

ADMINISTRATIVE AND LEGAL SUPPORT FOR ACCESS TO THE NOTARY PROFESSION IN UKRAINE

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Annotation. The aim of the work is to comprehensively study the administrative and legal support for access to the notary profession in Ukraine, to clarify the content of the relevant legal and organizational mechanisms, and to identify the problems and prospects for improving state regulation in this area. The methodological basis of the study consists of general scientific and special legal methods of cognition, in particular the formal legal, systemic and structural, logical-semantic, comparative legal, and functional methods.

Results. The article establishes that access to the notary profession in Ukraine is a complex administrative and legal mechanism covering a system of legally established requirements for a person, internship procedures, passing a qualification examination, obtaining a certificate granting the right to engage in notarial activity, and organizational admission to professional activity. It is substantiated that the effectiveness of such a mechanism directly affects the quality of notarial services, the level of legal certainty in civil circulation, and public trust in the notariat as a publicly significant legal institution. It is determined that an important role in ensuring access to the notary profession is played by state authorities, primarily the Ministry of Justice of Ukraine, which perform managerial, coordinating, and control functions in this area. At the same time, a number of problems have been identified related to the need to increase the transparency of administrative procedures, ensure the objectivity of professional selection, improve the criteria for assessing candidates' professional readiness, and strengthen guarantees of equal access to the profession.

Key words: notary, access to the profession, legal experience in the field of law, administrative and legal support, state regulation, notarial activity.

1. Introduction.

In the current conditions of development of Ukraine's legal system, the notariat occupies an important place in the mechanism for ensuring the protection and defense of the rights, freedoms, and legitimate interests of individuals and legal entities. The peculiarity of this institution lies in the fact that it combines the private-law orientation of notarial activity with the public-law principles of its organization, supervision, and admission to the profession. For this reason, the issue of access to the notary profession should be considered not only as a кадрове чи професійне matter, but primarily as an administrative and legal one, since it is connected with the implementation by the state of its regulatory function in the field of justice [1].

The relevance of the topic is обусловлена тим, що the effectiveness of notarial activity directly depends on the quality of the legal mechanism for forming the notarial corps. The requirements for a person seeking the right to engage in notarial activity, the procedure for confirming professional suitability, the role of public authorities in the procedures of admission to the profession, as well as the criteria for assessing legal experience in the field of law, influence the level of professionalism of notaries and public trust in the notariat as a whole [2]. In this context, the administrative and legal support for access to the notary profession acquires particular importance as an independent direction of legal regulation.

In academic literature, certain aspects of access to the notary profession, the administrative and legal status of a notary, and the reform of notarial activity have already been the subject of research. In particular, A. V. Lyla-Barska carried out a comparative analysis of access to the notary profession in Ukraine and the Federal Republic of Germany, which makes it possible to assess the national model of professional admission more broadly [6]. A. V. Medynska examined the administrative and legal status of a notary in Ukraine and in foreign countries, focusing on the place of the notary in the system of legal regulation and public administration [7]. The works of O. S. Diakovskiy, S. S. Moroz, S. S. Rozsokha, and Yu. B. Bobozhko reveal current problems of the administrative and legal status of a notary, the peculiarities of the administrative and legal support of notarial activity, and directions for its improvement [9]. Particular attention should also be paid to scholarly approaches to understanding the role of the notary in related legal mechanisms, in particular in the field of alternative dispute resolution, which indicates the expanding functional significance of the notary profession in the modern legal system.

At the same time, despite the existing scholarly developments, the issue of the administrative and legal support specifically for access to the notary profession in Ukraine cannot be considered exhaustively studied. This especially concerns the problem of the legislative understanding of legal experience in the field of law, the uniform application of qualification requirements, as well as the possibility of taking into account academic and scientific-pedagogical experience for persons engaged in professional activity in the field of law. Such issues are of not only theoretical but also clear practical importance, since they directly affect the transparency, objectivity, and fairness of procedures for access to the notary profession [3].

Therefore, the study of the administrative and legal support for access to the notary profession in Ukraine is relevant in view of the need to improve the current legislation, unify administrative practice, and develop a modern approach to determining the professional suitability of persons seeking to engage in notarial activity. This necessitates a comprehensive scholarly analysis of the relevant regulatory and doctrinal approaches.

2. Analysis of scientific publications.

The issue of the administrative and legal support for access to the notary profession in Ukraine lies at the intersection of several scholarly fields, in particular studies of notarial activity, the administrative and legal status of the notary, state regulation in the field of justice, and the reform of legal professions. In recent years, this topic has been covered in academic literature only fragmentarily, mainly through the analysis of the legal status of the notary, the specific features of notarial activity, the requirements for the profession, and certain aspects of state supervision in the relevant field [9].

Among the works directly related to the chosen topic, special attention should first be given to the study by A. V. Lyla-Barska, which presents a comparative analysis of access to the notary profession under the legislation of Ukraine and the Federal Republic of Germany. The value of this publication lies in its coverage of approaches to the formation of qualification requirements for a notary, as well as in the opportunity to compare the Ukrainian model of professional admission with foreign experience [6]. Such a comparison is important for assessing the effectiveness of the national mechanism of access to the profession and identifying possible directions for its improvement.

Of considerable importance for understanding the public-law nature of the notary profession is the dissertation research of A. V. Medynska, devoted to the administrative and legal status of a notary in Ukraine and in foreign countries. In this work, the notary is considered not only as a subject of professional legal activity but also as a participant in administrative and legal relations, which makes it possible to interpret more broadly the mechanisms of state influence on the organization of the notariat, including the procedures for acquiring the right to engage in notarial activity [7]. For the topic of this study, this work is important from the perspective of determining the place of access to the profession in the system of administrative and legal regulation.

A separate group is formed by scholarly works that analyze the administrative and legal status of the notary in particular types of legal relations and propose ways for its improvement. Thus, the article by O. S. Diakovskiy

and S. S. Moroz examines directions for improving the administrative and legal status of the notary as a subject of state registration, which is important for understanding the practical role of the notary in the exercise of powers delegated by the state [8]. In turn, Yu. B. Bobozhko reveals the concept and elements of the administrative and legal status of the notary in relations concerning state registration, focusing on the rights, duties, and competence of the notary in the sphere of public-law regulation [10]. Although these works are not devoted directly to access to the profession, they form an important theoretical basis for understanding why the state establishes increased requirements for candidates seeking to engage in notarial activity.

The article by S. S. Rozsokha is also of scholarly interest, as it highlights the historical and legal aspects of the administrative and legal support of notarial activity. This study makes it possible to trace the evolution of approaches to the organization of the notariat and state influence on it, which is important for a modern understanding of the legal nature of procedures for access to the notary profession [9]. Historical and legal analysis confirms that the requirements for the notary profession have always been connected with the need to ensure a high level of trust in this activity.

In addition, for understanding current trends in the development of the notary profession, the work of A. A. Khrebtova, which examines the role of the notary in the system of alternative dispute resolution, is of significance. Although the subject matter of this article goes beyond the narrow issue of access to the profession, it demonstrates the expansion of the functional role of the notary in the modern legal system and, consequently, indirectly strengthens the argument for the need for proper regulatory regulation of access to the profession and for ensuring a high level of professional training of candidates [11].

At the same time, the analysis of scholarly publications provides grounds to assert that in contemporary Ukrainian legal scholarship there is no comprehensive study specifically devoted to the administrative and legal support for access to the notary profession. The existing works either examine the notariat in general or focus on the status of the notary, his or her functions, ethical principles, or particular areas of activity [10]. Insufficiently explored remain the issues of the legislative definition of legal experience in the field of law, the criteria for its calculation, the inclusion of academic and scientific-pedagogical experience, as well as ensuring a uniform approach to the implementation of qualification requirements in the practice of access to the profession.

3. The aim of the study is to provide a comprehensive scholarly analysis of the administrative and legal support for access to the notary profession in Ukraine, to clarify the essence, content, and specific features of the legal regulation of the relevant relations, and to determine the place of this institution within the system of state regulation of notarial activity. Within the framework of the study, attention is focused on the fact that access to the notary profession is not merely a formally established procedure for acquiring the right to engage in notarial activity, but rather a complex administrative and legal mechanism through which the state ensures the formation of a professional, competent, and ethical notarial corps.

The aim of the study also includes the examination of the legally established requirements for persons seeking to engage in notarial activity, the analysis of the powers of public administration entities in the sphere of admission to the notary profession, as well as the identification of problematic aspects of the practical implementation of the relevant administrative procedures [5]. Particular emphasis is placed on studying the legal nature of the qualification requirements for a candidate for the position of notary, their significance for ensuring an appropriate level of professional training, and their compliance with the current conditions of the functioning of the notariat.

In addition, the aim of the study is to provide a scholarly substantiation of the need to improve the current legal regulation with regard to the legislative definition of the concept of legal experience in the field of law as one of the key conditions for access to the notary profession. In this connection, an important task is to analyze the possibility of taking into account not only practical legal experience, but also academic and scientific-pedagogical experience in the field of law, if the relevant professional activity is directly related to teaching legal disciplines, conducting legal research, and preparing scholarly works [4]. Such an approach

makes it possible to assess the extent to which the current mechanism of admission to the profession complies with the principles of legal certainty, fairness, equality, and objectivity.

4. Review and discussion.

The issue of interpreting the concept of «legal experience in the field of law» for the purposes of access to the notary profession should be considered not in isolation, but in the broader context of regulating access to other legal professions. Such an approach is justified given that a notary, like a judge or a lawyer, belongs to the category of persons whose professional activity is connected with the application of law, legal responsibility, heightened ethical requirements, and the performance of socially significant functions [7]. At the same time, the Law of Ukraine “On Notariat” establishes the requirement of work experience in the field of law, but does not disclose the content of this concept as thoroughly as is done in certain related laws governing other legal professions [4]. For this reason, in order to provide a scholarly substantiation of approaches to its interpretation, it is possible to turn to the analogy of law, that is, to the use of legislative models already formed in the sphere of access to other legal professions. Such an analogy does not mean the mechanical transfer of norms from one law to another, but it makes it possible to identify the general logic of the legislator regarding the understanding of legal experience as a type of professional legal activity.

The legislative approach to candidates for the position of judge is important for another reason as well. Within the framework of regulating access to the judicial profession, the legislator in fact recognizes that systematic academic legal activity constitutes a full-fledged form of professional experience in the field of law. This confirms that academic and scientific-pedagogical activity in the field of law may be regarded not as auxiliary, but as one that forms an appropriate level of professional legal competence [6]. This circumstance strengthens the argument that, in the notarial sphere as well, academic and scientific-pedagogical experience should be regarded as one of the possible types of legal experience in the field of law [9].

No less important is the approach enshrined in the legislation on the bar. In order to acquire the status of advocate, the law also proceeds from the necessity of having work experience in the field of law, and the very logic of legal regulation connects such experience with professional activity in the legal specialty after obtaining the relevant education. Thus, in this sphere as well, what is decisive is not the formal title of a position, but the legal nature of a person’s professional activity [8]. This creates an important guideline for interpreting a similar requirement in the field of notariat, where what also matters is the existence of real professional legal experience rather than only a narrowly defined list of positions.

A further development of this approach can be traced in the practice of bodies of адвокатського самоврядування, which allow the inclusion in legal work experience of activity performed in the positions of academic and scientific-pedagogical employees, provided that such activity requires legal education and is related to educational, methodological, and scholarly work in the field of law. This is particularly demonstrative, since the bar, as one of the classical legal professions, effectively recognizes that teaching and scholarly activity in the field of law may constitute proper professional legal experience. For the notariat, such an approach constitutes a convincing analogous guideline, since academic and scientific-pedagogical activity in the field of law also presupposes in-depth knowledge of law, its interpretation, systematization, the formation of legal positions, and the professional training of future lawyers [10].

Therefore, the analysis of legislative approaches to access to the judicial and advocacy professions demonstrates that, in the Ukrainian legal system, there already exists a stable normative logic according to which legal experience may include not only practical work in traditional legal institutions, but also academic and scientific-pedagogical activity in the field of law. For this reason, in order to improve the administrative and legal support for access to the notary profession, it is advisable to enshrine at the level of the Law of Ukraine «On Notariat» or a subordinate normative act a clear definition of the concept of «legal experience in the field of law» [1]. Such a definition should expressly provide for the possibility of including academic and scientific-pedagogical experience in the field of law, provided that the relevant

activity was carried out in positions requiring legal education and was directly connected with teaching legal disciplines, conducting legal research in the field of law, and preparing scholarly works. Such an approach would ensure greater legal certainty, reduce the risk of inconsistent law enforcement, and broaden access to the profession for persons who possess proper legal qualifications but acquired their professional experience primarily in the sphere of legal scholarship and education.

The problem of access to the notary profession is further aggravated by the actual irregularity of qualification examinations. Although the Procedure for Admission of Persons to the Qualification Examination and for Conducting the Qualification Examination by the Higher Qualification Commission of the Notariat determines the procedural aspects of organizing the examination, it does not ensure a clear and predictable frequency for holding it. In practice, this leads to long time intervals between examinations. Thus, the qualification examination was publicly recorded as having been held in December 2020, with the next one taking place in June 2023, that is, with an interval of about two and a half years. This makes it possible to state that, in practical terms, examinations for selection to the notariat may be held, at best, approximately once every two to three years, which significantly complicates access to the profession, reduces the predictability of candidates' career planning, and creates additional organizational barriers to replenishing the notarial corps. In this regard, it is advisable to normatively establish a clearer frequency for holding the qualification examination or at least to impose an obligation to conduct it within reasonable and predictable time limits.

5. Conclusions.

The conducted study provides grounds for concluding that access to the notary profession in Ukraine is an independent element of administrative and legal regulation in the field of justice. Its content covers not only the establishment of qualification requirements for a candidate, but also the determination of procedures for admission to the qualification examination, assessment of a person's professional suitability, and adoption of a decision on granting the right to engage in notarial activity. It is through this mechanism that the state ensures the formation of a professional, competent, and ethical notarial corps capable of properly performing publicly significant functions in the field of protecting the rights and legitimate interests of individuals and legal entities.

It has been established that the current legal regulation generally forms the normative basis for access to the notary profession; however, it does not eliminate a number of practical problems. First of all, this concerns the absence of a clear legislative definition of the concept of legal experience in the field of law, which is one of the key conditions for access to the profession. The uncertainty of the content of such experience, the criteria for its calculation, and the types of professional activity that may be included in it creates preconditions for inconsistent law enforcement and excessive formalism in assessing candidates.

It is substantiated that, in order to improve the administrative and legal support for access to the notary profession, it is advisable to use related legislative approaches formed with regard to other legal professions, primarily judges and advocates. The analysis of such approaches gives grounds to assert that legal experience in modern legislation is not limited exclusively to practical legal work, but may also include academic and scientific-pedagogical experience in the field of law if the relevant activity is directly related to teaching legal disciplines, conducting legal research, and preparing scholarly works [6–10]. In this regard, it is advisable to normatively establish that such a type of professional activity may also be included in legal experience in the field of law for the purposes of access to the notary profession.

A separate practical problem is the irregularity of qualification examinations. The current procedure regulates the admission to and conduct of the examination; however, it does not establish a clear mandatory frequency for holding it, which negatively affects actual access to the profession. Publicly recorded notices of the examination held on December 2, 2020, and the next examination held on June 13–15, 2023, indicate a significant time gap between such procedures, meaning that in practice examinations may be held with intervals of several years. This complicates candidates' career planning, delays access to the profession, and creates additional organizational barriers to renewing the notarial corps.

In view of the above, it is advisable to improve administrative and legal regulation in two main directions. First, at the level of the law or a subordinate normative act, it is necessary to clearly define the concept of legal experience in the field of law, the criteria for its calculation, and the possibility of including academic and scientific-pedagogical experience in the field of law within it. Second, it is worth normatively establishing a minimum frequency for holding the qualification examination, for example, at least once a year or upon reaching a specified number of submitted applications.

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