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CONCERNING THE NOTARIAL FORM OF CIVIL RIGHTS PROTECTION

Creation of an appropriate mechanism of legal protection is an important guarantee of exercising rights and freedoms of parties to civil law relations.

The subjective civil rights are protected in accordance with the procedure established by law, i.e. through proper forms, means, and ways of protection.

The civil law books traditionally consider two forms of protecting civil rights: jurisdiction one and non-jurisdiction one.

The jurisdiction form of protecting civil rights and interests can consider the general procedure for protecting rights in courts and the special protection procedure: administrative one and notarial one.

The notarial system as an institution of a civil society protects the rights guaranteed by the Constitution and laws of Ukraine and the legitimate interests of citizens and legal entities through notarial actions performed by notaries on behalf of the state.

The fact that a notary acts on behalf of the state provided grounds to certain researchers for attributing protection of civil rights by a notary to the administrative form of protection, explaining this by the fact of appointing a notary and by control over fulfillment of a notary's professional duties exercised by a justice authority, as well as for considering the notarial bodies either as government agencies with an administrative nature of activities or bodies that are actually administrative ones, but have a special status.

In order to answer the question to which protection form we have to refer protection of civil rights by a notary, at first it is neces-

sary to take into account that the nature of a jurisdiction body is determined by the nature of its activities rather than the specifics of its creation and control over such activities.

In terms of their functional nature, activities of notaries are closer to those of courts as they are carried out for the benefit of individuals and legal entities and aim at controlling and regulating civil law relations.

Unlike diverse ways of protecting civil rights in court, pursuant to Article 18 of the Civil Code of Ukraine a notary protects them only in one way: by writing a notary writ on a debt instrument in cases and in accordance with the procedure stipulated by law. This notarial action is the principal out-of-court undisputable way of enforcing an obligation, which enables a creditor to have its rights, violated as a result of a debtor's failure to discharge its obligations, promptly restored with the help of a notary, providing that certain formal requirements are met.

It should also be noted that protection of rights by notaries is not final. Actions of notarial agencies may be appealed against in court.

A right to protection is exercised by each party to civil law relations at its own discretion and own will. At present an authorized representative has a wide range of choice of forms of protecting civil rights and interests. In every specific case, a person whose rights and interests have been violated decides on his/her own on the choice of remedies and their practical implementation, efficiency and expediency of using a specific form of protection.