

REPORT

Results of Public Monitoring Conducted within the
Framework of the Multi-Component Monitoring in the RA Notary Offices Project



ARMENIAN
YOUNG LAWYERS ASSOCIATION



Organization for Security and
Co-operation in Europe
Office in Yerevan

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OSCE YEREVAN OFFICE

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the RA Notary Offices Project**

DECEMBER 2009

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INTRODUCTION

An appropriate public administration system is not the only thing that is necessary for the development of the modern Armenian society. Also needed is a civil society that is constantly watching over the activities of such public administration system. The involvement of the third estate is important for the development of the Armenian state with an effective and functioning public administration system. Such involvement should also take the form of overseeing the sector of notary services. The establishment of appropriate public oversight mechanisms can become a foundation for overcoming the corruption risks in the sector. These mechanisms will serve to evaluate the level of notaries' knowledge of their functional responsibilities and skills that are required to carry out these functions, as well as the existence of the relevant moral-psychological qualities and characteristics. A sociological study by means of standardized interviews was conducted among citizens who use notary services, with the aim of increasing the role of non-governmental organizations in improving the RA notary services and preventing corruption in the sector. At the same time, groups of public observers from non-governmental organizations carried out an observation mission in notary offices. Afterwards, a telephone poll was conducted among RA citizens who have used notary services in the last few years. At the same time, legislation that regulates notary services was analyzed. All of this work was conducted under the Multi-Component Monitoring in the RA Notary Offices project. The idea of the project was proposed to the leadership of the Armenian Young Lawyers Association by advocacy and assistance centers and public receptions, and the Armenian Young Lawyers Association implemented the project in close and direct cooperation with the aforementioned centers. The project was implemented with financial support from the OSCE Yerevan office.

The project was made possible due to close cooperation with state bodies and officials, for which we express our gratitude, in particular, to the RA Prime Minister Tigran Sargsyan, Deputy Prime Minister Armen Gevorgyan, Minister of Justice Gevorg Danielyan, the RA President's Oversight Service, First Deputy Minister of Justice Gevorg Malkhasyan, Head of the Notary Division of the Ministry of Justice Mariam Gaboyan and Chairwoman of the RA Chamber of Notaries Alvard Melkonyan. At the end of the project, a meeting was held at the RA Ministry of Justice to discuss the preliminary draft of the report that would be published within the framework of the project. The Head of the Notary Division of the Ministry of Justice Mariam Gaboyan, Chairwoman of the RA Chamber of Notaries Alvard Melkonyan, notaries from various notary districts of the city of Yerevan, representatives of the OSCE Yerevan office and project staff attended the meeting. The purpose of the meeting was to discuss the preliminary draft of the report to be published within the framework of the project. Comments, recommendations and opinions voiced during the meeting have been taken into consideration while preparing this final draft of the report and are reflected therein.

The purpose of the project was to use public monitoring of the RA notary offices in order to identify the potential gaps in the area of notary services, develop recommendations on how to address these gaps, increase the public's interest in notary services and processes, and to build the capacity of civil society and non-governmental organizations to reduce corruption risks and other negative practices.

The questionnaires developed by the project's sociologist were presented to the First Deputy Minister of Justice and to the Head of the Notary Department. The start of the observation mission was somewhat delayed because the aforementioned officials had disagreements on the content of the questionnaires. The RA Prime Minister and the Minister of Justice were notified about problems experienced by the project. In the meeting with them, an agreement was reached to continue the project and to work together on improving the

monitoring tool to be used to monitor notary offices. Then the RA Ministry of Justice submitted recommendations on the questionnaire to be used in direct monitoring of notary offices. These recommendations were discussed with the project staff and incorporated in the new and final draft of the questionnaire. The questionnaire for telephone poll was also discussed jointly.

The direct survey among citizens using notary services in notary offices and citizens leaving notary offices, as well as direct observation, started on August 18, 2009 and was completed on September 15, 2009. The survey and observation were conducted by observers from a monitoring network of non-governmental organizations. At the same time, while monitoring was taking place, Yerkir Media TV and some local television companies aired promotional materials about the project, thus informing citizens about the observation mission.

As the project went on, it became clear that notaries thought that observers were there to find mistakes and corruption risks in their work and discredit them. Notaries had varied attitudes towards the monitoring. Some notaries, including the Chairwoman of the Chamber of Notaries, expressed their unhappiness with the observation mission as follows: they required project implementers to conduct all of their interviews inside notary offices and to have notaries sign the questionnaires at the end of every workday (in the first days of the monitoring, questionnaires were signed at the end of each day, but later on they were signed in the beginning of each day). In addition, if a citizen said he or she was unhappy with the services provided by a notary, some notaries simply refused to sign the questionnaires. This prevented citizens from answering questions freely. There were also cases of notaries wishing to read people's answers before signing the questionnaires. Such attempts were promptly stopped by project observers.

A telephone poll was conducted as part of the project on September 12-15, and a focus group discussion took place on October 10.

In addition, project lawyers analyzed the relevant legislation regulating the sector and identified a number of problem areas. Recommendations were developed based on this analysis.

1. METHODOLOGY

The principle of stratified regional sampling was used to select respondents. A probable proportional sampling of notary districts was made from all the marz units of the total universe in the first strata. The number of transactions completed in 2008 by the selected units was taken into consideration (up to 5,000 transactions, from 5,000 up to 10,000 transactions, from 10,000 up to 15,000 transactions, from 15,000 up to 20,000 transactions, from 20,000 up to 25,000 transactions, and more than 25,000 transactions). One notary district from each group with appropriate characteristics was selected. In the second strata, a random sampling of notary offices was made. In the third, citizens using notary services were selected to be interviewed (random selection from among all the customers who have visited the selected notary office within two working weeks).¹

In every stratum, parts of the sample were put together in such a way as to ensure that all units of the total universe had equal probability of being included in the sample. As a result, the total universe included the following:

- Kentron notary districts in Yerevan (more than 25,000 transactions),
- Nor Nork notary district in Yerevan (from 20,000 up to 25,000 transactions),
- Arabkir notary district in Yerevan (from 15,000 up to 20,000 transactions),
- Malatya-Sebastya notary district in Yerevan (from 5,000 up to 10,000 transactions),
- Erebuni notary district in Yerevan (from 5,000 up to 10,000 transactions),
- Gyumri notary district (from 15,000 up to 20,000 transactions),
- Armavir notary district in Armavir marz (from 10,000 up to 15,000 transactions),
- Kapan notary district in Syunik marz (from 5,000 up to 10,000 transactions),
- Ijevan notary district in Tavush marz (up to 5,000 transactions).

The total number of respondents was 1,168 (651 men and 517 women). 336 respondents came from the marzes, 832 were from Yerevan. 18.8% of respondents were engaged in the services industry, 14.2% were housewives, 10.6% were employed in the education sector, 7.6% were business persons, 5.9% were sole proprietors, and 5.2% were public officials. 3.6% of respondents were construction specialists, 3% - workers. Another 3% were employed in the healthcare sector. 2.5% of respondents were military servicemen. 8.1% and 5.5% of respondents were pensioners and unemployed persons, respectively. 2% of respondents had engineering/technical background, 1.3% had artistic background, and 2.4% were students. 3.2% of respondents were lawyers, which is an important profession for the notary system.

Parallel to the interviews, members of the monitoring team filled out observation cards. Based on these cards, they submitted reports on violations observed during multi-component monitoring of notary offices.

When selecting respondents for telephone poll, consideration was given to whether the selected units were from the capital, urban or rural units. A probable proportional sampling was made from among Yerevan and marz units with relevant characteristics. In the second strata, consideration was given to the size of the already selected units from the first strata, and a probably proportional sampling of the relevant communities was made. In the third strata, a random selection of respondents for telephone poll was made. As a result, the sampling universe included 1,209 respondents who took part in the telephone poll (see Chart 1).

¹ Because the number of customers was not very large, the objective was to conduct a standardized interview with all of them. The number of people who refused to be interviewed did not exceed the permissible limits.

Chart 1. Sample

	Respondents	
Armavir	104	
Shirak	111	
Ararat	106	
Vayots Dzor	23	
Lori	105	
Aragatsotn	51	
Tavush	50	
Kotayk	101	
Gegharkunik	90	
Syunik	59	
Erebuni	42	
Nubarashen	4	
Davtashen	14	
Shengavit	57	
Nor Nork	51	
Malatya	51	
Avan	18	
Nork-Marash	5	
Arabkir	50	

Kentron	50	
Kanaker	30	
Ajapnyak	37	
Total	1209	

The total number of respondents was determined by the following formula:

$$n = \frac{N t^2 s^2}{N \Delta^2 + t^2 s^2},$$

n is the sample universe, **N** is the general universe (determined on the basis of the 2001 census data published by the RA National Statistics Service),
 s^2 – variance,
 $\Delta = 0,03$ (error margin 3%), $t = 1,94$.

The result is $n = 1209$. Then the following formula was applied to determine the breakdown of respondents by communities:

$$n_i = \frac{n N_i}{N},$$

(where **N** and **n** are the general and sample universe, respectively, **N_i** and **n_i** are group sizes within general and sample universe groups). In the case of the telephone poll as well, parts of the stratified sampling were combined in each strata in such a way as to ensure that all units of the general universe had an equal probability of being included in the sample. As a result, 66.2% of telephone poll respondents came from the RA marzes and 33.8% - from Yerevan.

The data collected during the surveys was processed by statistical methods using SPSS software.

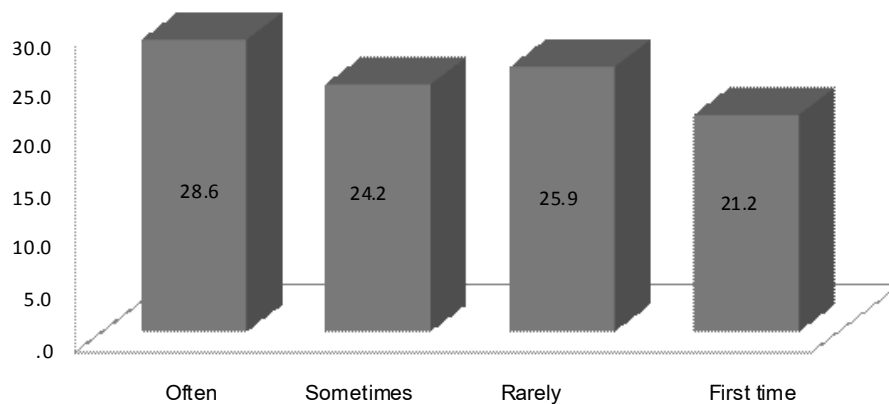
2. MONITORING RESULTS

2.1 FREQUENCY OF USE OF NOTARY SERVICES

In the period of monitoring and sociological survey, citizens frequently visited notary offices to notarize a wide variety of transactions. Notaries mainly notarized donations, certified copies and translations, provided powers of attorney, notarized sales of vehicles and apartments and registered acquisition of property rights. Other frequently occurring transactions included notarization of wills, contracts and mortgage loans. 28.9% of respondents polled by telephone stated that they or their family members have used notary services in the last few years. 6.8% of respondents said they had never used notary services because of financial constraints. The sociological survey also revealed that 25% of the clients in notary offices were not aware that notaries were liable with their property for the lawfulness of transactions notarized by them.

The results of standardized interviews also confirm that citizens go to notaries frequently (see Chart 2).

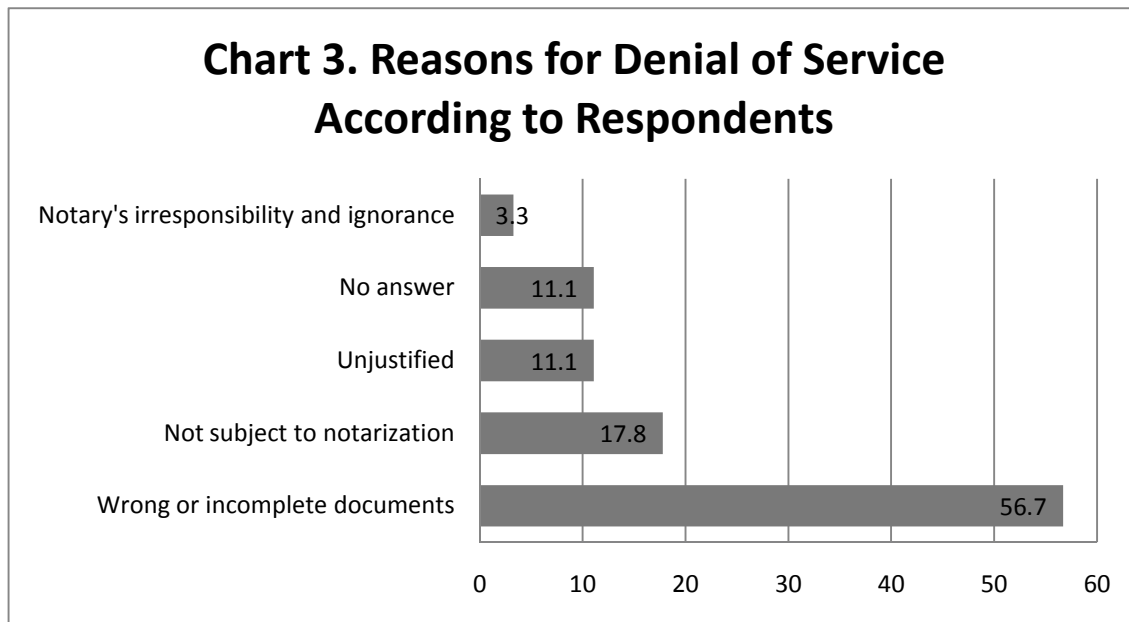
Chart 2. Frequency of Use of Notary Services



According to the chart, 28.6% of respondents stated that they use notary services frequently, 24.2% said they do it sometimes, 25.6% claimed that they use notary services rarely and 21.1% answered that this was the first time they ever came to a notary's office. 33.7% of the respondents, who make relatively frequent use of notary services, stated that they often come to the same notary office. Therefore, these people are mainly satisfied with the services. Observers, who were conducting the monitoring, also reported that there were some citizens who had kept returning to the same notary offices for many years. One of the observers came to the following conclusion as a result of the monitoring: "Citizens prefer to visit the same notary office for notary services, which results in the development of close relationships between

citizens and notaries.” However, it became clear that many citizens are not aware that all notary offices do the same transactions,² and this is why they keep returning to the same office. When asked by observers why they chose this particular notary office, citizens often replied: “We had to come here, because our case is related to wills.” The service fee is also an important factor. Different notary offices charge different fees for same transactions, and citizens tend to go to a notary service where the particular service is cheaper.

There have been cases when notaries denied service to customers. 9.7% of respondents, who have used notary services, reported such cases. According to respondents, there are different reasons for denial of services: 56.7% said service was denied because their documents were wrong or incomplete. In 17.8% of the cases the particular transactions were not subject to notarization, while 11.1% of respondents said the denial was not justified. 3.3% of respondents thought the denial had to do with the notary’s irresponsibility and ignorance (see Chart 3).

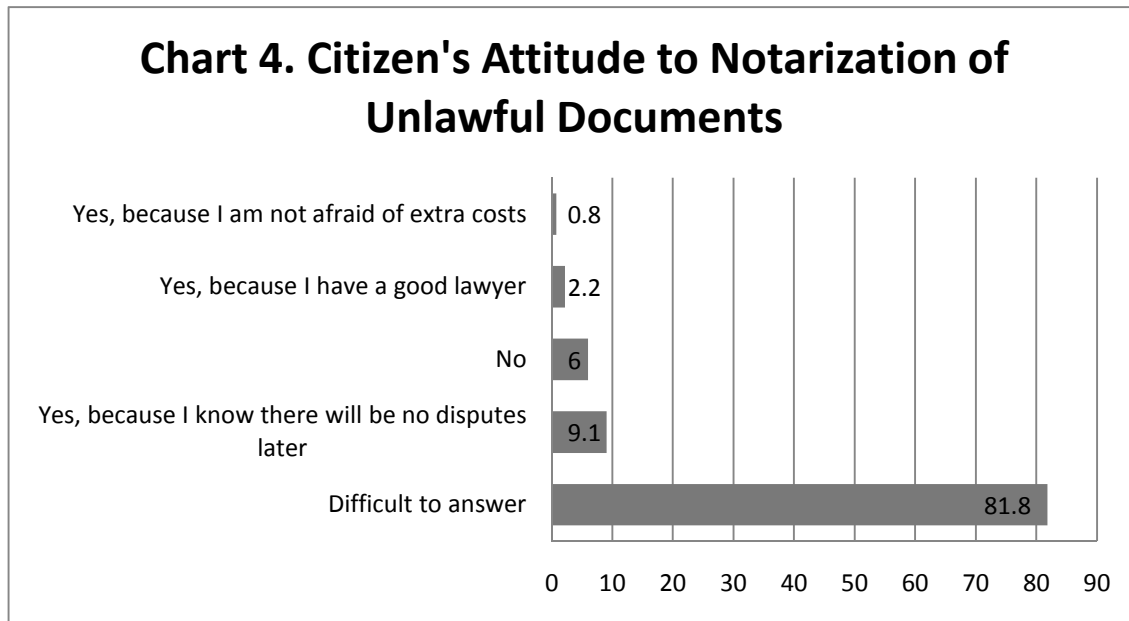


One of the citizens told the observers that a notary had denied service to him/her, because the notary was busy and had no time. He had suggested that the citizen go to a different notary. Our observation also revealed that this particular notary often denied service to citizens and sent them to a different notary. Citizens would leave his/her office confused, and wonder what difference it made to go to a different notary. An observer in the Nor Nork notary office (located at 19 Gaj Avenue) noted: “notaries sent citizens to each other’s offices. A citizen reported that, after providing consultation and charging a certain amount, a notary advised him

² According to citizens, the notary office of the Kentron notarial district located on Baghramyan Avenue has monopoly on transactions involving wills. However, according to the RA Justice Minister’s order of 11.09.2008, all notary offices in Yerevan have the right to notarize transactions involving wills.

to go to another notary, who also charged that citizens. In a different instance, when a citizen, who is a professional translator, submitted his/her translation to a notary for certification, the notary sent it to a translator to be translated again, without any explanation (according to the citizen).”

A citizen also confessed to observers that he/she tried to complete an unlawful transaction, but the notary refused to notarize it. This fact indicates that not all citizens possess an appropriate level of legal knowledge. This is clearly evident in Chart 4.



The Chart shows that, when asked whether they would want a notary to notarize a document automatically without correcting the parts that are against the law, or to notarize a document that is against the law and to leave the customer with a risk of future disputes, 81.8% of respondents found it difficult to answer. 12.2% of respondents said yes and only 6% of respondents gave an unambiguous “no” as an answer. This is extremely alarming, because the quality of notary services depends on the level of citizens’ legal awareness and on the standards that citizens demand. Citizens get the quality of services that corresponds to their values (giving additional money instead of a thank you, using family ties or friends, solve problems by circumnavigating the law, etc.). It is obvious that these circumstances breed risks of corruption.

2.2 SERVICE CULTURE

The monitoring revealed that discipline is not enforced in many notary offices. Notaries are usually late for work. For instance, according to an observer who worked at the Nor Nork notary office at 19 Gaj Avenue, “none of the three notaries showed up before 9:20, and the last notary arrived at 9:40, while customers waited in line in front of the door since 9:00.” Other observers reported the same situation in the Kentron notary district’s notary office at 21 Koryun Street. “Both notaries came to work later than the time set by themselves. The first arrived at 9:20, and the second – at 9:30.” This lax discipline is typical not only for notaries in Yerevan, but also for their colleagues working in the regions. An observer in the Armavir notary office noted on 18.08.09 that both notaries came to work at 9:30 instead of 9:00. One can conclude that most of the notaries are late for work, and some notary office do not have signs indicating their working hours and break hours.

This shows that notaries do not have a culture of customer service, which leaves citizens unsatisfied.

The telephone poll revealed that 11.2% of respondents were not satisfied with the notary services they had received. It is noteworthy that 52.8% of these people said their dissatisfaction was caused by long lines in notary offices. There was a case when a citizen decided not to use notary services at all because of long lines. Standardized interviews revealed the following main reasons for long lines, as identified by respondents: large number of customers (56.6%), insufficient number of notaries (4.8%), notaries working slowly (4.5%), lack of discipline on the part of citizens (4.3%), etc. 13.9% of respondents thought long lines were caused by a lack of waiting lists/sign-up procedures. Observation showed that in many notary offices there really were no procedures to control the lines. In some offices, even if there were people who had signed up in advance, they could not get in, because there were others waiting outside and no one would let them go first.

In one of the notary offices in the Kentron district (located at 21 Koryun Street), secretaries signed people up in waiting lists, but they would ask approximately seven citizens to come at the same time. According to an observer in that office, “almost everyone was asked to come either at 15:00 or 17:00: Often, some people came, who had signed up in advance, but if the notary was busy, they would be asked to come the next day. They were told that by the time the notary finishes his current work, it would be the time to see the next person on the waiting list. As a result, about half of the people’s work would be postponed. The break was supposed to be from 13:00 to 14:00, but it lasted until 14:20, while citizens waited outside. They would first see their friends or relatives and their business would take 5-10 minutes to complete, whereas other citizens’ business would take no less than two hours. Often, lawyers would bring clients, and lawyers would go in and out of the notary offices freely, even if there were customers in the office.”

In another notary office in the Kentron district, there was no procedure for signing people up at all. Moreover, as one observer noted, “the notary was screaming at an old man waiting in line, because he was upset for having to wait for a long time while others constantly jumped the line and went into the notary’s office.” In this particular notary office, the notary’s friends, lawyers and real estate agents went in without having to wait and completed their transactions very quickly, while other citizens’ business with the notary usually took anywhere from 30 minutes to two hours. According to an observer, “there was blatant discrimination. Discrimination was obvious also in connection with the charged fees.” Therefore, it is understandable that some customers complained about notaries being arrogant, rude and indifferent.

Even though the majority of respondents (75.1%) said they wanted to sign up in advance, the procedure of signing up in advance simply does not exist in some notary offices (such as the Nor Nork office at 19 Gaj Avenue). Moreover, when citizens ask to be signed up in advance in order to save time, notaries refuse to do that.

Similar dissatisfaction with the signing up in advance was reported by observers who had conducted monitoring in the regions. For example, customers in the Gyumri notary office asked to be signed up in advance, to be included in waiting lists, in order to have a more civilized and better experience in notary offices, like in some European countries. However, the following note, made by an observer on 31.08.09, indicates that it is still too early to talk about European standards in the service culture in Armenia: "Since notaries worked with their doors open, it became clear that notaries treat their customers with contempt."

54.1% of respondents were fully satisfied with the existing procedures of receiving citizens in notary offices. Others complained about these procedures in one way or another.

Citizens were dissatisfied with both the quality of services and the way they were treated by notaries. Citizens complained that notaries tend to complicate any and every transaction intentionally, thus making the people go through unnecessary trouble. Once they start notarizing a transaction, many notaries fail to provide complete information to citizens about their rights and the consequences of these particular transactions.

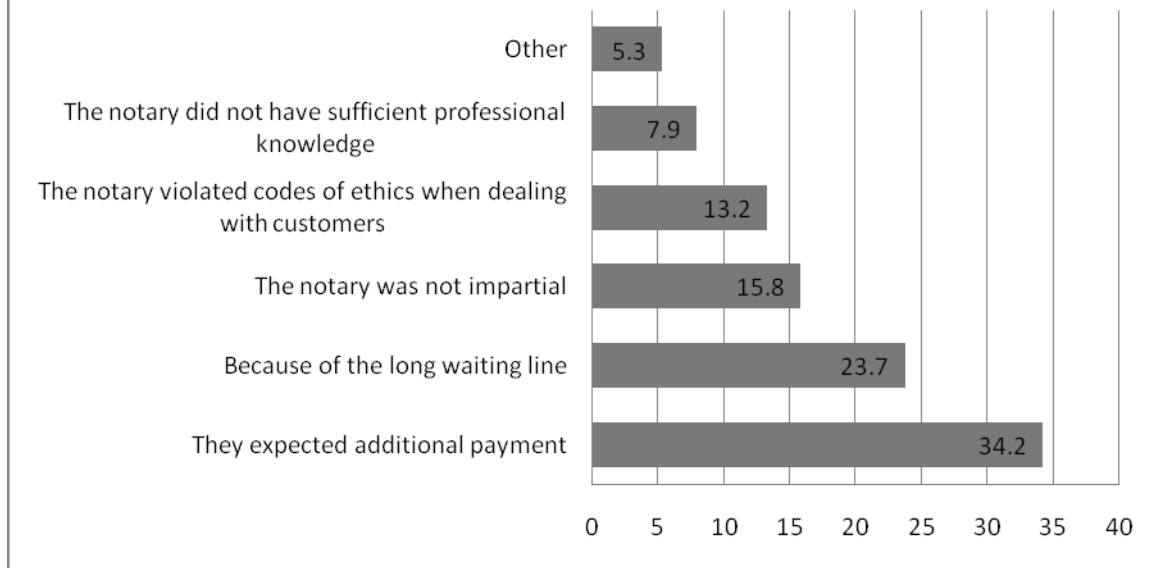
In general, the physical conditions of notary office buildings create additional difficulties for serving the public properly. One of the observers noted: "Of all the notary offices I had visited, only the one at 14A 1st Alley off Baghramyan Avenue complies with the building codes of the last few years, including the requirement to make the premises accessible for people with disabilities. The private rooms of notaries are renovated and properly furnished. However, other notary offices (such as Nor Nork or Malatya-Sebastya) do not have a waiting room and their corridors are not renovated."

There are two notaries working in the Gyumri notary office. They do not have separate private rooms. Therefore, the two notaries receive citizens in the same room without privacy. The Nor Nork notary office (at 19 Gaj Avenue) is located in the municipal building, the offices of notaries and secretaries are small, the waiting room is very narrow, and there were no chairs for the people who were waiting during monitoring. Citizens waited just outside the door of each notary's office, where they could hear and see clearly everything that was taking place inside. Citizens complained that there was no water in the waiting rooms for people who had spent a long time in line and were not feeling well. Customers in the Malatya-Sebastya notary office also complained that a citizen was sent from 56 Mirakyan Street to the Ajapnyak notary office for translation.

Many citizens were strongly dissatisfied with the provision of notary service and the way they were treated by notaries, and they doubted that notaries had sufficient professional knowledge. 3.2% of the telephone poll respondents said they had experienced legal or other problems after notarizing their transactions, because the transaction or document drawn up in the notary office did not confirm to legal requirements. Most of them (nine people) had gone back to the notaries to complain about this, and in six cases the notaries admitted their mistakes.

The telephone poll also revealed the following (see Chart 5): even though citizens complained that notaries did not have enough professional knowledge (7.9% of the people who were dissatisfied with notary services said this was the main reason for their dissatisfaction), that notaries were not impartial (according to 15.8%), and that notaries violated codes of ethics in the way they treated their customers (13.2%), most of the people complained that notaries expected additional money from them (34.2%)

Chart 5. Reasons for Citizen's Dissatisfaction



2.3 VIOLATIONS

In general, numerous violations were reported in different notary districts. According to observers, the most common and the most obvious violation was the lack of confidentiality in a number of notary offices (Kentron district's offices located at 14A 1st Alley off Baghramyan Avenue, 21 Koryun Street and 29 Mashtots Avenue, Nor Nork district's office at 19 Gaj Street and in Erebuni, Armavir and Gyumri notary districts). Other people like notarial translators and secretaries had unrestricted access to notaries' private offices. Even other customers waiting outside would go in and ask their questions. According to an observer, once they got their questions answered, these people would encourage other customers and tell them: "go in and ask your question, don't mind that there are other customers in the office." Conversations with notaries could be heard in the waiting area outside the office. Notaries would talk to secretaries in the waiting area without even leaving their offices.

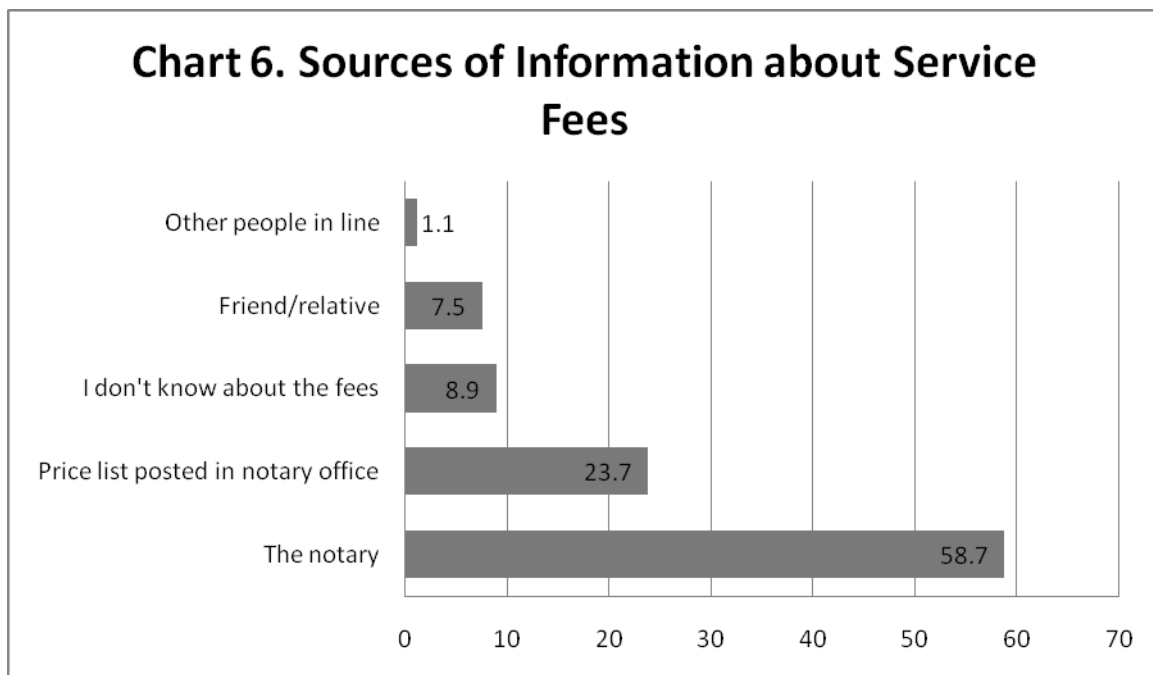
An observed reported the following: "A notary would do several transactions at once to save time. When there was only one customer left in his/her office, the notary would ask the secretary to invite other customers, or customers would come in uninvited." Citizens didn't even know that no one other than the parties was allowed in the notary's office when the transaction was being completed. In many cases, real estate agents would also be present in the office, in addition to notaries, citizens (parties) and secretaries, when transactions were being completed. Observers reported that "notaries would notarize contracts with their doors wide open and no regard for privacy, citizens and secretaries would go in and out of offices when transactions were being completed." Another observer reported: "When I served as an observer in a notary office on August 18, 19 and 20, as part of the monitoring team, I noticed that none of the notaries ever respected privacy while carrying out their duties. Translators go in and out of

notaries' offices very often. They go in when a transaction is being completed, ask questions and leave. This irritates the citizens who are in the office at that time and whose transaction is being interrupted and its confidentiality is being jeopardized, as well as the citizens waiting outside, whose opinions are disregarded. There was also dissatisfaction with the fees."

In the Erebuni notary office, the violation of privacy was such that a French-Armenian customer told our observer: "This is like a street market, I cannot regard this as a notary office." An observer working in the Nor Nork districts notary office at 19 Gaj Avenue wrote: "The notary would simply forget about the existence of the door. Almost all the citizens were served with the door wide open, giving all the other customers an opportunity to satisfy their curiosity."

At the same time, other observers reported the opposite. "Notaries fully respect privacy, despite the fact that there are very few seats." Such positive observations were made by observers working at a Yerevan notary office at 83 Teryan Street and a notary office in Ijevan. Another common violation reported in notary offices (for example, in Nor Nork, Malatya-Sebastya and other notary districts) is that the information posted on the walls is almost illegible for older people and difficult to understand for other citizens as well, because prices are quoted in units that are supposed to be multiplied by the official minimum wage to find out the real prices for notary services.

Therefore, most of the citizens do not even approach the posted price lists and do not read the information posted on the walls. It is much easier for them to ask the secretaries in the waiting rooms. It is not surprising that 49.6% of respondents answered "no" when asked whether they had read the information posted on the walls in the notary office before going into a notary's private office. Also of interest are the answers about where they had found out about fees for notary services (see Chart 6).



The Chart shows that only 23.7% of respondents said they found out the prices from price lists posted in the notary office. The majority of respondents (58.7%) were informed about the fees by the notary himself/herself, 7.5% found out the prices from their friends or family

members, 1.1% - from other people waiting in line, and 8.9% of respondents did not know the fees at all.

There was no sign indicating the office hours and break hours in the Malatya-Sebastya notary district office during the days of monitoring, but the price list was posted. Some of the offices were missing some samples of documents required by law (such as powers of attorney), as well as the order stipulating that the office had the right to deal with wills and the list of documents required for inheritance cases. One of the observers reported that in one particular office, there was no sign indicating the office hours and break hours, while information about notary service fees and state duties was posted in secretaries' room, in a place that was not obvious for customers. Also, the prices and state duties were presented in a form of coefficients. Another observer wrote: "On August 20, 2009, I was at the following notary office, where the office hours were not posted."

Of course, this is not the case in every office. There was an office that had a sign with office hours, price lists for notary services and other information posted on the walls.

The next group of reported violations has to do with the work of secretaries. Secretaries are supplied by "Ajaktsutyun" [Support] Limited Liability Company. They are subject to regular tax laws. According to observers, they usually had the cash registers required by law, but they used them to give receipts only every once in a while, when they noticed observers looking. Instead, they often "willingly" give legal advice, despite the fact that in places like the Erebuni notary office there was a sign saying: "TAKE YOUR DOCUMENTS TO A NOTARY FIRST, THEN SEE [SECRETARIES] FOR TYPING."

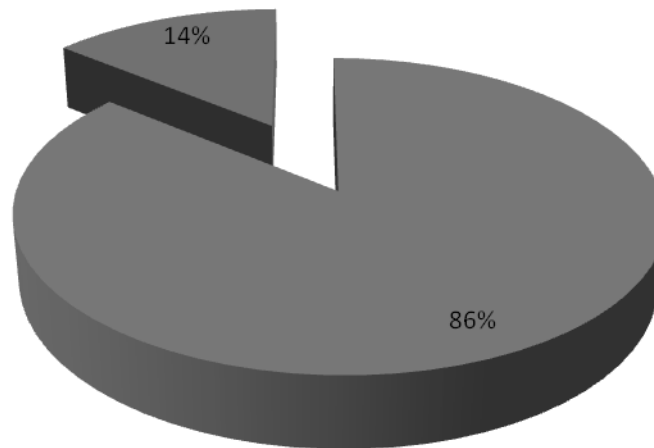
In some notary office, secretaries and notaries did not provide receipts for payments for their services during the period of monitoring. This was the case in the Baghranyan Avenue and 21 Koryun Street offices of the Kentron notary district, where they have copying (50AMD per page) and translation services. Secretaries charged 2,000-2,500 AMD to prepare a power of attorney. They would write these amounts on a piece of paper, then run them through the cash machine at the end of the day and show them to the notary. The copy machine operator and the translator would do the same. According to an observer, "secretaries performed numerous services throughout the day, but only 2-3 citizens were given receipts."

According to observers in the Arabkir notary district, secretaries did not use cash registers during the day of monitoring, but customers leaving notaries' private offices told the observers that the notaries provided receipts, but they didn't take them. An observer in the Nor Nork notary district reported: "Secretaries either do not give receipts at all, or they give receipts for amounts that are three times smaller than the actual amount charged, asking citizens not to tell anyone."

In one of the notary offices, secretaries did not give receipts on the first day of monitoring (21.08.09), but did provide receipts (albeit for small transactions only) on other days of monitoring. The same practice existed in another notary office, where secretaries gave receipts only for print jobs (150AMD per page), as well as in other notary offices. The interviewed customers also complained that secretaries were slow and made spelling mistakes in their documents.

The survey results showed that 85.9% of respondents made use of services provided by secretaries in notary offices (see Chart 7). 50.2% of these people were referred to the secretaries by notaries. Citizens are not aware that the law does not require them to use services provided by secretaries. In general, some 15.2% of respondent stated that notaries did not inform them about their rights, responsibilities and consequences of their transactions.

Chart 7. Use of Secretaries' Services



2.4 CORRUPTION RISKS

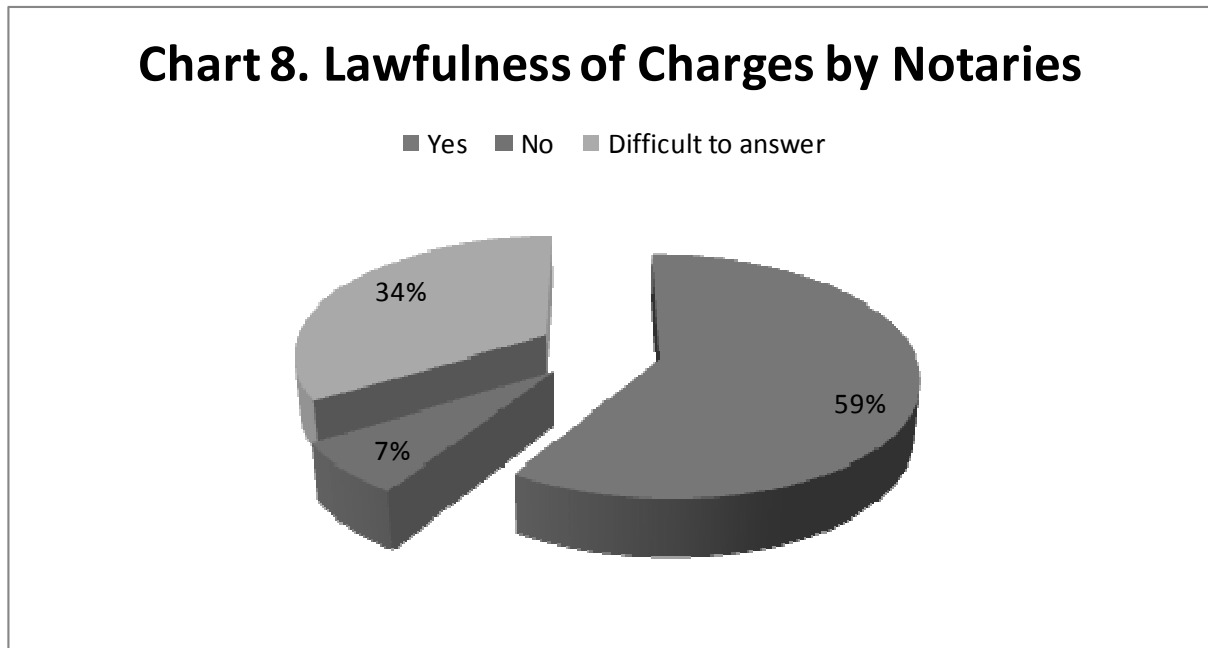
The monitoring made it obvious that citizens are interested in notarizing their transactions in a corrupt way. There is a big variety of transactions notarized in notary offices, and observation revealed that corruption risks are especially high in connection with wills and transactions containing disputes. One can assume that privacy is fully respected when transactions with corruption risks are notarized. In many cases, corrupt transactions are initiated mainly by citizens, and they are done quietly. However, corruption risks result not only from our public's low level of legal awareness and citizens' irresponsible behavior, but also from the shortcomings of the current system of notary services and imperfections of the law, as well as the moral/psychological characteristics of notaries.

A female customer in one of the Yerevan notary offices reported to an observer that a notary in Ashtarak charged 28,000 AMD for a transaction that cost only 5,000 AMD in Yerevan. In Yerevan, a citizen paid 6,000 AMD for a power of attorney, while another stormed out of a notary's office saying: "does it really cost 20,000 AMD to get a power of attorney?" One notary charged 20,000 for a house sale agreement, while the other wanted 25,000 AMD. In another notary office in the Kentron notary district, a pilot complained that he was charged 14,000 AMD, while the price list said he was supposed to pay only 1,500 AMD. He said the notary was taking advantage of the fact that the pilot was late for his flight to Moscow and had no choice but to pay. A few citizens suggested monitoring the Etchmiadzin notary office.

Naturally, customers' allegations do not constitute sufficient grounds for accusing the notaries, but they do shed some light on the situation. When a notary charges different amounts for same transactions and does not give receipts, then doubts and complaints are inevitable. According to a citizen, he had once completed the same transaction but was

charged double the amount. He said the presence of observers made it possible for him to pay less.

This is why a significant number of respondents (34%) found it difficult to say whether the amounts charged by notaries are in accordance with prices stipulated by law. It is also noteworthy that 7.2% of respondent gave a negative answer to that question (see Chart 8).



When putting their signatures in notary registers, 56.4% of respondents paid attention to the amount charged as recorded in the registers.³ 3.8% of these people claimed that the recorded amount did not reflect the amount paid. Six customers said a notary refused to give them a receipt when they asked for one. Customers in one of the notary offices complained that they get no documents confirming their payments.

Observers reported cases of customers signing in registers where no amounts were recorded. According to an observer, few people signed the registers in one of the notary offices, but no amounts were recorded there. Another observer reported that many citizens did not sign the registers, or they signed it but claimed there were no amounts recorded there. The same practice was noticed in a number of other notary offices, where no amounts were written in registers. An observer in the last notary office noted: "When asked if they paid attention to the amount when signing the register, many people said they signed the register but there was no amount written there. One citizen was surprised that he had to sign something. It was mostly lawyers and brokers who signed in front of the right amount."

On the whole, brokers' involvement in notary services can be regarded as an additional risk factor. Some people told our observers that they already know a specific notary and can "come to an agreement" with him/her. Even if brokers are lawyers, this still raises certain

³ 37.5% of respondents did not pay attention to the amount, 6.1% said they did not care about it, which shows their low level of legal awareness. The low level of legal awareness and/or indifference is also evidenced by the fact that only 33.8% of respondents had asked notaries for receipts. Others failed to do so, while 10.2% said they did not need receipts.

suspicious. For example, in one of the offices in the Kentron notary district, there was a case when a married couple couldn't complete a real estate sale deal because they had lost their marriage certificate. Then, the lawyer went in to see the notary, came out of the office and said everything was in order. It is not clear how everything became in order.⁴ In another office in the same district, "there were some people, who loosely fit the definition of a "broker", who "moved by the "desire to help," speeded up the processing of documents for the people who found themselves "in their net" and referred their "protegees" to their preferred notaries." These mediators (as well as friends or relatives) would go in and get served without having to wait in line, even if there were other customers already in the notary's private office."

In any case, the fact is that many people make use of broker services when going to notaries. 9.7% of telephone poll respondents said they had used brokers when dealing with notaries. Therefore, broker services need to be regulated properly, because the old values and moral/psychological qualities do not work any more.

2.5 FOCUS GROUP MEETING

The meeting took place on 09.10.2009. Each participant of the focus group is identified by a letter. Following are the views and opinions expressed by focus group participants.

- A. I am unhappy with long lines. I waste my time waiting for the notary, secretary and translator.
- B. There are some notaries who refuse to notarize documents prepared by me (I am a lawyer) and send me to their secretaries. By doing this, they make their work easier and faster. The notary can simply correct what he/she thinks are mistakes, but secretaries refuse to do that, saying that my electronic carrier may have viruses on it. Therefore, they say, they have to type the whole text themselves.
- C. I would like to mention that notaries categorize their customers as acquaintances and non-acquaintances. They allow brokers to come in without having to wait in line, which is humiliating to other people. Violations of notarial confidentiality/privacy are also blatant: when I am with a notary, other people keep coming in and out.
- D. I would ask that, before making a customer sign an agreement upside down, a notary said: "are you aware of what you signed?" instead of "hurry up, doors are closing." I went to the notary office on Baghramyan avenue, where the notary, in complicity with the broker, made me sign a sale agreement instead of a collateral agreement, without explaining my rights and responsibilities, and I am still suffering from the consequences of this transaction.
- E. I have used notary services in both Yerevan and Rostov (Russia). In Rostov, samples of all contracts are posted on the walls, and so are powers of attorney and other

⁴ According to Paragraph 130 of the order approving the instructions on procedures for notary services, "When notarizing transactions related to property with joint owners, a notary shall verify the identify of owners in accordance with procedures described in these instructions, and require a marriage certificate to verify the marital relationship of spouses; a copy of the said marriage certificate shall be included in the notary file." This order was revoked by the RA Justice Minister's order No. 171-N of 07.09.09.

documents. I have not seen anything like that in the Yerevan offices. If they had them posted, people would not have to face too much red-tape and waste so much time. When you enter a notary office, the whole commotion and the noise make you forget what you came in for, and it is difficult to orient oneself. When every customer has to go in and ask questions of notaries, they (notaries) are also humans and they get really tired by the end of the day, thus becoming unable to serve the people properly.

- F. I also haven't seen any such information posted on the walls. Another thing about passports. The notary working in the 1st Mas district doesn't accept passport copies made elsewhere, even if I had the original passport with me. Meanwhile, they charge 100 AMD for making copies of your passport.
- G. I would recommend that all notary offices should do all types of notary transactions. No matter where you go, whenever there is a question of opening a will, they send you to the Kentron notary district on Baghramyan Avenue. That's why they are always enormous lines there. I have dealt with notary offices in Shengavit and Malatya-Sebastya. It took me 1 year and 2 months to open a will.
- H. I went to a notary in the Arabkir notary office about a week ago, and I saw that two full signed register pages were open and there were no amounts written on them.
- I. I went to the notary office on Teryan Street to notarize a three-line power of attorney. The notary told me that the power of attorney was not made properly and referred me to the secretary. The secretary changed only a couple of words in the document prepared by me, for which I paid her 500 AMD. I went back to the notary's private office, where he/she notarized the power of attorney, charging me 3,000 AMD. Then I told the notary that I also needed the same document in English. The notary told me to go to the translation office next to the notary office on Baghramyan Avenue, have it translated and bring it back to him/her. I went there, got it translated and paid 2,500 AMD for three lines of text. Then I returned to the office on Teryan Street and had the English text notarized, for which I paid another 3,000 AMD. In other words, I ended up spending 9,000 AMD and 4 hours of my time to notarize three lines. The thing is that, if you need something very urgently, you have no choice but to go along.
- J. I had a land lease agreement notarized and I asked the notary for a receipt, which said 10,000 AMD on it. Being a lawyer, I was unable to understand where that amount came from, because there was no such separate type of lease. My calculations showed that I should have been charged 5,000 AMD. So, I think I was overcharged.
- K. I had to go abroad for training and I needed to have my transcripts translated very quickly. I went to a notary office, went to the translators' room, they translated it, and the translator went in to the notary's private office to notarize the translation. When the translator returned, he/she said that the notary had already departed, but he/she had the stamp and can do the notarization himself/herself. I refused notarization done in such a matter, because I became concerned that I may have problems later on.
- L. There was a case when I took my own translation to a notary office to be notarized, there were no mistakes in it, but I had to pay 5,000 AMD for notarization.
- M. I made use of notary services two years ago as well. My grandmother had prepared a will, and the notary asked for 20,000 AMD to notarize it. A day later, it turned out that one single word had to be changed in the will. I escorted my grandmother to the notary office again, and the notary charged another 20,000 AMD for notarizing the "amended" will.
- N. I needed to translate a verdict from Ukrainian to Armenian. It turned out that there is only one certified Ukrainian translator in Armenia. First of all, it took a long time to find him/her, and now I can't understand a thing in the notarized translation of the verdict. I

can understand the Ukrainian original better than its Armenian translation. How could a notary notarize such an illiterate (poor quality) translation?

- O. My grandmother wanted to make a will, and my mother and I went to the notary office on Abovyan street. We told the notary that my grandmother was bed-ridden and we needed the notary to visit her at home. The notary replied that he/she found it unpleasant to visit sick and elderly people. He/she refused to serve us.

3. REASONS AND WAYS OF REGULATION

3.1 MORAL REASONS

Strong financial/material success has become a primary goal in our society's mind, a sign of personal prosperity. However, when material prosperity is proclaimed to be a top goal in a society, but no legal means to achieve that goal are provided, when the proclaimed system of cultural values overvalues the goal to be aspired to by everyone, but the social system restricts the institutional ways to achieve these goals for a significant portion of the society, then deviations from social behavior become more prominent. Old moral norms do not work anymore, while new ones are not established yet. Citizens become demoralized and undisciplined, and have a very low level of legal awareness. The quality of notary services depends on the level of citizen's legal awareness, and it corresponds to standards dictated by citizens. In many cases, corruption risks come from citizens themselves, who try to push social processes out of the legal framework.

On the other hand, the corruption potential is concentrated in public administration. Irregular behavior is more common there, because demoralized people are eager to enter the public administration system, which provides relevant levers to circumvent the existing norms. The loss of collective solidarity and identification with the whole, and the putting of personal interests above everything else contribute to this irregular behavior becoming more common. Some notaries also replace state interests with personal interests, or they pursue other goals instead of the main goals of providing public services. Taking advantage of imperfection of laws, the notary bureaucracy starts working for itself as a result of inaction or red-tape. As corruption spreads in the public administration system, notary levers and resources are used to advance the interests of the select few. This creates a closed system where the logic and morality of authoritarianism and arbitrariness rule.

3.2 LEGAL REGULATION

3.2¹ THE NOTARIAL SYSTEM AND ITS LEGAL REGULATION

Continental law countries typically have a Latin notarial system, which is significantly different from the common law notarial system. Following are some characteristics of a Latin notarial system:

- Notaries provide public services by carrying out certain functions delegated by the state; they act on behalf of the state and under its supervision;
- Notaries organize their activities themselves and are fully liable with their personal property for any damage caused as a result of their activities;
- Notarization of documents is the main function of notaries; notarization of documents gives them public weight and conclusive force;
- Notaries charge fees determined by the state for notarization of documents;

- Notaries get organized in professional organizations (chambers of notaries, associations, unions, etc.); these organizations represent the interests of notaries and oversee the implementation of codes of conduct of notaries;

Armenia has a Latin notarial system regulated mainly by the following instruments:

- RA Constitution,
- RA Civil Code,
- RA Law on Notarial System,
- RA Law on State Duty,
- RA Government Decision “On Approving the Fees for Notary Services,”
- RA Justice Minister’s Order “On Approving the Procedures for Notary Activities,”
- RA Justice Minister’s Order “On Approving the Procedures for Keeping Records in Notary Registers and the Sample of Notary Registers.”

3.2² LEGAL STATUS OF NOTARIES

Notaries are person who deliver public services that contribute to the administration of justice. They carry out notary activities and deliver services provided for by law, on behalf of the state and in accordance with the RA Constitution and laws.

Notaries are independent in their professional activities and are to be guided by law only.

It is prohibited for state bodies or officials or for individual citizens to interfere with the activities of notaries, including in the form of forcing the notaries to carry out certain notary activities or preventing them from carrying out certain notary activities, or threatening or offending the notaries or treating the notaries with disrespect.

Notaries are not allowed to accept full-time jobs or other paid jobs, except for teaching, research and creative activities, while serving as notaries.

3.2³ REQUIREMENTS AND PROCEDURES FOR APPOINTING NOTARIES

Any capable citizen of the Republic of Armenia, who meets the following requirements, may be appointed as a notary:

- a) university-level legal education,
- b) no criminal background,
- c) at least one year of internship as a notary,
- d) passing scores in notary tests administered by a qualifications committee.

The Minister of Justice may also appoint as notaries certain individuals, who have not done a year-long internship and have not taken the test, if these individuals have at least three years of professional experience in the area of notary within the Ministry of Justice system or in the Chamber of Notaries.

Any capable citizen of the Republic of Armenia, who has complete or incomplete university-level legal education and no criminal background, may become a notary intern.

Internship is carried out on the basis of a contract signed between the notary and the intern.

The purpose of qualification tests is to verify that the applicant has the necessary knowledge to work as a notary.

Frequency of qualification tests: Qualification tests are organized once a year. The Minister of Justice may order extraordinary/additional testing to be organized. Qualification tests are announced by the media no later than 20 days before the test date.

The composition of the qualification committee is approved by the Minister of Justice. The committee includes an equal number of the ministry's representatives and notaries nominated by the Chamber of Notaries.

The tests are administered in the Armenian language, in written form and are open.

Applicants may contest their tests scores in the appeals committee, within three days of receiving their scores. The results of appeal must be communicated within two days.

Qualification test results may be contested in a court of law within ten days of receiving them.

Candidates, who have received passing scores, are given qualification certificates within ten days following the date of their test.

Notaries are appointed by the Minister of Justice, with consideration given to the recommendation of the Chamber of Notaries, which must be reasoned and justified.

3.2⁴ OVERSIGHT OF NOTARY ACTIVITIES

The Ministry of Justice is in charge of overseeing the activities of notaries. This oversight may be done through inspections. The Chamber of Notaries is supposed to be informed about upcoming inspections in advance, and its representative has the right to participate in these inspections. Inspections may be initiated by the Minister of Justice or the Chamber of Notaries.

3.2⁵ DISCIPLINARY AND MATERIAL LIABILITY OF NOTARIES

Notaries may be subjected to disciplinary sanctions on the following grounds:

- a) breaking the law or another legal act while carrying out notary work,
- b) opening a notary office outside of their notary district in cases not prescribed by law.

Invalidating a document notarized or approved by a notary, or changing it in a court of law does not lead, in itself, to liability of the notary who had notarized or approved the said document, unless the document was changed or invalidated because the said notary had broken the law or another legal act while doing his/her notary work.

Disciplinary proceedings against notaries are initiated by the Minister of Justice, either at his/her own initiative or on the basis of a recommendation of the Chamber of Notaries, or by the Chamber of Notaries at its own initiative.

Notaries may be subjected to the following disciplinary sanctions:

- a) warning,
- b) reprimand,
- c) strong reprimand,
- d) suspension for up to six months.

Notaries may dispute any disciplinary sanction applied to them in a court of law.

A notary is materially liable only for those damages to persons, who had sought notary services, which resulted from his/her intentional violations.

The Republic of Armenia is not liable for damages caused by violations committed by notaries while carrying out their functions.

Notaries are required by law to obtain liability insurance for at least 3,000 times the official minimum wage.

3.2⁶ PAYMENT FOR NOTARY SERVICES AND TARIFFS

Notary activities and notary services are provided for a fee.

Fees for notary services are set in the RA Government Decision No. 919-N of April 25, 2002. The Decision contains tariffs for notary services by types of notary activities. Some of the tariffs are fixed, while others can be set within a specific range.

Notaries set the prices, fee collection procedures and deadlines within the said tariffs.

Notaries also **charge** state duty for various notary activities, in accordance with procedures and amounts described in the RA Law on State Duty.

Notaries have the right to compensation in the amount of the cost of transportation, post, communication, banking services, maintenance of payment records or collection of evidence, as well as other expenses incurred during their performance of notary duties, as described by law.

3.2⁷ THE RA CHAMBER OF NOTARIES

The Chamber of Notaries is a self-managed, non-commercial professional organization of notaries. All notaries are required to be members of the Chamber of Notaries.

The Chamber of Notaries:

- represents notaries and protects their interests,
- supports notaries in the performance of their duties,
- participates in the administration of qualification tests and takes care of increasing the qualification of notaries.

In order to achieve its objectives, the Chamber of Notaries:

- establishes relationships with state and local self-government bodies, international organizations and associations of citizens,
- provides the Ministry of Justice with recommendations on laws and other legal acts related to notary activities, as well as on amending such laws and legal acts,
- summarizes the results of notary activities to ensure a uniformity of notary practices,
- organizes training for notaries and other activities to increase their qualifications,
- carries out other activities prescribed by law.

The bodies of the Chamber of Notaries are the general assembly, the board and the chairperson.

The Ministry of Justice exercises control over the Chamber's adherence to the law, other legal acts and the Chamber's bylaws.

3.2⁸ NOTARY ACTIVITIES AND GENERAL CONDITIONS FOR THEIR IMPLEMENTATION

When a notary notarizes a document, he/she confirms its lawfulness and establishes its conclusive force. A document notarized or approved by a notary's signature and seal has public recognition prescribed by law and full conclusive force.

Notary activities are to be carried out in an impartial manner, in conditions that are equal for everyone.

Every notary may perform every notary activity, except in some cases specified by law.

Notary activities are conducted in the official (literary) Armenian language. Only documents in the official (literary) Armenian language may be notarized or approved by a notary, unless the law states otherwise. Documents used on the territory of the Republic of Armenia, including contracts giving rise to rights that are subject to state registration, are prepared in the Armenian language only.

If an individual does not speak Armenian, he/she can participate in notary activities through a translator/interpreter.

Any person, who has a qualification certificate about his/her linguistic knowledge issued by the Ministry of Justice and who is trusted by the notary, can serve as a translator/interpreter during notary activities. When notarizing a transaction in a foreign language or providing clarifications to a person who does not speak Armenian, the choice of translator/interpreter must be agreed on with the parties. The parties are responsible for paying for translation/interpretation services.

Translators/interpreters are liable with their property, in accordance with procedures defined by law, for any damages caused by their inaccurate or incomplete translation/interpretation.

When performing notary activities, a notary is required to verify the identify of the physical persons, their representatives or representatives of organizations who are seeking notary services, and make sure they have the capacity and lawful competence to complete the transaction in question.

The identity and capacity of physical persons is determined by his/her ID documents.

The competence and capacity of organizations is determined based on the requirements of the RA legislation and the said organization's bylaws.

Documents to be notarized or approved by a notary must be signed in the notary's presence.

Notaries are required to ask the parties to submit powers of attorney, permits, agreements or other documents required by law or other legal acts that would prove their authority to complete the transaction they are seeking to have notarized.

Notaries use **self-adhesive protective labels** to protect notarized documents from forgery, as well as to protect identifying characteristics in the future.

Self-adhesive protective labels are placed by notaries on every single document notarized by them, regardless of the number of pages in each document.

Notaries record the serial number of each self-adhesive protective label in the notary register next to the record of the transaction for which the label was used.

Self-adhesive protective labels are placed in such a way as to prevent their removal without damaging the document.

Notaries perform the following notary activities:

- 1) notarize transactions (contracts, wills, powers of attorney, agreements, etc.),
- 2) take measures to protect inheritance property,
- 3) issue inheritance right certificates,
- 4) issue property certificates for shares in common or shared property,
- 5) certify copies of or excerpts from documents,
- 6) certify signatures on documents,
- 7) certify the accuracy of translation,
- 8) certify that the person is alive,
- 9) certify the location of a citizen,
- 10) confirm that the person on a photograph and the citizen are the same person,
- 11) confirm the time when documents were submitted,
- 12) transfer applications, statements and other documents of physical persons or legal entities to other physical persons or legal entities,
- 13) accept, keep, transfer or return deposits of money or other valuables,
- 14) take possession of documents,
- 15) provide evidence,
- 16) notarize protocols/minutes of general meetings or meetings of other collegial bodies of organizations.

Notaries have the right to provide other services, including legal assistance, consulting, provide clarifications and legal conclusions on specific issues, draft transactions or legal documents, provide other legal services, as well as other functions that contribute to the carrying out of notary activities.

All notary activities carried out by notaries must be recorded in notary registers.

Each notary activity is numbered separately; this number is required to appear on documents provided by the notary and in the notary's notes about notarization.

Samples of notary registers and procedures for making records in these registers are established by the Minister of Justice.

Notaries must refuse to carry out a notary activity, if

- 1) the carrying out of a specific notary activity is against the law, other legal acts or organization's bylaws,
- 2) the document or the required notary activities are not subject to notarization or approval,
- 3) the law indicates that this particular notary is not authorized to carry out the specific notary activity,
- 4) notary activities are requested by an incapable person, or by a person who does not have the required authority, or by his/her incapable representative or a representative without the proper authority, except in cases provided for by law.
- 5) notary activities are requested by a capable person, but, at that given moment, the person is in such a state where he/she does not understand the consequences of his/her actions or is unable to control his/her action,
- 6) the person requesting notary activities refuses to submit documents required by law or other legal acts for the performance of the given activity,
- 7) the person requesting notary activities refuses to pay the state duty for the specific notary activity or the service fee for other services rendered by the notary,
- 8) notary activities are connected with persons wanted by courts, prosecutors or investigators, persons who are running away from criminal prosecution, or the property of such persons.

Notaries refuse to carry out notary services on these grounds only if they have received official information about the persons being wanted from the Ministry of Justice or from individuals or organizations who are looking for these wanted persons.

When grounds for refusing notary activities are present, notaries must provide written decisions on refusing to carry out notary services, at the request of persons who were seeking notary services. In these decisions, notaries write down the legal grounds for their refusal and indicate procedures by which their decision may be appealed. A copy of the decision to refuse notary services is provided to the person who was seeking notary services.

Decisions on refusing notary services must be reached by notaries no later than on the day when the services were sought, or by the end of the period during which notary activities were delayed or suspended.

CONCLUSION

The sociological study, the monitoring and the analysis of the legal framework, conducted under the Multi-Component Monitoring in the RA Notary Offices project, revealed the following:

3.2.(3.2², 3.2³) LEGAL STATUS OF NOTARIES, AND REQUIREMENTS AND PROCEDURES FOR APPOINTING NOTARIES

Even though the passage of the Law on Notarial System resulted in a transition from a state notarial system to a notarial system providing public services, the state has retained a dominant (one may even say an absolute) role in the regulation of the notarial system. In particular, the state, represented by the Ministry of Justice, is fully in charge of the whole qualification process, appointment and dismissal of notaries, approving the notary districts and the number of notary positions, as well as overseeing the activities of notaries.

Even though the law clearly defines all the requirements that applicants must meet in order to become interns, becoming an intern and going through an internship is fully dependent on the notary's will. On the one hand, the logic of the law implies that eligible persons must be given an opportunity to go through an internship, except in cases when the notary has two interns already. On the other hand, the whole thing depends on the notary's wishes, and the law does not provide any objective criteria for the notary's rejection of an internship offer.

Evaluation criteria are subjective. The passing grade is not clearly defined. The criteria for the justification and reasoning of the decision by the Chamber of Notaries on appointing the candidates with passing grades are also not defined.

The RA legislation does not provide objective criteria for determining the number of notary positions. As a result, this issue is resolved by the regulatory body in a subjective way. Despite the fact that the RA notary system is a member of the International Union of Latin Notaries, this approach goes against the fundamental principles of international Latin notaries.

According to the By-Laws of the International Union of Notaries, "the number of notary offices should be sufficient to ensure a proper provision of notary services and to avoid monopolization of such services..."

According to the law, the number of notary positions is determined by the Minister of Justice, with consideration given to the opinion of the Chamber of Notaries. Since the Chamber of Notaries consists of notaries, their opinion on this subject cannot be objective because of a conflict of interests. The already working notaries would hardly be interested in increasing the number of notaries in the country due to purely commercial and competition-related considerations.

The following table was included in the RA Control Chamber's monitoring report on the Ministry of Justice's use of state budget allocations, its revenues, and management and use of state property. This table illustrates clearly that there is no logical connection between the number of notaries and the population of communities.

Notary Districts	Population of the community, in thousands	Number of Notaries
Kentron and Nork Marash	141.7	9
Shengavit	141.7	2
Erebuni and Nubarashen	128.7	2
Arabkir and Kanaker-Zeytun	209.6	3
Nor Nork and Avan	193.2	4
Malatya Sebastya	141.0	3
Ajapnyak and Davtashen	147.0	2

Given the situation, it is inevitable that:

1. there are long lines in some notary offices, affecting the quality of notary services, which, in turn, causes people to be dissatisfied with notary services. The survey results also confirmed that people were unhappy about long lines;
2. notaries have a monopoly in some districts around the country, which results in them charging the maximum fees for notary services.

3.2.(3.2³) OVERSIGHT OF NOTARY ACTIVITIES

The Ministry of Justice is in charge of overseeing the notary activities. This oversight may be done through inspections. The Chamber of Notaries is supposed to be informed about upcoming inspections in advance, and its representative has the right to participate in these inspections. Inspections may be initiated by the Minister of Justice or the Chamber of Notaries.

An analysis of legal regulations concerning this oversight of notary activities makes it clear that the Ministry of Justice has practically monopolistic rights in this matter, which is not compatible with the notary system's public status. Even though the Chamber of Notaries has the right to initiate inspections, it is deprived of the right to carry out a real oversight function. According to Article 19 of the RA Law on Notarial System, "other states bodies may exercise control over notaries' past or present activities only in cases and within limits specifically prescribed by law." This provision doesn't work properly in terms of its practical application, which results in other state bodies having difficulties or being unable to exercise any oversight functions. According to the RA Control Chamber's report, "Having cited Article 19 of the RA Law on Notarial System, the RA Ministry of Justice did not allow the Control Chamber's commission to verify the lawfulness of actual state duties and fees charged by notaries.

Essentially, the RA Law on Notarial System does not allow external state oversight bodies to review budget revenues from state duty charged by notaries.”

In the first quarter of 2009, the RA President’s Oversight Service examined how the RA Ministry of Justice exercised its function of overseeing the past and present work of notaries. The examination revealed following problems:

- When notarizing lease or collateral agreements involving real estate, some notaries failed to verify properly, as required by law, if other persons had rights to the said property, or the marital status of the persons signing the agreements.
- Some notaries based their decisions to notarize certain transactions on improperly acquired licenses, or made it possible for representatives to sign documents they had no authority to sign.
- Despite the legal requirement, some notary files have incomplete copies of bylaws of legal entities, or such copies are missing entirely, which makes it impossible to determine if the director of the said legal entity was authorized to sign that particular document. In some cases, there were legal entities whose directors were not authorized to sign the specific documents without a decision of the founders’ meeting, but they had signed them anyway.
- In some cases, notaries notarized approved documents by which a community sold, donated or leased its real estate, even though there was no community council decision on sale or lease of such community property. In some cases, documents related to real estate were notarized without a uniform certificate required by law.
- There were cases when registers were filled out improperly, with corrections or with pencil.

The aforementioned cases were checked by the RA Ministry of Justice, and this served as a basis for initiating disciplinary proceedings against the responsible notaries.⁵

According to the RA Ministry of Justice, of the notaries who had committed these mistakes, four were subjected to disciplinary sanctions, and disciplinary proceedings against another notary were initiated in December 2009.

The two cases cited above illustrate that external state oversight bodies can only inspect the procedures by which notary activities are carried out and their compliance with the law. They cannot inspect the lawfulness of procedures by which state duty and service fees are collected. These matters are examined by tax authorities.

Public oversight mechanisms are also missing, which leads to a system that is generally closed and lacks accountability and transparency.

⁵ This data is based on the document HNV-1690 of 09.11.2009 by the RA President’s Oversight Service, sent in response to the letter of the President of the Armenian Young Lawyers Association dated 07.10.2009.

3.2.(3.2⁵) DISCIPLINARY AND MATERIAL LIABILITY OF NOTARIES

The law provides for no grounds for disciplinary sanctions other than those mentioned in Chapter 3.2³. In these circumstances, the RA Ministry of Justice's oversight over notaries' work discipline, adherence to work discipline and performance of professional duties becomes simply declarative, because the law provides for no sanctions for breaches in the aforementioned areas.

With Annex 2 of the Bylaws of the International Union of Latin Notaries, the permanent board of the International Union of Latin Notaries CONFIRMS that moral integrity, strict adherence to codes of professional ethics and continuous professional development are important characteristics of notary activities, and URGES notaries of member-states, who realize the professional challenges they face, as well as the strengthening of competition from other types of activities, to take the following measures:

1. Notarial Councils (Chambers of Notaries) must make sure that the professional conduct of notaries is strictly in line with the codes of professional ethics;
2. Organize regular training for working notaries.

The lack of oversight mechanisms for notaries' work discipline, their adherence to codes of ethics and their performance of professional duties makes it possible for notaries not to respect their work hours and violate codes of ethics on a regular basis, which has been reported during monitoring in notary offices.

It is worth mentioning that, even if there are legal grounds for sanctioning notaries, the sanctioning itself is not an imperative, but rather a dispositive norm. In other words, even if grounds exist for sanctioning a notary, the decision to apply or not to apply disciplinary sanctions is left to the relevant body – the Ministry of Justice or the Chamber of Notaries.

It is worth noting that the four grounds for suspending a notary, described in Article 26 of the law, are the same as the grounds for dismissing a notary, described in Article 17 of the same law. Moreover, in both cases, the issue of suspending or dismissing the notary is left to the discretion of the relevant body.

The analysis of the abovementioned norms makes it clear that all the norms about the grounds for disciplinary sanctions, disciplinary procedures and liability are not imperative, but rather dispositive in nature, which means that the issue of applying or not applying a sanction, or sanctioning or dismissing notaries for the same violation are left to the discretion of the relevant body, which obviously contains great corruption risks.

The law provides for notaries' liability with their property only for damages caused to citizens by intentional violations on the part of the relevant notaries. Essentially, notaries or the Republic of Armenia are not liable at all for damages caused to citizens by carelessness, negligence or improper knowledge of laws on the part of notaries.

Essentially, the institute of notaries' liability with their property is not in line with the fundamental principles of Latin notarial system.

According to Paragraph 11 of Annex 1 to the Bylaws of the International Union of Latin Notaries (Fundamental Principles of Latin Notarial System), "if a notary's negligence or lack of diligence causes damages to the person who was seeking notary services, then the notary is required to compensate this person's damages."

1.2 (3.2⁶) PAYMENT FOR NOTARY SERVICES AND TARIFFS

In practice, notaries do not provide any receipts/documents for the money they charge unless the customer asks for them specifically. In addition, the notarized documents contain no indication of the actual amount charged. This leaves room for abuses, because notaries are able to charge the maximum amount set for the specific service and, instead of that, record the minimum amount for the said service in their registers, thus hiding their real income. In this regard, it would be appropriate not only to provide a receipt, but also put the amount of state duty and service fee on the notarized documents.

According to the RA Control Chamber's report, "In practice, notaries take cash for state duties and fees, without appropriate documents required by the RA Law on Accounting, which makes it impossible to verify the credibility of their tax reports and records (they pay simplified tax in the amount of 20% of their revenues)."

There are different opinions about service fees and state duties being fixed or relatively fixed. There is an opinion, shared by some notaries, that these fees/duties must be determined based on the value of each transaction (i.e. be a certain percent of the total value). International experience shows that his approach is applied in some countries. However, these countries have developed banking systems and financial transparency; also, in these countries, cash is almost never used for large transactions. In the case of Armenia, a significant part of the population does not use the banking system, there is a lot of cash in circulation and a strong tradition of using cash for transactions. In such circumstances, the aforementioned approach would lead to a practice of hiding the real value of transactions to avoid paying large fees and duties.

3.2.(3.2⁷) CHAMBER OF NOTARIES

Even though the law stipulates the principle of self-governance of the notary system, the body in charge of "ensuring the self-governance" of the sector – the Chamber of Notaries – has only formal powers that do not contribute in any way to the self-governance of notaries. Being a body whose membership is required for all notaries, it should have been given lawful powers that would ensure self-governance of the body and turn it into the main regulator of the sector. However, an analysis of the current legislation shows that the Chamber of Notaries does not have the powers of the main regulator of the sector; moreover, the powers delegated to it by law have nothing to do with regulating of the sector. In essence, the Chamber's role is limited to providing non-binding recommendations and conclusions.

The general assembly of the Chamber of Notaries has the authority to approve codes of ethics. However, there are no provisions on establishing a disciplinary committee to enforce these codes. Essentially, the Chamber has no oversight functions, even though the law gives it the right to initiate inspections. In any case, it would have been more logical if the Chamber played a more active role in enforcing its codes of ethics. Experience shows that the Chamber gets very few complaints about notaries. So far, it has received only a few complaints, which have been examined by the board and deemed unfounded. Such proceedings are done orally and no minutes of these discussions are taken.

3.2.(3.2⁸) NOTARY ACTIVITIES AND GENERAL CONDITIONS FOR THEIR IMPLEMENTATION

1. The fact that not every person, who has a qualification certificate about his/her linguistic knowledge issued by the Ministry of Justice, but only those who are trusted by the notary may serve as translators/interpreters, significantly reduces the accessibility of notary services and contains corruption risks. It is completely unclear what the trust criteria are: are they related to the translator's professional knowledge or his/her personal characteristics? Being unfamiliar with the foreign language in question, a notary is unable to judge about the translator's professional qualities, while the use of personal qualities as trust criteria implies a strongly subjective approach. In addition, not every notary office has a translator, which gives advantage to notaries who are located near notarial translation offices.
2. Article 29 of the Law on Notarial Services stipulates that "Notaries may have assistants or other employees..." in order to increase access to notary services. Such assistants or employees must sign labor contracts with notaries.

The law clearly stipulates: "Notary assistants or interns have the right to carry out the following activities:

- 1) receive citizens or examine documents submitted by them,
- 2) provide consulting or other legal services,
- 3) do clerical work in the notary office,
- 4) draft transactions and other legal documents,
- 5) summarize notary practices,
- 6) work with archives,
- 7) other duties assigned by notaries, except for the carrying out of notary activities."

3. Almost all notary offices have secretaries and other technical support staff, whose status and service fees are unclear. Most of these people are employed by "Ajaktsutyun" [Support] Limited Liability Company. 20 of the 25 notaries in Yerevan make use of the abovementioned service provided by "Ajaktsutyun" LLC. A labor cooperation agreement between a specific notary and "Ajaktsutyun" LLC serves as a basis for working in the notary office. Under this agreement, the notary agrees that the company's employee will perform certain duties in his/her office. It must be noted that such agreements do not cover a number of important issues, such as conditions for the use of the notary office space, financial matters, issues of liability for damages caused to citizens by secretaries (for instance, if secretaries lose or damage the original documents provided by citizens), etc. In addition, secretaries charge citizens for their services, but fail to provide them with any documents confirming the payment.

It is worth mentioning that notary staff members do not wear badges with their names and positions, which makes it impossible to verify whether the particular staff member is authorized to carry out the specific task. On the other hand, as a rule, secretaries in notary office not only draft transactions and other legal documents, but they also frequently provide legal consultations, which is something they are not authorized to do. This fact was noted by observers too.

4 Self-adhesive protective labels are given to notaries by the Ministry of Justice, by order of the RA Chamber of Notaries, in return for payment by notaries. It is worth noting that the process of printing these labels is not transparent. It is done without a tender and without appropriate procedures to ensure transparency and to justify the price. In addition, according to some

notaries, the protective labels do not serve their purpose of reducing the possibility of forgery of notarized documents. Therefore, these notaries think it is necessary to stop using these labels.

5 Even though the types of notary activities defined by law are very diverse and, essentially, cover the entire spectrum of notary activities that are typical for the Latin notarial system, the practical implementation of certain notary services creates certain difficulties. Notaries focus mainly on services that are in high demand, but they tend to ignore or are reluctant to provide other notary services that are stipulated by law but are not very common. In particular, it is difficult to get the following services: deposit of securities and money, verifying the time when a document was submitted, passing applications, statements or other documents from physical persons or legal entities to other physical persons or legal entities, providing evidence, notarizing the minutes of an organization's or any other collegial body's general meeting, etc. Sometimes, there are also difficulties with verifying a signature or certifying a copy or an excerpt from a document. There are different reasons for this behavior by notaries; they have to do with the existing business culture in the society and with the low level of legal culture, the insufficient level of notaries' knowledge, or with simple subjectivity, when a notary simply refuses to perform certain services without getting into details, thus protecting himself/herself from hypothetical risks. This also gives rise to the practice of refusing notary services without justification. Even though the law lists all the grounds for refusing notary services, sometimes services are refused even if none of these grounds are present. In these cases, sometimes notaries take advantage of the low level of citizens' legal knowledge and claim that one of the lawful grounds is present. Also not enforced is the requirement to provide a written decision on refusing a service at the request of the citizen.

6. Taking into consideration the positive experience of many countries, it is necessary to expand notaries' functions in the notarization of transactions requiring state registration. In the case of real estate transactions, it would be desirable to make notaries responsible for ensuring the state registration of property rights stemming from these transactions. Using the principle of "one-stop-shop", a citizen can carry out his/her real estate transaction, get it notarized by a notary and receive a certificate of state registration of his/her property right stemming from the transaction. This would, undoubtedly, make it easier for citizens to exercise their rights and will contribute to a significant reduction in corruption risks in the area. Naturally, the introduction of this practice would require that the list of services provided by notaries be expanded and the relevant tariffs be approved.

7. As a rule, the reception of citizens in notary offices is not properly organized, for a number of objective and subjective reasons. On the one hand, most of the notaries do not take any steps to improve the quality of services and working conditions. On the other hand, sometimes citizens themselves are not being helpful. The quality of service may be improved by consistently applying the practice of signing up in advance. At the moment, this practice is applied only for complex cases, which make up about 30% of the total number of transactions. Sometimes, the signed up citizens do not show up on time, which, essentially, makes the whole practice of signing up meaningless.

RECOMMENDATIONS

2.2. (3.2², 3.2³)

1. Clarify the entire process of becoming a notary, from internship to appointment.
2. Define procedures based on objective criteria, and minimize subjectiveness and corruption risks as much as possible.
3. Increase the role of the Chamber of Notaries in the aforementioned matters as much as possible. Use certain objective criteria for deciding on the number of notary positions, e.g. density of population in the specific area, concentration of administrative and economic activities, etc.

3.2. (3.2⁴)

1. Clarify by law the oversight mechanisms and the range of entities with the right to carry out oversight functions.
2. Introduce procedures to promote the transparency of and public oversight over the notarial system.

3.2. (3.2⁵)

1. Expand by law the powers of the Chamber of Notaries as the notarial system's self-governing body, by giving it the powers to oversee the notaries' work discipline, their adherence to codes of ethics and their performance of their professional duties, and establish oversight mechanisms.⁶
2. Improve mechanisms to protect the rights of persons who had sought notary services and bring them in compliance with international standards by provided for notaries' liability not only for damages caused by intentional violations on their part.

3.2 (3.2⁶)

1. Define by law certain specific principles for setting prices for notary services. For example, the fee for a notarized transaction may be:
 - a) a certain percent of the value of the notarized transaction, if the object of the transaction may be valued (the percent must be set by law),
 - b) a fixed amount, if the transaction may not be valued,
 - c) a sum of different values, if there are elements of various transactions,
 - d) a fixed additional payment for especially complex transactions (the law must provide clear description of what constitutes an especially complex transaction).
2. The regulatory body should strictly enforce the legal provision requiring notaries to provide receipts or other relevant documents for the amounts charged, and apply disciplinary sanctions for breaking this rule.
3. Require by law that notaries put the actual amount of paid state duty and service fees on notarized documents.

⁶ A good example is Estonia, where grounds and mechanisms for disciplinary liability are defined by the Law on Disciplinary Liability of Notaries adopted as far back as in 1995. According to the law, notaries may be sanctioned not only for intentional violations committed while performing their professional duties, but also for actions that contradict the universal moral norms or discredit the reputation of notaries.

3.2 (3.2⁷)

1. Expand the powers of the Chamber of Notaries in all areas of the notarial system, making it the main regulator of the system.

2. Make the Chamber more active in the introduction and enforcement of codes of conduct and applying sanctions.

3.2 (3.2⁸)

1. Require by law that notaries notarize translations made by any translator who has a qualification certificate about his/her linguistic knowledge, issued by the Ministry of Justice.⁷

2. Organize the printing of self-adhesive protective labels in accordance with state procurement procedures or other more transparent and competition-based procedures.

3. Ensure that “non-typical” notary activities are also carried out by taking certain measures to this effect, examining carefully all cases of arbitrary refusal to perform certain notary activities and taking appropriate action against them, and ensure access to all notary activities.

4. Require by law that notaries ensure state registration of rights stemming from transactions notarized by them.

5. Require by law that notary staff members wear name badges.

6. Require by law that notaries provide written decisions on refusing to perform notary activities in every case.

7. Require by law that notaries define procedures for receiving citizens that would have to be approved by the body in charge of oversight.

⁷ A significant number of notaries think this is unacceptable, because they are concerned this can lead to abuses by translators.

SUMMARY RECOMMENDATIONS

The analysis of all information pertaining to the notary system reveals that:

- a) there is a public demand for notary services,
- b) there are a number of outstanding problems in the notarial system that have to do with the policy in the sector, shortcomings of legislation, non-transparent procedures and, to a large extent, with the monopolization and lack of competition in some marzes,
- c) the notarial system needs urgent and comprehensive reforms, which would make it possible to improve significantly the quality of notary services,

In this regard, the will to liberalize the notarial system, which can be found in the RA Government's program, can be of vital importance. The full realization of this desire would lead to a comprehensive solution of the existing problems and to significant progress in the area.

