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ANALYSIS OF THE PRACTICE OF APPLYING THE LAW ON COMPULSORY PROFESSIONAL LIABILITY INSURANCE

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Abstract
This article analyzes the practice of applying the law on compulsory professional liability insurance. The issue of professional liability insurance for notaries in Uzbekistan was studied.

KEYWORDS: Insurance, professional liability insurance, insurer, insured, notary, court administrator.

INTRODUCTION

Although professional liability insurance is not widespread in our country, it is becoming mandatory for some industries. For example, the second part of Article 7 of the Law "On Notaries" states that "A notary engaged in private practice is not entitled to carry out his activities without concluding a contract for compulsory civil liability insurance."

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

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

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

The third type - a notary chamber (order of notaries, notary insurance fund) enters into a relationship with an insurance company, representing the interests of all members, when concluding an insurance contract, concluding a professional liability insurance contract (Denmark, USA, Belgium, Sweden, Quebec Province (Canada)). For example, the Quebec Provincial Order of Notaries, through its rules and standards of professional practice, enables its members to provide high-quality services to each community engaged in notarial activities. However, despite all the control mechanisms in place in the provision of these professional services, professional errors that may cause harm to third parties cannot be completely ruled out. In order to protect the public and to be able, if necessary, to compensate them for the damage caused, the Quebec Code of Professional Conduct requires all members of the professional order to have professional liability insurance for notaries. There are various options for such insurance for members of professional orders. The Order of Notaries of the Province of Quebec has created a professional liability insurance fund for notaries. Membership in the

Foundation is mandatory for every notary. The assets of the insurance fund are separate property and belong to all notaries; they are intended only for professional liability insurance [1].

In Uzbekistan, professional liability insurance for notaries is usually carried out according to the first type of system, that is, each private notary must insure his professional liability with an insurer with an appropriate license. We will consider the features of the professional activities of a notary, the requirements for a person wishing to engage in notarial activities, and define the concept and conditions for the initiation of a notary's professional liability. According to the legislation on notarial acts, notarial acts are performed by notaries in state notary offices and notaries engaged in private practice.

The professional activity of a notary is distinguished by a number of features, in particular:

1) A notary works in the field of evidentiary law and is involved in presenting qualified evidence in a case. Notarial acts have special evidentiary force, an example of which is the norm of Article 112 of the Civil Code, according to which if the requirements of the law on notarial certification of a unilateral transaction are not met, such a transaction is deemed invalid. The FC here establishes that such a transaction is invalid if the parties do not comply with the requirements of the law on notarization of the contract;

2) A notary operates in a field where the parties do not conflict and are not required to argue with each other, which is a non-conflict jurisdiction. In the event of a conflict situation, when the measures taken by the notary to reconcile the positions of the parties are in vain, the notary must refuse to resolve the dispute and recommend that the parties go to court;

3) There is a special opportunity to enter notarial activities due to the increased qualification requirements for a notary and the nature of his preparation for carrying out this activity. Different countries have different models and stages of preparation for notarial activities, but they all involve obtaining additional education and practical skills that are not covered by the general standard of higher legal education. Typically, these stages include: first degree - law degree, second level - diploma in notary law; third stage - internship in notary offices; The fourth stage is continuous professional development[2].

A person wishing to engage in notarial activities in Uzbekistan must be a citizen of Uzbekistan, have a complete higher legal education, know the state language, have at least three years of work experience in the field of law, including at least one year as a notary assistant or consultant in a state notary office, pass a qualification exam, and receive a certificate of the right to engage in notarial activities. A person who has a criminal record, has been declared legally incompetent or has been declared incompetent by a court cannot be a notary. In addition, a notary may not engage in entrepreneurship, advocacy, be the founder of bar associations, serve in the civil service or local self-government bodies, as part of other legal entities, and also perform other paid work, except for teaching, scientific and creative activities. He must also comply with the standards of professional ethics set forth in the Code of Ethics for Notaries[3];

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

5) Notaries engaged in private notarial activities in the Latin notarial system operate in a self-financing and independent organization of their activities. At the same time, notaries are accountable and supervised by both state bodies and bodies of the notarial community.

The main areas of notarial activity are: ensuring the indisputability of rights and facts, as well as the evidentiary value of documents; ensuring legality in concluding contracts and performing other notarial actions; Providing legal assistance to persons who apply to a notary for notarial actions [4]. The requirements for notarial activities are determined by the Law "On Notarial Services", and notaries operate on the basis of the Instructions "On the Procedure for Performing Notarial Actions by Notaries" in Appendix 1 to the Order of the Minister of Justice of the Republic of Uzbekistan No. 2 dated January 4, 2019. Failure of a notary to

perform one or more of his duties arising from the performance of his duties may result in the notary being held professionally liable if he has caused harm to another person due to his actions (omissions), carelessness or negligence.

The Law "On Notaries" provides for the responsibility of public and private notaries: Damage caused to a person as a result of illegal or negligent actions of a public notary shall be compensated in accordance with the procedure provided for by law. A person who applies to a notary to perform a notarial act: provided false information on any matter related to the performance of a notarial act; provided false information related to the performance of notarial acts; submitted invalid and/or forged documents; A notary shall not be liable for failure to disclose the absence or presence of persons whose rights or interests may affect notarial actions performed for a person.

Many authors, including S.Y. Fursa, P.M. Pavlik, T.M. Kilichava, S. Khimchenko, studying the problems of liability of notaries in case of non-fulfillment or improper fulfillment of professional obligations, use the term "civil legal liability"[5].

We believe that using the term "civil liability" in this context is not entirely correct, because, as noted above, we are talking about the professional, that is, notarial, responsibility of a notary in the performance of his activities. If we analyze the norms of the Law "On Notaries", we come to the conclusion that the legislator is only talking about the liability that arises when a notary fails to perform or improperly performs professional duties. Therefore, it would be more appropriate to use the term "professional liability", as it covers the liability of a notary only in cases where he has not performed or has not performed his professional duties properly. In all other cases of the notary's activities, as well as in any other person not related to the performance of professional duties, we can speak of civil liability.

The professional liability of a notary is a mandatory sanction (additional burden) aimed at restoring violated rights and interests of a notary who has performed work in accordance with a certificate of the right to engage in notarial activities and is included in the Unified Register of Notaries, if they have failed to fulfill or improperly fulfilled their professional duties, state measures, and caused harm to third parties.

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

The illegality of the actions of a notary consists in violating the requirements of the legislation and other regulatory legal acts on the implementation of notarial activities and in making professional mistakes by the notary, they are understood as actions or omissions that result in the actual results of notarial activities deviating from those expected and leading to a deviation of the actual results of notarial activities from those expected and resulting in negative personal and/or property consequences for clients and/or third parties, i.e. the notary's violation of rights, It is also manifested in the failure to fulfill or improperly fulfill the obligation to confirm legally significant facts, as well as the failure to perform other notarial actions to ensure their legal certainty.

The damage to the client of the notary and/or third parties associated with their receipt of poor-quality notarial services, that is, non-compliance with the requirements of regulatory legal acts or the lack of services at all. We agree with the position of the authors (S.Khimchenko and others), who argue that a notary can cause both material and moral damage to the client and/or a third party, This will consist of moral suffering, humiliation of honor, dignity, and damage to business reputation and must be taken into account separately[6].

The existence of a causal link between the notary's illegal actions and the negative consequences for the client and/or third parties resulting from the notary's professional errors is one of the conditions for the emergence of professional liability.

The view that a notary's professional liability arises regardless of his or her fault seems very balanced and reasonable. Determining whether or not a

notary is at fault is not a mandatory component for his or her professional liability to occur. For comparison, let's consider the norms of Articles 1457-1458 of the Quebec Code of Civil Procedure. These norms establish the following conditions for the professional liability of a notary to arise, namely: the notary's actions do not meet the standards of a moderate level; the existence of damage or loss caused to another person; Causation, that is, the existence of a direct connection between the notary's actions and the damage caused. Regarding the question of whether it is necessary to hold a notary accountable for his or her professional misconduct, two options are being considered. According to the first option, the presence of fault is mandatory, while the notary is not required to guarantee the result of the notarial act. According to the second option, if the notary also has to guarantee the result of the notarial act, then determining the notary's guilt is not important for holding him or her professionally liable. It should be noted that in developed countries, the tradition of taking into account only three conditions for determining the professional liability of a notary is widespread, and the condition of the presence of fault is not given special attention in this case.

It has been proven that a notary's professional liability arises regardless of his fault. We see that this approach is correct and reasonable. Strengthening the liability of notaries is aimed at protecting the interests of their clients and third parties who may suffer harm as a result of notaries' failure to perform or improperly perform their professional duties.

Article 19 of the Law "On Notaries" stipulates that a private notary must fully compensate for the damage caused. It is noted in the scientific literature on notarial liability that it is inappropriate to apply such a form of liability as the recovery of non-payment to a notary in the event of improper performance of notarial actions. The main form of liability should be compensation for damage and restoration of violated rights.

In our opinion, this approach is not entirely justified. The main form of professional liability is indeed compensation for damage, but at the same time, for professional liability in general and for a notary in particular, such a form of liability as the recovery of a fine is fully applicable as a type of civil liability.

In accordance with current legislation, a notary engaged in private notarial activities is required to insure his professional liability.

The subject of the notary's professional liability insurance contract is the notarial activities of a private notary related to the insured's property interests - liability for damage caused to third parties as a result of non-fulfillment or improper fulfillment. In accordance with the requirements of Article 191 of the Law "On Notaries", only private notaries are considered insured in a notary's professional liability insurance contract. Beneficiaries under the notary's professional liability insurance contract are individuals and legal entities who have contacted the notary for notarial actions and/or third parties.

In our opinion, the insurance risks under the notary's professional liability insurance contract may include: legal ignorance of clients resulting from the notary's failure to explain their rights and obligations to clients and to warn them about the consequences of the notarial actions performed; disclosure of information about documents known to a notary in connection with the performance of notarial acts, except as otherwise provided by law; performance by the insured of a notarial act that is contrary to current legislation or international law and causes damage to the notary's client and/or third parties; Loss, destruction or damage to documents related to the professional activities of a notary.

It is possible to propose that the insured event be considered as an event provided for in the notary's professional liability insurance contract, as a result, the notary's professional liability for compensation for damage caused to the client and/or third parties is not fulfilled or professional duties are improperly performed. To receive insurance compensation, the insured (beneficiary) must document the occurrence of an insured event, The insured must also provide the insurer with documents confirming the occurrence of an insured event, the amount of damage, and the

documents necessary for the payment of insurance compensation in accordance with the insurance requirements. After the insurer provides all necessary documents important for making a decision on the recognition of an insured event, the insurer draws up an insurance report and makes a decision to pay insurance compensation or refuse to pay insurance compensation, which is notified in writing to the policyholder and/or beneficiary.

The notary's professional liability insurance contract must provide for the grounds for refusing to pay insurance compensation. In addition to the grounds established by Article 954 of the Civil Code, an insurance contract may also provide for other grounds: activities not related to the professional activities of the insured; actions by the insured against persons who do not have the legal basis for granting the right to notarize; impact of natural phenomena [7].

The notary's professional liability insurance contract is terminated in accordance with the requirements of Article 948 of the Civil Code, also, if after its entry into force the possibility of an insured event has disappeared and the existence of the insured risk has ceased, the insured event shall be deemed to have occurred due to the termination of the notary's professional activities in accordance with current legislation from the moment such circumstances arise; Cancellation of the certificate of the right to engage in notarial activities of the holder of the insurance policy.

Professional liability insurance of notaries is carried out to ensure compensation for damage caused to the property interests of the insured's clients and/or third parties and to the interests of notaries themselves, This is confirmed by the norm of Article 18 of the Law "On Notaries". To ensure compensation for damage caused as a result of notarial actions, a private notary is obliged to conclude a contract of insurance of his liability for private notarial activities.

Taking into account the above problems, L.M. Gorbach, A.B. Kaun, A. Zaletov, T.A. Govorushko emphasize that professional liability insurance of notaries should be mandatory.[8].

An analysis of current legislative norms allows us to conclude that professional liability insurance for notaries should be mandatory, because Article 191 of the Law "On Notaries" establishes the requirements for notaries to insure their professional liability, the insured event, and the minimum amount of the insured amount. Although some important terms of a notary's professional liability insurance contract are stipulated by the established norm, other important terms of the insurance contract are not stipulated at all (subject of the insurance contract, insurance tariff, amount of insurance payment and terms of its payment, term of the insurance contract). contract, procedure for amendment and termination, terms of insurance payment, reasons for refusal of insurance payment, rights, obligations and liability of the parties), which indicates significant shortcomings of this provision. Therefore, it is appropriate to add the phrase "not contrary to law" after the words "notary" in Part 3 of Article 191 of the Law "On Notaries".

In modern practice, the institution of professional liability insurance is becoming a very popular model for securing one's professional interests and protecting them in the event of an insured event. At the same time, it should be noted that within the framework of current legislation, in particular, within the framework of the Civil Code, the definition of types of liability insurance is determined in very limited types of insurance contracts. In particular, the Civil Code provides for the possibility of concluding two types of insurance contracts: tort or contractual liability insurance contract.

Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated 29.11.2017 No. 45 “On certain issues of the application of legislation in the resolution of disputes arising from insurance contracts by courts”[9] the decision does not address issues related to professional liability insurance.

It should be noted that the main source of claims against professionals are shortcomings, errors, or wrongdoings that have led to financial losses for clients or third parties. The nature of the damage depends on the nature of the professional activity. A professional's responsibility is to exercise due

care and skill in the performance of their duties. At the same time, he does not have to be competent in all matters. The level of competence of a professional employee should not be lower than what one professional expects from another in the same professional field. Protection from lawsuits can be proof that a specialist is not exceeding their authority, is being careful, and their actions are in line with their level of competence. He must convince the court that he acted honestly and reasonably.

"On Insolvency" [10] according to Part Five of Article 22 of Law No. O'RQ-763 of 12.04.2022, "The court administrator must insure his liability for damage caused to persons participating in the insolvency case within ten days from the date of his appointment as court administrator by the court."

The essence of the case considered in court practice is as follows: The court administrator violated the order of priority for satisfying creditors' claims within the framework of the enterprise's bankruptcy case, incurred unreasonable expenses, and committed other violations. As a result, the claims of one of the bankruptcy creditors were not satisfied and he filed a claim with the economic court for compensation for damages caused by the actions of the court administrator. The court upheld the claims and recovered 20 million soums from the court administrator.

The property liability of the court administrator was insured, and the creditor applied directly to the insurer for damages by sending a letter of voluntary performance of obligations under the insurance contract. The amount of damage was confirmed by a court document, and the creditor did not expect any difficulties in obtaining the money. However, the insurer refused to pay the insurance compensation, arguing that the beneficiary (in this case, the creditor) did not have the right to apply directly to the insurer for compensation. The creditor believed that his rights and property interests had been violated and filed a lawsuit against the insurer to recover 20 million soums from the court administrator to compensate for the damage caused.

In the case of the court administrator N. Aliyev, the tax department's claims for damages caused by the administrator in the amount of more than 20,000,000 soums as a bankruptcy creditor were satisfied. Based on the above example, in compliance with the norms of concluding a professional liability agreement within the framework of the practical implementation of the "Insolvency (Bankruptcy) Act", the rights of all participants to compensation for damage caused in the event of a breach of professional liability or the occurrence of an insured event are ensured. In another case, the court awarded damages in the amount of 10,750,989 soums to the tax department in favor of the administrator N. Aliyev.

Today, the rules regarding the mandatory professional liability insurance contract for court administrators are not clearly reflected in the legislation. Article 22 of the Law "On Insolvency" only mentions that the court administrator is obliged to insure his liability. This raises a number of questions regarding the content, nature, object, insured event, and terms of the contract related to the insurance of the court administrator's liability. In order to fill this gap, it is advisable to supplement the Law "On Insolvency" with Article 251 entitled "Compulsory Insurance Agreement for the Liability of the Court Administrator" and define it as follows:

Article 251. Contract of compulsory insurance of the liability of a court administrator

A contract of compulsory insurance of the liability of a court administrator for causing damage to persons participating in the insolvency case and other persons due to failure to perform or improper performance of the duties assigned to the court administrator in the insolvency case shall be concluded for a period of at least one year, with the condition of renewal for the same period.

The minimum amount of insurance under a contract of compulsory insurance of the liability of a court administrator shall not be less than three thousand times the base calculation amount per year.

Within ten days from the date of approval by the court of the procedures applicable to the insolvency case (with the exception of the insolvency case of a non-existent debtor), the

external administrator must additionally conclude a contract of compulsory insurance of liability for damage caused by persons participating in the insolvency case, damage caused to other persons in connection with the failure to perform or improper performance of the duties assigned to the court administrator in the insolvency case.

A contract for compulsory insurance of the liability of a court administrator shall be considered extended for a subsequent period if the court administrator has not notified the insurer of his refusal to extend the contract at least one month before its expiration. The validity period of the extended contract for compulsory liability insurance of a court administrator for the next period shall not be terminated in the event of a delay in payment of the insurance premium by the court administrator or a delay in payment of the next insurance premium for a period not exceeding thirty days. The validity period of the extended contract for compulsory liability insurance of a court administrator for the next period shall not be terminated in the event of a delay in payment of the insurance premium by the court administrator or a delay in payment of the next insurance premium for a period not exceeding thirty days.

The objects of compulsory liability insurance of a court administrator are the property interests of the court administrator related to his liability for compensation for damage caused to persons participating in the insolvency case or to other persons in connection with the court administrator's failure to fulfill or improperly fulfill his obligations within the framework of the insolvency case.

An insured event under a compulsory insurance contract for the liability of a court administrator is the occurrence of liability as a result of the court administrator's failure to fulfill or improperly fulfill the duties assigned to the persons participating in the insolvency case or other persons approved by a court decision in relation to the insolvency case.

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