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THE PLACE OF THE MACEDONIAN NOTARY OFFICE WITHIN THE MAJOR WORLD TYPES OF NOTARY SYSTEMS

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ABSTRACT

The notary office plays an important role in ensuring legal certainty within different legal systems worldwide. Comparative legal theory distinguishes between several major types of notary systems, most notably the Latin (continental) and the Anglo-Saxon (common law) models. This paper examines the place of the Macedonian notary office within these global classifications. It argues that the notary system in North Macedonia belongs to the Latin type of notary office, characterized by the delegation of public authority to independent and impartial notaries. Macedonian notaries are empowered to draft public instruments with enhanced evidentiary and enforceable value and to perform a preventive legal function by ensuring the legality of legal transactions. Through these functions, the notary office contributes to legal certainty, efficiency, and the reduction of court caseloads. The paper concludes that the Macedonian notary office represents an integral part of the European Latin notary tradition and a significant component of the national legal system.

Keywords: Notary, European latin notary, Anglo-american notary, Macedonian notary.

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Introduction

The subject of this paper is an analysis of the characteristics of the basic types of notary publics worldwide, with a special emphasis on the type of notary publics in the Republic of North Macedonia and the powers of the notary public in non-litigation proceedings. Worldwide, there are generally three types of notary publics: Latin, Anglo-American and Scandinavian.

Macedonian notary law, under the influence of Yugoslav law, adopted the Latin type of notary, which entered Yugoslav law through Austro-Hungarian law. For this reason, the 1996 Law on Notary Activities and the 2007 Law on Notary will generally follow this legal tradition. However, the 2015 Law on Notary openly raised the question of whether Macedonian notary law should and can abandon the Latin type of notary, i.e. whether and to what extent lawyers should be involved in the drafting of notarial documents.

1. Historical beginnings of notary office

Notary or public notary is an old legal profession that dates to ancient Roman law. Even Justinian's codification distinguishes between: scribae (scribes in public services) and notarii (private scribes). The term notary (notarius) was initially used to designate people who wrote quickly (Mojović, 2004, 131). The term notary was first used by Cicero's secretary named Marcus Tullius Tyrus, who developed the system of stenographers to record Cicero's speeches (Shea, 2009, 1). Notary became truly popular in 538 thanks to the Law of Emperor Justinian, which regulated the provision that no contract for sale, loan or gift was valid unless it was drawn up by the tabellion. In this way, the evidentiary power of the notarial act began to grow.

In today's sense, the term notary originates from the so-called tabellioni, associations of scribes who enjoyed public prestige, or from tabellio - public servant (Meyer, 2004, 22). The first notary chambers appeared in the tenth century in Italy, a country in which notary ship experienced full development during the Renaissance of civil law sometime in the twelfth century (Аврамовић, 2006, 37-38). The notary profession began to be built as a legal profession in the first medieval universities (Malavet, 1996, 410). A notary not only had to have the skill of speaking but also had to know the law. The education of notaries in the first law schools included civil law (Corpus iuris civilis) and ars dictandi. The first Ars notariae was compiled in Perugia in 1214. This is precisely why medieval Italy is the cradle of notary ship (Bryne, 2003, 781). At the same time, in Byzantine and Lombard law, the notary institute developed within the framework of unifying the role of the judge and the notary. In this sense, the judge-notary drew up documents for citizens, for example, a purchase agreement in the form of a report that took the form of a judgment, after which a notarial document was issued based on evidence. In the thirteenth century, notarial services also developed in Austria, which was initiated by students from Bologna. In the early Middle Ages, during the reign of Emperor Barbarossa and Pope Alexander III, it is said that the first notaries were appointed (1186 and 1191). In German law, the notary institution spread under the influence of canon law. In South Slavic law (Montenegro, Dalmatia), the notary profession would penetrate through Venice Radonić, 2005, 160). In 1512, the German Emperor Maximilian passed the Imperial Law on Notaries (Festić, 1998, 21-22). Under the influence of canon law and without reception from Roman law, the notary service would be created in England and the Scandinavian countries from the beginning of the thirteenth century. It is precisely because of this that the Anglo-American and Scandinavian notaries will deviate from the Italian German type of notary. On the other hand, the Italian German type

of notary will be further influenced by the laws of Napoleon Bonaparte. This is because in 1803, Bonaparte will bring the famous Loi ventose, which is the foundation of modern Latin notary because for the first time he will separate the notary profession from the judicial profession.

2. Basic types of notary public

Today, there are different types of notary public in the world. The different types of notary public arose because of the differences in the acceptance of this institution in the legal orders at the time of the creation of nation states. Throughout historical development, notary public has acquired characteristics from certain legal systems as more dominant in European and Anglo-American legal culture. In modern notary law, there are three types of notary public: Latin notary public, Anglo-American notary public and Scandinavian notary public. Different types of notary public can only be spoken at a macro level in accordance with the characteristics and specificities of the notary public and the powers of notary public, although each country separately regulates the notary public at a micro level.

2.1. Latin Notary

In continental Europe, the legal tradition is based on the Latin Notary. The Latin type of notary is also the most widespread. A basic characteristic of the Latin Notary is that notaries cannot be lawyers and/or judges at the same time. This is a vision of the Napoleonic law on notarial services from 1803, which will be the cornerstone of the Latin Notary together with the Italian vision of the notary profession as a legal profession (Alain Moreau, 1999, 31). The Loi ventose is the basis of the Latin type of notary because it will establish the concept of the independence of the notary from the court and restore the force of notarial documents (Crnic and Dika, 1994, 38). In this way, the function of certifying documents as a notarial function

will be promoted and the ideal of Byzantine and Lombard law of uniting the notary function with the judicial function will be demolished.

In Latin notary, the notary has the characteristics of a public service (notaries are appointed, have an official seat, legal powers determined and controlled by the state) and the characteristics of a liberal profession (business risk, costs for a notary office, direct collection of awards and expenses, liability for damage).

In the European Union, this type of notary has been accepted by the 28 current member states 21, namely: the Netherlands, France, Belgium, Luxembourg, the Czech Republic, Slovakia, Poland, Hungary, Romania, Estonia, Latvia, Lithuania, Slovenia, Germany, Austria, Spain, Portugal, Greece, Croatia and Italy. In Europe, it is also accepted by Russia and Albania, and by the former Yugoslav republics, which are not yet EU members, like North Macedonia.

Although the profession of notary is not regulated in the EC treaties and in principle falls within the competence of the EU member states, the EU does not completely distance itself from it. At the same time, based on the Conference of Notaries of the EU held in 1995, a Code of Conduct for the Notarial Profession was adopted, which established the common elements and fundamental principles of the notarial profession. This Code is not legally binding, i.e. it does not determine the exclusive application of any type of notary. In this Code, a notary is defined as a holder of a public service that is transferred to him by the state authority to draw up documents, whereby he is obliged to ensure the evidentiary force and enforceability of notarial documents.

In Latin notary public, notary services can only be performed by lawyers. In contrast, in Anglo-American notary public, there is no requirement that only lawyers perform notary services. Namely, here they are performed

by persons called "Notaries Publics" who are appointed to this position due to their confidentiality or reputation.

The headquarters of the Latin notary public is in Buenos Aires (Argentina) (Rijavec, 1996, 11). Latin notary public is also known as German Romanian or continental notary public. It is characterized by the fact that the state transfers public powers to highly qualified lawyers (notaries) who perform notary services as a free profession, neutrally, protect the interests of all parties and are holders of public powers. Notaries, according to this type of notary public are economically interested and flexible.

In Latin notary, the notary is not only a verifier of facts but also a lawyer who should help avoid expensive and lengthy court proceedings that waste time and money on the parties and other participants in the proceedings. The goal of notaries is to increase legal certainty in legal transactions as well as avoid disputes through professional drafting of legal acts. For this reason, the notary service in Latin notary is a classic preventive protection service.

The Latin type of notary can be found in two forms: the model of notary as a free profession and the model of lawyer - notary (Softić, 2007, 99-100).

The model of notary as a free profession is a pure model of Latin notary. The basis of this concept is the autonomy and independence of the notary service. According to this model, the notary is a person of public trust who impartially and equally represents the interests of all parties in the procedure.

The lawyer-notary model is a rarer type of Latin notary and is characterized by the fact that the lawyer can also perform notarial work. This model will appear in the eighteenth century in Prussia. The reason

for the emergence of this type of notary is the inability of lawyers to survive financially, which is why they were also assigned notarial duties. This solution will later enter the Federal Ordinance of German law in 1961. The fact that this type of notary allows the dual function of the same person, the function of a lawyer and the function of a notary, does not mean that in the same legal matter the same person can be both a lawyer and a notary (Schlast, 1998, 29). In fact, in the same legal matter or a legal matter that is in connection with it, the same person can be only a lawyer or only a notary. In this subtype of Latin notary, there is also a ban on the association and connection of lawyers and notaries for the purpose of performing the work together and in the same offices.

2.2. Anglo-American notary

Unlike Latin notary, Anglo-American notary is applied in the countries of the common law system. Here we primarily mean Great Britain, the USA, Scotland and Ireland. In this type of notary, the emphasis is placed on case law. Anglo-American notary is a much more liberal model in terms of providing notary services. According to this notary, the very draft of documents is a private matter, whereby the party, when in need of that work, should contact either a lawyer or a notary. At the same time, here the notary is not independent, impartial, neutral, but is an interesting provider of services.

The cradle of the Anglo-American type of notary is England. In England, the notary profession will be built under the influence of canon law and without the influence of Roman law (Festić, 1998, 29-35). Notary in England will appear in the thirteenth century when the Archbishop of Canterbury received authorization from the Pope to appoint a notary. The function and role of the notary in the Anglo-American type of notary is different compared to the Latin type because the term public document is

interpreted differently here. The Anglo-American system does not recognize the notarial document as a public document, nor can a private document become a public document here. The scope of notarial work is therefore limited here only to the certification of documents and the receipt of sworn statements. The central work of notaries here is primarily the certification of documents for their use abroad. For this system, it is something unknown for a notary to draw up documents for legal matters.

England does not even know a single notarial service at the level of the entire country. There are general and district notaries.

Basic requirements for the appointment of a notary here are age of at least 21 years, taking an oath, academic status of one year of theoretical knowledge of civil and international private law and one year of practice as well as passing the notary exam.

Basic notarial duties in the Anglo-American type of notary are certification of powers of attorney for use abroad, matters related to the purchase and or sale of real estate, taking oaths, preparing documents for companies, checking documents and providing information for immigration purposes.

In England, there are two types of notaries: public notaries and scrivener notaries. Public notaries are notary advocates who have a wide variety of functions and tasks, the most important of which are representing parties in civil and criminal court proceedings, purchase and sale matters, and matters related to real estate. In contrast, scrivener notaries are notary-scribes who have the function of issuing documents as well as certifying documents for use abroad (Piombino, 2011, 10).

Towed on the above, it can be concluded that the notary function and proselytization Anglo-American tradition is created and exists together

with the lawyer's function, that is, these two functions are not separated as is the case with the situation in national legislations that belong to the Latin type of notary.

2.3. Scandinavian notary public

The Scandinavian type of notary public operates in Northern Europe, primarily in Sweden, Denmark, and Norway. This type of notary public is a mixture of Latin and Anglo-American notaries, although it also shows its own characteristics. The main characteristic of this type of notary public is that the notary is not a public official but a civil servant (Škaljić, 2013, 20-30).

Notaries in Sweden are appointed by the local county administrative board, in Norway and Denmark by the district courts. Notaries are usually members of the bar associations, and their main function is the legalization of documents. The notary public here must be a lawyer, but not necessarily a lawyer. The requirements for appointment are to have residence in Sweden or the EU, to have completed basic or master's law studies, to have passed the notary exam, and to have at least 5 years of work experience.

The basic functions performed by a notary in the Scandinavian type of notary are the following: legalization of documents, certification of copies of documents, certification of powers of attorney, issuance of a certificate that a person is alive, sworn statements, certification of signatures of persons authorized to represent a company, supervision of prize games, confirmation that a party can perform an action.

The Scandinavian type of notary is very interesting because, for example, Norwegian law authorizes notaries to even conclude marriages, while Danish law authorizes notaries to certify signatures on wills and other

documents, as well as to perform various certifications within the framework of civil trials (Shaw, 2004, 140).

A basic characteristic of the Scandinavian type of notary is that, like the Anglo-American type, it does not recognize public documents. Precisely for this reason, certification of a document does not imply legal validity of the document or verification of the content of the document.

The Scandinavian type of notary, although it recognizes the function of notaries as civil servants, should be distinguished from the pure classical notary according to which the notary is a civil servant without professional independence, which will appear in absolutist regimes. The model of state notary that will appear in absolutist regimes will appear in the countries of the former communist bloc. This type of notary dates to 1922, when Lenin introduced it into the legal regime of the Soviet Union. After the end of the Second World War, this model of notary, modified, will be received in Hungary, Poland and the German Democratic Republic.

3. Macedonian Notary

The Macedonian notary will be built in the bosom of Yugoslav law. This is because Macedonian law was initially created in Yugoslav law and as such took over the free Latin notary from it. In Yugoslav legislation, the Latin type of notary was created under the influence of Austro-Hungarian law.

Free Latin notary existed in the Kingdom of Yugoslavia. It was regulated by the Zakon o javnem beleznicima of 11.09.1930.

With the abolition of the constitutional legal system of Royal Yugoslavia in 1944, the profession of notary ceased to exist.

After the fall of communist ideology and the process of establishing democratic legal systems towards the end of the nineteenth and beginning of the twentieth centuries, notary was reintroduced in Slovenia, Bosnia and Herzegovina, Croatia and North Macedonia. The Republic of Serbia did not accept this public service until 2011, when the Law on Notaries was adopted, and it did not come into force until September 2014.

North Macedonia is a member of the Latin Notary Association. Namely, at the Congress of the World Latin Notary Association held in Athens, the Macedonian Notary Chamber was admitted as a permanent member of this association, together with Mongolia and Chad.

The Latin type of notary in North Macedonia was adopted by the Law on the Performance of Notarial Affairs of 1996.

3.1. The need to introduce the notary service in the Republic of North Macedonia

Notaries were first introduced into our legal system with the Law on the Performance of Notarial Work in 1996 (Јаневски, 2001, 1). The first notaries began working only in June 1998, and the Chamber of Notaries of Macedonia was established in the same year (Јаневски, 2001, 1).

The introduction of notaries, objectively speaking, had a positive impact on the entire legal system of North Macedonia, primarily in terms of its functioning. The purpose of introducing notaries is to facilitate legal transactions through the provision of legal services by notaries. This also affects the promotion of the so-called "preventive legal protection" because the introduction of this public service increases legal certainty and avoids disputes before the courts, and the courts are relieved of most undisputed legal matters, but also of disputed legal matters in which there is no administration of justice in the narrow sense of the word (Јаневски, 2009).

The introduction of the notary public greatly facilitated the exercise of rights in certain disputes or eliminated the need to conduct some litigation proceedings, which began the process of relieving the courts of some of the disputes "hung over their heads" and increased the efficiency of the judicial system.

By recognizing the status of notarial documents as public documents, and in certain situations as executive documents, the conduct of entire litigation proceedings was avoided and the possibility of directly requesting their execution was left open. The proper functioning of the notary public service assumes that citizens can exercise their rights quickly and without any waiting, which essentially means that the state attaches great importance to the notary public in the protection of citizens' rights. The introduction of the notary public in our country also has special significance in international legal relations.

Comparatively speaking, all the functions of the notary in modern legal systems can be divided into three groups: protection of the interests of the parties, acceleration of legal transactions and facilitation of the work of judicial authorities.

At the same time, according to Professor Arsen Janevski, the notary is a prerequisite for the functioning of every modern legal state, because through it the legal order in concrete is realized and implemented.

The tasks that, according to the ZVNR, were performed by notaries primarily matter within the jurisdiction of the courts and administrative authorities.

The notary office in North Macedonia is a free Latin notary office. It represents a synthesis of the public character of the notary service and the performance of this service by highly qualified people who bear the

business risk of their work themselves. This assumes that it is a synthesis of legal service and private profession. However, although our country has generally accepted this type of notary office, it has done so in a way that preserves the foundations of our legal system. Notary in North Macedonia also has the characteristics of a liberal profession, which presupposes: the absence of a specific clientele, the possibility of limited competition, the right to directly collect the fee and reimburse the costs from the client, the notary himself bearing the costs of the notary office, and more.

The notary profession in North Macedonia must not be equated with other legal professions, especially the lawyer profession, because the lawyer protects the interests of only one of the parties, unlike the notary who acts as a trustee of the parties, which assumes that he equally protects the interests of both parties, impartially and neutrally. In this regard, notaries are referred to as impartial trustees of the parties. However, it is a fact that the ZVNR had many imprecisions, and at the same time its amendments and supplements were requested. Some of the notaries, due to objective reasons, could not provide a minimum of work in their official areas, the need arose for notaries to be able to undertake procedural actions in the area of the entire city of Skopje, regardless of the area in which court that notary has an official seat, which the ZVNR did not allow, then the need arose for notaries to be able to employ in addition to trainees, professional associates and deputies, the need to foresee the actions of notaries in cases when it comes to the establishment, organization, termination, status and other changes in commercial companies, etc. This opened the need for the adoption of a new Law on the Notary of North Macedonia in 2007.

3.2. The Notary Service in North Macedonia according to the Notary Law of 2007

With the adoption of the new Notary Law of North Macedonia (Law on Notary Public, Official Gazette of the Republic of North Macedonia No. 55/2007, 86/2008, 139/2009 and 135/2011), the concept of notary services as envisaged by the ZVNR was not changed, but it nevertheless went a step further, because it increased the quality of notaries' work, reduced the number of disputes and increased legal certainty. At the same time, it is more successful, because it was built on the experiences of notaries from other countries as well as on the several years of experience of notaries in North Macedonia. This is a law that significantly expanded the functions and powers of notaries in North Macedonia.

According to the Law on Notaries of North Macedonia from 2007, but also with other laws that were passed, the functions and powers of notaries in our country have been increased, primarily in order to relieve the courts from procedures that are not decided authoritatively and thus to relieve the courts at least from undisputed cases, which would ultimately increase the efficiency of the judicial system in our country (Janevski and Zoroska Kamilovska, 2011).

A fundamental novelty of the Law on Notaries is the transfer of part of the non-contentious legal matters to the notary.

In civil procedural law, the protection of civil subjective rights is of an authoritative nature, and in this regard, it is said that protection with the help of state authorities is the highest level of realization of legal protection. This opens the possibility for the purpose of more efficient realization of legal protection, part of the legal matters to be entrusted to the notary Trgovcevic-Prokic, 2009, 8).

The very transfer of non-contentious legal matters to the notary is determined by the form of legal protection. This is the so-called "preventive jurisdiction" which provides for the division of competence between the court and the notary public through the precise determination of their actions.

It is indisputable that the courts are competent judicial bodies which, when performing the matters within their scope of competence, have general competence, and the other judicial bodies have competence derived from the general, absolute judicial competence. This is also the case with the notary public, whose competence to act and decide on certain legal matters is a competence derived from the general, absolute judicial competence.

In a subjective sense, the competence of the notary public is his authorization and duty to act in certain legal matters within his scope of competence, which presupposes that he cannot refuse to act within the scope of his competence. When it comes to the competence of the notary public in an objective sense, it is derived from the already established competence of the civil court, as a court with general competence for civil and non-contentious matters.

Procedures in which the subject matter of the dispute is not decided authoritatively are usually placed under the jurisdiction of the notary, because the notary, as a specific legal institution, is assumed to guarantee legal certainty for citizens.

The basis for distinguishing between the court and the notary is the dispute. This opens the possibility of relieving the courts of undisputed legal matters, in which there is as a rule no conflict of interest between the parties and opens the possibility of the notary performing some of the non-contentious legal matters. In this regard, one of the basic characteristics of the non-contentious procedure was that it was an undisputed procedure,

unlike the litigation procedure, which is a typical contentious court procedure, this characteristic of the non-contentious procedure is a prerequisite for the notary to be able to perform some of the non-contentious matters.

In certain cases, the legal protection of the parties can also be indicated through legal aid, such as in the procedure for drawing up documents.

The notary also performs certain legal tasks arising from procedures that essentially fall outside the scope of judicial protection of rights, such as the case of the certification of certificates, which for a long time was referred to as the work of the court as an administrative authority.

Formally, the legal element that distinguishes the court from the notary is the trial and decision-making on the threatened right contrary to the law. This is precisely why the dispute is referred to as the boundary for distinguishing between them.

Comparatively speaking, the notary has been given the authority to act in probate and execution proceedings. The notary's actions in probate proceedings in most countries are carried out based on a quick judicial act.

When talking about non-contentious proceedings, it can be concluded that the specific material-legal situation in them must also enjoy judicial protection, although non-contentious proceedings are proceedings in which disputable legal issues are not discussed. This means that they cannot go beyond the scope of judicial protection itself, objectively speaking.

Conclusion

The Macedonian notary public, according to its legal nature, organization and competences, unequivocally belongs to the Latin (continental) type of notary public. It is an institution of public interest, whose main purpose is to ensure legal certainty, legality and preventive legal protection in legal transactions.

Notaries in the Republic of North Macedonia act as independent and impartial bearers of public authority, who, by drawing up public documents, certification and other legally established actions, contribute to the security and stability of legal relations. Public documents drawn up by notaries enjoy enhanced evidentiary value, which significantly reduces the risk of future disputes.

Furthermore, the Macedonian notary public plays an important role in relieving the burden on the courts, as certain undisputed and formal legal procedures have been transferred to the competence of notaries. Thus, the courts focus on resolving disputed issues, while notaries ensure the efficient and rapid exercise of the rights of citizens and legal entities.

Following European legal standards and the tradition of continental law, the Macedonian notary public is organized as part of the modern European Latin notary public, with clearly regulated professional responsibility and control of legality. In this way, it represents an important pillar of the legal system and a guarantee of trust in legal transactions, both nationally and internationally.

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