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INSURANCE OF PROFESSIONAL RESPONSIBILITY OF NOTARIES IN UZBEKISTAN: EXPERIENCE OF FOREIGN COUNTRIES

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ABSTRACT

This article analyzes the experience of foreign countries in the insurance of Professional Responsibility of notaries. The role of this type of insurance on the basis of the legislation of foreign countries is revealed in this.

KEYWORDS

Notary, insurance, professional defendant of kilish insurance, lawyer-Lawyer, insurer, policyholder.

INTRODUCTION

While professional liability insurance is not common in our country, it becomes mandatory for certain areas. For example, the second part of Article 7 of the Law "On Notary" stipulates that "a notary engaged in private practice does not have the right to carry out his activities without concluding a compulsory civil liability insurance contract".

THE MAIN RESULTS AND FINDINGS

In world practice, there are various systems of professional liability insurance of notaries, which can be systematized into three types.

The first type is individual insurance, where the notary himself applies to the insurance company (Germany, Finland, Netherlands, Japan, Brazil).

The second type is self-insurance, that is, mutual insurance societies of notaries are united (Canada, Great Britain, South Africa, Australia).

The third type-notarial chamber (order of notaries, notarial insurance fund) enters into relations representing the interests of all members when concluding an insurance contract with an insurance company, concludes a professional liability insurance contract (Denmark, USA, Belgium, Sweden, Quebec province (Canada)). For example, through the Quebec provincial notary order, its rules and norms of professional practice, the implementation of notarial activities, its members can provide high-quality services to each public. However, despite all the control mechanisms available in the provision of these

professional services, it is not possible to completely exclude professional errors that may harm third parties. In order to protect the public and to be able, if necessary, to compensate for the damage caused to them, the Code of Professions of the Province of Quebec entitles all members of the professional order to require professional liability insurance of notaries. There are various options for such insurance for members of a professional order. The Order of Notaries of the Province of Quebec has created its own professional liability insurance fund for notaries. Membership of the Foundation is mandatory for every notary public. Assets of the insurance fund are separate property and belong to all notaries; they are intended for professional indemnity insurance only.

Professional liability insurance of notaries in Uzbekistan is usually carried out according to the first type of system, that is, each private notary must insure his professional liability with an insurer with an appropriate license. We will consider the features of the professional activity of a notary, the requirements for a person who wants to engage in notarial activity, and determine the concept and conditions for starting the professional responsibility of a notary. According to the legislation on notariat, notary acts are performed by notaries of state notary offices and notaries engaged in private practice.

The professional activity of a notary differs from representatives of other types of legal activity by a number of features, in particular:

1) A notary public works in the field of evidentiary law and provides qualified evidence in a case. Notarial acts have special evidentiary force, an example of which is the norm of article 112 of the FC, in which if the requirements of the law on notarization of a unilateral agreement are not observed, such an agreement is considered invalid. FC here determines that such an

agreement is invalid if the parties do not comply with the requirements of the law on notarization of the agreement.

2) a notary public works in an area where the parties do not have disputes and are not required to argue with each other, so this area is a non-dispute jurisdiction. In the event of a conflict situation, when the measures taken by the notary to reconcile the positions of the parties are futile, the notary should refrain from resolving disputes and recommend the parties to go to court;

3) there is a possibility of special access to the performance of notarial activities related to the increase in qualification requirements for the notary public and the nature of his preparation for the implementation of this activity. In different countries, there are different models and stages of preparation for notarial activities, but all of them are related to the acquisition of additional education and practical skills that are not covered by the general standard of higher legal education. These steps usually include: first stage-law degree; second stage-diploma in notary law; third stage - practice in notary offices; The fourth stage is continuous professional development.

A person who wants to engage in notary activity in Uzbekistan must be a citizen of Uzbekistan, have a complete higher legal education, know the state language, have at least three years of experience in the field of law, including having at least one year of work experience as a notary assistant or consultant in the state notary office, passing a qualification exam and receiving a certificate of the right to engage in notary activity. A person with a criminal record, a person who has been declared by the court to be legally incapacitated or unable to act cannot be a notary public. In addition, a notary may engage in entrepreneurship, advocacy, be the founder of

lawyers' associations, serve in the civil service or local self-government bodies, as part of other legal entities, also, it is not possible to perform other paid work except for teaching, scientific and creative activities. He must also comply with the norms of professional ethics set forth in the Professional Code of Ethics of Notaries;

4) the notary performs public legal functions on behalf of the state, which reflects his legal status as a person in the service of the state and society;

5) notaries engaged in private notarial activities in the Latin notary system work in the mode of self-financing and independent organization of their activities. At the same time, notaries are accountable and controlled by both state authorities and the bodies of the notary community.

The main areas of notarial activity are as follows: ensuring the indisputability of rights and facts, as well as the evidential force of documents; ensuring legality when concluding contracts and performing other notarial actions; providing legal assistance to persons applying to a notary for notarial acts. The requirements for notarial activities are determined by the Law "On Notary Publicity" and notaries work on the basis of the Instruction of the Minister of Justice of the Republic of Uzbekistan dated January 4, 2019 No. 2 mh, Appendix 1 "On the procedure for performing notarial actions by notaries". Failure of a notary to perform one or other tasks arising from the performance of his duties, if he has caused damage to another person due to his actions (inaction), carelessness or negligence, may cause the notary to be held professionally liable.

The Law "On Notary" stipulates the responsibility of public and private notaries: damage caused to a person as a result of illegal or careless actions of the state notary shall be compensated in accordance with the

law. A person who applies to a notary to perform a notarial act: gave false information on any issue related to the performance of a notarial act; provided false information related to the performance of notarial acts; submitted invalid and/or forged documents; The notary shall not be liable if the notary does not disclose the absence or presence of persons whose rights or interests may affect the notarial acts applied to the person.

Many authors, among them S.Ya.Fursa, P.M.Pavlik, T.M.Kilichava, S.Khimchenko, study the problems of the liability of notaries in case of non-fulfillment or improper fulfillment of professional obligations and apply the term "civil-legal liability".

We believe that the use of the term "civil-legal responsibility" in this context is not entirely correct, because, as mentioned above, we are talking about the responsibility of the notary public in the performance of professional, i.e., notarial activities. If we analyze the norms of the Law "On Notary", we come to the conclusion that the legislator speaks only about the responsibility that arises when a notary does not perform or incorrectly performs professional duties. Therefore, it would be more appropriate to use the term "professional liability", because it covers the liability of the notary only in cases where he did not perform his professional duties or did not perform them properly. In all other cases of notary activity, as well as any other person not related to the performance of professional duties, we can talk about civil liability.

The professional responsibility of a notary is mandatory sanctions aimed at restoring the violated rights and interests to a notary who performed work in accordance with the certificate of the right to engage in notarial activity and was included in the unified register of notaries, if they did not perform their

professional duties, state measures or did not perform properly, and caused damage to third parties (additional weights).

Analyzing the norms of Articles 18-19 of the Law "On Notary", the conditions for the occurrence of professional liability of a notary are illegality, it can be concluded that regardless of the damage and guilt caused to the client and/or third parties (including in its absence).

Illegal actions of a notary consist of violating the requirements of the legislation and other normative legal documents on the implementation of notarial activities and making professional mistakes by the notary, they are understood as actions or omissions that deviate from the expectations of the actual results of the notarial activity and lead to a deviation of the actual results of the notarial activity from the expected ones and negative personal and/or property consequences for clients and/or third parties, i.e. non-fulfilment or improper fulfilment of the obligation of the notary public to confirm rights, as well as legally significant facts, it is also manifested in the failure to perform other notarial actions in order to ensure their legal validity.

Damage to the client of the notary and/or third parties due to their receiving poor quality notary services, that is, it is expressed in the fact that it does not comply with the requirements of regulatory legal documents or does not receive services at all. We agree with the position of the authors (S. Khimchenko and others) that the notary is also proprietary to the client and/or a third party, also claim that it can cause moral damage, it consists of moral sufferings, i.e. humiliation, damage to business reputation, and should be taken into account separately.

The existence of a causal relationship between the illegal behavior of the notary and the negative consequences for the client and/or third parties as a result of the notary's professional mistakes is one of the conditions for the emergence of professional liability.

The view that the notary's professional liability occurs regardless of his fault seems to be very balanced and reasonable. Determining the presence or absence of a notary's guilt is not considered a mandatory component for the occurrence of his professional liability. In comparison, let's look at the norms of articles 1457-1458 of the FC of the province of Quebec. In these norms, the following conditions are defined for the professional liability of a notary, i.e.: the behavior of a notary does not correspond to the norms of the average level; existence of damages or losses caused to another person; causal connection, that is, the existence of a direct connection between the notary's actions and the damage caused. As for the question of the need to bring the notary's fault to professional responsibility, two options are being considered. According to the first option, if the notary is not required to guarantee the result of the notarial act, the presence of guilt is mandatory. According to the second option, if the notary must also guarantee the result of the notarial act, then the notary's guilt is not important to bring him to professional responsibility. It should be noted that in developed countries, the tradition of taking into account only three conditions for determining the professional liability of a notary is widespread, and the condition of the presence of fault is not given special attention in this case.

It has been proven that the notary's professional responsibility arises regardless of his fault. We will see that this approach is correct and reasonable. The strengthening of liability for notaries is aimed at

protecting the interests of their clients and third parties who may be harmed by the failure or improper performance of their professional duties by notaries.

Article 19 of the Law "On Notary" stipulates that a private notary shall fully compensate for the damage caused. It is noted in the scientific literature on issues of notarial liability that it is inappropriate to apply a form of liability, such as the collection of neustoyka, to a notary if notarial actions are not performed properly. The main form of liability is damage compensation and the violated right must be restored.

In our opinion, this approach does not fully justify itself. The main form of professional liability is indeed compensation for damages, but at the same time, for professional liability in general, and for a notary in particular, as a type of civil legal liability, the form of liability, such as the recovery of a fine, is fully used.

In accordance with the current legislation, a notary engaged in private notary activity must have professional liability insurance.

The subject of the notary's professional liability insurance contract is the insured's property interests - non-fulfillment or notarial activity of a private notary related to liability for damage caused to third parties as a result of improper execution. According to the requirements of Article 191 of the Law "On Notary", only private notaries are the insured parties in the notary's professional liability insurance contract. Beneficiaries under the contract of professional liability insurance of notaries are individuals and legal entities who apply to the notary for notarial acts and/or third parties.

Insured risks under the notary's professional indemnity insurance contract, in our opinion, may be: legal ignorance of clients caused by notary public not explaining their rights and obligations to clients, not

warning them about the consequences of notarial actions; disclosure of information about documents known to him in connection with the performance of notarial acts by a notary, with the exception of cases provided for by law; performance of a notarial act by the policyholder that is contrary to the current legislation or international law norms and harms the notary's client and/or third parties; loss, destruction or damage to documents related to the notary's professional activity.

In the notary's professional liability insurance contract, it is possible to propose to consider the insured event as an event provided for in the notary's professional liability insurance contract, as a result, the notary's professional responsibility for compensation of damage caused to the client and/or third party is not fulfilled, or as a result of improper performance of professional duties. In order to receive insurance compensation, the insured (beneficiary) must document the occurrence of an insured event, it is also necessary to provide the insurer with documents confirming the occurrence of an insured event, the amount of damage, and the necessary documents to pay the insurance compensation in accordance with the insurance requirements. After the insurer submits all the necessary documents that are important for making a decision on the recognition of an insured event, the insurer draws up an insurance report and makes a decision on whether to pay insurance compensation or refuse to pay insurance compensation, the policy owner and/or beneficiary will be notified in writing.

The notary's professional liability insurance contract must provide grounds for refusing to pay insurance indemnity. In addition to the grounds established by Article 954 of the FC, other grounds may be provided for in the insurance contract: activities of the policyholder not related to professional activity;

actions by the policyholder against persons who do not have legal grounds for granting the right to notarial security; the effect of natural phenomena.

The notary's professional liability insurance contract is canceled in accordance with the requirements of Article 948 of the FC, and if after its entry into force the possibility of an insured event has disappeared and the existence of an insured risk has ceased, insurance event, due to the termination of the notary's professional activity in accordance with the current legislation, from the moment of such events; cancellation of the certificate of the right to engage in notarial activity for the owner of the insurance policy.

Professional liability insurance of notaries is carried out in order to ensure compensation for damage caused to the property interests of the insured's clients and/or third parties and to the notaries' own interests, this is confirmed by the norm of Article 18 of the Law "On Notary". In order to ensure compensation for damages caused by notarial activities, a private notary is obliged to conclude an insurance contract for his liability for private notarial activities.

Taking into account the mentioned problems, L.M. Gorbach, A.B. Kaun, A. Zaletov, T.A. Govorushko emphasize that notary professional liability insurance should be carried out in a mandatory form.

CONCLUSION

The analysis of the current legal norms allows us to conclude that the professional liability insurance of notaries should be carried out in a mandatory form, because in Article 191 of the Law "On Notary" the requirements for insuring the professional liability of notaries, the insurance event and the minimum amount of the insurance amount are defined. Although some important terms of the notary's professional liability insurance contract are defined by the

established norm, other important terms of the insurance contract are not defined at all (the subject of the insurance contract, the insurance tariff, the amount of the insurance payment and the terms of its payment, the term of the insurance contract). contract, procedure for modification and termination, terms of insurance payment, reasons for refusal of insurance payment, rights, obligations and responsibilities of the parties), this shows the significant shortcomings of this provision. Therefore, it is appropriate to add the sentence "not contrary to the law" after the words "notary" to the third part of Article 191 of the Law "On Notary".

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