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THE CONCEPT, LEGAL NATURE AND PROCEDURAL ASPECTS OF NOTARIAL ACTS RELATED TO THE CONFIRMATION OF UNDISPUTED RIGHTS

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Abstract

This article explains the role of the notary profession in the life of society on an international scale, the concept, legal nature and procedural aspects of notarial actions, which are called undisputed rights in notarial activities, and refers to the works of scholars who have conducted scientific research in this area and makes a comparative analysis.

Keywords: Notary, notary, notarial activity, undisputed law, undisputed fact, Latin notary, Anglo-Saxon notary, substantive law norm, procedural law norm.

Аннотация:

Ушбу мақолада нотариат соҳасини халқаро миқёсда жамият ҳаётида тутган ўрни, нотариал фаолиятда низосиз ҳуқуқ деб ном олган нотариал ҳаракатлар тушунчаси, ҳуқуқий табиати ва процессуал жиҳатлари очиқ берилган, бу борада илмий-тадқиқот ишларини олиб борган олимларнинг ишларига муурожаат этилган ва қиёсий таҳлил қилинган.

Калит сўзлар: нотариус, нотариат, нотариал фаолият, низосиз ҳуқуқ, низосиз факт, лотин нотариати, англо-саксон нотариати, моддий ҳуқуқ нормаси, процессуал ҳуқуқ нормаси.

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Аннотация:

В данной статье рассматривается роль нотариальной деятельности в жизни общества в международном уровне, концепция, правовая природа и процессуальные аспекты нотариальных действий, которые называются бесспорными правами в нотариальной деятельности, а также приводятся ссылки на работы ученых, проводивших научные исследования в этой области, и проводится сравнительный анализ.

Ключевые слова: нотариус, нотариальная деятельность, бесспорное право, бесспорный факт, латинский нотариус, англосаксонский нотариус, норма материального права, норма процессуального права.

Introduction

Since its establishment, the notary public has been recognized internationally as an institution that regulates non-disputable legal relations existing in society. Notarial activity is a part of the legal sphere.

Currently, notary public is divided into two types internationally: Latin notary public and Anglo-Saxon notary public. Latin notary public is a perfect system that fully encompasses the non-conflict aspects of notary public. Currently, the notary public of Uzbekistan is implementing the advantages of international Latin notary public in practice.

It is worth noting that the systematization of all legislative documents related to the notary institution, established in the Decree of the President of the Republic of Uzbekistan “On the Development Strategy of New Uzbekistan for 2022-2026” [1], was noted as an important task. The Resolution of the President of the Republic of Uzbekistan dated May 25, 2018 No. PQ-3741 “On measures to further improve the notary system as an institution aimed at preventing conflicts”, [2] the Decree of the President of the Republic of Uzbekistan dated September 9, 2019 No. PF-5816 “On measures to radically reform the notary

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system in the Republic of Uzbekistan”, [3] the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan “On regulating non-state notarial activities Resolution No. 156 of March 16, 2020 “On Approval of Regulatory and Legal Documents”, [4] Resolution No. 726 of the Cabinet of Ministers of the Republic of Uzbekistan “On Approval of Administrative Regulations on the Procedure for Performing Certain Notarial Actions by Notaries” [5] of November 18, 2020, has established the procedure for performing five types of complex notarial actions by notaries. This process, in turn, is of great importance in the systematic reform of the sector based on digital technology.

Notary publics occupy a special place among the agencies that protect the legal rights and interests of individuals and legal entities. The term notary public comes from the Latin word “Notarius” and means “a secretary who writes letters”. In the Republic of Uzbekistan, notary publics, *in our opinion*, are agencies that certify the indisputable rights of individuals and legal entities, as well as documents that have legal significance and entail legal consequences, and carry out actions related to the confirmation of these indisputable rights and indisputable facts.[6]

expressed his opinion, agreeing with the opinion that the word notary, recognized in the world of international law, means “a secretary who writes letters . A similar point of view was also expressed by Russian legal scholars A.V. Selyanin, N.I. Avdeyenko, M.A. Kabakova, and A.I. Gomol, who expressed the opinion that the term notary is derived from Latin and means “a secretary who writes letters.” [7] One of the unique aspects of notarial offices that distinguishes them from other administrative offices is their non-disputable legal relations and non-disputable rights resolution.

Notary offices , unlike judicial institutions, perform notarial actions aimed at confirming undisputed rights and undisputed facts. By performing these actions, they protect the rights and interests of individuals and legal entities protected by law. Notarial actions performed by notaries are divided into groups by legal

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scholars based on their content and essence, and the type of civil legal relations existing in society that they regulate.

The division into groups has been interpreted differently by legal scholars. In particular, K.S. Yudelson divides the types of notarial acts performed by notaries into the following groups according to their content: notarial acts that confirm transactions, certify undisputed situations, aimed at protection, aimed at confirming property rights, aimed at securing obligations, fulfilling debt obligations, and aimed at executing undisputed obligations”[8].

Z.A.Iskandarev, who expressed his opinion on this issue, divides notarial actions into the following 4 groups according to the stage of development of civil legal relations [9]: Notarial actions aimed at confirming the right: confirming transactions, issuing a certificate of the right to inheritance, confirming certificates of ownership of the common property of the spouses; later this process was further improved by V.N.Argunov, and N.I.Avdeyenko and M.A.Kabakova also joined it. [10] A.I.Gomola interprets this division into groups as follows [11]: Focusing separately on notarial actions aimed at confirming undisputed rights, this category of notarial actions includes issuing a Certificate of the Right to Inheritance and a Certificate of the Joint Property of the Spouses. A.B.Sarelungo divides notarial acts into the following types based on their legal nature [12]: a) notarial acts aimed at confirming undisputed rights; b) undisputed facts conducted a legal and scientific analysis, dividing it into notarial actions aimed at confirmation and attestation.

A.I. Gomola recognizes that “notary is an official in the system of a state body authorized to confirm undisputed legal relations and facts, certify documents, and perform notarial actions specified in the law in order to protect the rights and legitimate interests of citizens and legal entities”[13]. SA Togayev notes that “notary is a system of authorized bodies and officials carrying out legal activities aimed at strengthening and confirming undisputed rights and facts”[14].

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In our opinion, notary public is understood as authorized bodies and officials who, based on the rights and interests of individuals and legal entities protected by law, confirm the rights and facts that are not in dispute. N.I. Avdeyenko, M.A. Kabakova, D.D. Averin, E.N. Kovaleva, M.G. Avdyukov [15] in their works expressed the opinion that notary offices regulate only non-disputed relations.

In our opinion, based on the general rule of substantive law, a non-disputable legal relationship and a non-disputable right are, firstly, a relationship that does not contradict the law, secondly, the actions of citizens aimed at exercising their rights and obligations according to their own will, free will and agreement, and thirdly, the state of entry into legal relations by individuals.[16]

In modern notary, the terms “notary office” and “notarial activity” are significant in that they are broad in scope. In particular: “notary office” is a system of agencies that protect the rights and interests of individuals and legal entities protected by law within the scope of their authority on legal grounds; a legal institution that ensures the implementation of civil legal relations in a certain form and maintains notarial activity at the necessary standard by performing notarial actions between the state and citizens; a science whose subject is the study of notarial activity and the place of its participants in the environment of notarial activity.[17]

In our opinion, the legal nature of notarial activity aimed at confirming undisputed law is expressed in the fact that it studies and puts into action the criteria regulating undisputed law and undisputed facts existing in society. From this point of view, the basis of notarial activity is the norm of substantive law. Each notarial action is a substantive activates the legal norm. For example: if the Civil Code of the Republic of Uzbekistan specifies the procedure for notarizing a purchase and sale agreement, then by performing this type of notarial action, the notary activates the substantive legal norm regarding the purchase and sale agreement specified in the Civil Code of the Republic of Uzbekistan.

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Constitutional norms play an important role in clarifying the legal nature of notarial activities related to the confirmation of undisputed rights.

As stated in Article 66 of the Constitution of the Republic of Uzbekistan, "The owner shall own, use and dispose of the property belonging to him at his own discretion," this norm explains the indisputable legal nature of notarial activities. Recognizing this, it is worth noting that every notarial activity, which embodies a legal relationship, is primarily aimed at protecting the rights of individuals and legal entities specified in the constitution.

E.B. Tarbagayeva, G.G. Cheremnykh, I.G. Cheremnykh, recognizing this point of view, emphasize that the activities of notary offices are aimed at protecting the constitutional rights of citizens"[18]. As M.G. Avdyukov noted, "in order to ensure the legal implementation of notarial actions, prevent violations of the law, and protect the rights and legitimate interests of legal entities and individuals, a notary is also required to be an active participant in explanatory work in the press and in various ways about the types of documents issued in a notary office, their legal aspects, the procedure for their execution, and the consequences they entail." [19]

According to V.V. Yarkov, A.I. Gomola, a notary or an official performing a notarial act, acting in accordance with the law, performs the notarial function aimed at protecting the right. The legal nature of the implementation of other types of notarial acts aimed at confirming undisputed rights is expressed in the fact that notaries are prohibited by law from performing notarial acts on their own initiative, this legal situation is explained by the fact that in Article 27 of the Constitution of the Republic of Uzbekistan, "everyone has the right to freedom and personal inviolability" is expressed in the legal norm. As M.G. Avdyukov noted, "the law, prohibits a notary and other officials performing notarial acts from performing notarial acts on their own initiative"

It is worth noting that the basis of notarial activity is undisputed legal relations and undisputed facts . There are scientific approaches aimed at revealing the

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concept of notarial actions related to the confirmation of undisputed rights, the legal nature and procedural aspects of notarial work by scholars, and these scientific works are also important in that they reveal that the notarial field is a separate system. [20]

In conclusion, in the current development, it is felt that individuals and legal entities have a constant need for an institution such as a notary office in order to exercise their rights and legitimate interests protected by law.

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