с тем некоторые позиции требуют существенных изменений. Так, предлагаем рассмотреть вопрос о внесении соответствующих изменений и дополнений в Гражданский кодекс Республики Казахстан следующего характера: внести в законодательство о наследовании по завещанию положение о возможности использования упрощенной формы завещания при обстоятельствах (экстремальные ситуации), реально угрожающих здоровью и жизни завещателя (воля завещателя может быть выражена в простой письменной форме). Также предлагаем внести в законодательство положение о возможности использования видео- или аудио - записей как способ фиксирования завещания. Подобная форма завещания давно легализована во многих странах, и даже письменная форма не может полностью исключить возможности порока воли завещательной сделки.

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MODERN NOTARY OF THE REPUBLIC OF KAZAKHSTAN AND WAYS OF ITS DEVELOPMENT

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An important part of the country's legal system, the notary has passed through a difficult path of formation and reform over the years. Two decades ago, the domestic notary chose the

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Latin model of existence, corresponding to the historically developed Romano-German legal system in Kazakhstan. The Latin type of notary is organized and operates based on the principles developed by the International Union of Notaries.

At the same time, today the notary public is at a crossroads: there is a multidirectional development of legislation. On the one hand, there is a systematic reduction in the types of notarial actions, on the other-the legislator returns the previously abolished executive inscription, imposes on the notary a new obligation to perform the role of a certain intermediary in the transfer of documents on the registration of rights to immovable property between the owner and the authorized body. In my opinion, these and other processes of legal support of notarial activity need to be understood in terms of determining the real needs of society for using the potential of the notary. From this point of view, the legislative process was initially imperfect, because the attention of developers of projects of normative legal acts constantly slipping conceptual questions: what are the areas of legal policy in the field of public relations, whether her evolving regulation, what is the trajectory of changes in social relations, what are the consequences of draft laws. In general, it should be noted that there is no clearly defined direction of development of state policy in the field of notaries, which is the most important factor that slows down its formation and functioning.

The theses that the notary ensures the legal security of civil turnover, "the notary is a part of the legal infrastructure of the state", "the institution of the notary ensures the constitutional right of everyone to qualified legal assistance"are memorized. However, it is not specified how, to what extent, the notary is able to guarantee the security, stability of public relations, and economic actions. What are its real guarantees, is notarial activity interesting for the society? It seems that these questions should be the starting point in determining the ways of development of the notary model in modern Kazakhstan.

Formed type domestic notary essentially limited to performing only the functions of identification, which certainly hinders the potential of notaries, it is a rejection of society and government, as unnecessary bureaucratic institution that creates obstacles for civilian purposes, and which must, sooner or later disappear with the development of technology, the translation of all documentation in electronic format.

Active digitalization of notary activity is currently one of the main priorities of the institute's development in the coming years. This is indicated by the draft law on notaries adopted on December 2, 2020 at the plenary session of the Chamber of the Majilis of the Parliament.

The main purpose of the development of this draft law is to improve the legislation on notaries and the legal system for protecting the rights and legitimate interests of individuals and legal entities. According to the deputies of the Parliament, further digitalization of notarial activities will ensure the efficiency, transparency and legality of notarial actions performed, and simplify the processing of notarial documents.

The adopted bill was divided into five blocks. Which we will focus on and consider what impact these innovations will have on the notary.

The first block is aimed at creating a centralized electronic repository system and an electronic archive for storing and recording notarial documents, which will increase the efficiency of notary services. Notaries are granted the right to make written transactions in electronic form, which will be signed by the parties and the notary using an electronic digital signature or using a graphic tablet for digital signature. At the same time, at the legislative level, the issues of posting the necessary information about notarial activities on the Internet resource are regulated.

The second block of amendments contains the concept of "notarial secrecy". Notarial secrecy is one of the basic principles and guarantees of notarial activity. The consolidation in the Law "On Notaries" of the composition of information that constitutes the secret of notarial acts, legal, organizational and technical measures to protect this information will ensure the information security of both the citizen and the notary as an institution aimed at ensuring the civil rights of individuals and legal entities.

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The third set of amendments, unfortunately, was not disclosed in detail, but according to the deputy B. Kesebayeva, it concerns the regulation of notary management bodies both in the territories and at the level of the republic.

The fourth set of amendments establishes the creation of a disciplinary commission of the Republican Notary Chamber, which considers complaints, at the national level.

The fifth set of amendments provides for the introduction of two new notarial acts: certification of the equivalence of an electronic document to a paper document and certification of the equivalence of a paper document to an electronic document. This will allow more active use of modern means of legal communication, as well as formalize legal relations based on digital technologies [1].

I also want to add to the changes the introduction of the ability to perform remote notary services, which allow notarization through the use of modern means of telecommunications (means of communication) via the Internet with the help of digital tools and live audio-video calls, as well as with the participation of a witness.

The presence of the client in person in front of the notary is mandatory, although the notary can identify this person through visual telecommunications, as is the practice in Estonia and Georgia. For example, Georgian legislation allows for the preparation and certification of notarial documents if one or more parties are present at the notary's office, while others participate in this process via a teleconference (video conference or Skype). Such notarial action will really help citizens of Kazakhstan, being in another country, to get notarial services without restrictions, and also, what is important, quickly and with minimal costs.

The public nature of the notary's activity is determined by the transfer to him of part of the state functions: to certify rights and obligations, transactions, facts, to endow subjects of public relations with rights and obligations, to certify their will, etc. Documents originating from a notary have increased legal, evidentiary force, which should be provided in the legislation: the regulatory definition of the specified quality needs to be regulated; the establishment of a requirement for the recognition of the evidentiary value of a notarial document by all bodies, organizations and persons; an exemption from proving the facts and circumstances set out in the notarial act should be fixed [2]. Ensuring the considered property of a notarial act is the most important condition for the importance and usefulness of the institution of a notary in economic and law enforcement relations. Further development of the notary in this direction should be based on the answer to the question: what are the advantages of the notarial form of transactions?

With an active notary model, the parties to the transaction have the right to expect such advantages of its notarization as confirmation of ownership of the property by establishing the legality of the acquisition of property rights; compliance with the "single window" principle, in which the notary is practically the only expert and person accompanying the process of transferring civil rights; giving the contract the force of a notarial act: evidentiary, executive force; legal security.

From my prospective there is a requirementof transformation of the notary model, which will significantly simplify the interaction of citizens and state bodies. Such decisions guiding to free the former from bureaucratic procedures, reduce the cost of legal support for civil turnover, and simplify its administrative support. In this direction, the qualified legal assistance provided by notaries actually becomes such, involving a complex of legal notarial services, and not today's formal certification of facts and transactions. To be presise notary should strive to meet public demands for the comprehensive provision of qualified legal assistance, explain and show the advantages of the notarial form, clearly formulate and provide guarantees for notarization.

Currently in my opinion, most effective way to develop the notary is to be directed to the transition to an active notary model. What implies: the release of citizens and organizations from the need to apply to the authorities for the collection of documents; the creation of safe, transparent conditions for the calculation of the parties to the transaction; ensuring the fulfillment of tax obligations arising from certified transactions. That is, the model of the Latin notary is a mandatory and important part of the legal systems in advanced states. It is appropriate to

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maintain this role of the notary in The Republic of Kazakhstan as well. At the same time, not to forget the need to reconsider the forms of notary assistance in order to match the level of economic development of the state and the prospects for further development.

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ПРАВОВОЕ РЕГУЛИРОВАНИЕ ЛИЧНЫХ НЕИМУЩЕСТВЕННЫХ ОТНОШЕНИЙ В ЗАКОНОДАТЕЛЬСТВЕ УКРАИНЫ

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В Конституции Украины указано, что человек, его жизнь, честь и достоинство, неприкосновенность и безопасность признаются наивысшей социальной ценностью (ст. 3 Конституции Украины [1]). Соблюдение и защита прав и свобод человека и гражданина является главной задачей государства, признается, что все люди свободны и равны в своем достоинстве и правах, а сами права и свободы человека неотчуждаемы и нерушимы (ст. 21 Конституции Украины [1]). Закрепив в Конституции Украины эти положения, законодатель отразил человеческие ценности, содержащиеся в целом ряде международно-правовых документов и соглашений, участницей которых является Украина.

Особое внимание обращено сегодня на проблему личных неимущественных прав. Это обусловлено их местом в системе гражданских отношений.

Гражданский кодекс Украины [2] устанавливает понятие регулируемых гражданским законодательством гражданских правоотношений, которые можно разделить на две группы: а) личные неимущественные и б) имущественные отношения, основанные на юридическом равенстве, свободном волеизъявлении, имущественной самостоятельности их участников (ч. 1 ст. 1 ГК Украины [2]).

В ГК Украины имеется отдельная книга «Личные неимущественные права физического лица». Этим, во-первых, подчеркивается важность личных неимущественных прав по сравнению с другими правами, регулирующимися Гражданским кодексом и, во-вторых, законодательно закрепляется положение о том, что личные неимущественные права не только защищаются гражданским законодательством, но и регулируются им.

Таким образом личные неимущественные правоотношения являются не только полноценным предметом гражданско-правового регулирования на уровне с имущественными отношениями, но и имеют соответствующий приоритет перед ними, поскольку структурно указанные первыми при определении предмета гражданско-правового регулирования.

Личные неимущественные отношения делятся на две группы: 1) личные отношения, связанные с имущественными (например, авторские, патентные, другие виды отношений интеллектуальной собственности); 2) личные отношения, не связанные с имущественными (например, право на честь, на тайну корреспонденции и т.п.).

Для более полного представления сущности личных неимущественных прав как гражданских, следует обратиться к вопросу о предмете гражданского права, традиционно и по сей день являющегося дискуссионным, особенно в отношении регулирования личных неимущественных отношений.

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