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Notaries' activities during the war: Ukrainian experience

Działalność notariuszy w czasie wojny: doświadczenia ukraińskie

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Abstract

During wartime, notaries face a number of complex legal and organisational challenges that require the adaptation of traditional procedures and approaches to the changed conditions of wartime. This study focuses on ensuring the availability of notarial protection during wartime and the need to develop a legal framework for a regulatory response to challenges that require new approaches and solutions. This article examines the issues of access to notarial services and preservation of confidentiality of documents during war and armed conflicts. In particular, the author examines the difficulties faced by notaries in preserving documents, as well as the security issues of the notary and his/her clients. The author analyses the practice of law enforcement and changes in the regulatory framework in the field of notary during the military operations in Ukraine. The author analyses the right of military personnel, rank-and-file and senior civil defence officers, employees of critical infrastructure facilities, civil servants, local self-government officials and police officers to a personal order under current Ukrainian legislation, which is an important tool for their social protection and support. This article focuses on the Ukrainian experience, but the knowledge gained in the course of the analysis may be useful for other countries facing similar problems. The study reflects the relevance and importance of the problem of ensuring the functioning of the notary during wartime and suggests ways to address these complex challenges.

Keywords: notary, notary public, notarial protection, notarisation of transactions, personal order, war, Martial Law

Streszczenie

W czasie wojny notariusze stają przed szeregiem złożonych wyzwań prawnych i organizacyjnych, które wymagają dostosowania tradycyjnych procedur i podejść do zmienionych warunków wojennych. Niniejszy artykuł koncentruje się na zapewnieniu dostępności ochrony notarialnej w czasie wojny oraz potrzebie opracowania ram prawnych dla regulacyjnej odpowiedzi na wyzwania, które wymagają nowych podejść i rozwiązań. Omówiono w nim kwestie dostępu do usług notarialnych i zachowania poufności dokumentów w czasie wojny i konfliktów zbrojnych. Autorka w szczególności analizuje trudności napotymane przez notariuszy w zabezpieczaniu dokumentów, a także kwestie bezpieczeństwa notariusza i jego klientów. Przytacza także praktykę egzekwowania prawa i zmiany w ramach regulacyjnych w dziedzinie notariatu podczas operacji wojskowych w Ukrainie. Autorka analizuje również prawo personelu wojskowego, szeregowych i wyższych oficerów obrony cywilnej, pracowników obiektów infrastruktury krytycznej, urzędników służby cywilnej, samorządowców i funkcjonariuszy policji do osobistego zamówienia na mocy obowiązującego ustawodawstwa ukraińskiego, które jest ważnym narzędziem ich ochrony socjalnej i wsparcia. Niniejszy artykuł koncentruje się na doświadczeniach ukraińskich, ale wiedza zdobyta w trakcie analizy może być przydatna dla innych krajów borykających się z podobnymi problemami. Opracowanie odzwierciedla aktualność i wagę problemu zapewnienia funkcjonowania notariatu w czasie wojny oraz wskazuje sposoby sprostania tym złożonym wyzwaniom.

Słowa kluczowe: notariat, notariusz, ochrona notarialna, notaryzacja transakcji, porządek osobisty, wojna, stan wojenny

Introduction

During wartime, notaries face a number of complex legal and organisational challenges that require the adaptation of traditional procedures and approaches to the changed conditions of wartime. In this sense, notaries become important participants in the system of ensuring law and order and protecting the rights of individuals and legal entities and their property. As the Ukrainian experience shows, notarial services are becoming an important tool in dealing with military losses and compensation for damage caused by war. Notaries often act as intermediaries in resolving these issues, but they also face difficulties in determining the amount of damage and conducting compensation procedures.¹

One of the main challenges that arise in times of war is maintaining access to notarial services, as the forced displacement of the population, destruction of infrastructure and restrictions on free movement can complicate the process of ensuring the availability of notarial protection. In addition, an additional challenge is to ensure the safety of the notary and his/her clients in times of war and active hostilities. Notaries have to work in dangerous conditions, which may endanger their lives and health, and may make it difficult to carry out the normal notarial process.

¹ M.L. Closten, *The public official role of the notary*, „UIC Law Review” 1998, Vol. 31, pp. 651–702.

Analysing the practice of law enforcement, there are also frequent cases of difficulties in maintaining the confidentiality and integrity of documents in the event of evacuation or destruction of notary offices. Therefore, today Ukrainian notaries still face problems with ensuring the safety of documents, and ensuring backup and storage of documents may be crucial for preserving the rights and interests of individuals and legal entities in times of war. Therefore, the relevance of this study is primarily determined by the growing need to understand and resolve complex situations arising from military conflicts and the need to develop a legal framework for a regulatory response to challenges that require new approaches and solutions. In the light of these problems, there is a need to develop and implement special regulations aimed at ensuring the functioning of the notary in war and conflict, taking into account all the specific requirements that arise during war. The Ukrainian legislator is trying to respond dynamically and in a timely manner to the need for legal regulation of all spheres of society and the state, so such legal acts provide for measures to ensure the safety of notaries and their clients, as well as to maintain access to notarial services even in emergency situations.

The importance of this study is also related to the fact that notaries have a special place in exercising the right of military personnel, privates and senior officers of civil protection services, employees of critical infrastructure facilities, civil servants, local government officials and police officers to a personal order, which is an important tool for social protection and support of these persons. However, there is a problem in the absence of a clear and unified approach to the drafting and use of personal orders, and the lack of a unified methodology and standards can lead to errors in the application of this mechanism, as well as to the possibility of conflicts and contradictions in the definition of the rights and obligations of the above-mentioned persons. A study of the peculiarities of the application of personal orders will help to identify the most effective practices of their use, taking into account the legal framework and the specifics of activities in the field of defence and security.

Identifying and analysing the main problems related to ensuring access to notarial services, preserving the confidentiality and integrity of documents, as well as ensuring the safety of notaries and their clients in wartime is of particular interest. The study of Ukrainian legislation, which has undergone systemic changes in approaches to the methods of legal regulation of notaries' work during the war, will serve as a solid basis for countries facing similar problems. Therefore, the purpose of this study is to analyse the changes to the current legislation of Ukraine in the field of notarial activity and the problems that arise in the process of drafting and using personal orders in the field of notary during the war.

Transformational changes in the notary's activities during the war: an overview of legal and organisational issues

The difficulties faced by notaries during the war demonstrate the importance of a thorough analysis of the legal and organisational mechanisms that would adequately guarantee the protection of the rights and freedoms of citizens and ensure safe working conditions for notaries. The unique challenges faced by notaries in the performance of their duties under Martial Law due to security threats, numerous violations of human rights and, in particular, property rights, objectively require the development of a comprehensive approach to addressing compensation for damage and restoring the situation of victims of armed conflict². At the same time, the analysis of these problems allows us to better understand the role of notaries in ensuring law and order during military conflicts and to improve the mechanisms for protecting the rights of citizens in emergency circumstances. In times of war, the unique dualistic nature of the notary, which functions on the borderline of public and private interests, is better understood as a link between the state and civil society.³

It is known that during the Martial Law period, most public and private notaries will continue to carry out their professional activities, except for some regions where restrictions may be imposed due to circumstances that complicate the work of notaries. This is due to the fact that during the period of Martial Law, notaries may face various restrictions that affect the normal functioning of their professional activities. Therefore, the website of the Notary Chamber of Ukraine contains a list of notaries working under Martial Law.⁴

The key features of the work of notaries under Martial Law should be divided into areas of their work and the functions assigned to them by the current legislation. In particular, they should be grouped in the following order:

- regulation of the work of state registers (for example, at the beginning of the war, in order to prevent unauthorised actions with the information of the registers by the aggressor country, the work of most state registers was suspended, except for the inheritance register, the unified register of powers of attorney, the unified register of special forms of notarial documents, the state register of civil status acts, the register of agricultural receipts);
- temporary non-performance of certain notarial acts (e.g., until the state register of real rights to immovable property, the unified register of encumbrances on movable property, the state register of legal entities, individual entrepreneurs and public organisations resume operation, alienation agreements, pledges of immovable property, pledge/mortgage agreements of movable property were temporarily not certified; certificates of acquisition of ownership of immovable/movable property, including the right to inheritance, were not issued);
- changes to the period for acceptance of the inheritance (as a general rule, the period for acceptance of the inheritance is 6 months from the date of death of the testator;

² O. Pis'mennij, *Sučasni problemi institutu notariatuv umovah voënnogo stanu*, "Publične pravo" [*Modern problems of the notary institution in the conditions of Martial Law*, "Public Law"] 2023, № 1(49), pp. 23–30, <https://www.publichne-pravo.com.ua/files/49/3.pdf> [access: 15.04.2024].

³ V.G. Šišlenko, *Pravove Regulivannâta Organizaciâdiâl'nosti Notariatuukraïni*, "Forum Prava" [*Legal regulation and organization of activities of the notary of Ukraine*, "Law forum"] 2010, № 4, pp. 971–975, <https://dspace.univd.edu.ua/server/api/core/bitstreams/72234ae4-648c-4c26-b23d-7afb0488a2ca/content> [access: 15.04.2024].

⁴ List of notaries of Ukraine who work under Martial Law: *Perelik notariusiv Ukraïni, âki pracuût' v umovah voënnogo stanu*, Notarial'na Palata Ukraïni, 10.03.2022, <https://npu.ua/news/notary/> [access: 15.04.2024].

however, during the period of Martial Law, the period for acceptance of the inheritance is suspended, and after the cancellation or termination of Martial Law, it is extended);

- peculiarities of the use of special forms (for example, under Martial Law, the use of special forms by notaries is not mandatory for notarial acts such as certification of a power of attorney, will or authentication of signatures on documents);

- transfer of certain notarial functions to commanders (chiefs) of military formations or their authorised persons (during Martial Law, commanders (chiefs) of military formations or their authorised persons may certify powers of attorney (except for powers of attorney for the right to dispose of immovable property, management and disposal of corporate rights) and wills of military personnel, employees of law enforcement (special) bodies, civil protection bodies involved in deterring armed aggression of a foreign state);

- restrictions for citizens and residents of the aggressor country (for example, strict restrictions have been introduced and are currently in force for Russian citizens and legal entities directly related to the aggressor country; in fact, almost the only possible notarial act of a Ukrainian notary at the request of a Russian citizen is to certify the authenticity of the signature on the application for renunciation of Russian citizenship).

From a legal point of view, the effective activity of notaries during the war is of great importance, since, based on the content of the Law of Ukraine “On Notaries”, notaries in their activities are called upon to contribute to the maintenance of law and order and the protection of property and property rights of individuals and legal entities.⁵ In times of war, the activities of notaries allow us to determine the effectiveness of their work and check how they ensure compliance with the rule of law and constitutional legal guarantees in emergency circumstances.⁶ In addition, during the war, the risk of violation of property rights of citizens increases, so it is important to have a high-quality legal regulation of notaries' activities in order to apply effective measures to protect property and rights of individuals and legal entities, as well as to perform urgent notarial acts (certification of powers of attorney, wills, authenticity of signatures on applications, inheritance cases, etc.)

During the period of Martial Law, notaries cannot follow all the standard procedures required by law for notarial acts, as they did in peacetime. Therefore, in order to regulate the provision of notarial services by notaries, the Cabinet of Ministers of Ukraine approved Resolution “On Certain Issues of Notaries under Martial Law” No. 164 dated 28 February 2022, as amended (Resolution No. 164), which establishes the procedure for notaries' activities in wartime.⁷ In fact, the main purpose of amending the notarial procedure is to simplify access to notarial services for individuals and legal entities. For this purpose, the requirements for notarial acts were deliberately reduced, however, only to the extent

⁵ About the notary: Law of Ukraine dated September 2, 1993, No. 3425-XII. Information of the Verkhovna Rada of Ukraine, 1993, No. 39, Art. 383.

⁶ S. Osipova, *Influence on Latvia's Notarial System by Occupying Powers during the World War II*, “Journal of the University of Latvia. Law” 2014, Vol. 6, pp. 20–38, <https://journal.lu.lv/jull/article/view/209> [access: 15.04.2024].

⁷ About some notary issues under Martial Law: Decree of the Cabinet of Ministers of Ukraine No. 164 of February 28, 2022 with changes and additions, <https://ips.ligazakon.net/document/view/kp220164?an=1> [access: 15.04.2024].

that they allow for legality and do not violate the basic principles of notarial activity. It should be noted that a number of simplifications and prohibitions have now been cancelled, but their analysis will help to understand the legal and organisational measures taken by Ukraine to ensure the performance of notarial activities in times of war. Such analysis will be a good example for other countries in the event of war or other emergencies.

The first amendments introduced by Resolution No. 164 concerned the mandatory requirements for the form of notarised documents, which are usually established by Ukrainian legislation, namely the mandatory use of special forms of the established form. However, due to Russia's military aggression, the State Enterprise "National Information Systems" responsible for the supply of special forms was unable to supply notaries with the relevant forms, so during the Martial Law, notaries were allowed to certify powers of attorney and wills, and to certify the authenticity of signatures on documents without using special forms of notarial documents, on plain paper. At the same time, the notary's details must be printed on a white letterhead using computer technology: an image of the State Emblem of Ukraine, surname, full name, patronymic (if any), name of the state notary office (for a state notary), address of the workplace, telephone number, e-mail address.⁸

In order to verify the validity of a power of attorney that was drawn up without the use of standard forms of notarial documents and certified by a notary on plain white paper, the interested person has the right to submit a copy of this power of attorney to the notary. In this case, the notary is obliged to issue a certificate within two business days confirming or refuting the compliance of the notarisation of the power of attorney with the requirements of the applicable law. This procedure is important from the point of view of ensuring legal certainty and trust in notarial documents during the war, when special circumstances may arise that complicate the process of fulfilling the standard requirements for notarial practice. The mechanism proposed by the Cabinet of Ministers of Ukraine allows for effective control and compliance of notaries' actions with the law, while maintaining a high level of public confidence in the notary system in any situation.

From both a legal and organisational point of view, it is important to know who can be a notary during Martial Law, as it is not always possible to find a notary in such a situation. For such cases, Ukrainian legislation has established a range of persons who can replace a notary and perform a certain range of notarial acts. Resolution No. 164 provides that under Martial Law, the commanders of the Armed Forces of Ukraine, other military formations, law enforcement officers and civilian authorities have the ability and authority to certify powers of attorney (except for powers of attorney for the disposal of real estate, management and disposal of corporate rights) and wills of military personnel of the Armed Forces of Ukraine, other military formations, law enforcement officers and civilian authorities. Such powers of attorney and wills must be further registered in the relevant registers, so they are sent through the General Staff of the Armed Forces, the Ministry of Defence, the relevant law enforcement (special) or other body to the Ministry of Justice

⁸ M. Korniienko, *Notariat pid čas voënnogo stanu: ključovi zmini* [Notary during Martial Law: key changes], 15.03.2022, https://biz.ligazakon.net/analitics/209961_notarat-pd-chas-vonnogo-stanu-klyuchov-zmni [access: 4.15.2024].

or its territorial body to ensure their registration by notaries in the Unified Register of Powers of Attorney or the Inheritance Register.⁹

Certified wills and powers of attorney are registered by the heads of these entities (bodies, institutions) or other persons authorised by such heads under a separate serial number in the register for registration of wills and powers of attorney, the form of which is approved by the Ministry of Justice. The number under which the will or power of attorney is registered is indicated in the certifying inscription. The General Staff of the Armed Forces, the Ministry of Defence, the relevant law enforcement (special) or other body (institution) shall ensure that powers of attorney and wills are submitted to the Ministry of Justice or its territorial body within five days of receipt. In its turn, the Ministry of Justice shall ensure their transfer to the territorial body of the Ministry within two business days after receiving the power of attorney and will. Within two business days after receiving a power of attorney or a will, the territorial body of the Ministry of Justice shall ensure their transfer to a notary / state notary office for further registration in the Unified Register of Powers of Attorney or the Inheritance Register. Within three business days after receiving the certified power of attorney / will, the notary / state notary office is obliged to ensure their registration (accounting), enter information about them in the Unified Register of Powers of Attorney or the Inheritance Register, store these documents and transfer them for storage to the relevant state notary archive within three months after the termination or cancellation of Martial Law. The territorial body of the Ministry of Justice shall notify the Ministry of registration of a power of attorney, will, and entry of information about them into the Unified Register of Powers of Attorney or the Inheritance Register, and the Ministry of Justice shall notify the body (institution) from which the relevant documents were received.¹⁰

It is worth noting that in wartime it is important to have mechanisms to ensure the continuous functioning of all spheres of society and the preservation of legal relations. Empowering military commanders to certify powers of attorney and wills is an important step in ensuring legal certainty in wartime. Firstly, it allows to ensure the continuity of legal relations during wartime, when the possibility to contact notaries may be limited due to active hostilities or other circumstances. From this point of view, ensuring legal certainty is critical in maintaining order and stability in society. Secondly, allowing commanders and other authorised persons to notarise powers of attorney and wills simplifies procedures and reduces bureaucratic barriers in times of war, allowing for a quick response to the needs of society and ensuring continuity of legal processes. In addition, the mandatory registration of such powers of attorney and wills in the relevant registers guarantees their legal effectiveness and validity, which is important for ensuring legal certainty of the parties and avoiding disputes in the future. Thus, allowing powers of attorney and wills

⁹ About some notary issues under Martial Law: Decree of the Cabinet of Ministers of Ukraine No. 164 of February 28, 2022 with changes and additions <https://ips.ligazakon.net/document/view/kp220164?an=1> [access: 15.04.2024].

¹⁰ About some notary issues under Martial Law: Decree of the Cabinet of Ministers of Ukraine No. 164 of February 28, 2022 with changes and additions <https://ips.ligazakon.net/document/view/kp220164?an=1> [access: 15.04.2024].

to be certified in military institutions has significant practical implications for ensuring legal stability and normal functioning of society in times of military conflict.

The current legislation of Ukraine provides that notarial acts may be performed not only in notary offices, but also in diplomatic missions and consular offices of Ukraine. In cases where there is no notary in rural settlements, such acts may be performed by local government officials authorised by the notary. The provisions of the Law of Ukraine “On Notaries” (Article 40) define the categories of persons entitled to replace a notary and certify documents that have the same legal status as notarised documents (chief doctors and their deputies, heads of medical institutions, as well as captains of vessels flying the flag of Ukraine and heads of penitentiary institutions).¹¹

Despite the importance of regulatory support for human and civil rights and freedoms, the need to improve the efficiency of the organisation and functioning of the institution of public services, including in terms of public services as the subject of notaries’ activities in Ukraine, is a priority task for the authorities.¹² It is important for the state to ensure adequate organisational readiness and access to legal services for notaries, as war conditions require a high level of organisational readiness and mobility from notaries, given that the need for legal services (in particular, confirmation of documents, registration of property rights and other notarial acts, etc.).¹³

The legislator also pays special attention to improving the structure of the notary system in times of war, ensuring the safety of notaries while providing notarial services, ensuring proper communication and information support, including with public authorities. In addition, the war has made adjustments to the organisational structure and mechanisms of the notary system, as notary institutions were divided by territory, taking into account their ability to function in emergency circumstances and coordination of their activities.

A separate issue concerns ensuring the security of notarial acts and the protection of notary staff and clients under Martial Law, which requires the introduction of additional security measures. It is important for notaries to be prepared to work in emergency situations and to be able to mobilise quickly in critical moments.

It is important to ensure proper communication between notary institutions, other law enforcement agencies and the public during the war in order to improve and increase the efficiency of notarial services in emergency circumstances. The interaction of notary bodies and executive authorities should be understood as legally enshrined methods of cooperation that ensure the exercise of joint powers in order to perform both general and specific functions.¹⁴ There are the following forms of interaction between these entities:

¹¹ About the notary: Law of Ukraine dated September 2, 1993, No. 3425-XII. Information of the Verkhovna Rada of Ukraine, 1993, No. 39, Art. 383.

¹² O.V. Rudchenko, *Publični poslugi âk predmet diâl'nosti notariâsiv v Ukraïni*, “Ûridičnij Naukovij Elektronij Žurnal” [Public services as a subject of activity of notaries in Ukraine, “Legal Scientific Electronic Journal”] 2022, № 1, pp. 388–395, http://lsej.org.ua/1_2022/98.pdf [access: 15.04.2024].

¹³ C. Janice, M. Rahayu, *Responsibilities and Authorities of the Notary for the Legalization of Authentic Deeds*, “Law Doctoral Community Service Journal” 2022, Vol. 2(1), pp. 14–19.

¹⁴ V.G. Tišenko, *Funkcional'na ta organizacijna vzaëmodiâ notariatuz organami publičnoï vladi v Ukraïni* “Visnik Černivec'kogo Fakul'tetunacional'nogo Universitetu «Odes'ka Ûridična Akademiâ»” [Functional and organizational interaction of the notary with public authorities in Ukraine, “Bulletin of the Chernivtsi Faculty

exchange of information; joint control over compliance by citizens of Ukraine, foreigners and stateless persons with the requirements of Ukrainian legislation on the provision and receipt of notary services; holding joint events; joint training on notary activities.¹⁵ We can also point to such types of interaction between these bodies as organisational and functional interaction. Organisational interaction of notaries with executive authorities is a type of interaction that is a complex and mutual connection of elements of the organisational system, which is manifested in their joint functions, and its management structure in their simultaneous and coordinated relations with the external environment. In other words, these are mutually beneficial and mutually agreed (in terms of goals, time, place, resources, etc.) actions of the notary and executive authorities as elements of the public service of Ukraine aimed at organising and streamlining their work. Organisational actions include: developing programmes, holding meetings, controlling, explaining certain activities, studying and summarising work experience, recruiting personnel, etc. Functional interaction between the notary and executive authorities is manifested in the mutually coordinated and mutually beneficial activities of these entities, which are carried out in order to properly perform their functions.¹⁶

Government and law enforcement agencies should facilitate the safety and normal functioning of notaries during this period, providing them with the necessary conditions to perform their duties in accordance with the law.¹⁷

It should be noted that Resolution No. 164 establishes a procedure for public and private notaries in the event of a possible threat of unlawful seizure or loss of special forms of notarial documents and the seal of a private or public notary. According to this document, in the event of such a threat, the notary must immediately destroy the unused forms and seal. After the destruction, the notary draws up an act, an electronic copy of which with a qualified electronic signature of the notary is sent to the State Enterprise "NAIS" (in case of destruction of forms) or to the relevant territorial body of the Ministry of Justice (in case of destruction of the seal). This procedure is aimed at ensuring security and preventing possible misuse or forgery of notarial documents in case of unauthorised access to the forms or seal.¹⁸

This Resolution No. 164 provides for the possibility of transferring special forms of notarial documents between notaries, including transfer outside the notary district. During such transfer, an acceptance certificate is drawn up in two copies, an electronic copy

of the National University «Odesa Law Academy»] 2016, № 2, pp. 158–169, http://www.jes.nuoua.od.ua/archive/2_2016/18.pdf [access: 15.04.2024].

¹⁵ Ū. Vasilik, *Vzaēmodiā sub `ektiv notarial'noi diāl'nostiz deržavnimi ta nederžavnimi organami* [Interaction of subjects of notarial activity with state and non-state bodies], "Knowledge, Education, Law, Management" 2020, No. 3(31), Vol. 1, pp. 136–141, <https://kelmczasopisma.com/viewpdf/991> [access: 15.04.2024].

¹⁶ V.G. Tišenko, *Funkcional'na ta organizacijna...*, op. cit.

¹⁷ K.Ī. Čižmar, A.Ī. Drebot, *Īnstitut notariātu sered Īnših organiv deržavnoi vladi: okremi aspekti*, "Naukovij Visnik Užgorods'kogo Nacional'nogo Universitetu" [Notary institution among other state authorities: individual aspects], "Scientific Bulletin of the Uzhhorod National University. Series: Law" 2015, Vol. 32(1), pp. 149–152. [http://nbuv.gov.ua/UJRN/nvuzhpr_2015_32\(1\)_36](http://nbuv.gov.ua/UJRN/nvuzhpr_2015_32(1)_36) [access: 15.04.2024].

¹⁸ About some notary issues under Martial Law: Decree of the Cabinet of Ministers of Ukraine No. 164 of February 28, 2022 with changes and additions <https://ips.ligazakon.net/document/view/kp220164?an=1> [access: 15.04.2024].

of which with qualified electronic signatures of notaries is sent to the State Enterprise “NAIS” or its branch within five business days after the act is drawn up. However, the current legislation does not currently provide an answer to the question of what notaries should do if they are unable to send the necessary documents to the Ministry or the NAIS due to objective circumstances.¹⁹

Allowing the transfer of notarial forms between notaries ensures the efficient functioning of the notary system and the exchange of the necessary documentation to perform their duties. Drawing up an acceptance certificate with electronic signatures of notaries ensures the authenticity and legal weight of this process. However, a disadvantage is the lack of defined procedures in case notaries face difficulties in further transferring documents to the competent authorities due to objective obstacles, which may complicate their work and cause delays in resolving legal issues.

It is important to note that under Martial Law, Ukrainian legislation is actively changing and continues to adapt to new realities. The legal acts regulating the notary sphere are no exception. From a legal and organisational point of view, the activities of notaries during the war help to ensure the protection of the rights and property of individuals and legal entities, promote the observance of law and order, and improve the organisational readiness of notary institutions to act in emergency situations. Obviously, the notary’s activities in wartime open up opportunities for improving the regulatory environment, enhancing the quality and efficiency of notarial services and protecting the rights of citizens both during Martial Law and in the post-war period.

Personal order as a novelty of Ukrainian legislation in the field of notarial activity

A personal order is a document by which servicemen, privates and officers of civil protection services, employees of critical infrastructure facilities, civil servants, local government officials and police officers can exercise their right to dispose of a one-time financial assistance in the event of their death. The possibility of issuing such a document is provided for by the Law of Ukraine No. 3515-IX “On Amendments to Certain Legislative Acts of Ukraine on the Appointment and Payment of One-time Financial Assistance.”²⁰ It is worth noting that a personal order is an important legal mechanism for ensuring social protection and support for persons serving in the field of defence, security and public order. This tool provides an opportunity to quickly and efficiently provide financial assistance to the families of fallen servicemen and women in the event of their loss, which is important for ensuring their social well-being and support after their death.

¹⁹ About some notary issues under Martial Law: Decree of the Cabinet of Ministers of Ukraine No. 164 of February 28, 2022 with changes and additions <https://ips.ligazakon.net/document/view/kp220164?an=1> [access: 15.04.2024].

²⁰ On amendments to some legislative acts of Ukraine regarding the appointment and payment of one-time cash assistance: Law of Ukraine No. 3515-IX of December 9, 2023, <https://zakon.rada.gov.ua/laws/show/3515-20#Text> [access: 15.04.2024].

According to the current legislation of Ukraine, a personal order is drawn up in a free-written form, the document specifies the person(s) who will receive the said assistance, with the percentage of such persons' share. The personal order must be made on special forms of notarial documents, taking into account the special nature of the personal order and the need to minimise the risks associated with forgery of the said document and, as a result, the illegal receipt of a one-time financial assistance paid in connection with the loss of life by a serviceman, which, in accordance with Article 3 of the Constitution of Ukraine, is the highest social value. The second copy of the personal order should be attached to the file 02-54 "Other transactions" of the nomenclature of files of the state notary's office and private notary provided for in Annex 32 to the Rules for Notarial Record Keeping.²¹

It should be noted that the use of special forms makes it more difficult to forge a document and reduce the risk of illegal receipt of financial assistance. Additionally, placing the second copy of the personal order in the file 02-54 "Other transactions" of the nomenclature of files of a state notary's office or private notary is important to ensure the systematisation and preservation of legal documents, as well as for further control and verification of their legality and authenticity.

The authenticity of the signature of the person who has signed the personal order on this document is certified by the head of the civil protection body or unit or a notary. The original of the personal order shall be kept in the personal file of the person holding the rank of private or commander of the civil protection service who drew it up.

The law stipulates that military personnel, members of the rank-and-file and senior staff of civil defense services, employees of critical infrastructure facilities, civil servants, local self-government officials, and police officers have the right to cancel a personal order or make a new one at any time.²² Therefore, each new personal order cancels the validity of the previous personal order.

It is important that the Law prohibits disclosing the content of a personal order until the fact of death (death) of the person who made it is established²³. In general, the prohibition of disclosing the content of a personal order until the fact of the death of the person who made it is established is justified for several key reasons. First, this approach ensures compliance with the principle of confidentiality and personal privacy, given that the personal disposition usually contains confidential information about financial and personal plans, which may not be permissible to disclose to third parties. In this case, the ban on disclosing the content until the fact of death is established guarantees the protection of the individual's personal interests. Secondly, it helps prevent possible misuse of information. If the content of a personal directive becomes known before the death of the

²¹ Letter of the Ministry of Justice dated 10.04.2024, <https://npu.ua/wp-content/uploads/2024/04/or24.pdf> [access: 15.04.2024].

²² On amendments to some legislative acts of Ukraine regarding the appointment and payment of one-time cash assistance: Law of Ukraine No. 3515-IX of December 9, 2023, <https://zakon.rada.gov.ua/laws/show/3515-20#Text> [access: 15.04.2024].

²³ On amendments to some legislative acts of Ukraine regarding the appointment and payment of one-time cash assistance: Law of Ukraine No. 3515-IX of December 9, 2023, <https://zakon.rada.gov.ua/laws/show/3515-20#Text> [access: 15.04.2024].

person who made it, this may lead to an attempt to commit fraudulent acts or physical or psychological pressure on the person who made the directive. Thirdly, restricting access to information about the content of a personal directive until the fact of death is established helps to preserve its legitimacy and compliance with the law, as it avoids possible illegal attempts to change or cancel the directive during the life of a person, violating his inner will. Therefore, objectively, the ban on disclosing the contents of a personal order until the fact of death is established is justified from the point of view of privacy protection, prevention of improper use of information and preservation of the legitimacy of this legal document.

Worthy of attention is the rule that stipulates that, regardless of the content of the personal order, minors, minors, adult disabled children, disabled widows (widowers) and disabled parents of a deceased (deceased) person are entitled to one-time financial assistance in the amount of 50 percent of the share that would have belonged to each of them in the case of appointment and payment of one-time cash assistance in the absence of a personal order. Refusal to appoint and receive one-time monetary assistance on behalf of minors, minor children of a deceased (deceased) person, as well as incapacitated persons and persons whose civil capacity is limited, who have the right to appoint and receive one-time monetary assistance, is not allowed. In all other cases, the share is distributed among other persons who have the right to be assigned and receive one-time cash assistance, in equal shares.²⁴

It should be noted that the norm, which provides for the right to a one-time financial assistance for vulnerable categories of persons (minors, adult disabled children, disabled widows (widowers) and disabled parents of a deceased (deceased) person) without taking into account the content of the personal disposition, is important from view of social protection and justice. This is due to the fact that ensuring the right to one-time cash assistance for minors, adult disabled children, disabled parents and widows and widowers of deceased persons in the amount of 50% of their share, without taking into account the content of personal disposition, is an important step to ensure their social well-being and avoiding financial difficulties that may arise due to the loss of a family member (breadwinner). In addition, the assignment and receipt of assistance in cases where a person is unable to work or incapacitated is necessary to protect his rights and interests, as it allows avoiding possible cases of abuse of these rights. In general, the norm, which provides for the right to one-time cash assistance without taking into account the content of personal disposition, is an important element of social protection and justice, aimed at supporting the most vulnerable categories of the population and ensuring their social well-being.

Also, special attention should be paid to the impossibility of refusing the appointment and receipt of one-time monetary assistance on behalf of minors, minor children of the deceased (deceased) person, as well as incapacitated persons and persons whose

²⁴ On amendments to some legislative acts of Ukraine regarding the appointment and payment of one-time cash assistance: Law of Ukraine No. 3515-IX of December 9, 2023 <https://zakon.rada.gov.ua/laws/show/3515-20#Text> [access: 15.04.2024].

civil capacity is limited, who are entitled to the appointment and receipt of one-time monetary assistance. Actually, the prohibition of refusal of assistance is not allowed for several reasons, which have significant social and legal justification. First, minors and persons whose civil capacity is limited are persons who cannot independently decide on issues related to their rights and interests. Refusal to grant assistance on their behalf is intended to protect them from possible abuse and malpractice that may arise from a lack of ability to assess the situation and make informed decisions. Secondly, the refusal to assign assistance on behalf of persons who do not have full civil legal capacity excludes the possibility of conflicts and disputes related to the use of this assistance. This in turn helps ensure legal accountability and prevents potential wrongdoing by trustees or others who may try to take advantage of these funds. Another factor that the legislator obviously took into account is the special vulnerability of these categories of persons, therefore, the refusal to grant assistance may be justified from the point of view of maintaining financial stability and protecting the interests of the child or a person with limited civil capacity.

Persons who are entitled to a one-time financial aid can refuse to receive it by submitting an application, the authenticity of the signature on which is notarized. Confirmation of the authenticity of the signature on the application by a notary avoids possible attempts at fraud or forgery of documents, which have become especially widespread in wartime conditions. Such an order contributes to ensuring legal certainty and protection of the rights and interests of all parties, avoiding misunderstandings or conflicts. The notarization of the signature on the application complies with the principles of legitimacy and legal responsibility, which ensures trust in the procedure of refusing to receive assistance and protects against possible abuse or illegal actions.

Conclusions

During the war, the notary is an important element of the law and order system, ensuring the protection of the rights of individuals and legal entities and their property. The activity of notaries during the war from a legal and organizational point of view helps to ensure the protection of the rights and property of individuals and legal entities, to promote compliance with law and order, and to improve the organizational readiness of notary institutions to act in emergency conditions. In addition, the Ukrainian experience shows the significant role of notaries in solving issues related to ensuring legal certainty and compensation for war damage in order to restore the rights of victims.

Ukrainian notaries successfully cope with ensuring the availability of notarial protection in conditions of displacement of the population and destruction of infrastructure, as well as preservation of confidentiality and integrity of documents during the evacuation or destruction of notary offices. In this context, it is important to implement special legal acts that take into account the specific requirements of wartime and ensure the safety and accessibility of notarial services. In this work, it is proposed to group all changes in the legislation of Ukraine that had an impact on the work of notaries during the war, according to the areas of their work and performed functions: regulation of the work of

state registers; temporary failure to perform certain notarial actions; changes regarding the expiration of the term for acceptance of inheritance; features of using special forms; transfer of certain notarial functions to commanders (chiefs) of military formations or persons authorized by them; restrictions for citizens and residents of the aggressor country. It is important that in the conditions of Martial Law, the legislation of Ukraine continues to change and adapt to new realities.

As for the certification by notaries of a personal order, which must be drawn up in writing on special forms of notarial documents, today it is an effective and safe legal mechanism for ensuring social protection and support for persons performing service in the field of defense and security.

In general, the activity of the notary in wartime opens up opportunities for improving the regulatory environment, improving the quality and efficiency of the provision of notarial services, and protecting the rights of citizens both during Martial Law and in the post-war period.

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