



## [en] Preventive function of a notary in the legal system of society

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**Abstract.** As Ukraine has chosen the European vector of development, the legal status of the notary as the subject providing protection of the rights and lawful interests of citizens deserves special attention. Due to the insufficient level of legal literacy among the population, the legislator imposes on the notary the duty to implement a preventive function, namely to explain to persons their rights and responsibilities, warn of the consequences of notarial acts, and most importantly, assist individuals and legal entities in protection and the realization of their rights and interests. This function has recently become increasingly important, as the notary, certifying transactions with the participation of the parties, should help prevent offenses. In particular, its activities are aimed at preventing conflicts and disputes in civil law relations, both when concluding a transaction and those that will arise in the future. To achieve the objectives outlined in this study, methods of analysis, dialectical, anthropological, functional, documentary analysis and others were used. The aim of the work is a comprehensive general theoretical and applied study of the legal nature of the functions of the notary, including preventive function, as well as substantiation of the main directions of legal regulation of the notary in Ukraine in modern state transformations, development of relevant scientifically sound proposals and recommendations.

**Keywords.** Notary; functions of the notary; preventive function; notarial acts; legal status of the notary.

**Sumario.** 1. Introduction. 2. Materials and methods. 3. Results. 4. Discussion. 5. Conclusions. 6. Bibliography.

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## 1. Introduction

From the first years of independence, Ukraine has strived to build the rule of law and create a qualitatively new society, which will ensure the priorities of universal values. The main events on this path, which undoubtedly helped its recognition by other countries of the world, were the adoption of the Constitution of Ukraine (Verkhovna Rada of Ukraine, 1996), Ukraine's accession to the Council of Europe, a number of reforms. However, the country and its institutions continue to seek to ensure strict respect for human rights and the rule of law. As Ukraine has chosen the European vector of development, the issue of the legal status of a notary as an entity that protects the rights and legitimate interests of citizens deserves special attention.

The relevance of this research topic is due to the fact that in recent years the notary is in constant reform and needs analysis. Like any institution, the notary has its own history of development and formation. Notary is one of the oldest legal institutions, the emergence of which is due to the development of civil turnover and the need to assist its subjects in the implementation of transactions and the consolidation of acquired rights in legal form. The notary emerged as an institution of civil society that provides protection of private property and indisputable property rights, protection of the rights of all participants in civil circulation. Throughout the history of the state and law, notaries are an integral part of the legal system of any country, as the functions performed by notaries are objectively necessary and widely used by society, especially in a society with a developed economy and civil circulation. The first historical information related to the prototypes of notarial acts dates back to Ancient Egypt, where there were so-called "agoranomos" who recorded written legal evidence. But the notary in its more modern form appeared in ancient Rome. The current stage of development of notaries is associated with Ukraine's independence and the adoption of the Law of Ukraine "On Notaries" of September 2, 1993 (Verkhovna Rada of Ukraine, 1993).

According to the norms of the Constitution of Ukraine (Article 59), every person has the right to professional legal assistance. The notary, in addition to performing his functions as performing notarial acts (certification of documents, etc.) has the authority to provide legal advice. That is, the notary provides professional legal assistance. Thus, the notary exercises powers that have expanded compared to the time when the institution was developed. The mission of a notary is to protect the rights and prevent acts of a legal nature that violate the interests of others. The notary guards the dignity of the person and uses every opportunity to provide him with access to freedom of decision in a fully protected environment.

The presence of a state jurisdiction or officials, endowing them with special competence or a set of powers in a particular legal field, jurisdiction, consolidation of the legal basis for the exercise of these powers, the ability to regulate public relations - these are the main but not the only features of notarial jurisdiction. Establishment and proof of legal events, their legal assessment in accordance with the law, and the key - is the design of procedural documents - are mandatory features of notarial jurisdiction, which are most clearly regulated in criminal procedure, civil procedure, arbitration, administrative, tax, budget, customs, family, housing, labor, environmental and other legislation. To study the phenomenon of notarial jurisdiction, it is important not only to understand the definition, to reveal the characteristics, but also

to clarify the purpose and tasks. However, while the purpose and tasks are often the subject of scientific research, the problem of functions, including preventive, notarial jurisdiction, is insufficiently studied.

The works of domestic scholars, such as O.I. Nelin (2017), S.Ya. Fursey (2021), O.A. Martinyuk (2017), M.S. Dolynska (2018a,b), K.I. Chizhmar (2017) do not cover the full range of issues related to the legal status of the notary and in particular the preventive function. The need for theoretical justification of the preventive function of notaries and the definition of practical recommendations for improving the efficiency of notaries led to the choice of the topic of this work and its relevance.

The aim of the work is a comprehensive general theoretical and applied study of the legal nature of the functions of the notary, including preventive function, as well as substantiation of the main directions of legal regulation of the notary in Ukraine in modern state transformations, development of relevant scientifically sound proposals and recommendations. To achieve this goal the following tasks are formulated: to define the concepts, main tasks and purpose of the notary; explore the concepts and main types of functions of notarial activities; to reveal the main provisions and the essence of the preventive function; to find out the main ways to improve the organization and activities of the notary in Ukraine.

## 2. Materials and methods

To ensure the objectivity, comprehensiveness and completeness of research, as well as to obtain scientifically sound and reliable results in this work used a set of philosophical, general and special scientific approaches, methods and principles of scientific knowledge. In particular, the dialectical method made it possible to identify features and determine the essence of the sphere of notaries and to clarify its connection with other legal phenomena. Anthropological approach has helped to reveal the nature and essence of notaries in terms of creating an effective model of relations in the field of human rights and anticipate trends, as well as to characterize the institution of notaries as one designed to affirm and ensure human rights and freedoms.

The functional method was used to identify and analyze the main tasks and functions assigned to the notary system. The purpose and tasks of the preventive function of the notary system are clarified with the help of the target method. The method of documentary analysis made it possible to outline areas for improving the administrative and legal support of the organization and activities of the notary. The method of generalization was used to formulate the final conclusions of the study. The method of abstraction is to assess the place of the notary in modern Ukrainian society, to analyze the basics of legal regulation of the notary as a subject of human rights protection. Method of analysis - to substantiate the theoretical issues of the preventive function of notarial activities; as well as to assess the current state of legal regulation of the notary as a subject of human rights protection.

The theoretical basis of the study were the scientific developments of such Ukrainian and foreign studies as “Actual problems of the functioning of the notary system in Ukraine: an attempt at concentric equal definition” (Nelin, 2017), “Theory of notarial process” (Fursey, 2021), “Legal nature of notarial jurisdiction” (Vdovichena & Melenko, 2021), “The specifics of the organization of notarial activities

in countries with notarial systems of Anglo-Saxon and Latin types” (Martinyuk, 2017), “Guarantees of the notarial process as a component of guarantees of notarial activity in Ukraine” (Dolynska, 2018a), “Guarantees of notarial activity: some issues of theory and practice” (Chizhmar, 2017), “Notary” (Dolynska, 2018b), “The Roles of Notary in Living Environment Conservation” (Sudini, 2020), “Authority Of Land Deed Officers On Sale And Purchase Binding Agreements For Certificate Return Process” (Riskiana & Adjie, 2022), “Functions of notarial jurisdiction: approaches to understanding” (Vdovichena, 2021), “Principles of international notary” (Nevzorova, 2019).

### **3. Results**

#### **3.1. Concepts and general theoretical provisions on notaries in the legal system of society**

The current stage of legal reform in Ukraine has identified the need to rethink the role and place of notarial jurisdiction in the legal system of Ukraine as an effective means of protecting human rights and the place of the institution of notarial activity based on the principles of Latin (free) notary. This is done in order to promote a holistic approach to defining the functions of notarial jurisdiction and build a clear structure of notarial bodies to provide legal and notarial services in accordance with international standards, as well as gradual and systematic reform of domestic notaries as an institution to protect the rights of individuals and legal entities. The role of the notary in the life of society is expressed in its functions, which are not permanent, but change (expand) with the development of the notary of independent Ukraine. The delimitation of notarial functions allows to reflect the place of the notary in modern society as a special legal institution and show the specifics of its activities in relation to the participants in the notarial acts.

At the same time, the legal nature of notarial jurisdiction in the mechanism of protection of human and civil rights and freedoms is a civil society institution, endowed with notaries in the person of notaries, who carry out public activities on behalf of Ukraine to protect the state generally by performing notarial acts. It is often noted in the scientific literature that notaries should be considered as a constitutional and legal institution, which is a set of legal norms governing public and private interests based on a combination of public and private interests in the organization of notaries and notarial activities to protect the rights guaranteed by the Constitution of Ukraine.

Notarial jurisdiction is functionally aimed at guaranteeing the institution of human and civil rights and freedoms, because this is how the state (as an instrument to satisfy the public interests of society) performs one of its functions, taking into account both public and private interests. In particular, notaries acquire their powers from the state, and the notary himself operates in accordance with the law and carries out its activities in accordance with the procedures established by law, primarily by performing notarial acts. In addition, a feature of the notary, which distinguishes it in the system of law enforcement agencies, is a special area of its activities - preventive legal services (Komarov & Tsuvina, 2021).

However, when determining the elements of the public law status of notaries as a system of bodies and officials, the following circumstances should be taken into account, in particular: notaries are a system of state bodies and officials and, according to current legislation, they operate for legal purposes, implementing specific functions; the notary has a certain organizational structure - actually state notary offices, state notarial archives, private notaries and officials of other state bodies and local governments. Given the functional burden on the nature of notarial jurisdiction, we can say that it exercises the public power of the state - on the one hand, and on the other - inextricably linked with civil society.

In the scientific literature, the term “notary” is used in several senses, namely: 1) the system of bodies and officials who, based on current legislation, perform notarial acts in the interests of citizens, organizations and the state; 2) is a branch of legislation, the rules of which regulate notarial activities. It is also called the notarial process; 3) special legal discipline, the subject of which is the consideration of issues related to the organization and regulation of notarial proceedings and the activities of its participants in the notarial sphere. There is a normative definition of the concept of notary and its content. In particular, in 1993 the Law of Ukraine “On Notaries” was adopted, according to which notaries in Ukraine are a system of bodies and officials who are obliged to certify rights, as well as facts of legal significance, and to make other notarial acts provided by law, in order to give them legal credibility (Nevzorova, 2019).

Given the normative definition of the concept of “notary”, we can distinguish between subjective and objective aspects of the concept of a notary. The subjective side is a set of bodies and officials authorized to perform notarial acts. These include, in particular, state notary offices, state notarial archives, private notaries. In addition, in settlements where there are no notaries, officials of local self-government bodies have the right to perform a certain range of notarial acts. Consular offices of Ukraine are obliged to perform notarial acts abroad, and in the cases provided by current legislation - the diplomatic missions of Ukraine. In addition, Art. 40 of the Law of Ukraine “On Notaries” contains an exhaustive list of actions equated to notarial, which may be performed by other officials. The objective aspect of the term “notary” means the range of notarial acts that these bodies and officials have the right to perform in accordance with applicable law. It is emphasized that such notarial acts must be indisputable, i.e. should not cause controversy. However, if a dispute arises, it must be considered in court, and at this time the notarial act in respect of which the dispute arose is suspended until the entry into force of the court decision (Nelin, 2017).

Examining the peculiarities of his legal position as a state-authorized public service provider, but at the same time not directly related to any branch of government, it is necessary to dwell on the characteristics of such elements of its legal status as purpose or purpose, tasks and functions. First of all, these constituent elements of the legal status of any subject, which is the bearer of power, play a primary role in determining its place among other subjects in the state and society. The purpose, tasks and functions are, so to speak, justification of why the state creates a certain institution (in our case, notary) or officially recognizes its existence, and why it gives it a certain amount of power. And secondly, the purpose, tasks and functions of the notary, in our opinion, are on a par with the principles of public interest, i.e. they

reflect the public interests and aspirations, provision and implementation of which are related to the functioning of the notary, and from the point of view of the state and society, a necessary guarantee of their normal existence and development (Fursey, 2021).

The purpose of notarial activity is to achieve adequacy and legality in the field of realization, protection and defense of constitutional rights and freedoms of the subjects of notarial legal relations. The tasks of notarial activity are, directly, the implementation, protection and defense of civil, family, economic and other rights and legitimate interests, using the methods and means of notarial activity. Methods and means of notarial activity are: certification of rights and facts that have legal significance, issuance of certificates, duplicates, imposition and lifting of the ban on alienation of property, certification of copies of documents, certification of authenticity of signatures on documents; fidelity of translation, transfer of applications of individuals and legal entities to other individuals and legal entities, acceptance on deposit of sums of money and securities, execution of writs of execution, protests of promissory notes and maritime protests, etc.

### **3.2. The essence and content of the functions of a notary**

The content of legal regulation of notarial activity is primarily manifested through the functions that are implemented in the process of such regulation. The functioning of the system is the current work of certain of its subjects, the performance of their traditional functions for which they were formed or endowed with certain powers in this area. The concept of functioning covers not only the processes of performing external functions of the system, but also various internal processes of maintaining this system in an active state. The practical value of clarifying the functional specifics of notaries is that to see the feasibility of the transfer of certain powers of the notary to the executive or governmental and non-governmental organizations in terms of legality and completeness of citizens and legal entities and vice versa functions of the notary.

The current practice of the notary in Ukraine shows its chaos and inconsistency, a significant increase in the volume of relatively low quality of notarial activities, as evidenced by the growing number of court appeals against notarial activities. All this is a consequence of insufficient professionalism of notaries, abuse of the right to perform notarial activities and so on. Accordingly, the issue of notarial activity needs its own research in terms of rethinking the functional purpose of the notary, which should result in conclusions on improving the functioning of the notary in Ukraine. The relevance of the scientific study of the functional purpose of notaries is also due to the current reform of the legal system of Ukraine, which significantly increases the need for research on the problems of notaries and notarial activities.

The expediency of scientific study of the functions of the notary is also determined by the peculiarities of the notary as a phenomenon that varies depending on the development of the state, the legal system, the needs of socio-economic relations. This variable nature of the notary from a methodological point of view necessitates its constant research, rethinking the phenomenon of the notary and its purpose in accordance with the current state of society, state and the legal system, which will

ensure compliance with current research needs of notarial practice (Vdovichena & Melenko, 2021).

Considering the issue of the functional purpose of the notary, it should be emphasized that in the legal literature, the views of scholars on these issues are quite different in nature. It should be noted that despite the relatively high level of scientific research of the notary in general, and its functional purpose, which is carried out including at the level of relevant legal sciences (civil law, civil procedural law, commercial law, etc.), the issue of functional the appointment of the notary as a phenomenon of theoretical and legal plan did not receive a final and unanimous understanding. We support the view of scholars that the functional purpose of any phenomenon or institution of civil society, including notaries, is original, fundamental, because it determines its role and importance for the development and development of civil society itself. Therefore, the scientific study of the functional purpose of the phenomenon or institution requires priority attention from scientists, because the establishment of patterns of functioning should be the basis for improving and developing the phenomenon or institution.

Therefore, the functional purpose of the notary as a key aspect of the development of civil society requires proper research and rethinking in accordance with the current processes of building the legal system. The complexity of the scientific study of the functional purpose of the notary is also confirmed by its interdisciplinary nature as an object of scientific knowledge, as various aspects of the functions of the notary may be of scientific interest for the theory of state and law and a number of branches. In the legal literature, the issue of the functions of the notary is defined quite ambiguously, so we will try to generalize these views in order to determine the scientific potential of the study of the notary in the context of its functional purpose (Martinyuk, 2017).

According to scholars, the functions of the notary are to protect and defend the rights and legitimate interests of individuals and legal entities, local communities and the state; in the regulation of certain relations between the subjects, using the substantive and procedural rules of applicable law; that the notary in the performance of his functions must consider and analyze the will of the subjects who applied to him for its legality; in the prevention of possible offenses. This is a refusal of a notary to perform notarial acts that are contrary to law; in raising legal awareness and legal culture of citizens; on the influence of legislation, because the notary is an institution that in its activities can affect almost all branches of law, and through trial and error in its practice shows the legislator what he should pay attention to.

Scholars also consider the functions of the notary as meaningful characteristics that reflect the main directions and essence of the activities of notaries in the legal system of the state, i.e. in this case it is not so much about the features of the notary, but about what they reflect in their content. Continuing this view, scientists emphasize that they are divided into: social, which include preventive, law enforcement and fiscal functions; substantive, which are directly related to notarial activities and are manifested in certain subtypes: legal establishment, certification of facts, security and jurisdictional activities; evidence, which are due to the essence of notarial activity, namely the creation of professional written evidence. Also, the functions of the notary in jurisprudence are understood as the main directions of its activities, reflecting its features as a unique legal institution, which has the task of protecting and

defending the subjective rights of citizens and legal entities in the private sphere (Dolynska, 2018a).

Also, the functions of the notary scholars include: ensuring the indisputability and probative value of documents, legality and legal assistance to persons who have applied for notarial acts; law-establishing, certifying, security and jurisdictional functions; law-regulating, the content of which is the application of substantive and procedural law, resulting in an impact on legal relations between the subjects; legal analysis, the result of which is the identification of a range of options for permitted behavior of legal entities; the function of prevention of possible offenses, which is implemented by explaining to interested parties the illegal nature of the chosen ways to solve their problems and refusal of notarial acts that are contrary to law; advisory and explanatory, which consists in providing legal assistance to citizens through advisory and explanatory work with them and thus raising the level of their legal awareness; the function of promoting the improvement of lawmaking in the state, which is manifested in the possibility of identifying shortcomings in current legislation and possible ways to address them in lawmaking (Chizhmar, 2017).

There are attempts by scholars to move away from understanding the functions of the notary and to establish the specifics of the tasks assigned to the notary. In fact, scholars approach the understanding of the role of the notary through the understanding of the end result of the functioning of the notary, i.e. the solution of those tasks that are entrusted to the notary. Thus determine the functional purpose of the notary through the analysis of the tasks assigned to him. According to scientists, the main tasks of the notary are: ensuring the protection and safeguarding of property, rights and legitimate interests of individuals and legal entities; promoting law and order; crime prevention. In our opinion, the tasks of the notary, although they are quite scattered doctrinal understanding, it should be emphasized that they are not justified to identify with the functions of the notary, in addition, the very understanding of the tasks of the notary should be determined by understanding its content.

### **3.3. Preventive function of notary bodies**

Due to the insufficient level of legal literacy among the population, the legislator imposes on the notary the duty to explain to persons their rights and responsibilities, warn of the consequences of notarial acts, and most importantly, to assist individuals and legal entities in protecting and realizing their rights and interests. This obligation is justified by the content of the general purpose of the notary as a legal institution established by the state and existing within the universally recognized constitutional principle of the existence of the state for man, and directly based on the preventive function of the notary.

This function has recently become increasingly important, as the notary, certifying transactions with the participation of the parties, should help prevent offenses. In particular, its activities are aimed at preventing conflicts and disputes in civil law relations, both when concluding a transaction and those that will arise in the future. In contrast to judicial activity, the subject of notarial activity is undisputed cases. Thus, the institution of the notary in the rule of law plays a key role not only in



providing legal assistance to citizens, legal entities and in ensuring their legal security, but also in preventing disputes between the parties to a contractual relationship. The participation of a notary in the development of the terms of the transaction before its practical implementation avoids disputes over the law between the parties to the concluded and notarized transaction, and makes their relationship more stable and predictable, especially in market conditions. The participation of a notary allows to provide each of the parties to the transaction with legal protection at the stage of registration of the law and the contract, while judicial protection may be required later, at the stage of dispute.

As part of the preventive function, the notary acts in the following main areas: facilitating the process of proving in court in legal disputes, as notarial acts are important as evidence and allow the court to reveal the true will of the parties and the facts of the case; notary plays an important role in the implementation of public powers of the state to administer justice); resolution of undisputed legal disputes, reducing their number in the courts. All notarial activities are aimed at preventing conflicts and minimizing unnecessary recourse to the courts to protect their rights, which, in turn, makes the notary an institution that ensures stability and security in society (Dolynska, 2018b).

Thus, the essence of this function lies in the fact that the notary performing notarial acts, in particular on the certification of transactions, establishes the presence or absence of the relevant rights and obligations of subjects, thus preventing possible conflicts and disputes between them, and hence possible offenses. That is, the notary administers the so-called preventive justice, which is exercised by the notary creates a basis for resolving issues without their judicial consideration by drawing up a legal document on behalf of the state, giving it in some cases legal force equal in legal significance to the judicial document.

It should be emphasized that the performance of a notary's function of a preventive justice body in no way replaces the activity of a court administering justice, in particular, the institution of a notary does not administer justice and has a clear difference from the judicial system. After all, the subject of preventive, precautionary justice, the notary performs the following basic functions to ensure and protect the rights of citizens and legal entities: provides the opportunity to enforce obligations without going to court; promotes the formation and clear consolidation of mutual rights and obligations of the subjects of civil law, bringing them certainty, legal inconsistency, as well as giving them an official character (Sudini, 2020).

As stated in European Parliament Resolution A3 0422/93 "On the Status and Organization of Notaries in the 12 Member States of the Community" (European Parliament, 1993), the notary acts as a precautionary judge, avoiding bringing a case to court by eliminating or reducing the likelihood of disputes; the notary plays the role of an impartial adviser to the parties. In general, the system of domestic notaries belongs to one of the two main types of notaries in the world - Latin. Ukraine is a member of the International Union of Latin Notaries (founded on October 2, 1948 in Argentina), the basic principles of which, in particular, are the following:

1) principles concerning the role and main purpose of the notary: the notary acts on behalf of the state, but is subject only to the law; the function of serving the state, which the notary performs independently, without being part of the hierarchy of civil servants. At present, the monopoly of state notariate established in Soviet times has

been overcome in Ukraine and a powerful system of private notariate has been created;

2) principles concerning the main functions of the notary: the notary provides impartial qualified legal assistance, legality, equal justice and public authenticity of private acts; as an advisor, the notary reveals the true will of the persons who applied to him and reflects it in the legal act; notary deeds have a special probative and often enforceable force; the activities of the notary are in the sphere of undisputed jurisdiction, while helping to prevent disputes and conflicts. In the Latin notary system, the notary, on the one hand, acts as an independent representative of the state, empowered to perform notarial acts on behalf of the state, and on the other hand, is personally responsible for notarial acts, acting as a representative of the “free” profession. The independence of the notary and the performance of the tasks of public authority ensures the granting of agreements to the parties “public form” and “public trust”.

It should be noted that Ukraine has always recognized itself as a follower of the Romano-Germanic legal system, which is characterized by the existence of two systems of protection of the rights of participants in legal relations: judicial protection and preventive justice. At the same time, it can be stated that many of the current legislation adopted in recent years are to some extent focused on the principles of Anglo-Saxon law, which assigns a somewhat exaggerated role to judicial protection, sometimes to the detriment of the other, no less effective forms of protection (Prytka et al., 2021).

Judicial protection is a way to restore already violated rights. However, isn't it better to anticipate and encourage the development of mechanisms to minimize violations of rights? And these mechanisms constitute the institute of preventive justice. Specialists rightly note the different economic efficiency and cost of different notary systems and the general legal infrastructure for the countries of the Romano-Germanic and common law systems. Thus, the results of research have shown that the costs in the Anglo-Saxon legal system, in particular in the United States, for the maintenance of the courts, due to the underdevelopment of the notary system, exceed the same costs in continental European legal systems by about 3 to 7 times.

It is generally accepted that when applying to notaries, the rights of individuals are protected, which prevents the need for judicial protection. Justice is not always available due to various factors: the workload of the courts, the length of court proceedings, high court costs, legal fees for lawyers, and so on. Not being a judge who restores the legal order violated by conflicts between certain subjects of law, the notary prevents disputes with his reasonable advice, concluding agreements in accordance with the law, ensuring the security of public relations (Drozdov et al., 2021).

The preventive role of notarial protection is to prevent violations of the law by: performing notarial acts; refusal to commit them; explanation to the parties of the consequences of the actions taken. The most common notarial acts in civil turnover are certification of transactions, execution of writs of execution on promissory notes, protests of promissory notes, authentication of signatures on documents, authenticity of copies (photocopies) of documents and extracts from them, accuracy of translation, certification of facts, maritime protests.

Notarial acts, which are relatively indisputable, play a special role. They facilitate the process of proving because, firstly, they allow the court to reveal the true will of the parties and, secondly, they are less rebuttable than documents in simple written form. In fairness, it should be noted that the current procedural legislation of Ukraine does not favor any evidence, but notarial documents have certain features. They objectively trust the court, as they are issued by an independent, competent person who is not interested in the outcome of the dispute. And if you can deny the facts confirmed by the testimony of some witnesses with the testimony of others, the content of most notarized documents can be challenged only by filing a lawsuit, such as invalidating a will, certificate, contract and more. The trust of civil turnover in notarial documents and actions is based on two points: first, the notary is a person with state control functions, and therefore the very participation of such a person in drafting a document gives society a guarantee against abuse; secondly, the notary is within his powers a specialist, a person competent in matters of law, which means that the documents drawn up by the notary are correct both in form and in substance (Riskiana & Adjie, 2022).

The most important duties of a notary are - refusing to perform a notarial act if it does not comply with current legislation of Ukraine or international treaties, the consent of which is binding on Ukraine in the prescribed manner. This obligation is based on the principle of legality of notarial activities and derives from the preventive function of the notary, as it is preventive in nature.

Thus, the notary as a branch of justice by its legal nature tends to the judiciary and contributes to the achievement of justice. The judiciary and the notary are actively cooperating. First, effective notarial activity eliminates the need to go to court and initiate legal proceedings. Secondly, the notarial form provides the probative force to rights, facts and documents, which facilitates, if necessary, the process of consideration and resolution of civil cases in court, establishing the facts that are the subject of evidence in this case. This allows us to characterize the notary as an institution of preventive justice, designed not to perform judicial functions, but to promote the achievement of justice and prevent litigation by preventing violations of civil rights and interests, ensuring their proper implementation, which can be called preventive protection.

#### **4. Discussion**

Public life is constantly changing, and therefore there is a need for rapid response, including from representatives of notarial activities. In order to effectively perform the functions provided by the state, namely to protect the rights and legitimate interests of those who seek the help of a notary, the latter must constantly improve themselves. In our opinion, in order to implement the functions of the notary mentioned in this study, it is necessary to outline the tasks for the improvement of notarial activity. We believe that the following areas are promising to reform: decentralization of power in the field of notaries; introduction of electronic notary; introduction of blockchain technology in notarial activities; codification of notarial legislation.

As for the first direction of improving the legal status of the notary - is the decentralization of power in the field of notary. The Ministry of Justice of Ukraine, among

a wide range of its powers, has control and organizational functions, which together characterize the competence of the Ministry in the field of regulation of notarial activities. However, given the European integration direction of the state and legal policy of Ukraine, in which the ministry, as an executive body, is given only the role of coordinator. In our opinion, there is a need to analyze the scope of his powers and resolve the issue of the expediency of delegating a number of powers to the Notary Chamber of Ukraine, a self-governing professional organization. After all, this will show the European community that Ukraine is ready for change, including in the field of notarial activities. Because through these changes, the Notary Chamber of Ukraine, as a body of professional self-government of notaries, will be able to help the state to respond effectively to relevant changes and innovations in the field of notaries. Of course, in order to make such decisions, it is necessary to make sure that the Notary Chamber of Ukraine is ready in terms of organization to obtain these powers.

In our opinion, such decentralization has a positive character, as it involves the transfer of uncharacteristic of a public authority's functions in the field of notaries, from the main territorial departments of justice to the Notary Chamber of Ukraine. Such functions include: checking the procedure for performing notarial acts; advanced training of notaries and their assistants; control over the observance by notaries of the rules of professional ethics; organization of notarial activity and rules of notarial record keeping. Of course, the control over the activities of state notary offices and archives belongs to the absolute competence of the Ministry of Justice of Ukraine, and the control of a self-governing organization in this case is not appropriate. However, for example, raising the professional level of notaries and their assistants - this function can be implemented by the Notary Chamber of Ukraine. After all, the competence of the Notary Chamber of Ukraine already includes the function of monitoring the compliance of notaries with the rules of professional ethics. Also, admission to the profession of notary and deprivation of the right to engage in notarial activities are also already being implemented jointly by the Ministry of Justice of Ukraine and the Notary Chamber of Ukraine by establishing a relevant body (Shevchenko et al., 2020).

Regarding the second direction, the current state of digital technology development in Ukraine is ambiguous. On the one hand - there is a developed system with about 40 states and unified registers, electronic systems "SETAM" and "PRO-ZORRO", personal account of the client of administrative services on the website of the Ministry of Justice of Ukraine, but on the other hand, there are many problems such as: lack of a single protocol and universal automatic data exchange between registers; low level of Internet users among the rural population; insufficient number of digital identifiers, such as IDs of passports and electronic digital signatures among the population. These gaps do not allow us to say that Ukraine is ready for the transition to a digital economy, as the main conditions for its creation should be, above all, modernized socially important areas of government regulation, including notaries.

The development of digital technologies requires the application of new principles to the organization of notarial activities, namely the creation of a new institution that combines a set of classical notarial acts with the addition of digital technologies, as well as the maximum range of administrative services needed by society, without

the use of funds from the State budget or community funds. In our opinion, there are a number of factors that hinder Ukraine's transition to a digital economy, namely: lack of mutual exchange between the data of about 100 registers of Ukraine; lack of automated notary workplace; lack of remote authorization of clients with an electronic digital signature or ID-card; lack of legislative regulation for the creation of an electronic register of notarial acts and electronic notarial archive, lack of automatic creation of a notarial document; and a number of other technological gaps, which is responsible for servicing civil circulation. In addition, it should be borne in mind that all the above points, which are absent in our country, are available in most Latin notarial states, including post-Soviet countries (Rudenko et al., 2021).

We believe that the introduction of digital notary is an inevitable process for our state. But in order for the digital notary to function more efficiently, systemic changes are needed, which will be aimed at the use of digital technologies for the benefit of the notary and citizens. First, it will provide an opportunity to update the notarial process - make it more convenient and understandable, integrate the notary into transnational legal relations and help strengthen the status of the notary among other members of the legal profession. The main thing is to start working in this direction now with the use of European experience.

Another area for improving notarial activity is the introduction of blockchain technology. In order to find out how this technology will be useful for the activities of notaries, it is necessary to understand what this term means. From a technical point of view, blockchain is an electronic document management platform with verification and digital signature mechanisms. Cryptography ensures that no one can change the data contained in the blocks without warning: each blockchain contains a cryptographic link to its previous block. Thus, trust between users is considered unnecessary (Vasylyv & Sorochkina, 2020).

Such an innovation is now gaining popularity and can both positively interact with the notary and become a substitute for him. For example, in Austria legal entities are allowed to register without a notarial certificate through an electronic portal, in Croatia - business registration no longer requires the participation of a notary, and this technology is present in Georgia and Germany. As noted earlier, analyzing the current legislation of Ukraine governing the activities of notaries in Ukraine, we can conclude that there are a large number of laws, decrees, orders and other bylaws. All these regulations artificially expand the legal framework, but in fact it leads to inconsistencies, conflicts with other branches of law, gaps in the law (Vdovichenko, 2021).

Summarizing the above, in our opinion, it would be appropriate to adopt the Notarial Procedure Code of Ukraine. This normative legal act is currently extremely important for the activities of the notary, as it aims to replace a special part of the current Law of Ukraine "On Notaries" and streamline the system of the current bylaws. The adoption of the Notarial Procedure Code of Ukraine will allow to quickly regulate the procedural aspects of the notary's activities, to create defined and clear procedures for each notarial act, and, accordingly, appeal mechanisms. The draft Notarial Procedure Code of Ukraine, which was developed and returned to the parliament in 2011 for revision, has still been ignored. The draft Notarial Procedure Code should become the main regulator of the procedure for performing notarial acts

and should help integrate the standards of European notaries into notarial activities in Ukraine.

## 5. Conclusions

The degree of development of notarial activity is an important indicator of both the level of the legal system of the country and social freedom. Virtually any state, natural or legal person, cannot do without a notary, as he is the link between citizens in their attitude to civil rights and responsibilities. The notary is a system of state bodies and officials and, in accordance with current legislation, they act for the purpose specified by law, by performing certain tasks, performing specific functions; the notary has a certain organizational structure - actually state notary offices, state notarial archives, private notaries and officials of other state bodies and local governments. Given the functional burden on the nature of notarial jurisdiction, we can say that it exercises the public power of the state - on the one hand, and on the other - inextricably linked with civil society.

Given the analysis of the purpose, tasks and functions of the notary, we can say that notaries, both public and private, are full-fledged subjects of law enforcement and human rights activities, and therefore constituent elements of relevant law enforcement and human rights mechanisms. Carrying out, within the competence of the state, law enforcement and jurisdictional activities, the notary performs public tasks and functions on extrajudicial protection and protection of rights and legitimate interests of individuals and legal entities, local communities and the state, strengthening law and order, prevention of law and order action.

The preventive function performed by notaries is to prevent the offense by refusing notaries to perform notarial acts that do not comply with the law or are intended to act in violation of the law. The essence of this function lies in the fact that the notary performing notarial acts, in particular on the certification of transactions, establishes the presence or absence of the relevant rights and obligations of subjects, thus preventing possible conflicts and disputes between them, and therefore possible offenses. That is, the notary administers the so-called preventive justice, which is exercised by the notary creates a basis for resolving issues without their judicial consideration by drawing up a legal document on behalf of the state, giving it in some cases legal force equal in legal significance to the judicial document.

In our opinion, in order to implement the functions of the notary mentioned in this study, it is necessary to outline the tasks for the improvement of notarial activity. We believe that the following areas are promising for reform: decentralization of power in the field of notaries; introduction of electronic notary; introduction of blockchain technology in notarial activities; codification of notarial legislation.

The practical significance of the obtained results is that the formulated and substantiated conclusions and proposals are of theoretical and practical significance. In particular, the provisions and conclusions formulated in the study can be used in: research - for further study of general and special issues related to the legal support of the organization and activities of the notary; law-making sphere - to improve the legislation governing relations in the field of legal support of the organization and activities of the notary; law enforcement - during the practical activities of public

authorities in the field of organization of the functioning of the notary; educational process - during teaching in law schools, for the preparation of scientific and methodological manuals, textbooks, lectures, seminars, as well as in research work of students.

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