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IV. FINANCE AND INVESTMENT: NEW CHALLENGES AND OPPORTUNITIES *https://vilniustech.lt/bm*

THE LIABILITY OF A NOTARY AS AN ECONOMIC ENTITY PROVIDING LEGAL SERVICES, ENSURING THE INTERESTS OF CONSUMERS

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Abstract. The article examines the problematic aspects of civil liability of notaries of the Republic of Lithuania when performing notarial actions, ensuring the interests of consumers. The principle of personal liability of a notary is revealed, paying attention to the duality of the notary's functions. The notary's activities are analyzed, (not) related to the exercise of public authority powers, reviewing the limits of civil liability of a notary as an economic entity, and the influence of the actions of the injured person himself, raising the issue of liability. In the article, the author raises a rhetorical question regarding the application of indirect liability of the state for damage caused by the notary's unlawful actions, performing functions assigned to the state, focused on the balance of interests of the notary and the state, revealing the importance of the principle of notary independence. The author attempts to reveal the gap in legal regulation in the context of notary civil liability, protecting the interests of both consumers and the notary from unjustified liability.

Keywords: notary, consumer, state, civil liability, damage.

JEL Classification: K20, K36, K42.

1. Introduction

Notaries are involved in many areas of life, from the purchase of property and shares to inheritance, divorce, etc. Notaries help to implement and defend a number of rights and obligations, ensure the legality and legal security of civil relations. When a notary performs his professional duties, legal facts arise that change civil relations. Transactions with real estate approved by a notary change the content and scope of real rights to real estate, approved documents are enforceable, facilitate the process of proof in civil cases and are considered official written evidence with greater prima facie evidentiary power. The professional activity of a notary is specific. In Lithuania, a notary is a person authorized by the state, ensuring the prevention of legality and the protection of the legitimate interests of the state, but at the same time is a representative of a liberal profession, independently organizing his economic activities and personally responsible for his work. The dual public and private status of a notary confirms that a notary is not a typical representative of the government. The state, by transferring certain of its functions to a notary and granting him the powers of public authority, is not liable for damage caused by a notary. The notary is subject to personal liability. In the case of civil liability, the principle of full compensation for damage, restitutio in integrum, is applied to a notary. From the point of view of civil liability, a notary is not considered a state official, although the activities performed by a notary are related to the implementation of public authority functions. Such a dual status of a notary emphasizes the combination of the principles of the free market and state regulation, since the state transfers all responsibility and the costs of notarial activities to representatives of the liberal profession, ensuring the legal security of the state. The mandatory participation of a notary in concluding certain transactions guarantees the state a smaller number of civil cases, reduces criminal acts in the field of property law, facilitates the detection of crimes, and minimizes the likelihood of falsification of the transaction. It is obvious that the activities performed by a notary are preventive, ensuring the legality and stability of civil turnover, which does not cost the state anything, since the notary's expenses are covered by the participants in civil legal relations themselves, and the notary himself compensates for the damage caused. In carrying out his professional activities, the notary is involved in the fight against money laundering and the

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prevention of terrorist financing, performs the registration of real rights, restrictions on real rights and legal facts, supervises the collection and payment of taxes, thereby ensuring the protection of the public interest. It is obvious that in the sense of preventive law enforcement, the state has created certain protective mechanisms, seeking to avoid costly and lengthy judicial disputes ex post facto (Stürner & Murray, 2010, p. 25). In other words, the legislator, seeking inter alia to minimize the risk that transactions will give rise to legal uncertainties, thereby trying to minimize the negative impact on welfare, saves resources that could be used in the legal apparatus (courts), establishing full material liability for persons engaged in independent professional activities, for the performance of functions ensuring the public interest. Thus, the issue of civil liability, in order to protect the interests of a notary from unjustified liability, should be resolved by assessing all significant circumstances: the scope of the notary's exercise of public authority, the influence of the actions of the injured party on the occurrence of the damage. This is important in order to ensure the social well-being of a notary exercising public functions and performing professional activities, guaranteeing the distribution of the burden of compensation between the state, the notary and the injured party. The aim of the article is to reveal the duality of the notary's functions by analyzing the notary's activities (not) related to the exercise of public authority powers in the context of civil liability, reviewing the influence of the actions of the consumer himself, as an injured party, raising the issue of liability within the limits of the notary's professional care and diligence.

The author seeks answers regarding the possibility of distributing the burden of civil liability of a notary, taking into account the actions of the injured party and the application of indirect liability of the state, compensating for damage caused by the notary performing the functions assigned to him by the state. In order to achieve the stated goals, the tasks set for the article are to analyze the relationship between the professional activities of a notary and the implementation of public authority functions with the application of the principle of personal liability of a notary; to assess the content of professional care and diligence in the context of the civil liability of a notary; to identify the influence of the actions of the injured party himself, raising the issue of liability.

2. The relationship between the professional activities of a notary and the implementation of public authority functions with the principles of personal responsibility and independence of a notary

The Constitutional Court of the Republic of Lithuania has noted that the state may perform its functions not only through the system of relevant institutions, which includes state and municipal institutions, but also – to a certain extent – through other (non-state) institutions, which are entrusted (entrusted) with the performance of certain state functions by law or which participate in the performance of state functions in certain forms and ways defined in law (Majūtė et al., 2014, p. 9). In the Republic of Lithuania, the profession of a notary is related to the maintenance of legal order and the performance of certain functions granted by the state. As can be seen from the definition of a notary in the Notary Law, a notary is an authorized person performing state functions established by law (Supreme Council of the Republic of Lithuania, 1992), whose functions are manifested in ensuring legal certainty, order and legal protection. The main duty of a notary is to ensure that illegal transactions are not concluded and thus avoid legal disputes. In this regard, a notary is assigned the status of a state official, which obliges him to protect the weaker party from fraud and error (Mikalonienė et al., 2019, pp. 72–73). However, within the meaning of Article 5 of the Constitution of the Republic of Lithuania, a notary, as a person authorized by the state providing legal services, is not a government institution (On the compliance of Part 3 of Article 23 of the Law on Notary of the Republic of Lithuania (wording of January 23, 2003) with the Constitution of the Republic of Lithuania, 2010, (Constitutional Court of the Republic of Lithuania, 2010). A Lithuanian notary is part of the Latin notary system, therefore the state transfers the responsibility for ensuring the legality of particularly important civil transactions to a private person, recognized as a representative of a liberal profession. In Lithuania, notaries are not typical representatives of the government in terms of the activities they perform. A notary in Lithuania is an economically independent person engaged in independent professional activities, controlled by the state. The dual public and private status of a notary is also proven by the fact that notaries are not a government institution, but entrepreneurs, since they perform public functions through the forms of private actions. In France, according to the French legal system, the activity of a notary is also considered a liberal profession, however, notaries are public sector employees whose function is to register all acts and contracts to which the parties must and wish to grant the authenticity characteristic of acts of public authorities, and to confirm their date, accept them for safekeeping, issue their copies and extracts having the force of an enforceable document. Regarding the status of a notary as a liberal profession, Directive 2005/36/B on the recognition of professional qualifications and the Law on the Recognition of Professional Qualifications Acquired in the EU Member States (The European Parliament & the Council of the European Union, 2005) specifies a separate category of regulated professions, which, due to activities related to the exercise of government functions, did not include the profession of notary (The European Parliament & the Council of the European Union, 2006; Seimas of the Republic of Lithuania, 2015). The classification of notary activities as entities exercising public authority functions was also confirmed by the ECJ in its decision of 12 February 2008 in the case "Commission

of the European Communities v. Federal Republic of Germany" (European Commission & Federal Republic of Germany, 2011, No. C-54/08), stating that the activities of notaries do not include direct and specific participation in the exercise of public authority functions, but the functions they perform are undoubtedly related to the public interest and can be assessed as auxiliary and preparatory activities intended for the exercise of public authority functions.

In Lithuania, the activities of a notary are related not only to the exercise of public functions but also to professional activities, the preparation of legal documents and the provision of services. Documents drawn up by a notary have the force of official documents and are drawn up taking into account the will of individuals and the requirements of the law. The requirement of notarial form is established only for certain transactions, the conclusion and execution of which is of particular importance to society in terms of protecting the public interest, however, a notary may also certify those transactions that the law allows to be concluded orally or for which the law establishes a simple written form (Supreme Council of the Republic of Lithuania, 1992). Article 26 of the Supreme Council of the Republic of Lithuania provides for a notary to make executive records, which are executive documents with the same legal force as a court decision; to approve transactions (contracts, wills, powers of attorney, etc.); to take measures to protect inherited property; to issue certificates of inheritance rights; to issue certificates of ownership of a part of the spouses' joint property; to impose prohibitions on the transfer of property that must be registered; to certify the authenticity of copies of documents and their extracts; to certify the authenticity of signatures on documents; to certify the authenticity of translations of documents from one language to another; to certify the fact that a citizen is alive and is in a certain location; to accept documents for safekeeping; to confirm the time of submission of documents; to transfer statements from one legal entity and individual to other legal entities and individuals; to accept money and securities as a deposit; to accept maritime protests (Supreme Council of the Republic of Lithuania, 1992). Article 1.74 of the Civil Code of the Republic of Lithuania (Seimas of the Republic of Lithuania, 2000) provides for transactions that require a notarial form: transactions for the transfer of real rights to an immovable property and transactions for the encumbrance of real rights and immovable property (for example, purchase and sale of immovable property, donation, exchange, mortgage, usufruct, easement, etc.); marriage contracts (pre-nuptial and post-nuptial); purchase and sale contracts for shares of private limited companies, when 25% or more of the shares of the private limited company are sold or the sale price of the shares is more than 14,500 euros, except for the exceptional cases provided for in the Civil Code of the Republic of Lithuania; other transactions (for example, an official will, mortgage contract, annuity contract, contract on the consequences of divorce (separation of life), declaration on the recognition of paternity, gift contract with an amount exceeding 14,500 euros, contract on assistance in making decisions, advance directives, etc.). Considering the various types of notary activities, it is obvious that the main task of a notary is to prepare authentic documents that have the force of law and, in a broad sense, prima facie evidentiary force for the parties who have drawn them up. The greater evidentiary force of documents is related to the rules of evidence in civil proceedings, but not to the nature of the notary's activities. In Lithuania, in accordance with the provisions of Article 26, paragraphs 2 and 3 and Article 40 of the Notary Act, in Poland, in accordance with the provisions of Article 79 of the Polish Notary Act (Sejm of the Republic of Poland, 1991), notaries perform public authority services only by issuing certificates of inheritance rights, ownership rights to a part of the common property of spouses, issuing executive orders and records, terminating marriage and making a decision to refuse to perform a notarial act. In principle, all such notary actions are performed when there is no dispute between the parties, a notary does not examine disputes between individuals, does not establish disputable circumstances, and in the event that doubts or disagreements arise regarding the rights of individuals or legal facts, he must refuse to confirm such rights or facts (Supreme Court of the Republic of Lithuania, 2020, no. e3K-3-422-378/2020). In such a case, the participation of a notary is related to the will of the parties, which gives such will legal force. In the opinion of the Commission, when carrying out this activity, a notary does not have any decision-making powers in relation to the parties, therefore, the drawing up of an authentic document is the simplest confirmation of the prior agreement of the parties (The Lithuanian Chamber of Notaries & the Council of the Republic of Lithuania, 2024, C-128/21). The mere preparation of documents in accordance with special provisions for official documents does not mean, in relation to the notary profession, that notaries are carrying out activities in the field of public authority. Meanwhile, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, Romania and the Slovak Republic, being the parties supporting the defendant French Republic in the aforementioned case, emphasized that the activities carried out by notaries related to the preparation of documents with evidentiary and enforceable force are a specific expression of public authority, meaning that notaries, in the performance of their public authority functions, are authorized by public authority to draw up and issue authentic documents. Therefore, even assuming that, according to the case-law of the Court of Justice, the first paragraph of Article 45 EC applies only to activities in which the powers to apply coercive measures are exercised, this provision is applicable to the profession of notary because a notarial act is enforceable (European Commission & Hellenic Republic, 2011). It should be noted that the concept of public authority is not clearly defined, and therefore can be understood in both a narrow and a broad sense, relating it

to the implementation of state competences (Prapiestis et al., 2002, p. 955). One of the most important state competences and tasks is to ensure the legality and stability of civil legal relations. It is the notary who ensures the protection of the legitimate interests of individuals and the state.

The significance and specificity of the notary's activities imply the application of stricter requirements of care, caution and diligence to notaries, due to the greater risk of causing damage to their own property and that of third parties. The legislator establishes the strictest personal liability for a notary, since legal facts arise for a notary in the performance of his professional duties, which change civil legal relations. A notary is a guarantor of the legality and stability of civil relations. Such a social legal situation obliges a notary to be an especially careful and caring highly qualified lawyer. The scarce Lithuanian legal doctrine tends to consider the civil liability of a notary to be tortious, since the principle of freedom of contract does not apply to the relationship between a notary and a client, since a notary does not have the opportunity to negotiate remuneration for the services provided. However, in scientific doctrine, for example, J. L. Ober notes the features of contractual liability, when a notary does not have the right to refuse to certify an official document for a client, if the drawing up of such a document does not contradict the norms of the law; and considering the fact that notaries' fees for the services provided are strictly regulated (Ober, 2007, p. 31). In Lithuania, the involvement of a notary in the approval of a notarial act and the inability to refuse to participate in contractual relations or freely determine the coincidence of the terms of the contractual relations and the inability to exclude the contractual aspect from the relations between the client and the notary do not deny the absence of elements of a contractual relationship. Although the Supreme Court of Lithuania still holds the position that the professional civil liability of a notary is tortious (Civil Supreme Court of the Republic of Lithuania, 2007a, no. 3K-3-251/2007; 2004, no. 3K-3-371/2004; 2000a, no. 3K-3-336/2000; 1999, no. 3K-3-398/1999). Meanwhile, German notaries are subject to tortious liability, but there are cases when contractual liability is also applied, based on the principle of a contract in favor of a third party. In Germany, the liability of a notary is regulated by the German Notary Act (Federal Code for Notaries, 2023), which provides for subsidiary liability of a notary, i.e., in the event of negligence of a notary, a notary may be required to compensate for damage only if the person who has suffered the damage cannot obtain compensation in any other way (BNotO § 19, part 1, sentence 2) (Ganter et al., 2009, p. 6). In France, both tortious and contractual liability of a notary is also possible, but French legal doctrine suggests that in order to avoid disputes over what liability to apply to a notary, a third type of civil liability should be recognized – professional liability – and applied to all professionals, thus avoiding the dualism of civil liability (Mikalonienė et al., 2019, pp. 72–73). The Lithuanian legal doctrine establishes the principle that a notary is liable for all the damage caused to the victim, and not a part of it, because in a value sense, the principle of liability for all damage is based on the need to protect the interests of the victim and the real implementation of his right to compensation for all damage (Mikalonienė et al., 2019, pp. 72–73), therefore it is considered that the victim has the right to demand compensation for all damage from <...> the notary. The doctrine emphasizes that from the point of view of civil liability, a notary is not considered a state official and is personally liable on general grounds. The law does not limit the amount of liability, not only material but also non-material damage is compensated (Baranauskas, 2003, p. 60). Based on the principle of full personal liability, compensation must also be provided for lost income that a person would have received if there had been no illegal actions. Also, in the case of civil liability, directly incurred losses, amounts spent as payment to the other party to the contract, interest and remuneration paid for the service provided by the notary must be compensated. The return of remuneration for the service provided is considered a special method of defense of violated rights. Such a conclusion should be drawn, in the case of the provision of services, by providing a special rule regarding the return of the remuneration received. The unusual status of a notary service provider provides an opportunity to consider whether the services provided, in the absence of a contractual relationship between the notary as a service provider and the user as a service recipient, could not be considered quasi-services. If this point of view is accepted, the legal regulation established by the Civil Code of the Republic of Lithuania, which provides for the client's methods of defense when services are not provided or are provided improperly, would become relevant (Mikalonienė et al., 2019, p. 254). The Court of Cassation has indicated that the claim to award the defendant the amount paid to him for the work performed should be assessed as a claim to apply to the customer the remedy established in Article 6.665, paragraph 1, p. 2 of the Civil Code of the Republic of Lithuania, i.e., to reduce the price of the work to zero; such a claim should not be assessed as a claim to compensate for damage, since it is expressed on the basis of the inadequate quality of the work. An entity that believes that it has suffered losses due to the improperly performed work of the contractor has the right to demand compensation for them only after proving all the conditions of civil liability (Supreme Court of the Republic of Lithuania, 2016, no. 3K-3-160-687/2016). Such an interpretation of the Court of Cassation, considering that a notary is a quasi-service provider, would mean that the claim to award the remuneration paid for the notary services performed is essentially equivalent to the claim in Article 6.665, paragraph 1, p. 2 of the Civil Code of the Republic of Lithuania established special method of defense of violated rights and should not be considered as the application of civil liability. The parties to the dispute should prove that

the notary performed his duties improperly (poorly) and justify that this happened due to circumstances dependent on the notary (Supreme Court of the Republic of Lithuania, 2002, no. 3K-7-645/2002). Without proving these conditions, the methods of defense provided for in Article 6.665 of the Civil Code of the Republic of Lithuania could not be applied. It should be noted that in the cases of the Court of Cassation, which assessed the illegality of the service and the compensation for the damage related to it, the issue of the return of the amounts paid was not assessed separately. It is believed that when claiming compensation for losses, the claim to award the paid remuneration in terms of proof is no different from the claim for compensation for damage, since both amounts are awarded together. However, with regard to the calculation of the statute of limitations, a shortened three-year term applies to claims for compensation for damage (Article 1.125, paragraph 8 of the Civil Code of the Republic of Lithuania), while a general ten-year statute of limitations applies to claims for reimbursement of the remuneration paid for the service (Article 1.125 paragraph 1 of the Civil Code of the Republic of Lithuania). Legal doctrine and case law do not provide more detailed information on the legal qualification of the claim for the return of the remuneration paid, however, the separation of the claim for the return of the remuneration paid for the service would be of great importance in the case of a violation of a quality service, when only the remuneration paid is requested due to the provision of an inadequate quality service. Typically, in civil liability cases, the main and largest claim is related to the direct losses suffered by the plaintiff. These losses occur, for example, when a notary approves a transaction, which, if later declared invalid, although it returns the persons to the status quo, the plaintiff can no longer objectively recover the remuneration paid to the notary. The performance of a notarial act consists of several stages: preparation and performance. At the stage of preparation for a notarial act, the notary checks the data of registers and state information systems that are essential for performing a notarial act and protecting the legitimate interests of persons; orders the revision of data from state registers; requests data and (or) documents from third parties necessary for the performance of a notarial act; forwards documents (postal, courier services) at the request of the client; publishes publicly the information provided by the client or information necessary for the performance of a notarial act (Supreme Council of the Republic of Lithuania, 1992). The notary's work at this preparatory stage, regardless of whether the notarial act will be performed or not, is compensated by the client. The compensation received by the notary, as well as the remuneration paid to the manager of registers and state information systems, collected by the notary from the client for the work performed by the manager of registers and state information systems, are not considered the notary's remuneration (income) (On approval of the amounts (rates) of notaries' remuneration for the performance of notarial acts, preparation of transaction drafts, consultations and technical services and the list of cases of exemption from payment of this remuneration (The Government of the Republic of Lithuania, 2023). At the stage of performing a notarial act, the notary's remuneration is paid for the performed notarial act. After performing a notarial act, regardless of whether the act is later declared invalid, the notary's remuneration is included in the notary's income, from which the notary, as an entity carrying out economic activities, pays taxes in accordance with the procedure established by law. It is obvious that the amounts of the notary's remuneration are causally linked to the notary's actions. For this reason, the courts are inclined to award them to the notary in full, linking these amounts to financial losses arising as a result of the notary's unlawful actions (Supreme Court of the Republic of Lithuania, 2017a, no. 3K-3-133-695/2017).

Article 16 of the Law on Notaries provides that a notary is liable not only for his own, but also for the damage caused to natural or legal persons by the actions of his representative and employees of the notary's office in the performance of his professional activities as a notary. According to Article 6.264(2) of the Civil Code of the Republic of Lithuania, employees are persons who perform work on the basis of an employment contract or civil contract, if they act on the instructions of the relevant legal or natural person and are under its control (Supreme Court of the Republic of Lithuania, 2017a, no. 3K-3-133-695/2017). A notary, in order to properly perform his duties, employs employees to carry out his activities, organizes their work and pays them remuneration. Article 6.264(1) of the Civil Code of the Republic of Lithuania provides that the employer must compensate for damage caused by the fault of his employees performing their work (official) duties. The employer is liable for the damage caused by the actions of the employee not only because he controls the employee, but also because he receives a benefit from the employee's employment, i.e., the employee creates added value for him, the recipient of which is the employer (Mikalonienė et al., 2019, p. 58). Article 6:102 of the European Principles of Tort Law also regulates liability for damage caused by auxiliaries (European Group on Tort Law, n.d.). Part 1 of this principle establishes that a person is liable for damage caused by his assistants who performed their functions, if they violated the required standards of conduct. The question arises whether the performance of the functions transferred to a notary by the state is partly not identical to the relationship of an employer and employee, in terms of subordination; should the state, entrusting a notary to perform public functions, not compensate for the damage as an entity controlling the activities of a notary?

It should be emphasized that the law on notaries establishes very broad state powers in regulating the notary profession. The state actively participates in the selection of candidates for notaries, takes care of their qualification improvement, participates in the application of disciplinary liability, supervises the activities of

a notary, etc., and receives material benefits in the form of paid taxes. A notary bases his activities exclusively on the standards and rules established by law, thus ensuring the effective implementation of the preventive justice function, independently taking care of the material and technical issues of organizing his activities, without receiving any remuneration and protection from the state. For example, in the USA, the state must also bear some responsibility for the damage caused by the illegal actions of a notary, because it does not sufficiently regulate the activities of notaries, does not take care of their training and qualification improvement. Indirect state liability is based on the fact that the state has violated its positive obligation to properly control the professional activities of notaries (Mikalonienė et al., 2019, p. 58). In Estonia, a notary is also entrusted with the performance of functions assigned to him by the state, therefore, when a notary cannot compensate for all the damage caused due to insolvency, the state is also liable according to the rules of indirect civil liability. It is obvious that the dual status and activities of a notary raise two-fold discussions in the context of civil liability. By entrusting notaries with the protection of the general interest, the state regulates and supervises the professional activities of notaries, but does not fully protect its partial executor of the functions. Therefore, in order to create a certain balance between the public and private functions of a notary, in terms of liability, in the author's opinion, it is necessary to separate the functions assigned to the notary from other activities performed by the notary and to provide for state liability for damage caused by the notary's performance of the functions transferred to him by the state. Otherwise, can we state that a notary is a person authorized by the state? In such a case, does the state, being a representative of a liberal profession, have the right to exercise control over this profession and activities, when the notary is not an authorized representative of the state? This leads to the question of the application of personal liability, when a notary acts for the purpose of public interest, what is (possible) state liability?

3. Assessment of the content of a notary's professional care and diligence in the context of civil liability

The theoretical justification for the duty of care was formulated back in 1932 in the precedent of the House of Lords of the United Kingdom in the case of Donoghue v Stevenson, in which the court formulated a general rule that every person has a duty of care, therefore the specifics of professional civil liability are partly determined by historical reasons. Although the laws adopted in the Middle Ages provided for immunity for representatives of the liberal professions for damage caused by negligent actions (Hondius, 2015, p. 237), civil liability was still applied to some professionals, but only when the damage was caused by gross negligence. However, over time, both absolute and limited professional immunity were abandoned, recognizing that a professional must also be liable for damage caused by negligent actions, thus seeking to increase public confidence in the relevant legal profession.

The profession of a notary, his work, is an activity related to the risk of causing harm, therefore it is obvious that stricter standards of attentiveness and care should be applied to representatives of this profession, on the basis of which their behavior as a professional is assessed, professional negligence is established or denied (Supreme Court of the Republic of Lithuania, 2019, no. e3K-3-43-378/2019). Nicholas J. McBride (McBride & Bagshaw, 2005) presented two approaches to the duty of care: as a cynical one, i.e., a certain duty of the defendant not to take certain actions in a given situation, and after taking them, to compensate for the damage caused by them and cover the losses, and an idealistic one, i.e., a defendant not to act in a certain way, being sufficiently careful not to take certain actions that could cause harm. For example, when comparing the activities of a notary and an attorney, in the activities of an attorney, an attorney can rely on the duty of care only in a contractual relationship, while representing a client under a contract, while a notary is not bound by any contractual relationship with a client, but this does not mean that a notary is subject to lower requirements for care, diligence or qualification. An attorney is not obliged to conclude a contract with a client, while a notary's refusal to perform his duties may disrupt the implementation of public functions. As shown by the extensive case law of civil cases, the greatest problems arise when it is necessary to establish the grounds for the emergence of civil liability, determining what culpable actions were performed and what culpable actions were performed by the notary, and whether he was guilty. Therefore, it is obvious that Article 6.246 of the Civil Code provides that actions (action or omission) are considered unlawful not only when they violate the obligation established by law or a contract to perform certain actions or to refrain from them, but also when they violate the general obligation to act carefully and diligently. According to Mikelėnas (2003), illegality also includes the violation of a moral duty (Petrazycki, 1995, p. 56), therefore, if a law is not based on morality, it is difficult to expect that such a law will be observed and respected (Rainienė, 2015, pp. 148–171), because a law that does not have a moral basis is a foreign body in society, leading to the legitimization of immoral behavior and, without a doubt, promoting the demoralization of society. When it comes to the values of a diligent and prudent notary, it should be assessed whether there was a professional duty of care, whether the notary did everything that was reasonable to require of him in that specific situation (Supreme Court of the Republic of Lithuania, 2004a, no. 3K-3-11/2004; 2004b, no. 3K-3-371/2004; 2006, no. 3K-3-295/2006), because when performing his professional duties, a notary cannot act only formally, but must take all possible measures to protect the legitimate interests of individuals (Supreme Court of the

Republic of Lithuania, 2017b, no. 3K-3-250-687/2017), since a violation of the duty of professional care is an improper performance of <...> functions, manifested by technical or intellectual negligence or even intentional, which is a basis for civil liability. Thus, when assessing the legality of a notary's actions, the quality of the actions or services of these professionals is presumed, because the activity is performed not by an ordinary person, but by a professional (Supreme Court of the Republic of Lithuania, 2013, no. 3K-3-405/2013), therefore the professional duty of care is the main <...> duty of a notary, requiring the proper performance of professional duties (Čaplinskienė et al., 2019, pp. 69–93). As long as there is at least one assumption that the professional was inattentive and insufficiently careful, the presumption of guilt cannot be rebutted (Supreme Court of the Republic of Lithuania, 2002, no. 3K-7-645/2002; 2003a, no. 3K-7-127/2003; 2013, no. 3K-3-405/2013), such a formulation determines that the liability of a notary in practice balances on the border of liability without fault. Such a general duty of care is owed not only to professionals but also to every person, however, the specificity of a professional's duty of care is determined by the characteristics of the profession, that is, theoretical knowledge and experience. In French doctrine, a professional is understood very broadly <...> as having special abilities <...> performing paid service provision activities <...> using a functional complex <...> the management of which requires professional mastery, which is acquired by completing special education and gaining experience (Jackson et al., 2007, pp. 2–3). It is obvious that the legal qualification of professional activity determines the fact that its subjects begin to be subject to special norms of behavior related to the specialized nature of work, moral aspects of activity, justification of their clients' expectations, ensuring interests and protecting rights (Le Tourneau, 2012, pp. 977–978). Thus, standards of professional conduct are the criteria by which professional conduct, the presence of professional negligence, and adherence to moral principles are assessed, therefore, the establishment of standards of professional conduct is the duty of the state and the relevant professional corporation. The standard of professional conduct can be established using an objective criterion, when the professional's age, theoretical knowledge, and practical experience are not taken into account, assessing whether he acted as an experienced professional would have acted in his place, and a subjective criterion, taking into account the knowledge and practical experience of a particular professional. The objective standard of conduct is explained by the fact that the consent of a professional to perform work for which he does not have sufficient knowledge or experience is equivalent to professional negligence (Carswell, 1997, p. 202), and the subjective one would be considered that the duty of care is not violated. In most states, which seek to protect the interests of a weaker group of consumers, only an objective standard of professional conduct is applied (Sanbar & Pataki, 1979, pp. 690–691), the same standard is followed by Lithuania, therefore the nature of the notary profession also presupposes a higher standard of professional care and diligence, and the specifics of professional activity determine the peculiarities of his civil liability (Supreme Court of the Republic of Lithuania, 1999, no. 3K-3-398/1999). In Lithuanian judicial practice, the interpretation of standards of care is in one case reasonable and logical, in another case sufficiently strict, however, taking into account the fact that professional negligence should be assessed as a way of acting that does not meet the established requirements of professional activity (Supreme Court of the Republic of Lithuania, 2007b, no. 3K-3-582/2007), courts should determine not only the provisions of Article 6.248 of the Civil Code of the Republic of Lithuania. 2. the presence of intent or negligence in the forms of fault indicated, but also other forms of professional negligence and misconduct determined by the specifics of professional activity (Supreme Court of the Republic of Lithuania, 1999, no. 3K-3-398/1999), since in the case of professional negligence and misconduct, establishing the notary's unlawful actions, by which he only contributed to the occurrence of damage, and considering them as the basis for the occurrence of civil liability, would eliminate the possibility for courts to artificially adopt strict decisions in civil liability cases of notaries, in order to artificially establish the guilt of a representative of professional activity, regarding the payment of insurance benefits, and would provide the injured party with the opportunity to receive compensation for damage more quickly and simply.

Professional negligence is generally considered to be an act where a professional fails to ensure a standard of conduct that would normally be ensured by qualified, experienced, and diligent members of that profession in the same circumstances, so a professional cannot plead ignorance of the standards applicable to his or her conduct as a professional (Boroi & Gorunescu, 2010, p. 1221), as the notary's ability to foresee possible negative consequences is therefore of a higher order. Not every professional error can be considered professional negligence and carelessness, therefore it is important to provide criteria for determining professional negligence, carelessness and carelessness, because the available use of all possible means in the activities of a notary is of fundamental importance for the performance of professional activities and the protection of legitimate interests, however, the performance of this duty does not in itself mean that the duties of care, caution and diligence were properly fulfilled, when the data obtained were incomplete and inaccurate, such as the suitability of a specific person's identity document and its presentation does not in itself mean that the notary's duty was properly fulfilled and the actions meet the standards of care, caution and diligence. The duty of professional care, depending on the nature of the functions performed, may relate to both technical and intellectual aspects of the notary's activities. Intellectual aspects of care include the duty

to provide appropriate advice on the legality and appropriateness of the action and to ensure the appropriate structure of the action, to clarify the true will of the parties, to explain the essence to the parties and warn them about the risks, to verify the existence of the conditions for the performance of the action and to properly formalize it (Čaplinskienė et al., 2019, pp. 71–79). Technical aspects of care include the duty to investigate the factual circumstances, to establish the identity of persons, their capacity, the authenticity of signatures, if necessary, to request information from third parties and registers, and the duty to comply with the restrictions on actions, deadlines for performance, and the procedure for drawing up, processing and storing documents (Supreme Council of the Republic of Lithuania, 1992). It is obvious that the totality of intellectual and technical aspects of care ensures the legality and legal certainty of the concluded acts (The Council of Notariats of the European Union, 2008), therefore, improper performance of functions, manifested by technical or intellectual negligence or even intentional, is considered a violation of the duty of professional care. Although technical duties have different content in various legal systems, the problems of personal identity, capacity and authenticity of signatures, as one of the elements of manifestations of carelessness and negligence, are characteristic of all legal systems, and therefore are widely examined in professional civil liability cases. It is noteworthy that Lithuanian case law in cases regarding the liability of notaries for establishing identity is quite demanding. Lithuanian courts focus on documentary investigation, detailed procedures and their mechanical implementation, without granting discretion to notaries (Mitsilegas & Vavoula, 2016, p. 274) in the process of establishing identity. Meanwhile, French courts assess a more diverse range of circumstances. According to a report submitted to the European Parliament by the Council of Notaries of the EU, an analysis of the law of France, Germany, Poland and Romania identified several possible methods of identification: by presenting an official document, based on the testimony of witnesses whom the notary knows personally or whose identity has been established. A similar model of identification is found in US law, where no further identification is required if the notary knows the party to the transaction personally (The Council of Notariats of the European Union, 2008, p. 43), while identification from documents is criticized as unreliable due to the widespread forgery of documents (Alstyne, 1999, pp. 1017–1024). Although Lithuanian cassation practice has stated in abstracto that it is necessary to make maximum efforts and use all measures that do not contradict the law (Supreme Court of the Republic of Lithuania, 2003b, no. 3K-3-764/2003), in concreto Lithuanian courts usually do not require a notary to assess a wider range of circumstances, such as the time of approval of the power of attorney, the profession of the represented person, etc., and do not recognize discretion in choosing possible actions when the examination of signatures has been carried out flawlessly, requiring more intellectual efforts, such as knowledge that the person who approved the power of attorney worked as an assessor who does not have the independent right to approve documents, or a decision to postpone the notarial act in order to obtain a certificate and to make sure whether the party has the original of this document or its duplicate (Čaplinskienė et al., 2019, pp. 69–93). Such a position of the courts, which may lead to a disproportionate burden on professional activities and liability for failure to perform such actions that could not have been performed under normal conditions, raises various discussion situations that only confirm the necessity of analysis. However, practice shows that as long as there is at least one assumption that <...> the professional was inattentive and insufficiently careful, the presumption of guilt cannot be rebutted (Supreme Court of the Republic of Lithuania, 2004a, no. 3K-3-11/2004; 2004b, no. 3K-3-371/2004; 2006, no. 3K-3-295/2006). This is shown quite illustratively by the Supreme Court of Lithuania of 4 July 2019. ruling, in which the notary improperly identified the seller's identity, without checking the signature in the submitted passport and in the previous land purchase and sale agreement, from the conclusion of which 11 years have passed, during which the person's signature could have changed for objective reasons, the court required such specific knowledge that is not typical of this profession, which is not even required from a handwriting expert, and applied an extremely high standard of care and diligence, i.e., applied liability without fault. Therefore, the question arises whether the concept of the "lower limit of error" is not set too strictly in Lithuanian court practice and whether the bar of the standard of legal professional conduct is not set too high, in order to protect the injured party from the notary's insurance claim? In both Lithuanian substantive law and case law, when implementing the absolute model of a notary as an investigator of documents and evidence, taking into account the context of the situation and the evaluative nature widely assessed by these professionals, it would be appropriate to establish legally defined boundaries of document investigation, without absolute standards of legal conduct of a notary, and to establish the criteria and content of the duties of professional care and diligence.

4. The influence of the actions of the injured party (consumer) on the issue of liability

The jurisprudence of the Constitutional Court of the Republic of Lithuania holds the position that in protecting and defending human rights and freedoms due to damage caused by unlawful actions of private and public persons, the institute of compensation for damage is of particular importance. The necessity to compensate for material and moral damage caused to a person is a constitutional principle that imperatively requires the establishment by law of such legal regulation that a person who has suffered damage as a result of unlawful actions could in all cases demand fair compensation for that

damage and receive that compensation (Constitutional Court of the Republic of Lithuania, 2006). Compensation for damage is always pecuniary. Compensation for damage aims to return the person who suffered it to the situation that existed before the violation, however fair compensation for damage also means that when resolving disputes over compensation for damage, the problem of distributing compensation for damage and losses is important. Article 6.248 of the Civil Code of the Republic of Lithuania. 3 d. The general duty of every person to be careful and prudent is established, to the extent necessary under the relevant conditions, taking into account the essence of the obligation and other circumstances. The degree of this duty is not the same for all persons. Depending on the person's activity, the assessed criteria for care and careful (prudent) behavior are different. The specifics of the professional requirements applied to the professional activities of a notary and the peculiarities of fault as a condition for the civil liability of a notary are determined by the social and legal status of the notary as a professional. The actions performed by a notary change civil relations. As a result, the greater risk of causing damage to both his own and third-party property obliges the notary to establish stricter requirements for care, caution, diligence. The Supreme Court of Lithuania tends to apply a particularly strict standard of fault for carelessness, carelessness, inattention, etc. in professional civil liability cases (Supreme Court of the Republic of Lithuania, 2000a, no. 3K-3-336/2000), comparing the professional's behavior not with an ordinary person, but with a model of the possible behavior of a specialist in that field in the same situation. When a person's activity is his professional activity (Mikalonienė et al., 2019, 153–163), professional error, even in the mildest form of fault (Supreme Court of the Republic of Lithuania, 2000b, no. 3K-3-1345/2000) is a very specific element of liability, which precisely notes that the debtor of the obligation is a professional in his field, from whom the best knowledge of his profession is expected. When assessing fault, the actual behavior of the person and a hypothetical objective standard of behavior of the person are compared with each other, raising the relationship between the actual behavior of the professional who caused the damage and a certain standard (Mikalonienė et al., 2019, pp. 236–237). The Court of Cassation has clarified that the unlawfulness of actions can be understood not only as nonperformance or improper performance of an obligation established in a contract or law, disregard for the requirements of the law, but also as a violation of the general duty to act with care (Seimas of the Republic of Lithuania, 2000, Article 6.246). In the long term, it may sometimes be impossible to adhere to the established <...> standard in absolutely every situation, although the <...> standard leaves no room for excuses (Goldberg & Zipursky, 2016, p. 747). However, a strict treatment of the professional's fault, when even the slightest mistake is considered the basis for civil liability, should not ipso facto mean that the victim's own behavior should be ignored, left aside, without legally assessing it. Failure to assess other circumstances, including the victim's own actions, excessively expands the boundaries of the professional's liability and distorts the essence of civil liability. The actions of the victim himself, by which he significantly contributed to the occurrence of the damage, should not be ignored solely because the notary, as a professional, is subject to the highest requirements of care and diligence. It is believed that, assuming that not only the actions of the notary led to the occurrence of the damage, the totality of these circumstances should not be completely ignored. It must be assessed whether the danger was foreseeable in advance, whether it could have been realistically perceived and assessed, and whether the victim himself freely chose further behavior that was harmful to him (Ambrasienė et al., 2004, pp. 200–201). Risk assumption is understood as a real assessment of the risk of damage occurring and a decision of free will to act in a manner of his own choosing, foreseeing the possibility of damage occurring, but without abandoning his intentions. A person does not show that he seeks damage, but he realizes the dangerousness of the behavior or situation, therefore it is necessary to assess to what extent the victim himself contributed to the occurrence of the damage, whether he agreed to the occurrence of the damage, i.e., assumed the risk. It should be noted that not all victims are equal, which makes the actions of the same victim particularly important and relevant. If the victim himself was inattentive and careless, he should not be protected in the same way as a careful victim who did not contribute to the damage (Mikalonienė et al., 2019, pp. 148–149). It is undeniable that a notary is inclined to apply civil liability for any type of negligence, however, the application of civil liability should be based on the assumption that not only the notary, but also the consumer of the legal service is a reasonable and rational person seeking benefit and if he behaves in a way that he should not normally behave, there is an assumption that not only the notary's actions determine the occurrence of damage. When determining the notary's fault, its degree and form, no more should be required than from any other, i.e. a person with special knowledge, because after all, a notary is only an expert in law, and not in all areas, and therefore is not obliged to be responsible for such negligence that would not be noticed by a professional in that area, for example, a spelling professional, and to assume responsibility for the actions of the injured consumer himself (Mikelėnas, 2003, p. 340), in which the latter contributed and is guilty of causing the damage. In Article 6.248 of the civil code. 3 established the concept of objective fault, when fault is presumed and a person is considered guilty if his actions, or the actions of other persons for whom he is responsible, cause harm to persons. Meanwhile, in Austria, the position of the concept of subjective fault prevails, when the standard of reasonable conduct of the offender himself is taken into account, but if the offender is simply incapable of acting in this way <...> liability does not apply to him,

because there is no fault in his conduct. That the subjective element of fault should not be completely ignored is also confirmed by Article 4:102(2) of the Principles of European Tort Law (hereinafter –PETL) (European Group on Tort Law, n.d.), which provides that the ordinary standard of fault may be adjusted, taking into account special circumstances that the person could not have foreseen or acted upon. In 2001 when considering the draft law on the law of obligations of the Republic of Estonia, it was also proposed to establish the subjective concept of fault in the law, based on the fact that society cannot demand from a person to act in a way that this person is subjectively incapable of acting, and then apply liability to him for what was impossible for him. It is obvious that the existence of fault is always a matter of evaluative nature, which must be assessed in each specific case. Was the notary really at fault, and, if so, to what extent did the notary contribute to the occurrence of the damage and to what extent is the consumer himself at fault. Article 6.253, paragraph 5 and Article 6.248, paragraph 4 of the Civil Code of the Republic of Lithuania provide for the possibility of assessing the extent to which the victim himself contributed to the occurrence of the damage, and Article 6.253, paragraph 1 of the Civil Code of the Republic of Lithuania also provides for the basis for not applying civil liability or for fully or partially exempting a person from civil liability. Article 8:101, paragraph 1 of PETL also provides that liability may not be applied or the amount of damage to be awarded may be reduced to the extent that it is established that the victim is also at fault (having regard to the victim's contributory fault), and taking into account other circumstances that may be important for establishing the victim's liability or reducing it if he himself had caused the damage (Mikalonienė et al., 2019, pp. 232–233). The determination of the notary's fault does not in itself mean that the injured consumer who contributed to the damage should be generally exempted from the obligation to compensate for the damage or compensate it in a smaller amount, therefore the courts must assess whether, despite a certain negligence of the injured consumer, the notary did not act in a way that would have prevented the damage (Mikalonienė et al., 2019, pp. 236–237). It is obvious that to state that the fault of the injured consumer himself never matters if the notary is a professional is unfounded, since the finding of guilty actions is determined by different factual circumstances. To resolve such situations, the institute of mixed fault should be applied, the norms of which are provided for in the general rules of civil liability, without making exceptions in the context of professional activities. It would be unfair not to apply the mixed fault institute to a professional, which in the case of professional civil liability would be considered a defense measure for a notary in order to avoid the obligation to compensate for the damage or to reduce the percentage of the damage to be awarded to him. Otherwise, negligence of participants in civil turnover would be encouraged at the expense of professional representatives.

5. Conclusions

1. The dual status and activities of a notary raise twofold discussions in the context of the civil liability of a notary. Different interpretations of the content of the notary's activities distort the concept of civil liability of a notary as a state-authorized person performing public functions, but being a liberal profession. The uncertainty of the concept of public authority raises a kind of legal imbalance, when the CJEU links the public authority function of a notary with the application of coercive measures, while Lithuanian national law links the implementation of public authority functions with the drawing up of authentic documents, which ensure the legality and legal security of civil transactions. Based on the definition of the concept of a notary provided for in the Law on Notaries, we see that the functions performed by a notary in Lithuania have both a public and private nature, and the lack of separation of these functions prevents the possibility of demanding that the state assume responsibility for the performance of functions transferred by the state to ensure the public interest. It is believed that in the case of duality of notary functions, partial responsibility of the state, as an entity exercising control over notaries' activities, could be considered by applying the institute of indirect liability. Otherwise, the supervision and control of the state, as a representative of a liberal profession, independently and economically independently carrying out their professional activities, is a pointless and excessive action, increasing state costs, and does not guarantee legal security either for the notary, as an economic entity, or for the client, as a recipient of legal services. The state, as an institution administering justice, must not only protect the rights and freedoms of consumers in the event of damage caused by an economic entity through illegal actions, but must also ensure and guarantee the social well-being of entities implementing public functions and be responsible for the damage and compensation for losses caused by controlled entities.
2. The specifics of the notary's activities determine that special norms of conduct are applied to the notary, related to the moral aspects of the activity, ensuring the interests of consumers and protecting rights. When assessing the legality of the notary's actions, it is presumed that the actions are performed not by an ordinary person, but by a professional, therefore, as long as there is at least one assumption that the professional was inattentive and insufficiently careful, the presumption of guilt is not rebutted. Such a formulation determines that in practice the liability of the notary balances on the border of liability without fault, when specific knowledge not characteristic of the notary profession is required from the notary, for example, when assessing the identity of a signature and its variation, establishing the identity of a person. This is also illustrated by the practice of Lithuanian courts,

when in cases of establishing the civil liability of notaries, only the form of fault (intention and negligence) is assessed, without assessing a more diverse range of circumstances, for example, actions that could not be performed under normal conditions without special expert knowledge, which have a decisive influence on not imposing liability on the notary. It is obvious that both Lithuanian substantive law and judicial practice introduce an absolute model of a notary as an investigator of documents and evidence, with the aim of creating a mechanism ensuring the protection of both the notary's and the consumer's rights. However, the uncertainty of the lower limit of error and the bar of professional conduct standards indicate the possibility of applying a dual standard of care, which in turn may introduce legal uncertainty and imbalance in the professional activities of a notary. Therefore, it is believed that the establishment of the limits and criteria of professional conduct standards would eliminate the possibility for courts to artificially make strict decisions and in many cases establish the guilt of a notary as a professional in his field, making it absolute and requiring specific knowledge not characteristic of the notary profession.

3. Without denying that the notary's conduct should be assessed through the standard of a reasonable and careful professional, it should not be forgotten that the notary's duty, when conducting a legal analysis of the documents submitted by the parties, is to establish the will of the parties and ensure the legality of the transaction being concluded. As can be seen, the notary's establishment of the will of the parties occurs at the free will of the parties by submitting the necessary documents and information to conclude the transaction. It is obvious that the process of the transaction being approved is the totality of the actions of all those participating in it, both the parties and the notary, in which each subject acts at its own responsibility and risk. Therefore, to state that in all cases only the notary's conduct, applying the highest standard of care and diligence, should be assessed, without assessing the conduct of the parties themselves, is legally irrational. The notary's strict treatment of fault, when even the slightest mistake is considered the basis for the occurrence of civil liability, should not ipso facto mean that the parties may act recklessly or in a way that they normally should not act and contribute to the occurrence of damage with their actions. Such a failure to assess the actions of the parties, ignoring and leaving them aside, is an artificial extension of liability at the expense of the professional and a distortion of the essence of civil liability. The purpose of the institute of civil liability is compensatory, in order to return persons to the position in which they were before the violation. Therefore, the assessment of circumstances such as the actions of the debtor and their influence on the occurrence of damage is the basis for exempting the notary from liability or applying the institute of mixed fault and reducing the amount of damage to be awarded to him by a percentage, taking into account the degree of fault of the debtor and the scope of illegal actions.

References

Ambrasienė, D., Baranauskas, E., Vilčinskaitė, D.S., Galvėnas, R., Laurinavičius, K., Norkūnas, A., Papirtis, L. V., Rudzinskas, A., & Baltrukonytė, Ž. (2004). *Civil Law. Law of obligations*. Lithuanian University of Law Publishing Center.

Alstyne, P. J. (1999). *Notary's duty of care for indentifying documents signers. The John Marshall Law Review*, *32*(4), Article 6.

Baranauskas, E. (2003). Civil liability of a notary: Current issues. *Jurisprudence*, *37*(29), 59–65.

Boroi, A., & Gorunescu, M. (2010). Professional negligence and legal liability. In *Annals of DAAAM for 2010 and Proceedings of the 21st International DAAAM Symposium, 21.* Vienna, Austria. DAAAM International. https://www.daaam.info/Downloads/Pdfs/proceedings/proceedings_2010/24460_Annals_1_head.pdf

Carswell, R. (1997). Professional negligence – the sword Damocles. *Northern Ireland Legal Quarterly*, *48*(3).

Constitutional Court of the Republic of Lithuania. (2006). *Resolution No "On the compliance of Article 3 (wording of 13 March 2001) Part 3 and Article 7 (wording of 13 March 2001) Part 7 of the Law on Compensation for Damage Caused by Unlawful Quota, Investigation, Prosecutor's Office and Court Actions with the Constitution of the Republic of Lithuania*" (2006 August 19, Case No. 23-04). Official Gazette Žinios, 2006, No. 90-3529. https://www.infolex.lt/ta/83896

Constitutional Court of the Republic of Lithuania. (2010). *On the compliance of paragraph 3 (wording of 23 January 2003) of article 23 of the Republic of Lithuania Law on Notariat with the Constitution of the Republic of Lithuania* (2010, March 22, No. 34–1620). https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.367830

Čaplinskienė, E., Čiomanas, J., Ražanaitė, S., Matonis, A., Mikiparavičienė, L., Mikaliūkštytė, I., Sakalauskaitė, S., Pudžiuvelienė, R., Brazytė, O., Rinkevičiūtė, R., Bružienė, D., Tiesnesienė, E., Jūrevičienė, D., Remeikytė, D., Zacharevičienė, I., & Stračkaitis, M. (2019). *Notary's Duty of Professional Care. Notariat 29/2019*. Lithuanian Chamber of Notaries.

European Commission & Federal Republic of Germany. (2011). *Judgement of 24 May 2011, European Commission v. Federal Republic of Germany* (2011, May 11, Case No. C-54/08). https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62008CJ0054

European Commission & Hellenic Republic. (2011). *Judgment of the Court (Grand Chamber) of 24 May 2011) failure of a member state to fulfil obligations – Article 43 EC – freedom of establishment – Notaries – Nationality requirement – Article 45 EC – connection with the exercise of official authority – Directive 89/48/EEC* (2011, May 24, case no. C-61/08). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62008CJ0061

European Group on Tort Law. (n.d.). *Principles of European Tort Law*. http://www.egtl.org/docs/PETL.pdf

Federal Code for Notaries (Bundesnotarordnung, BNotO). (2023). *Last amended by Article 3 of the Act of 20 December*

2023 (Federal Law Gazette, No. 389). https://www.gesetze-im-internet.de/englisch_bnoto/englisch_bnoto.html

Ganter, H.-G., Hertel, C., & Wöstmann, H. (2009). *Handbuch der Notarhaftung* (2nd ed.). ZAP Verlag.

Goldberg, J. C. P., & Zipursky, B. C. (2016). The strict liability in fault and the fault in strict liability. *Fordham Law Review*, *85*, 743–788. https://doi.org/10.2139/ssrn.2871328

Hondius, E. (2015). Professional liability. In M. Bussani & A. J. Sebok (Eds.), *Corporative Tort Law: Global perspectives* (p. 237). Stämpfli.

Jackson, R. M., Powell, J. L., Stewart, R., &Allen, S. (2007). *Jackson And Powell on professional liability* (6th ed.). Sweet & Maxwell.

Le Tourneau, P. (2012). *Droit de la responsabilité et des contrats* [Liability and contract law] (9th ed.). Dalloz.

Majūtė, V., Čiomanas, J., Lukaševičiūtė-Binkulienė, D., Šaltauskienė, S., Venclovienė, S., Stračkaitis, M., & Čaplinskienė, E. (2014). *Notariato teisė* [Notarial law]. Druka.

McBride, N. J., & Bagshaw, R. (2005). *Tort Law* (2nd ed.). Pearson.

Mikalonienė, L., Mikelėnas, V., Varapnickas, T., & Žemlytė, E. (2019). *Civil liability of notaries.* Versus.

Mikelėnas, V. (2003). *Commentary on the Civil Code of the Republic of Lithuania* (Vol. 1., Book 6). Justitia.

Mitsilegas, V., & Vavoula, N. (2016). The evolving EU anti-money laundering regime: Challenges for fundamental right and the rule of Law. *Maastricht Journal of European and Comparative Law*, *23*(2), 261–293. https://doi.org/10.1177/1023263X1602300204

Ober, J. L. (2007). Civil liability of notaries. In *Foundation for the development of legal culture* (p. 31). Moscow.

Petrazycki, L. (1995). *Law and morality*. Harward University Press.

Prapiestis, J., Baranskaitė, A., Morkūnienė, G., & Prapiestytė, D. (2002). *Namų advokatas* [In-house lawyer]. State Enterprise Legal Information Center.

Rainienė, V. (2015). Reasons for the inadequacy of the formalist approach in the interpretation and application of law. *Security of Society and Public Order: Proceedings of Scientific Articles*, *13*, 148–177. https://cris.mruni.eu/cris/entities/publication/6b5312df-0daf-4610-9022-0aa046665c78

Sanbar, S., & Pataki, L. (1979). Professional liability: Malpractice of attorneys, accountants, architects, and engineers. *Oklahoma City University Law Review*, *3*, 690–691.

Seimas of the Republic of Lithuania. (2000). *Law on the approval, entry into force and implementation of the Civil Code of the Republic of Lithuania* (2000, July 18, No. VIII-1864). Official Gazette Žinios, 2000, No. 74-2262. https://www.infolex.lt/ta/104630

Seimas of the Republic of Lithuania. (2015). *Law on the Amendment of the Republic of Lithuania Law No. X-1478 on the Recognition of Regulated Professional Qualifications* (2015, December 22, No. XII-2233). TAR, No. 361. https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/327f7040afa711e59010bea026bdb259

Sejm of the Republic of Poland. (1991). *Ustawa z dnia 14 lutego 1991 r. – Prawo o notariacie* [Act of 14 February 1991, the Notarial Law]. *Journal of Laws*, *22*(91). https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19910220091

Stürner, R. & Murray, P. L. (2010). *The Civil Law notary – neutral lawyer for the situation: A comparative study on preventative justice in modern societies*. Beck.

Supreme Council of the Republic of Lithuania – Reconstitutive Seimas. (1992). *Law on Notariat of the Republic of Lithuania* (1992, September 15, No. I-2882). Echo of Lithuania, No. 192-0. https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.1695

Supreme Court of the Republic of Lithuania. (1999). *Lithuanian Supreme Court Civil cases division judge board decision in civil case L. K. v. D. J* (1999 September 27, civil case, no. 3K-3-398/1999).

Supreme Court of the Republic of Lithuania. (2000a). *Lithuanian Supreme Court Civil cases division judge board decision in civil case M. D. P v. R. B.* (2000 March 22, civil case, no. 3K-3-336/2000).

Supreme Court of the Republic of Lithuania. (2000b). *Lithuanian Supreme Court Civil cases division judge board decision in civil case UAB "Vileka" v. AB bankas "Snoras"* (2000 December 13, civil case, no. 3K-3-1345/2000).

Supreme Court of the Republic of Lithuania. (2002). *Lithuanian Supreme Court Civil cases division judge board decision in civil case A. S. v. G. P.* (2002 June 13, civil case, no. 3K-7-645/2002).

Supreme Court of the Republic of Lithuania. (2003a). *Lithuanian Supreme Court Civil cases division judge board decision in civil case R. N. v. R. V., R. B., 222nd Apartment Building Owners' Association, AB DK "KDK Draudimas"* (2003 January 21, civil case, no. 3K-7-127/2003).

Supreme Court of the Republic of Lithuania. (2003b). *Lithuanian Supreme Court Civil cases division judge board decision in civil case R. L. v. Z. S.* (2003 September 3, civil case, no. 3K-3-764/2003).

Supreme Court of the Republic of Lithuania. (2004a) *Lithuanian Supreme Court Civil cases division judge board decision in civil case J. S., I. Z., v. Notary at the 7th Notary Office in Klaipėda V. J. M., AB "Lietuvos draudimas"* (2004 January 21, civil case, no. 3K-3-11/2004).

Supreme Court of the Republic of Lithuania. (2004b). *Lithuanian Supreme Court Civil cases division judge board decision in civil case D. B v. AB "Lietuvos draudimas"* (2004 June 23, civil case, no. 3K-3-371/2004).

Supreme Court of the Republic of Lithuania. (2006). *Lithuanian Supreme Court Civil cases division judge board decision in civil case J. G. v. notary L. T., State Enterprise Centre of Registers"* (2006 June 30, civil case, no. 3K-3-295/2006).

Supreme Court of the Republic of Lithuania. (2007a) *Lithuanian Supreme Court Civil cases division judge board decision in civil case V. V. v. V. P., AB "Lietuvos draudimas"* (2007 June 17, civil case, no. 3K-3-251/2007).

Supreme Court of the Republic of Lithuania. (2007b). *Lithuanian Supreme Court Civil cases division judge board decision in civil case Š. G. v. The Audit Quality Control Committee* (2007 June 22, civil case, no. 3K-3-582/2007).

Supreme Court of the Republic of Lithuania. (2013). *Lithuanian Supreme Court Civil cases division judge board decision in civil case E. P., G. P. v. "If P&C Insurance AS", UAB DK "PZU Lietuva"* (2013, July 18, civil case no. 3K-3-405/2013). Vilnius.

Supreme Court of the Republic of Lithuania. (2016). *Lithuanian Supreme Court Civil cases division judge board decision in civil case UAB "Mano turtas" v. AB "Eurovia Lietuva"* (2016 March 10, civil case no. 3K-3-160-687/2016).

Supreme Court of the Republic of Lithuania. (2017a). *Lithuanian Supreme Court Civil cases division judge board decision in civil case Police Department under the Ministry of the Interior v. R. T.* (2017 March 7, civil case, no. 3K-3-133-695/2017).

Supreme Court of the Republic of Lithuania. (2017b). *Lithuanian Supreme Court Civil cases division judge board decision in civil case* (civil case, no. 3K-3-250-687/2017).

Supreme Court of the Republic of Lithuania. (2019). *Lithuanian Supreme Court Civil cases division judge board decision in civil case B. Š. v. K. S.* (2019 February 14, civil case, no. e3K-3-43-378/2019).

Supreme Court of the Republic of Lithuania. (2020). *Lithuanian Supreme Court Civil cases division judge board decision in civil case* (2020 November 4, civil case no. e3K-3-422-378/2020). Vilnius.

McBride, N. J., & Bagshaw, R. (2005). *Tort Law*. Pearson Education.

The Council of Notariats of the European Union. (2008). *Comparative study on authentic instruments – national provisions of Private Law, circulation, mutual recognition and enforcement, possible legislative initiative by the European Union (United Kingdom, France, Germany, Poland, Romania, Sweden).* https://www.europarl.europa.eu/RegData/etudes/STUD/2008/408329/IPOL-JURI_ET(2008)408329_EN.pdf

The European Parliament & the Council of the European Union. (2005). *Directive 2005/36/EC on the recognition of professional qualifications* (2005, September 7, No. 32005L0036). Official Journal of the European Union, L 255/22. https://eur-lex.europa.eu/eli/dir/2005/36/oj/eng

The European Parliament & the Council of the European Union. (2006). *Directive 2006/123/EC on services in the internal market* (2006, December 12). Official Journal of the European Union, L376/36. https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:376:0036:0068:en:PDF

The Government of the Republic of Lithuania. (2023). *On the approval of the list of the amounts (fees) of the renumeration of notaries for the performance of notarial acts, preparation of draft transactions, consultations and technical services and the list of cases of exemption from payment of this renumeration* (No. 498). https://www.infolex.lt/ta/867543?ref=1

The Lithuanian Chamber of Notaries & the Council of the Republic of Lithuania. (2024). *Judgment of 18 January 2024, Lithuanian Chamber of Notaries v. Competition Council of the Republic of Lithuania* (2024, January 18, Case No. C-128/21). https://curia.europa.eu/juris/document/document.jsf;jsessionid=636976F97A9FD19BE418C7AB2439D782?text=&docid=281789&pageIndex=0&doclang=LT&mode=req&dir=&occ=first&part=1&cid=4957480