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**TÍTULO:** Acciones notariales: un análisis comparativo de la legislación de la República de Azerbaiyán y los Estados miembros de la Comunidad de Estados Independientes.

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**RESUMEN:** El notario es la organización más poderosa y autorizada. En los años de la Unión Soviética, las relaciones de propiedad privada no se desarrollaron y la cantidad de acciones notariales certificadas no fue tanto. Hoy en día, la legislación de la mayoría de los Estados miembros de la Comunidad de Estados Independientes otorga el derecho de realizar actos notariales tanto a notarios estatales como privados, y las escrituras certificadas en nombre del estado por notarios privados y estatales tienen la misma fuerza legal. Uno de los problemas es aumentar las responsabilidades de los notarios en la transacción de escrituras para personas jurídicas y físicas, y aumentar las responsabilidades de los notarios por daños a personas jurídicas y físicas debido a transacciones ilegales de notarios.

**PALABRAS CLAVES:** notario, legislación, propiedad, código civil.

**TITLE:** Notarial actions: a comparative analysis of the legislation of the Azerbaijan Republic and the Member States of the Commonwealth of Independent States.

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**ABSTRACT:** Notary is the most powerful and authoritative organization. But in the years of the Soviet Union private ownership relations were not developed and the amount of certified notarial actions was not so much. Nowadays the legislation of most Members States of Commonwealth of Independent States grants the right of performing notarial acts to both - state and private notaries and the deeds being certified on behalf of state by private and state notaries have identical legal force. One of the problem is to increase liabilities and responsibilities of Notaries in transaction of deeds for legal and physical persons and to increase responsibilities of Notaries for damage of legal and physical persons due illegal transaction of notaries.

**KEY WORDS:** notary, legislation, property, civil code.

**INTRODUCTION.**

Law of the Republic of Azerbaijan "About Notariate" from November 26, 1999 came into force in 2000, January 30. In comparison with the majority republics of the former and with the CIS (Commonwelath of the Independent States) republics, the Republic of Azerbaijan adopted the law "About Notariate" later than these republics.

As the example we can list the dates of the adopted laws of the following republics:

- 1) "Bases of the Legislation of the Russian Federation about the Notariate" adopted February 11, 1993.
- 2) The Law of Ukraine "About Notariate" adopted September 2, 1993.
- 3) The Law of the Republic of Uzbekistan "About Notariate" adopted December 26, 1996.
- 4) The Law of the Republic of Moldova "About Notariate" adopted April 11, 1997.
- 5) The Law of the Republic of Tajikistan "About State Notariate" adopted May 15, 1997.

- 6) The Law of the Republic of Kazakhstan “About Notariate” adopted July 14, 1997.
- 7) The Law of the Republic of Kyrgyzstan “About Notariate” adopted May 30, 1998.
- 8) The Law of the Republic of Turkmenistan “About State Notariate” adopted April 30, 1999.

Only two republics Armenia and Republic of Belarus adopted their law about Notariate later than the republic of Azerbaijan. The law of the Republic of Armenia “About the Notariate” adopted December 27, 2001 and the law of the Republic of Belarus “About the Notariate and Notarial activities” adopted July 18, 2004.

In 2002, November 8 with the adoption of new Law of the Republic of Moldova “On Notary”, the Law of the Republic of Moldova “On Notary” adopted April 11, 1997 came invalid. In 2012, April 16 with the adoption of new Law of the Republic of Tajikistan “About State Notariate”, the Law of the Republic of Tajikistan “About State Notariate” adopted May 15, 1997 came invalid.

Law of the Azerbaijani Republic “About Notariate” is consisted of 94 Articles. According to the Article 17 and Article 26 the following notarial acts shall be performed by Notaries:

- 1) Certify transaction and powers of attorney.
- 2) Take measures on protection of succession.
- 3) Issue certificates of succession.
- 4) Issue certificates of title to a share of common property of spouses.
- 5) Issue certificates on obtaining of houses, residents, appartments via Open stock market.
- 6) Authenticate copies and extracts of documents.
- 7) Authenticate signatures on documents.
- 8) Authenticate the translation of documents from one language into another.
- 9) Attest to the fact that a natural person is alive.
- 10) Attest to the fact that a natural person is at a particular place.
- 11) Authenticity of a natural person and his photo.

- 12) Attest to the time of submission of documents.
- 13) Hand statements of natural and legal persons over to other natural and legal persons.
- 14) Accept sums of money, securities and wills into deposit account.
- 15) Executive inscription.
- 16) Protest bills of exchange.
- 17) Submit cheques for payment and attest to the fact that cheques are not paid.
- 18) Accept the documents for keeping the documents in the archives.
- 19) Accept sea protests.
- 20) Provide evidences.

Notarization of alienation of immovable property agreement is widespread among the notarial acts. According to the requirements of the Articles 144.1; 307.7; 668.1.1 and 865.2 of the Civil Code of the Azerbaijan Republic from December 28, 1999 “Alienation of all types of immovable property” (purchase-sale; home apartment Exchange; Gift; Rent) shall be considered valid if the agreements are in written form and notary attested.

Comparing with the CIS Member States only the Civil Code of Azerbaijan, Civil Code of Turkmenistan (Articles 206, 337 and 982), Civil Code of Ukraine (Articles 657, part II of 719 and part II of 732), Civil Code of the Republic of Armenia (Articles 562.2, 572 and 595.2) envisage notarization of agreements on alienation of immovable property obligatory.

Article 818 of the Civil Code of Moldova envisages: “The contract of sale of enterprise as a unitary patrimonial complex shall be concluded by notary certification”. But notarization of the contracts of other immovable property is not obligatory, voluntary.

In Tajikistan notarization of the Contract of Gift of Immovable Things is considered to be obligatory, but parties can conclude purchase-sale contract in other form.

Concerning of alienation of immovable property, legislation of the CIS Member States envisages notarization of the Contract of Rent obligatory, but notarization of the following contracts: contract of purchase and sale of immovable things, contract of exchange, and contract of gift is not obligatory.

According to legislation of the Russian Federation, Republic of Kazakhstan, Republic of Uzbekistan, Republic of Kyrgyzstan, Republic of Belaruss, Republic of Moldova, for conclusion of Contract of Purchase and Sale of Immovable Things, Contract of Exchange, Contract of Gift, parties upon their mutual consent can choose one of the following variants:

- 1) Contract can be notarized.
- 2) Parties themselves can conclude the contract in written form.
- 3) Contract for the parties can be concluded by a lawyer or by an employee of legal entity.
- 4) Contract can be concluded by the body of State registration of transaction with immovable property.

Thus, according to the experience of these countries, we can see that as a rule the contracts can be concluded by a Notary, by the state registered legal firm and by the body of state registration with immovable property.

But legislation of all CIS Member States envisages state registration of establishment of ownership to immovable property and ownership to other things, limitation mortgage), alienation of and termination of property rights of immovable property obligatory.

I think that it is a good point that legislation of the Azerbaijani Republic envisages that a Notary shall be responsible to explain deeds to the parties and one of the main obligatory responsibilities of a Notary is notarization of contracts of alienation of all types of immovable things, as well as notarization of contract of mortgage.

Literature on jurisprudence of the Russian Federation highlights the following principles on Notariat:

- 1) Principle of legislation.
- 2) Performance of notarial actions in conformity with legislation of Russian Federation.
- 3) Notarial actions shall be performed by notaries and authoritative officials.
- 4) The principle of autonomy and impartiality of Notary.
- 5) The principle of equality before the law when performing notarial acts. This principle does not exclude the right of additional benefits for some categories of citizens provided by law; for example payment of state fee for notarial transaction.
- 6) Performance of notarial acts in the undebatable sphere of jurisdiction.
- 7) Performance of notarial acts in the name of Russian Federation.
- 8) Principle of procedures of notarial acts.
- 9) Responsibilities of notaries while performing notaries acts.
- 10) Non commercial feature of notarial acts.
- 11) Performance of notarial acts in conformity of law and in conformity of traditions and moral norms of society.

Article 1 of the Fundamental Principles of legislation of the Russian Federation on the Notariat of February 11, 1993 envisages “... performance of notarial actions in the name of Russian Federation by notaries which are provided by legislative acts”. According to this article performance of notarial action in the name of Russian Federation is considered to be one of the fundamental principles of notarial action.

Article 1 of the Law of the Republic of Belarus “About the notariate and notarial activities” from July 18, 2004; Article 2 of the Law of the Republic of Kurguzstan “About Notariate” adopted May 30, 1998; Article 3 (part I) of the law of the Republic of Armenia “About Notariate” adopted

December 27, 2001 and Article 6 of the law of the Republic of Tajikistan “ About State Notariate” adopted April 16, 2012 envisage the performance of notarial in the name of State.

Performing of notarial acts in the name of state is not highlighted in the Law of the Azerbaijani Republic “About Notariate”. It will be appropriate to make amendments to the Article 1 of the Law of the Azerbaijan Republic “About Notariate” as the following: “Notarial acts are performed in the name of the Republic of Azerbaijan. Performance of notarial acts in the name of state will enhance the role of notariat and increase confidence among people for the notary services”. As in Court decision, the performance of Notarial actions in the name of State by state and private notaries can be understood as the guarantee of State. According to the Article 3 of the law of the Azerbaijani Republic “About Notariate” “The notary is forbidden to be engaged in business activity and to perform other paid works, except for scientific, pedagogical and creative activities”. Notarial action is not entrepreneurial activity.

To be engaged in business, activity is also forbidden by legislation of the following republics: Russian Federation, Ukraine, Republic of Belarus, Kazakhstan Republic, Republic of Moldova and Kyrgyz Republic.

Notarization of notarial acts concerning of succession is widespread in the practice of Azerbaijani Notary. According to the Article 29 part 5 of the Constitution of the Republic of Azerbaijan the state guarantees succession rights. Article 25 envisages: “Everyone has the right to own property; neither kind of property has priority. Ownership right including right for private owners is protected by law.

Everyone might possess movable and real property. Right of ownership envisages the right of owner to possess, use and dispose of the property himself/herself or jointly with others. Nobody shall be deprived of his/her property without decision of law court. Total confiscation of the property is not permitted. Alienation of the property for state or public needs is permitted only after

preliminary fair reimbursement of its cost. The state guarantees succession rights”.

Comparing with CIS Member States we want to add that the legislation of all CIS Member States guarantees constitutional succession rights, except Ukraine, Turkmenistan and Kyrgyzstan. It is not clear why there is no legislative norm concerning of succession in constitution of Ukraine, Turkmenistan and Kyrgyzstan.

According to the Article 1133 “Inheritance law” of the Civil Code of the Azerbaijan Republic “Property of the deceased (testator (testatrix) is devolved to other persons (heirs) according to law or testament or on both grounds. Intestate succession (devolution of decedent’s property to persons indicated in law) is effective in case of an intestacy or if testament is declared invalid entirely or partly”.

The norms of succession in Civil Codes of CIS Member States are highlighted in the following articles.

Article 1133-1325 of the Civil Code of the Azerbaijanin Republic, Article 1110-1185 of the Civil Code of Russian Federation, Article 1216-1308 of the Civil Code of Ukraine, Article 1138-1190 of the Civil Code of the Republic of Tajikistan, Article 1118-1166 of the Civil Code of the Kyrgyz Republic, Article 1112-1157 of the Civil Code of the Republic of Uzbekistan, Article 1432-1575 of the Civil Code of the Republic of Moldova, Article 1038-1083 of the Civil Code of the Republic of Kazakhstan, Article 1128-1318 of the Civil Code of Turkmenistan, Article 1184-1241 of the Civil Code of the Republic of Armenia and Article 1031-1092 of the Civil Code of the Republic of Belarus.

Relevant to the Article 1166 “Testament conception “of the Civil Code of the Republic of Azerbaijan “Physical person can give by a will his (her) property or its part to one or more persons among his (her) heirs or to one or more persons who are not among his (her) heirs”.



According to the Civil Code of the following republics, physical person can give by a will his (her) property in the following articles: Article 1118 of the Civil Code of the Russian Federation, Article 1040 of the Civil Code of the Belarus Republic, Article 1234 of the Civil Code of Ukraine, Article 1449 of the Civil Code of the Republic of Moldova, Article 1046 of the Civil Code of the Republic of Kazakhstan, Article 1161 of the Civil Code of Turkmenistan, Article 1120 of the Civil Code of the Republic of Uzbekistan, Article 1127 of the Civil Code of the Republic of Kyrgyzstan, Article 1150 of the Civil Code of the Republic of Tajikistan, Article 1193.1 of the Civil Code of the Republic of Armenia.

According to the Article 1167 of the Civil Code of the Republic of Azerbaijan “A capable person having the ability to sober discourse of his (her) actions, able to express clearly his (her) will and who has come of age at the moment of making of testament can give by a will”.

According to the requirement of the Article 1168 of this Civil Code Republic of Azerbaijan “Testament must be made only by testator (testatrix). It’s inadmissible to make testament by mean of a representative”.

It will be appropriate to state that, the Civil Codes of the CIS Member States envisage the same legal norms that “only a capable person having the ability to sober discourse of his (her) actions, able to express clearly his (her) will and who has come of age at the moment of making of testament can give by a will and to make testament by mean of a representative is inadmissible”.

Article 1179.1 of the Civil Code of the Republic of Azerbaijan requires: “Testament must be made in written form. Written testament is allowed in notarial form as well as without it”.

Notarial form requires testament to be made and signed by testator (testatrix) and approved by notary and in absence of latter by local self-government authority (Article 1179.2 Civil Code of the Republic of Azerbaijan).

According to the Civil Codes of the Russian Federation, the Republic of Belarus, the Republic of Moldova and Turkmenistan, it is possible that testament to be made in notarial form and in absence of notary, according to the legislation can be made in written form, but according to the Article 1050 of the Civil Code of the Republic of Kazakhstan, Article 1131 of the Civil Code of the Kyrgyz Republic, Article 1124 of the Civil Code of the Republic of Uzbekistan, Article 1157 of the Civil Code of the Republic of Tajikistan and Article 1247 of the Civil Code of Ukraine and Article 1203.1 of the Civil Code of the Republic Armenia “A will shall be certified by a notary or other officials of the relevant local government”.

To prevent some legal disputes among heirs, it will be appropriate to make ammendment to the article 1179.1 of the Civil Code of the Republic of Azerbaijan as the following: “a will must be in written form and shall be certified by a notary” as in legal practice of Ukraine, Kyrgyzstan, Kazakhstan, Tajikistan, Armenia and Uzbekistan.

Civil legislation of the CIS Member States and as well as the Article 1180.1 “Making of testament by notary” of the Civil Code of the Republic of Azerbaijan envisages that “It is admissible a notary to make testament from testator (testatrix)’s words in presence of two witnesses. Generally accepted technical facilities may be applied for testament making”.

Testator (testatrix) must read a testament made by notary from testator (testatrix)’s words and sign it in presence of notary and witnesses (Article 1180.2 Civil Code of the Republic of Azerbaijan).

According to the Article 1184 “Will and Testament witnesses” of the Civil Code of the Republic of Azerbaijan underage persons, disabled considered persons, testamentary heirs and their relatives in ascending and descending lines, sisters, brothers, spouses and persons received testamentary order (legatary) cannot be testament witnesses.

According to our view, the concept “relative” denotes a member of family, there is no need to indicate the words “sisters, brothers, wife, husband” after the word “relative” in Article 1184 of the Civil Code of the Republic of Azerbaijan.

It will be appropriate to indicate testamentary heirs and persons who cannot be testament witness without the use of word “relative”. To prevent further court disputes it will be appropriate to make ammends to the Article 1184 of the Civil Code of the Republic of Azerbaijan and to add the list of the following persons who cannot be testament witness: notary certifying testament; testamentary heirs’ children, parents, grandchildren, great grandchildren; testamentary legal heirs; persons who cannot read testament due the physical disability and illiteracy; persons who were accused for false witness.

Unlike the legislation of the Republic of Azerbaijan legislation of CIS Member States envisages the abovementioned norms: as the example we can say that according to the Civil Codes of the Russian Federation, Ukraine, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan and Armenia notary certifying testament and persons who cannot read testament due the physical disability and illiteracy; According to the Civil Code of Belarus, Kazakhstan, Kyrgyzstan, Tajikistan testamentary heirs’ children, parents, grandchildren, great grandchildren and testamentary legal heirs cannot be testament witness.

Persons who were accused for false witness cannot be testament witness according to the civil legislation of Belarus, Kazakhstan, Tajikistan and Armenia.

Wishing to provide for a registration scheme enabling a testator to register his will in order to reduce the risk of the will remaining unknown or being found belatedly, and to facilitate the discovery of the existence of this will after the death of the testator the Member States of the Council of Europe signed Basel Convention - “Convention on the Establishment of a Scheme of Registration of Wills” May12, 1972.

In accordance with the provisions of this Convention, The Contracting States undertake to establish or appoint one or more bodies responsible for the registration.

According to the legislation of the Contracting States registration of will shall be done by notary or public authority and on the death of the testator any person may obtain the information on presentation of an extract of the death certificate or of any other satisfactory proof of death.

From CIS Member States only Ukraine in 2010, July 10 signed this convention. Russian Federation is going to sign this convention.

According to the Article 1193 of new Civil Code of the Republic of Azerbaijan: “Irrespective of testament’s content testator (testatrix)’s children, parents and spouse have obligatory share of inheritance. According to the law this share makes up to the half of the share due to them (obligatory share) during intestate succession”.

In order to compare the issue concerning of obligatory inheritance share CIS Memembr States civil legislation must be looked through.

According to the Article 1149.1 of the Civil Code of the Russian Federation “The under age or disabled children of the legator, his disabled spouse and parents, as well as the disabled dependent heirs of the legator, as well as heirs of the first, second and third turn if not less than a year before the legator’s death they were dependent of them regardless of the fact whether they lived together with the legator or not shall inherit regardless of the content of the will not less than half the share which would be due to each of them in the case of inheritance in law (an obligatory share)”.

According to the Article 1241.1. of the Civil Code of Ukraine: “The underage or disabled children of the legator, disabled widow (er) and disabled parents inherit, regardless of the contents of the will, half the proportion that belonged to each of them in case of inheritance by law (Required portion).

According to the Article 1069.1 of the Civil Code of the Republic Kazakhstan “The under age or disabled children of the legator, his disabled spouse and parents, shall inherit regardless of the content of the will not less than half the share which would be due to each of them in the case of inheritance in law (an obligatory share)”.

According to the Article 1505 Civil Code of the Republic of Moldova “Regardless of the content of the will, the disabled successors of first instance inherit a compulsory share, which must constitute at least a half of the share due to them by statutory succession (compulsory portion)”.

According to the Article 1064.1 of the Civil Code of the Republic of Belarus “The children of the testator, which are minors or not capable for labor, spouse and parents of the testator, which are or not capable for labor, shall inherit, regardless of the will contents, not less than half the share, which should be due to each of them in case of inheriting by operation of law (the mandatory share)”.

Article 1142 (part 1) of the Civil Code of the Republic of Uzbekistan envisages: “Minor children or children not capable of work of the deceased including adopted children and also his spouse and parents who are not capable of work including adoptive parents inherit regardless of the content of the will not less than half the share that would have been due to each of them in case of inheritance by operation of law (compulsory share)”.

According to the Article 1188 of the Civil Code of Turkmenistan: “Children of the legator, parents and wife( husband) inherit regardless of the contents of the will half the proportion that belonged to each of them in case of inheritance by law (Required portion)”.

According to the Article 1149.1 of the Civil Code of the Kyrgyz Republic “Minor or disabled children of the testator, adopted children , his disabled spouse and parents shall inherit, regardless of the content of the testament, no less than two of thirds of the share that would be due to each of them in intestate succession (legitime)”.

Upon requirements of the Article 1171.1 of the Civil Code of the Republic of Tajikistan “Minors or disabled children of the testator and his disabled parents (stepfather and stepmother) or disabled spouse inherit, regardless of the content of the will, not less than two thirds of the share, which would be due to each of them under intestate succession (compulsory share)”.

Article 1194.2 of the Civil Code of the Republic of Armenia envisages that minor children of the testator, as well as children, spouse and parents of the deceased, recognized in accordance with the law disabled, or reached the age 60 shall inherit compulsory share.

Comparative analysis show that except the Republic of Azerbaijan and Turkmenistan, Civil legislation of other CIS Member States envisage that the under age or disabled children of the legator, his disabled spouse and parents shall inherit regardless of the content of the will not less than half the share. And only in the Civil Code of the Russian Federation heirs of the first, second, third, fourth and fifth turn if not less than a year before the legator’s death they were dependent of them regardless of the fact whether they lived together with the legator or not shall inherit regardless of the content of the will not less than half the share which would be due to each of them in the case of inheritance in law (an obligatory share)”.

According to legislation of Tajikistan and Kyrgyzstan, an obligatory share shall be not less than two thirds of the share, which would be due to each of them under intestate succession, other CIS Member States legislation requires that an obligatory share shall be not less than half the share which would be due to each of them in the case of inheritance in law.

We think that it is illogical that capable children, parents, wife (husband) of the legator inherit regardless of the contents of the will half the proportion that belonged to each of them in case of inheritance by law to inherit an obligatory share. It will be appropriate to define an amount of obligatory share as two thirds of the share, which would be due to each of them under intestate succession, as it is envisaged in the civil legislation of Kyrgyzstan and Tajikistan.

Now our analysis will be directed to responsibilities of notary envisaged in legal norms of CIS Member States legislation. Depending on the nature of committed legal violations, legal responsibilities may be classified as disciplinary, administrative, material, civil and criminal responsibilities. For each type of legal responsibility, there is specific punishment measures.

Civil liability responsibility enshrined in violations of physical and legal entities property and personal non property rights. The term "Financial liability" is highlighted in labour legislation, for example in the Articles 198, 199, 200 and in other articles of the Labor Code of the Republic of Azerbaijan, February 1, 1999.

Legislative acts of the Republic of Azerbaijan envisage that notary or State bear responsibility for illegal actions of notary. According to the second part of the Article 68 of the Constitution of the Republic of Azerbaijan "Everyone has the right for compensation by the state of losses borne as a result of illegal actions or non-action of state bodies or their officials".

Relevant to the article 11 under the title "Financial liabilities of a Notary" of the Law "About Notariate" of the Republic of Azerbaijan from November 26, 1999 "Notary shall bear financial responsibilities subject to legislation of the Republic of Azerbaijan for material damage of physical and legal entities, institutions or state due illegal action of State notary. The amount of material damage is determined by the consent of Parties or by the Court".

According to the Article 32 part 10 of the Law "About Notariate" of the Republic of Azerbaijan "persons blamed for disclosure of confidentiality of notarial actions shall bear responsibility subject to legislation of the Republic of Azerbaijan".

According to the Article 144.1 of the Civil Code of the Republic of Azerbaijan of December 28, 1999 "Agreements as to disposition of objects entered in the state register of immovable property shall be certified by a notary public. During certification the notary shall check the disposing party's

right to dispose of the property and compliance of the agreement with the law. The notary shall be liable for any inaccuracy in notarized agreements”.

According to the Article 1100 of the Civil Code of the Republic of Azerbaijan “the damage caused to a legal entity or a private person in result of unlawful actions (inaction) of the state authorities, local authorities or the officers of such authorities, including issuance of an act of the state authority or the local authority, which is contrary to the law or other legal acts, shall be subject to compensation by the Azerbaijan Republic or the relevant municipality”.

Article 460 of the Code of the Azerbaijan Republic “On administrative violations” of December 29, 2015 envisages that incorrect deduction or untimely and non complete payment of state duties to state budget by official persons entails imposition on official persons of penalty.

Relevant to the Article 186 of the Labour Code of the Republic of Azerbaijan of February 1, 1999 “Employers may punish employees for failure or delay in the performance of their duties or for substandard performance, for violation of duties defined by the employment contract and internal discipline regulations. Moreover, employees shall be held accountable in other cases stipulated by Legislation. But Article 199 of this Code envisages full financial liability of the employee and determine that the employee shall bear full financial liability if he violates the law.

Also Section 8 of the “Code of ethics of notaries” approved by the order 6-T of April 29, 2006 of the Ministry of Justice of the Republic of Azerbaijan given under the title “Prosecution of Notary for violations of requirement of the Code and awarding Notary for exemplary treatment” envisages that due legal violations, prosecution of Notary shall be executed subject to the Labour Code of the Republic of Azerbaijan and Law “About Notariate” of the Republic of Azerbaijan.

Requirements of the Article 68 - Section II of the Constitution of the Republic of Azerbaijan, Article 1100 of the Civil Code, Article 460 of the Administration Violations Code, of as well as Articles 186 and 199 of Labour Code are applied to Notaries too.



If the Article 11 of the Law “About Notariat” envisages only material liability of a Notary, Article 144.1 of the Civil Code envisages that notary shall be liable for any inaccuracy in notarized agreements. The type of liabilities is not highlighted in this article. The concept “liability” in comparison with the “material liability” can bear broad meanings due committed legal violations such as material liability, liability for property, administrative liability, and criminal liability.

Despite the fact that some notaries were prosecuted for disciplinary and criminal liability, there is no evidence that Notaries were prosecuted for material liability and court did not make decision that due the requirements of the Article 1100 of the Civil Code of the Republic Azerbaijan where for the damage caused to a legal entity or a private person in result of unlawful actions (inaction) of the state authorities, local authorities or the officers of such authorities, including issuance of an act of the state authority or the local authority, which is contrary to the law or other legal acts, shall be subject to compensation by the Azerbaijan Republic or the relevant municipality, even though there are cases that people suffer material damage due illegal action of a Notary. Though they were case of violation of rules of payment of state duties, incorrect deduction or untimely and non complete payment of state duties to state budget, Notaries were not prosecuted by the Ministry of Tax of the Republic of Azerbaijan subject to the Article 460 of the Administrative violations Code of the Azerbaijan Republic.

In order to prevent any dispute concerning in determination of notary’s responsibility, it will be appropriate to install videocameras in notary office and to shoot on videotape all procedures of notarial actions. It will be useful to keep these videotapes at Head Office of Registration and Notary of the Ministry of Justice of the Republic of Azerbaijan. With these videotapes it can be defined whether notary fulfilled his/her professional liability as stated below: observing ethical norms with the clients; to explain clients their rights and tasks; to serve in fair and unbiased manner; to prevent any damage due legal unawareness of to inform about consequences of notarial actions.

In order to compare the professional responsibility of the Notary in legislation of CIS Member States we analysed legislation of CIS Member States legislation. Article 17 under the title “Rights, duties and responsibilities of a notary” of the law “About Notariate” of the Russian Federation of February 11, 1993 envisages: “Notary, assumes full financial responsibility for the harm caused to the property of a citizen or a legal entity as a result of a notarial act, contrary to the laws of the Russian Federation, or wrongful denial of notarial acts, as well as the disclosure of information about the notarial acts. Compensation for harm done by insurance indemnity under the concluded contract liability insurance notary engaged in private practice, and in his failure - due to the property of such notary within the difference between the insurance reimbursement and the actual amount of damage. Damages caused by the notary intentionally compensated solely by the property belonging to him”.

Chapter VII “Control of activities of notaries” of the Bases of the Legislation of the Russian Federation “About the Notariate” envisages that refusal to perform a notarial act or improper performance of a notarial act shall be appealed in court. Control over the execution of professional duties of notaries working in the state notary’s offices shall be carried out by the institutions of the Ministry of Justice and control over the execution of professional duties of notaries working in private practice shall be carried out by - Notary Chamber. Control over compliance with the tax laws is provided by tax authorities in the manner and within the time stipulated by the legislation of the Russian Federation. In the case of a notary in private practice, acts contrary to the laws of the Russian Federation, its activity can be terminated by the court. Notary working in state notary’s office, in case of acts contrary to the laws of the Russian Federation, shall be liable in accordance with the law.

Article 16 Section 4 of the Bases of the Legislation of the Russian Federation “About the Notariate” envisages: “In case of failure or delay in the submission of information to the tax authority, a Notary can be prosecuted under the law of the Russian Federation”. In accordance with the Tax Code notaries are obliged to report to the tax authorities to issue certificates of inheritance and the notarization of gift. Notary performs his duties in accordance with these Principles, the legislation of the Russian Federation and the oath. A notary is required to keep confidential the information that became known to him in connection with the exercise of his professional activity. The court may release a notary from the duty of secrecy, if the notary against a criminal case in connection with the commission of a notarial act.

According to the Article 18 of the Bases of the Legislation of the Russian Federation “About the Notariate”: “Notary in private practice, has to conclude a contract or contracts of insurance of civil liability of a notary in the exercise of notarial activity. Notary shall not perform their duties and to perform notarial acts without a contract of insurance. The object of insurance for civil liability insurance contract shall be the property interests associated with the risk of liability of a notary, in private practice, for the obligations arising from the infliction of property damage to a citizen or legal person who applied for a notary’s, and (or) to third parties in carrying out notarial activities.

Notary shall not perform their duties without a contract of insurance.

The insurance amount cannot be less than 100 times the legal minimum monthly wage”.

Insurance rates for civil liability insurance contract notary determined by the insurer in the circumstances affecting the degree of risk of liability of a notary, including experience in notary notarial acts and the incidence of the duties of a notary for compensation for property damage caused to third parties.

Unless otherwise provided in this Article, the sum insured under the contract of insurance of civil liability of a notary shall not be less than:

- 1) 2 000 000 under a contract of insurance of civil liability of a notary, having notary in urban areas;
- 2) 1 500 000 under the contract of insurance of civil liability of a notary, having notary office in a rural village.

Other terms and conditions of insurance of civil liability of a notary are determined by agreement between the parties in accordance with the legislation of the Russian Federation and the insurance regulations, approved by the insurer or association of insurers.

Insurance reimbursement is effected in the amount of actual damages suffered, but within the sum insured.

Notary Chamber of the Russian Federation in order to ensure the property liability of notaries - members of the Chamber of Notaries shall have the right to conclude a contract of liability insurance of notaries - members of the Chamber of Notaries of the Russian Federation (hereinafter - the liability insurance of notaries - members of the Chamber of Notaries) the insurance amount determined at the rate of not less than 500 000 for each of the notary - a member of the Chamber of Notaries.

If the risk of liability for the obligations arising from harm to third parties in the implementation of notarial activity, immune Notarial Chamber of the Russian Federation, the sum insured for civil liability insurance contract entered into by a notary public, having notary in urban areas, can not be less than 1 000 000 rubles, and the notary, having notary office in a rural village - less than 500 000 rubles.

Insurance indemnity under a contract of liability insurance Notaries - Notary Chamber members made in case of failure of the insurance indemnity under a contract of insurance of civil liability of a notary.

Control over compliance with the requirements of this article notaries performed notarial chambers of the Russian Federation.

From January 1, 2014 according to the legislation of Russian Federation the minimum wage for the citizen is determined in the amount of 5554 rouble, for Moscow residents is determined in the amount of 12600 rouble.

The responsibility of notaries is envisaged in Articles 21, 27 and 28 in Law of Ukraine “About Notariate” of September 2, 1993.

Article 21: “Responsibility of the notary public”: “The damage caused to a person due to illegal or negligent acts of a notary public shall be compensated in accordance with the legislation of Ukraine”.

Article 27: “Responsibility of private notary”: “Harm caused to a person as a result of illegal actions or negligence of private notary, shall be compensated in full”.

Article 28: “Insurance of civil liability of private notary”: “To provide compensation for notarial acts notary is obliged to start dealing with private notary activity with signing of contract of insurance of civil liability”.

The State shall not be liable for damage caused by unlawful actions of private notary in the exercise of notarial activity functions of the state registrar of real estate rights.

Private notary shall not be liable for the obligations of the state.

The minimum amount of insurance coverage is a thousand times the minimum wage.

Size of the damage is determined by agreement of the parties or the court.

According to the Article 6 (section 4) of the Law of the Republic of Uzbekistan “About Notariate” from December 26, 1996: “Notary, other officials, to perform notarial acts, as well as for those who have to perform notarial acts became known in connection with the performance of their duties, are prohibited from disclosing information which became known to them, including after the termination of the labor contract.

According to the Article 19 “Responsibility of Notary” of this legislation “Notary for breach of their professional duties shall be liable in accordance with the legislation. Damage caused by a notary public as a result of violations of their professional duties, shall be compensated by the state in accordance with the procedure established by the Cabinet of Ministers of the Republic of Uzbekistan”.

According to the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan from December 28, 2010 “Regulations on the procedure for compensation of the damage caused by the notary owing to violation of the professional obligations” the following provisions can be stated:

Provision “On approval of the procedure for the reimbursement damage caused due to violation of Notary their professional duties” was approved with decision of the Cabinet of Ministers of the Republic of Uzbekistan from December 28, 2010, relevant to the Article 19 of the Law of the Republic of Uzbekistan “About Notariate”. Article 19 of the Law of the Republic of Uzbekistan “About Notariate” envisages that “Expenses incurred by the Department of Justice in connection with the court cases concerning compensation for businesses and individuals for damage shall also be recovered from the notary in order recourse (regression) in accordance with these Regulations”. The damage is compensated by the state at the expense of fund of development of courts and judicial authorities with the subsequent presentation of the return requirement (recourse) to the notary in the amount of paid compensation. The basis for compensation of the damage is the judgment which has entered legal force about compensation of the damage.

According to the Article 16 (part 1) “Insurance activities of private notary”: “Contract for insurance of civil liability must be concluded for the obligations arising from harm as a result of notarial acts. Private notary may not proceed to the notarial acts in the absence of such a treaty” (Law of the Republic of Kazakhstan “About Notariate” from July 14, 1997). The procedure and conditions of insurance of civil liability of a notary for the obligations arising from harm as a result of notarial

acts, established by legislative acts of the Republic of Kazakhstan.” Article 24 of this law envisages:

1. Notary and officials authorized by this Act to notarial acts, if commit illegal actions bear liability such as: criminal, administrative, financial, disciplinary and other liability under the legislation of the Republic of Kazakhstan.
2. Notary in private practice, in case of violation of their professional responsibilities and ethics prosecuted by Notarial Chamber, in accordance with the Code of Honour of the notary.
- 3 The State shall not be liable for damages to natural and legal persons as a result of a private notary notarial acts.

Article 4 of the Law of Kyrgyz Republic “About Notariate” from May 30, 1998 states that while performing notarial acts notaries have equal rights and bear equal responsibility. Article 22 of this law under the title “Responsibility of Notary” and Article 22-1 of this law under the title “Insurance of private notary” envisages: “Notary and officials authorized by this Act to notarial acts, if they commit illegal actions contradicting the legislation of Kyrgyz Republic bear responsibility under legislation of the Kyrgyz Republic. Notary intentionally divulged information about committed notarial acts or notarial act contrary to the laws of the Kyrgyz Republic shall be obliged by the court to make amends for the damage due to this. In other cases, the damage is compensated by a notary public, if it cannot be made in a different order”.

According to the Article 21 (part 3) of this law Notary in the cases stipulated by the legislation of the Kyrgyz Republic shall be obliged to submit to the tax authority the information necessary for the calculation of the tax on property, the value of the property transferred to the ownership of citizens by way of inheritance or gift. In case of failure or delay in the submission of information to the tax authority, provided by part three of Article 21 of this Law, the notary may be held judicially accountable in accordance with the legislation of the Kyrgyz Republic.

Article 22-1 envisages: “Private notary is obliged to insure their civil liability for the obligations arising from harm as a result of notarial acts, through the conclusion of the insurance contract. Notary shall not perform their duties without a contract of insurance. The minimum sum insured is set to 500 times the amount of statutory assessment index”. This amount approximately equal to 2110 US dollars.

According to the Article 8 of the Law of Turkmenistan “About State Notariate” from April 30, 1999 “In the case of disclosure of information about committed notarial acts or notarial act Public Notary and officials conducting notarial acts bear responsibility under the legislation of the Turkmenistan Republic”.

Article 23 of the Law of the Republic of Moldova “About Notariate” of November 8, 2002 envisages: “The notary is responsible for the violation of his or her professional duties”.

Articles of the Law of the Republic of Belarus on July 18, 2004 “About notariate and notarial activity” highlights the norms of responsibilities of Notary.

According to the Article 9 (Section 7) “A person is guilty of divulging secrets of notarial act shall bear responsibility established by the legislative acts of the Republic of Belarus”.

Article 34 (section 1) “Liability insurance of private notary” envisages: “Private notary is obliged to enter into a contract of liability insurance in case of causing harm to other persons as a result of the wrong committed notarial act”.

According to the Article 34 (section 4): “Belarusian Chamber of Notaries concludes additional insurance contract to provide compensation for damage caused by its members as a result of the wrong committed notarial acts, if the size of the damage caused uncovered, insurance compensation shall be paid in accordance with the private notary insurance contract”.



Article 41 – “Liability of notaries, authorized officers”: “Notaries, authorized officials in the case of violation of the legislation of the Republic of Belarus shall be prosecuted in accordance with the legislative acts of the Republic of Belarus”.

According to the Article 10 (Section 8) of the law of the Republic of Tajikistan of April 16, 2012 “About the State Notariate”, “A person is guilty of divulging secrets of notarial act shall bear responsibility established by the legislative acts of the Republic of Tajikistan. Article 28 (section 2) envisages that Public Notary performing notarial act shall bear responsibility for the damage caused to physical and legal persons under the legislation of the Republic of Tajikistan.

According to the Article 110 of this law physical and legal persons violating the requirements of the Republic of Tajikistan “About State Notariate” shall be prosecuted according to the legislation of the Republic of Tajikistan.

Generally legislation of CIS memembr states envisages that State shall bear responsibility for harm caused to physical and legal persons due illegal actions of State Notary, but for the harm caused to physical and legal persons due illegal actions of private Notary, only Private notary shall bear responsibility.

It is appropriate to state that according to legislation of Uzbekistan, Tajikistan and Turkmenistan only state notaries are performing notarial acts, activity of private notaries is not envisaged in legislation of these republics.

The article under the title “Material Responsibility of Notary” exist only in law of the Republic of Azerbaijan “About Notariate” and the title does not coincide to the content of the article. According to this Article only private notary shall bear material responsibility. The damage caused to a leagl entity or a private person in result of unlawful actions (inaction) of the state notaries shall be subject to compensation by the Azerbaijan Republic according to the Article 1100 of the Civil Code of the Republic of Azerbaijan. This Article 1100 of the Civil Code of the Republic of

Azerbaijan envisages: “The damage caused to a legal entity or a private person in result of unlawful actions (inaction) of the state authorities, local authorities or the officers of such authorities, including issuance of an act of the state authority or the local authority, which is contrary to the law or other legal acts, shall be subject to compensation by the Azerbaijan Republic or the relevant municipality”.

In many CIS Member States legislation articles determining the responsibility of a Notary is called “Responsibility of a Notary” and states that Notary is responsible for illegal actions.

According to my view it will be appropriate to change the title of the Article 11 “Material responsibility of a Notary” of the law of the Republic of Azerbaijan “About Notariate” into “Responsibility of a Notary” as the following: “Notary depending on illegal actions shall bear disciplinary, administrative, material, civil and criminal liabilities”.

Expenses incurred by the Republic of Azerbaijan in connection with the court cases concerning compensation for businesses and individuals for damage shall also be recovered from the notary in recourse order (regression).

Private Notary reimburse the full amount of funds of damages to businesses and individuals and the amount of funds shall be determined with the mutual consent of parties in court manner”.

### **Research Methodology.**

Method of comparative law and historical approach which is of great importance for jurisprudence presented the methodological basis of the research. There are similarities and differences can be found in CIS member states legislation regulating the issues concerning of notarial acts. Majority of lawyers consider that Notary is state body.

As in most countries, the Notary with the status of public officials appointed by the state, perform their primary function and observe the interests of the government and government supervises its activity; that is we can consider it as state body.

## CONCLUSIONS.

It will be appropriate to make amendments into article 1 of the Law of the Azerbaijani Republic “About Notariate” the following extract: “Persons authorised to conduct notarial act shall perform Notarial actions in the name of the Republic of Azerbaijan”.

According to the legislation of French Government, Notary can be a person with a master degree. Taking into consideration experience of legislation of France, it will be appropriate to make changes into part 2 of the Article 3 of the law of the Azerbaijani Republic “About Notaries” as following: “Any citizen of the Republic of Azerbaijan who wants to be a Public or Private Notary shall have a master degree in legal studies, shall have to obtain high moral and professional knowledge”.

It will be appropriate that only person who’s age is not under 30 can be appointed in position of a Notary, because they need to obtain a degree and practice for some years trainee notaries, two or more years of training in a notarial office.

That is why we recommend to add the following requirement to the Article 3 part 3 of the Law of the Republic of Azerbaijan “About Notaries”: “only a person who’s age is not under 30 and who is a citizen of the Republic of Azerbaijan can be appointed as in position of a Notary”.

I recommend that, changes must be done in Article 1184 of the Civil Code of the Republic of Azerbaijan as following: “The following persons cannot be testament witnesses: Notary, certifying testament or other person certifying testament; underage persons, disabled considered persons; testamentary heirs and their children, spouses, parents, grandchildren, great-grandchildren, sisters, brothers, testamentary legal heirs; persons who cannot read due the physical disability and illiteracy; persons who were accused for false witness”.

In order to reduce the risk of the will remaining unknown or being found belatedly, and to facilitate the discovery of the existence of this will after the death of the testator, the Republic of Azerbaijan must sign Basel Convention - "Convention on the Establishment of a Scheme of Registration of Wills" of May 16, 1972. After the signing of this Convention it will be appropriate to determine the Ministry of Justice of the Azerbaijan Republic as a National organization. In this case all testaments certified by a Notary or by other officials will be registered at the Ministry of Justice of the Republic of Azerbaijan.

I recommend to add part 6 to the Article 14 of the Law of the Republic of Azerbaijan "About Notariate" the following: "All procedures of notarial actions in a Notary office or out of Notary office shall be recorded on videotape and these videotapes shall be kept at the Ministry of Justice. The expenses of recording the procedures of notarial acts on videotape out of a Notary's office shall be at expense of the client".

At the same time, in order to provide confidentiality of notarial actions it will be appropriate to make amendments to the paragraphe 3 and 5 of the Article 32 of the law of the Azerbaijan Republic "About Notariate" as following:

To the Paragraphe 3 of the Article 32: "Documents related to the notarial actions and videotapes of these deeds shall be given by the decision of court and investigation organizations dealing with criminal, civil and administrative cases".

To the Paragraphe 5 of the Article 32: "The copies of documents and recordings of videotapes shall be given to solicitor on written inquiry and warrant of the solicitor".

I recommend to ammend Article 1193 of the Civil Code of the Republic of Azerbaijan as following: "Irrespective of testament's content testator (testatrix)'s children which are minors or not capable for labor, spouse and parents of the testator, which are or not capable for labor, shall inherit,

regardless of the will contents, not less than two thirds of the share (obligatory share), which should be due to them (obligatory share) during intestate succession”.

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