciones históricas establecidas de la creación y el desarrollo de la institución notarial en Ucrania. La institución notarial está profundamente arraigada en la tradición jurídica nacional. Ciertos principios de control de la actividad notarial no se destacaron en el texto de *Ruska Pravda*, pero fue en ese momento cuando se sentaron las bases ideológicas, culturales e ideológicas para la formación y el desarrollo del servicio público nacional. Los principios morales y éticos son importantes tanto en la profesión notarial como en el control correspondiente de la actividad notarial en Ucrania, porque hoy en día el liderazgo ético es de suma importancia en la educación superior y en la función pública. El liderazgo ético debe basarse en una personalidad y un gerente morales. El principio de transparencia digital en el curso del control de la actividad notarial en Ucrania surge en el contexto del aumento de la eficiencia de la administración pública, la reducción de los costos administrativos, la mejora de la calidad de los servicios públicos y la garantía de su accesibilidad, y la reducción de la corrupción. El principio de garantizar un alto nivel de profesionalidad de los notarios incluye, entre otras cosas, el desarrollo de habilidades para trabajar con veteranos y personal militar, habilidades de activismo público para la interacción de educación jurídica especial con el público en el curso de la implementación de proyectos de la Cámara de Notarios de Ucrania. El principio de centrar el control judicial de las actividades notariales en el respeto de los derechos y libertades humanos surge naturalmente a la luz de las disposiciones de la Constitución de Ucrania y del Código Europeo de Ética Notarial y es una garantía de protección de los derechos y libertades de los ciudadanos.

Palabras clave: Principios, control de las actividades notariales, marco administrativo y legal, ética notarial, transparencia digital, profesionalidad, tribunal, control judicial, procedimientos judiciales.

Resumo

Para entender a essência dos princípios, é importante entender as origens históricas e as tradições históricas estabelecidas do estabelecimento e desenvolvimento da instituição notarial na Ucrânia. A instituição notarial está profundamente enraizada na tradição jurídica nacional. Certos princípios de controle sobre atividades notariais não foram destacados no texto do *Ruska Pravda*, mas foi naquela época que as bases ideológicas, culturais e ideológicas para a formação e desenvolvimento do serviço público nacional foram estabelecidas. Princípios morais e éticos são importantes tanto na profissão notarial quanto no controle relevante sobre atividades notariais na Ucrânia, porque hoje a liderança ética é de suma importância no ensino superior e no serviço público. A liderança ética deve ser baseada em uma personalidade moral e um gerente moral. O princípio da transparência digital no curso do controle sobre atividades notariais na Ucrânia surge no contexto do aumento da eficiência da administração pública, redução de custos administrativos, melhoria da qualidade dos serviços públicos e garantia de sua acessibilidade e redução da corrupção. O princípio de garantir alto profissionalismo dos notários inclui, entre outras coisas, o desenvolvimento de habilidades no trabalho com veteranos e militares, habilidades de ativismo público para interação de educação jurídica especial com o público no curso da implementação de projetos da Câmara de Notários da Ucrânia. O princípio de focar o controle judicial sobre atividades notariais na observância dos direitos humanos e liberdades surge naturalmente à luz das disposições da Constituição da Ucrânia e do Código Europeu de Ética Notarial e é uma garantia de proteção dos direitos e liberdades dos cidadãos.

Palavras-chave: Princípios, controle sobre atividades notariais, estrutura administrativa e legal, ética notarial, transparência digital, profissionalismo, tribunal, controle judicial, procedimentos legais.

INTRODUCTION

The administrative and legal principles of control over notarial activities in Ukraine have been reevaluated at different stages of the formation of the national legal system. It is noted that “during Ukraine’s independence, the notary system has undergone significant changes: the requirements for notaries, the protection of their labor and social rights, and the performance of notarial acts have changed. New challenges have emerged that were not previously characteristic of Ukraine: the COVID-19 pandemic, Russia’s armed attack on Ukraine, etc.” (Merkulov, 2023, p. 60). At the same time, even in the context of rapid changes in the state and society, it is the principles that play the role of ideological ‘guidelines’ that, on the one hand, determine the vector of development of social relations, and on the other hand, serve as unshakable ‘pillars’ that outline the fundamental values of Ukrainian society and serve as the basis for further rule-making, local management decisions, as well as the daily activities of specialists and professionals in this area.

Given the rather narrow specificity of the issue of the principles of control over notarial activities in Ukraine, it remains out of focus for domestic administrative scientists, which makes it necessary to conduct additional scientific research in public relations under study. Truly, there is much to determine as far as the said principle of

notarial activities is concerned in Ukraine, but there are many complexities when it comes to its application in society. The principle has been marred by huge infelicities, as there continue to be violations of certain rights, such as those related to labor and social security, and such violations have really affected the objective of the law, which is to ensure a safe and secure society. The question one is forced to pose here is: what becomes of Ukrainian society when the old traditional principle of control over notarial activities has been greatly affected? This will be a serious issue that will be addressed in the subsequent write-up in this research setup.

The purpose of the article is to establish the range of principles of control over notarial activities in Ukraine. To achieve this purpose, it is necessary to solve the following tasks: to consider the historical origins, established historical traditions of formation and development of the notary institute in Ukraine; to consider the essence and content of the moral and ethical principles of notary, including through the analysis of relevant foreign experience; to clarify the essence of the principles of digital transparency, ensuring high professionalism of notaries and flexibility and adaptability of control. The issue is that we all understand that the principle under examination is a very old one that have occupied a prominent place in the Ukrainian society. But what we don't understand here is at the level of the difficulties that are experienced in the application of these principles which has been disturbing all this while. One this in establishing the principles, the other is in ensuring that the principles meet up with its objectives, really something need to be done.

FINDINGS AND DISCUSSIONS

In order to fully understand the essence of the principles, it is important to understand the historical origins and established historical traditions of the formation and development of the notary institution in Ukraine. According to Apalkova (2021)

notary is one of the oldest legal institutions, the emergence of which is due to the development of civil turnover and the need to assist its subjects in the implementation of transactions and consolidation of acquired rights in a legal form. The first historical information related to the prototypes of notarial acts dates back to the times of Ancient Egypt, where there were so-called «agora-nomos» that recorded legal evidence in writing. But the notary in its form more adapted to the modern understanding appeared in ancient Rome. (p. 27)

According to Demeshko (2020), the organizational formation of the notary in the Ukrainian lands began in the second half of the eighteenth and nineteenth centuries. Notaries drew up and certified various legal acts, giving them the meaning of public acts, drawing up property inventories, and public auctions. The activities of a notary in each region were controlled by the provincial court, which checked the qualifications of the 'applicant', appointed a person to the position of a notary, and checked his work. In counties with a vacant notary position, the functions of a notary were performed by a justice of the peace. Notaries were considered to be in the civil service with the eighth class, but they were not entitled to ranks and pensions for this title. It is noted that notaries appointed by the government had the right to be equated with assistant secretaries of the Zemsky court. It was emphasized that they performed their functions only within the district to which the district court was assigned. In other regions, their acts had no legal force.

Some researchers, including Dolynska (2018), observe signs of the emergence of notarial activity in the political and legal life of Kievan Rus (Ukraine-Rus), stating that "the confirmation of the fact of the notary's emergence in the state is the provisions on the procedure of inheritance (based on customary law) provided for in the treaty of Rus with Byzantium in 911. Analyzing the provisions of this treaty, it should be noted that the legislation of that time distinguished between inheritance by will and by law, which were later included in the Spatial Edition of the Ruska Pravda (Articles 90-106)" (p. 14). Based on the analysis of the formation of notaries, it can be noted that this legal institution is deeply rooted in the national legal tradition. Of course, certain principles of control over notarial activities were not singled out in the text of Ruska Pravda, but it was then that the ideological, cultural and ideological foundations for the formation and development of the national public service were set.

On the basis of the ideological and cultural foundation outlined above, scientific approaches to understanding the principles of law and the principles of control were subsequently formed. Thus, Kolodii (1998) argued that "the principles of law are such basic ideas of the existence of law which express the most important laws and foundations of this type of state and law and are of the same order as the essence of law" (p. 28). At the same time, Luchenko (2003) noted that "when defining the concept of control principles, it is necessary: firstly, to take into account the most important, objectively necessary manifestations of control, which reflect its nature and focus, specificity as an independent legal entity; secondly, to reproduce such methodological requirements that are constantly identified and used in the process of control, and contribute in practice to improving its effectiveness" (p. 97).

Ukrainian legislation does not explicitly outline the principles of control over notarial activities; rather, these principles are derived from the guarantees provided for notarial practice. According to the Law of Ukraine No. 3425-XII On Notaries (1993), these guarantees ensure that: “the state guarantees and provides equal access for citizens to engage in notarial activities, as well as equal opportunities for notaries in the organization and execution of their duties. Any interference in a notary’s activities—particularly with the intent to obstruct their responsibilities or to coerce them into committing unlawful acts, including attempts to extort information protected by notarial secrecy from the notary, their assistant, or other employees—is strictly prohibited and subject to legal liability. Searches, seizures, and inspections of the notary’s workplace (office) must be conducted strictly in accordance with the law. Furthermore, the seizure or removal of notarial registers and documents entrusted to a notary for safekeeping, as well as the notary’s seal, is not permitted. Such registers, documents, or seals may only be presented to a court upon a reasoned judicial order, solely for inspection, and must be returned immediately after the review”.

At the same time, it is important to note that some countries, including Montenegro, have established separate Codes of Notarial Ethics, which define the moral and ethical principles of the notarial profession, considering the unique deontological aspects of notarial practice. The Montenegrin Code of Notarial Ethics, for example, establishes the principles, rules, and procedures for determining violations of professional and ethical conduct among notaries. It aims not only to ensure the flawless execution of notarial duties but also to uphold and enhance the dignity of the profession and maintain public trust in notarial services.

The ethical and legal obligations of notaries are based on ratified and published international treaties, universally recognized norms of international law, the Constitution, the Basic Principles of Notarial Deontology of the International Union of Notaries, the Law on Notaries, and the Statute of Notaries. In their professional practice, and in adherence to the fundamental spirit and rules of this Code, notaries must exercise independent and autonomous judgment, making decisions in accordance with their conscience on a case-by-case basis.

In Ukraine, according to the Rules of Professional Ethics of Notaries of Ukraine, approved by the Order of the Ministry of Justice No. 2039/5 (2021), “the professional ethics of a notary of Ukraine is based on the principles of: publicity; independence and impartiality; legality; accessibility; immediacy; notarial secrecy and confidentiality; honesty; good faith; respect for the profession”.

Moral and ethical principles are important both in the notary’s own activities and in the relevant control over notarial activities in Ukraine, because today ethical

leadership is of paramount importance in higher education and in the public service. Ethical leadership should be based on a moral personality and a moral manager. The moral personality component focuses on the desirable personal qualities of leaders, such as being perceived as honest, fair and trustworthy. The moral manager focuses on the leader and uses transactional efforts, such as rewards and punishments, to reinforce the desired behavior (Mahlangu, 2020). In view of this, the appropriate control over notarial activities should be aimed at maintaining the leadership potential of notaries, their high professional level through the prism of taking into account the high standards of professional ethics of notaries.

It is also worth paying attention to such a principle of control over notarial activities in Ukraine as digital transparency. According to Bysaga (2023),

digital technologies should be understood as a set of tools, methods and processes that use digital signals and digital information processing to store, exchange and transmit data. They are based on the use of electronics, computers, software and networking tools to automate, optimize and improve various processes and activities. Thus, the introduction of digital technologies in the notary sphere has a positive impact on the work of the notary, which ensures increased efficiency and productivity. In addition, it contributes to increased security and mobility, making notary services more convenient for clients. Digitization also contributes to the innovative development of notaries, stimulating the introduction of new technological solutions and improving the quality of services. (p. 11)

At the same time, in the context of control, an institutional approach is important, which provides for effective interaction between the components of the institutional system and the mechanisms for its implementation and control over the use of digital technologies and allows for the creation of an effective network of relationships between all levels of the system horizontally and vertically, as well as for improving the efficiency of the entire public administration system and the quality of public services. The article highlights the benefits of introducing digital technologies into public administration, which allows to: increase the efficiency of public administration, reduce administrative costs, improve the quality of public services and ensure their accessibility, and reduce the level of corruption (Popova, 2023).

The principle of ensuring high professionalism of notaries cannot be overlooked. Professionalism reflects the attitude of employees to the profession they practice, their persistence in researching, mastering, applying and observing professional

ethics. Professionalism also refers to a person's state of mind, which reflects the way they think and live. Professionalism does not simply reflect excellent skills or the possession of specialized knowledge (intellectual abilities). However, it also encompasses a disciplined attitude to performing one's work on time and in compliance with the rules set by the organization. If employees can be disciplined in the performance of their duties, this will indirectly affect the optimal performance of the organization (Asgaruddin, 2023).

The Ministry of Justice of Ukraine exercises control over maintaining the proper level of professionalism of notaries. It is worth noting in this context that according to the Law of Ukraine No. 3425-XII «On Notaries» (1993), "control over the organization of notaries, inspection of the organization of notarial activities of notaries, their compliance with the procedure for performing notarial acts and compliance with the rules of notarial record keeping are carried out by the Ministry of Justice of Ukraine and its territorial bodies". Article 10 of the Law of Ukraine No. 3425-XII «On Notaries» (1993) stipulates that "in order to determine the level of professional training of persons intending to engage in notarial activities and to decide on the cancellation of a certificate of the right to engage in notarial activities, the Higher Qualification Commission of Notaries is established under the Ministry of Justice of Ukraine".

In the context of martial law, it is important to be aware that the professionalism of notaries also includes the development of skills in working with veterans and military personnel. In this context, it should be noted that the Ministry of Veterans Affairs of Ukraine and the Notary Chamber of Ukraine signed a Memorandum of Partnership and Cooperation, which provides for maximum assistance to the parties in developing the necessary psychological and other skills in the course of work with military personnel.

The professionalism of notaries also includes the skills of civic activism for special legal education interaction with the population. For example, the Notary Chamber of Ukraine launched the Notary Facing the Village project in October 2018, under which all regional offices of the National Police of Ukraine organize free notary consultations for citizens living in rural areas. The schedule of visits is made known to the population in each region of Ukraine.

A separate principle of control over notarial activities in Ukraine is the flexibility and adaptability of control. In this context, it is worth pointing out the effective adaptation of the notary system to work in the context of the COVID-19 pandemic. Despite the difficult sanitary and epidemiological situation, notaries continued to work in compliance with the necessary measures and restrictions provided for by law. The Notary Chamber of Ukraine decided to establish "duty notary offices", which

helped to maintain the stability of civil turnover. In addition, the Notary Chamber of Ukraine launched an open support line for citizens and businesses, where they could get advice on notary issues. Another example of the flexibility and adaptability of the notary system to certain new conditions is the introduction of information technology (Nelin, 2021).

It is impossible to ignore the principle of orienting judicial control over notarial activities toward the observance of human rights and freedoms. In this context, some notary practitioners argue that judicial control over notarial activities is based on the constitutional right of citizens to judicial protection. However, the question arises: Is this judicial control over the notary's activities or over the observance of human rights? We believe that the latter is correct. For the control mechanism to be activated, a complaint must be filed by the person concerned, who is the individual that applied for the notarial act. In this case, only the refusal to perform a notarial act or the improper performance of a notarial act may be appealed. Practice shows that, in most cases, the subject of appeals in courts is the refusal to perform a notarial act, mainly in inheritance cases, where the participation of a notary in the process of exercising rights is mandatory. In other words, the constitutional provision is primarily a guarantee of the protection of citizens' rights, not a basis for control over the professional activities of notaries (Manokhina, 2017). It is the observance of human rights and freedoms that is fundamental to judicial control over notarial activities. According to the Constitution of Ukraine (1996), "everyone is guaranteed protection of their rights, freedoms and interests from violations and unlawful encroachments by any means not prohibited by law".

At the level of the General Assembly of the Council of Notaries of the European Union (2009), the orientation of notarial activity towards ensuring the so-called "legal security" is enshrined, namely, it is stated that "both by the advice he (the notary) gives to the parties impartially and proactively and by the preparation of a reliable document that will result from this, his intervention provides the user of the right with the legal security that he seeks. This security is better ensured the higher the academic legal qualifications of the notary, who gained access to the profession after various examinations, internships and competitions, and carries out this activity in compliance with strict disciplinary rules, under the constant supervision of public authorities, and thanks to the geographical location that allows him to use his services throughout the country". At the same time, this international document draws attention to the leading role of the state in the exercise of control over notarial activities. However, notaries are also subject to the requirement of loyalty to the state, which is proclaimed as one of the general principles of notarial activity and is reduced to the fact that "a notary is obliged to be loyal to the state from which he received the powers of state authority. He/she

shall provide his/her services whenever required by law and in accordance with the laws of his/her state. He/she shall participate in the fight against money laundering by providing his/her cooperation and all necessary information to the competent authorities in accordance with the legislation of his/her state" (General Assembly of the Council of Notaries of the European Union, 2009). It is worth noting in this context that it is the state that is required to create equal conditions for access to professions without attitudes and simulacra aimed at achieving the goals of personal enrichment (Bondarieva, 2019).

CONCLUSIONS

In conclusion, understanding the essence of these principles requires an appreciation of the historical origins and established traditions that have shaped the notary institution in Ukraine. The notary institution is deeply rooted in the national legal tradition. Although certain principles of control over notarial activities were not singled out in the text of *Ruska Pravda*, it was during that period that the ideological and cultural foundations for the formation and development of the national public service were established.

Moral and ethical principles are important both in the notary profession and in the oversight of notarial activities in Ukraine, as ethical leadership is of paramount importance in higher education and the civil service today. Ethical leadership should be based on strong moral character and effective ethical management.

The principle of digital transparency in the course of control over notarial activities in Ukraine arises in the context of increasing the efficiency of public administration, reducing administrative costs, improving the quality of public services and ensuring their accessibility, and reducing corruption.

The principle of ensuring high professionalism of notaries includes, among other things, the development of skills in working with veterans and military personnel, skills of public activism for special legal education interaction with the public in the course of implementation of projects of the Notary Chamber of Ukraine.

The principle of focusing judicial control over notarial activities on the observance of human rights and freedoms naturally arises in the light of the provisions of the Constitution of Ukraine and the European Code of Notarial Ethics and is a guarantee of protection of the rights and freedoms of citizens.

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