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Few Perspectives on the Comparative Law Concerning Notarial Activity

Senior Lecturer Bogdan CIUCĂ, PhD
„Danubius" University of Galaţi
bogdanciuca@univ-danubius.ro

Abstract: In Romania, the notary public is attributed with an autonomous position, but also exercises a service of public interest and the law does not exactly state whether or not the notary public is a public officer. In other states this statute is clearly provided by the law. For example, the first article in The Notary's Law from Spain defines the notary as "… the public officer who is authorized , in compliance with the laws of the country, to certify contracts as well as other extra-judiciary documents." The Notary's Regulation issued in the very same country explicitly provides that "notaries public are at the same time professionals of law as well as public officers." In a similar approach, Law no. 14/1991 from Poland, on notarial activity, provides in art 2 that: the notary exercises their duties as public officers and benefit from the protection ensured to public officers. Furthermore, the Law on the organization of the public notaries offices in Belgium clearly delineates in art. 1 the notary as a public officer.

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In Romania, the notary public is attributed with an autonomous position, but also exercises a service of public interest and the law does not exactly state whether or not the notary public is a public officer. In other states this statute is clearly provided by the law. For example, the first article in The Notary's Law from Spain defines the notary as "…the public officer who is authorized , in compliance with the laws of the country, to certify contracts as well as other extra-judiciary documents."

The Notary's Regulation issued in the very same country explicitly provides that "notaries public are at the same time professionals of law as well as public officers." In a similar approach, Law no. 14/1991 from Poland[1], on notarial activity, provides in art 2 that: the notary exercises their duties as public officers and benefit from the protection ensured to public officers. Furthermore, the Law on the organization of the public notaries offices in Belgium clearly delineates in art. 1 the notary as a public officer.

[1] David, Sofia-Ana, Ciortoloman, Mihai, „Lucrare comparativă privind unele aspecte ale sistemului notarial latin"/ „Comparative Work on some perspectives regardin the Latin notarial model", in Suplimentul BNP/ Public Notaries Offices Supplement no. 3/2000, p. 15.

In Law no. 1153/1997 on notaries from the *Moldavia Republic*, states that the notary has the status of an autonomous position but is at the same time recognized as being irremovable.

As regards the *notary's territorial competence*, it is set in Germany depending on the territorial jurisdiction of the Court of Appeal as well, where the notary public office operates. In Romania, as well as in Austria, Spain, France, Italy, Poland and Russia, this competence is set depending on the territorial jurisdiction of the Court, while in Canada the territorial jurisdiction of the notaries in unlimited. In *Argentina*, the notarial competence stretches to the limits of the district where the notary exercises his or her duties. In Hungary, the territorial competence of the notary is determined by The Ministry of Justice while in The Czech Republic by the Court of Appeal in whose jurisdiction the notary office operates.

With regard to the character of the tasks fulfilled by the notary public, in Romanian as well as the statutory documents from the Moldavia Republic, it is proven that the document drafted by the notary is of public authority and may serve as evidence in a Court of Law. The *Belgian* law sets that the documents concluded before a notary are authentic and their authority equals those issued by public authorities. The Law on the organization of the notary from this country provides the notary with broad competence and the documents issued by any notary may serve as evidence in a Court of Law and constitutes in themselves as enforceable titles.

The Polish law states that the notarial documents are authentic. The German, French and Russian law provides that the documents issued by the notary are endowed with probatory force that is more powerful than of those signed by individuals alone. What is more, the law provides that the notarial documents may serve as evidence in a Court of Law only if the parties clearly state this fact in their contends.

In *Italy*, in compliance with the provisions stated in The Civil Code, the notarial documents may serve as evidence in a Court of Law and when they also contain patrimonial liabilities, they are also endowed with enforceability. When the notary authenticates a document that is signed by an individual, that document is endowed with the certainty with regard to the identity of the person having signed that particular document as well as to the date when that document was concluded. Thus, the document is not enforceable but may serve as evidence in a Court of Law.

In *Argentina*, the notarial document may serve as evidence in a Court of Law depending on the statutory documents issued by the various provinces. In general, it is considered as a public document and may serve as evidence in a Court of Law until declared false by the Court.

In *Canada*, the documents concluded by notaries may serve as evidence in a Court of Law but are not enforceable. In Slovenia, the notarial document may serve as evidence in a Court of Law and are considered stronger evidence than those signed by individuals alone, due to the fact that they are regarded as public documents, and their enforceability is determined by the duty of doing or

authorizing something. In *The Czech Republic* the notarial documents are authentic only after having fulfilled the terms provided by the notarial regulations.

With regard to the possibility that the notarial activity is also carried out by subjects other than the notary, in Romania, this prerogative is recognized to the diplomatic missions and the consular offices, both for the Romanian citizens abroad as well as for the foreign citizen, if the law allows. In addition, such a competence is also recognized to the secretaries of the local councils from the cities where there is no public notary office so that people may legalize their signatures placed on various documents and may issue copies of documents, less those signed by individuals alone.

In the Moldavia Republic, the competence of concluding notarial documents is also exercised only by the diplomatic and consular missions. In Germany, the administrative documents may serve as evidence in a Court of Law with the same authority as a notarial document, but this is limited to the field of territorial competence, case in which it is also enforceable. A similar situation is met in Belgium, France, Italy, Hungary and Russia. In Poland, some administrative documents are enforceable. The notary from Argentina also authenticates legal documents and facts, sharing this competence with the administrative authorities. Unlike these cases, in Austria, The Czech Republic and Slovenia, authenticating documents is exclusively carried out by notaries, without the intervention of any administrative authority.

With regard to the liability of the notary public for the documents concluded in the virtue of the position that person holds, in Romania it is states that the notary public is also liable from a civil, disciplinary or penal point of view, as mentioned previously. In Poland, art. 50 from The Notarial Law provides that all the documents that have been concluded contrary to the law as well the regulations, as well as the deeds that are against professional probity, are punished with disciplinary penalties – reprimand, warming, fiscal fine, dismissal.

In *Germany*, the responsibility of the notary is unlimited. The facts that may cause prejudices and are exercised on duty are to a great extend included in the same guidelines regulating the duties of an officer to repair the incurred prejudices. The responsibility of the notary is subject to a differentiated professional insurance. First of all, the notary has the duty of individually contracting a professional indemnity insurance covering the risks incurred by his duties. The Chamber of Notaries from Germany concludes and insurance contract whose scope is to guarantee the damages not covered by the insurance concluded by each separate notary. Furthermore, there is another insurance for repairing the intentional damages that are not guaranteed through previous insurances and that are paid from a guarantee fund, endorsed by a Chamber of Notaries or more Chambers altogether. The Russian law provides a compulsory insurance of notarial activity. The notary may not start working unless he signs such an insurance contract. In case the notary is responsible for a crime related to his or her activity, the notary may not exercise his or her duties, on

account of a decision issued by The Court, and if a client is injured as a result of notary public's negligence, that particular client has to be indemnified for by the notary.

In *Austria*, the notary is liable with regard to his or her clients, being compelled to indemnify them for all the incurred damages. The Notarial Canadian Corporation compels the notaries to pay insurance for their professional responsibility in an amount that is fixed annually. The sanction for not paying this amount is the exclusion from the corporation. In Spain, France and Hungary, the notary exercises a freelance profession, but is unlimitedly liable for his or her activity.

In *Italy*, with regard to exercising their profession, the notaries public have distinct responsibilities. First of all, as any public officer, they are criminally liable, and are also subject to the disciplinary stipulations provided by the notarial law, being thus sanctioned by means of reprimand, warning, temporary suspension, paying damages, dismissal. The, as attorney-at-fact, the notary is compelled to fulfill the professional authorization endowed by his or her clients. In case the proxy is free, the responsibility of the notary extends. As an endorser in business and as a counselor, the responsibility is the same as if the notary acts as an attorney-at-fact. What is more, the Italian law provides, as a guarantee for the civil liability of the notary, the payment of an insured amount when nominated in his or her office.