

THE ROLE OF NOTARIES IN A MODERN LEGAL SYSTEM IN THE WESTERN BALKANS

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Abstract

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The research problem and purpose are the importance of scientific theories in the scientific study (Haliti-Mustafa et al., 2023) of the system in the Western Balkans. In a modern legal system, in harmony with the criteria and directives of the European Union (EU), the faster provision of legal services and the expansion of the forms of protection of interest rights in the current conditions are almost impossible to realize without the existence of a segment new law — Institute of the Notary Service in the Western Balkans. The methods used in the paper to achieve the objectives are alternative methods and analysis of results as well as comparative and inductive, and deductive methods. The main findings of the paper are notarial systems, which analyze and present an overview of the role of notaries and their impact on issues and changes in notarial acts, and an overview of high-impact research for young researchers in the field of notarial systems. As a conclusion, the research results show the effectiveness of notaries in dealing with legal issues (Sariyev, 2022).

Keywords: Notarial System, Western Balkans, Notarial Acts, Public Nature

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1. INTRODUCTION

Scientific arguments say that the genesis and historical development of the notary in the world is early — it is connected with the first birth of writing, private property, and the consolidation of the state and law. Although there are arguments that the notary was born and developed first in Babylon, Egypt, and Greece, however, the scientific position still dominates that Rome was the cradle of its development. In Rome, the first forms of notarial writing were called tabelliones (tabieliones) (Podvorica et al., 2018, p. 4). Reforms in justice and not in the notarial system of the Western Balkans could not be comprehensive without the establishment and operationalization of the notarial service, under the standards and directives of the European Union

(EU). For the implementation of these reforms, various countries of the Western Balkans have drawn up and approved the legal framework for the notary system at the national level. One of the significant phenomena of the 20th century, in the notarial system of the Western Balkans, turns out to be the fading of the normative approaches to the systems of changes that these countries have in the legal requirements in the notarial field. The historical developments in the countries of the Western Balkans in the notary systems that we have in Albania and Italy show the possibility that the citizens of both countries receive the same service in the notaries' chambers, regardless of location. As a contemporary public service in the Western Balkans created to meet the needs and interests of citizens and other legal entities, it has reflected positively on the general functioning of

the legal system, where this has particularly influenced the advancement of preventive legal protection and the increase of safety. Notaries in the Western Balkans have been operating for many years, but this does not mean that most of them have not faced numerous problems in performing notarial activities, while the implementation of notarial laws so far has shown some weaknesses which will be surpassed with the help of the new Law on Notary for every Balkan country, hoping to successfully implement its work in modern and contemporary law. The purpose of the paper is the interpretation of the legislation for the notarial system in the Western Balkans, as well as the formal agreements and scientific research of different times related to the notarial systems. The main objectives of this study are basic principles, which mean those legal standards or norms, which serve as guides for notaries in their daily legal work to achieve the defined goals, including the implementation of the law. The notary system gives the main stamp to the notary institution and is a set of rules based on which the notarial procedure is developed in relation to the preparation and authentication of all actions. The research has managed to present the applicability of legal norms in the creation of legal works (contracts, compilation of wills, authorizations, authentication of documents, etc.) The purpose of this study is to further investigate the forms of notarial acts, and the legal effects which are created after the compilation of acts according to the legislation of the Western Balkans. During the research, we encountered a gap in the current national and international literature related to notarial systems in the legal aspect. Also, the gap has been a big obstacle for us because there has been very little research in terms of quantity and quality aspects. Also, it was noticed that there was a gap in the legislation in some countries of the Western Balkans, referring to recent developments in different and complementary laws and legal acts, such as the administrative instructions in the notarial system. The notary system was defeated enabling notaries to more easily apply legal norms in practice, to find the meaning, purpose, and breakdown of the legal norm (Tergočević-Prokić, 2009). The Western Balkans notary system provides that the notary is obliged to exercise his activity regardless of the influence of other subjects, but always following the legislation in force and the constitution (Rouech, 2023). The research problem is of great importance because it expresses the seriousness of the two most important notarial systems that appeared during the journey of its development over the centuries, the Latin, the Anglo-Saxon notarial system, and the state notarial system (Abdalla et al., 2022, p. 173). Such research enables us to obtain relevant knowledge with the help of scientific methods and research techniques. The paper uses the meta-analysis method, the synthesis method, the comparative method, as well as the inductive and deductive methods.

The rest of this paper is structured as follows. Section 2 reviews the relevant literature. Section 3 presents the methodology used to conduct the study. Section 4 presents the results and discussion of these results. Section 5 concludes the study.

2. LITERATURE REVIEW

P. (2024) ensures meticulous record-keeping of notarial acts with this comprehensive Notary Public Record Book. With 250 entries, this logbook provides ample space to document every notary law notarial act performed by signing agents and notaries. Stay organized and compliant with state-specific requirements as the details of each transaction, including the type of document, the signer's identity, and the date of notarization are recorded (P., 2024).

Referring to the latest high-level literature such as "The Notary's Manual: Showing the Rights, Duties, and Liabilities of Notaries, according to the Common Law throughout the Union" (2011), includes over 20,000 analytical, theoretical, and practical works on American and British law. Legal treatises include case books, local practice manuals, form books, works for lay readers, pamphlets, letters, speeches, and other works by the most influential writers of their time. It is of great value to scholars of domestic and international law, government and politics, legal history, business and economics, criminology, and much more (Closen et al., 1997). "Notary official" means the notary public or other individual authorized by law to perform a notarial act. "Notary public" means an individual charged by the State Treasury to perform a notarial act. "Official stamp" means a physical image affixed or stamped on a tangible record or an electronic image attached to or logically connected to an electronic record (Tory, 2019).

Effective notary services help to ensure that documents are properly executed, facts are duly certified, and above all, the public is protected from fraud. Notarization is essential for many official documents including mortgages, deeds, contracts, and various corporate transactions (Department of the Treasury Division of Revenue and Enterprise Services, 2021).

A notary public who has been duly commissioned and qualified is authorized to perform the duties of a notary public throughout the State. A notarial officer may not perform a notarial act for a record to which the officer or the officer's spouse or civil union partner is a party, or in which either of them has a direct beneficial interest. An act that violates this provision is voidable. A notary public who is not licensed as an attorney-at-law shall not use or advertise the title of lawyer or attorney-at-law, or equivalent terms, in any other language, which means or imply that the notary public is licensed as an attorney-at-law. A notary public who advertises their services in any language is required to provide with such advertisement a notice that contains the following statement or translation of the following statement if the advertisement is not in English (CNI Notary Institute, 2021).

The extremely great importance of the notarial service institute consists in the delegation of many judicial powers of the non-controversial field to the notarial service. The notary service has a public and legal character and is independent and impartial. In modern legal systems, the notary service is suggested as a fair alternative to relieve the courts and administrative bodies from the heavy burden of unselected cases in uncontested cases. By providing efficient services to natural and legal persons, this service has a preventive effect on

reducing the sources of disputes and increasing legal certainty. The annual reports of the work of the courts in Kosovo show that since the application of the notary service in Kosovo began, the number of unselected cases from the field of inheritance and from other non-contentious fields, in all courts, has been drastically reduced (Tergočević-Prokić, 2009). Many documents say that the tabellions, documents, and official letters were compiled for the needs and interests of the emperor and his high officials. For this reason, the tabulations also gained the credibility of the state, while Justinian gave credence to the compiled documents — import files. The billboards had their own special place (station) in the forum itself (Hakani, 2011). The first category consisted of the compilers of acts who served near the emperors or in public centers and squares. They came from the class of free persons, who settled in special public squares and markets, where they edited the acts in the presence of witnesses. The acts were signed by the parties, the witnesses, and the notary (tabellions), who also used his monogram as a seal. The document had to be signed by three witnesses, who must be of legal age and capable of acting. The act had indisputable legal significance and enjoyed the confidence of the state.

3. RESEARCH METHODOLOGY

This paper has the characteristics of theoretical scientific research, which is necessarily qualitative (Haliti-Mustafa et al., 2023). In this study, several methods were used to achieve the objectives of the paper; they are the analysis method, the research method, and the scientific method. The work was carried out based on the concepts that exist in the Law on Notary from several Balkan countries, as well as on scientific research. The method of analysis and synthesis used in the study is particularly useful in researching the theoretical perspectives of local and foreign authors. Several methodologies were used to present a more qualitative paper, using at the beginning a descriptive-analytical methodology (examining various literature such as books, various dictionaries, various reports, scientific publications, and various publications of local and international authors as well as various laws that have affected the essence of our research). The summary of alternative methods and analysis of the results presented in this paper is under analytical methodology, comparative methods, and inductive and deductive methods.

4. RESULTS AND DISCUSSION

4.1. Subjects of notarial activity

For the sake of legal certainty, notarial activity is regulated by *jus cogens* (“legal norms”), which means that a notary can only be appointed by the person who first fulfills the legal conditions. Notaries are appointed by the state, to whom it delegates public authorizations for the performance of judicial actions in the field of uncontested procedure. The notary performs a specific legal service, so dexterity and professional skills are required from

him, as it is necessary to have certain legal knowledge (Podvorica et al., 2018, p. 45). The person who competes to be appointed notary is obliged to meet the conditions expressly provided by legal provisions. Without fulfilling the conditions, no one can be appointed to the post of notary. Thus, for example, the positive conditions are foreseen in the provision of Article 4, paragraph 1 of Law No. 06/L-010 on the Notary, where it is expressly stated that: “The duty of a notary can be exercised only by a person who is a permanent resident of Kosovo, who has full competence for him, an act that enjoys a professional and moral reputation, who has graduated from one of the law faculties of another country, after the nostrification of the diploma in the Republic of Kosovo; entities or other organizations for a period of 3 years that have passed the notary’s exam in Kosovo, which proves that it is able to provide the necessary premises and equipment for the exercise of the notary’s function in the manner defined by law; in accordance with the criteria defined by by-laws, after consultation with the Chamber of Notaries”. The candidate is obliged to fulfill the legal requirements at the time of competition, except for providing the premises and equipment necessary for the exercise of the function, which are allowed to be provided in the later stages of the notary appointment procedure (Law No. 06/L-010 on Notary, Article 4, paragraph 1). The Assembly of the Republic of Albania on June 1, 1994, issued Law No. 7829 on the notary, which brings radical changes in the field of construction, operation, and organization of the notary institution. These very necessary changes were under the construction of democratic relations in society, with political pluralism and with the new legal order, after the country’s exit from the communist dictatorship. According to the provisions of Article 1 of Law No. 06/L-010 on Notary: “The notary in the Republic of Albania exercises legal activity in the service of physical and legal persons, through the editing of acts and the performance of notarial actions, in accordance with the Constitution and the legislation in force”.

4.2. Duties of the notary

The basic duty of the notary provided by the legal norms is to advise the parties in the procedure. The notary must advise the participants in the notarial deed on the laws in force and the legal consequences of the notarial deed, with the risks associated with concrete legal work, to protect the parties from bad consequences — statements and carelessness are considered. Thus, the notary advises the parties on the nature and legal effects of the intended transactions and actions, the extent of the obligations related to these acts, and applicable provisions. The authenticity of the notarial deed can only be realized when the parties are notified in advance by the notary about the legal norms in force (Hakani, 2011, p. 70). In this respect, the purpose of the notary is to help and not hinder the parties in the authentication of the notarial deed. In the most serious cases, “If the parties continue to maintain their positions even after giving the appropriate warning, the notary may refuse to prepare the document, or to include the statements or suggested changes” (Tergočević-Prokić, 2009, p. 63).

It is stated that: “The notary takes care of the fair and impartial protection of all interests involved in the legal action, from this provision it follows that the notary must be impartial in advising the parties, especially when more than two parties are included in the legal transaction” (Code of Notarial Ethics and Professional Conduct of the Republic of Kosovo, 2009). The notary seals the notarial acts with his wet seal and signs them. After giving a solemn oath, at the request and expense of the notary, the Chamber of Notaries is obliged to prepare and equip all notaries with seals. The wet notary seal has an easily identifiable circular pattern (Podvorica et al., 2018, pp. 65-66).

4.3. Form of the notarial deed

The form is a constituent element of the notarial deed. For some documents, for example, when it comes to minutes, clauses for the authentication of the signature, etc., the legislator has previously determined the form in which these notarial acts must be written, to facilitate the work of notaries and to unify the practice notarial. A document of the same type and with the same legal nature must have the same form. The form (*prima facia* — “at first sight”) distinguishes the notarial document from the form of other private documents. Notaries are obliged to strictly observe the rules regarding the form of notarial document compilation during the exercise of notarial activity. If the document is not edited in the form expressly provided by the legal provisions, it can be canceled and not produce legal effects.

4.4. Act en minute

An act en minute must contain the following references: the registration number in the general register and the number of the act en minute. The sign en minute gives importance to the act in terms of execution. The notary keeps the notarial deed in his archive. Unlike the comparative notarial law, which expressly provided by legal provisions the deadline for the preservation of the act en minute, our law has not provided for such a deadline. The notary is obliged to file it and keep the original act en minute (Povlakić et al., 2011). At the request of the parties and under the conditions established by legal provisions, the notary can submit authentic copies or extracts from the original to the parties for the act to be valid and produce effects (Radović et al., 2010, p. 20).

4.5. Act en brevet

An act en brevet differs from an act en minute because it does not contain the number of the act en brevet, as it is mandatory to have the act en minute number. For its validity, the act is required to contain only the registration number in the general book. The act en brevet is a document in the form of one or more originals, executed by a notary and can be sent to the parties. No authentic copy or extract can be obtained from the act en brevet, which also

distinguishes this act from the act en minute (Radović et al., 2010, p. 23). The notary is authorized to deposit and keep a copy of the act en brevet in his archive, but the storage term must be much shorter than for the act en minute, although this issue is not defined by legal provisions either (Povlakić et al., 2011). The content of the text of a notarial document consists of facts and data determined by legal provisions. For the notarial document to be authentic, structured, and well compiled, the notary must master the art of compiling notarial acts, and organize the facts and data in a meaningful legal and logical order, so that the act presents a complete whole with strong organics (Podvorica et al., 2018, p. 80). The content of the notarial deed must faithfully describe the declared will of the party or parties. The notary compiles the notarial act only when he is sure that it is following the law, the legal order, the good ethical rules, and the interests of the parties (Tergočević-Prokić, 2009, p. 142). In the conditions defined by legal provisions, the notary is obliged to provide notarial services to both parties who appear as natural persons and legal persons, under the law. The notarial practice so far has proved more than once that even though notaries are persons of high intellectual and professional level, experienced lawyers, they are not completely infallible and immune to mistakes. Since the notarial deed has legal value as a written document, it must be signed by the parties and participants in the notarial act. As long as the notary has not yet signed, sealed, and registered, the notarial deed can still be changed. The parties have the right to correct or change it completely, requests which the notary must not refuse, otherwise the act is invalid (Gjurgjević, 2014, p. 95). It is clear that in the end the notary personally signs the notarial deed. This signature gives legal force to the notarial deed, otherwise it would not produce legal effects. Even the notarial deed is sealed after the signature of the notary. In case the notarial deed consists of several sheets, it is sealed with a wet seal on each binding sheet. When the deed is signed and sealed by the notary, then it remains only to be registered. Registration of the deed is the action that closes the entire procedure of its compilation.

4.6. Service fees

The notary has the right to remuneration for the work and to the remuneration of expenses incurred in connection with the performance of notarial services. This right is guaranteed to the notary by the provisions of the Law on Notary in the countries of the Western Balkans. It can be said that the fact of the payment of fees by the parties, as a subject in the procedure and not by the state, clearly defines the privacy element of the notarial service, although this service is a public service and is controlled by the state. The definition in the law of the notary’s funding source only through the fixed fee, not recognizing and accepting other types of remuneration, also reflects one of the differences that this service has with other free services, such as that of advocacy, which, among others, applies several types of rewards (Hakani, 2011, p. 113).

4.7. The responsibility of the notary

The rules related to the performance of notary services are regulated by legal provisions and the Code of Notarial Ethics. The notary must perform his duties conscientiously, honestly, impartially, and independently. Not only in his office during the performance of his official duties, but also outside it in his private life, he must behave following the Code of Notarial Ethics, professional conduct, and under the oath given. If, during the exercise of his duties, he violates the legal provisions and the rules of the Code of Ethics, the notary is liable before the law (Lazarević, 2016, p. 238).

There are three types of notarial responsibilities: 1) civil legal liability, 2) disciplinary responsibility, and 3) criminal liability (Podvorica et al., 2018, p. 2010).

Disciplinary responsibility in the notary system — due to violations of the rules of the Code of Ethics and legal norms — the image and reputation of the notary service, which enjoys public trust, are damaged. The notary's responsibility is individual. Compared to other free professions, the disciplinary responsibility of the notary is a specific responsibility, because, through this form of responsibility, the legislator aims to protect the public interest. The notary is responsible for violations committed during the exercise of professional activity according to the strictest rules of professional responsibility from the side of the Chamber of Notaries of the respective state (Podvorica et al., 2018, p. 2010).

4.8. Territorial organization and definition of notary offices

It is not disputed that the notary is organized based on the territorial principle. The territorial principle means that the notary can perform his official actions only within a specific country where the notary has its seat, that is, within the limits of a specific territory. To offer all citizens equal access to the notarial service, the legislator has provided a series of rules that do not allow the notary to perform notarial activities outside the headquarters of his office (Podvorica et al., 2018, p. 2010).

5. CONCLUSION

In this paper, we have understood that the notary profession is considered one of the professions that brings a good personal income for the notary, but it is also one of the professions with a high degree of risk of civil and criminal liability.

In the notarial systems in the modern Western Balkans, notarial services have their legal basis, which is regulated according to the legislation in force, as well as being suggested as a fair alternative to relieve the courts and administrative bodies of the heavy burden of cases of unselected in uncontested cases. We have also realized that we are dealing with efficient services for natural and legal persons, this service has a preventive effect in reducing the sources of disputes and increasing legal certainty according to the positive law. By providing efficient services to natural and legal persons, this service has a preventive effect on reducing sources of disputes and increasing legal

certainty. Genuine scientific analyses also show that in all countries where the institute of notarial service, *ratio legis* ("the reason or purpose behind a law") has been applied, it has given good results and has been accepted by the parties for the reason that a notary is a neutral person, a public official appointed by the state, a trained lawyer with high professionalism and morals, who exercises his function following the law, the Code of Notarial Ethics and the sworn oath. Today in the Western Balkans, the notary system has been confirmed at the same time as a producer of legal certainty and represents an important assumption in economic development and inclusion in contemporary business trends in the country. We find the roots of notarial activity in the early development schemes of human society when the state begins to consolidate as an organized and functional mechanism. The first forms of compilation and authentication of public and private acts by scribes, logographers, tabulators, etc. We find them in the Israelites, the Egyptians, the Greeks, and the Romans. The first states, as simple and primitive organisms, lacked infrastructure and real social and state organization. This fact has led some researchers to assert that it was impossible for the notary to appear as an activity with intellectual and legal content, since the birth of the first primitive states, when the level of development of economic, productive, and social relations was very low, just as the functioning of the state apparatus itself was inefficient. The first primitive states were characterized by the lack of well-organized state bodies and institutions, without which one cannot even speak of a genuine exercise of state power. Regardless of what was said above, some researchers in this field connect the origin of the notarial institution with the birth of writing. They agree that the first notarial acts arose only when writing was born, and to argue this thesis in legal doctrine, they cite various evidence and facts.

The main findings of the paper are the legal priority areas that have a preventive effect in reducing the sources of disputes at the time of creating the legal work at the notary, looking and analyzing the practical side and the legislation of the modern Western Balkans. The implications of the results are the legal provisions for notaries in their practical work. These implications are more about legal norms for notaries and leading notaries in practice. The limitations of the research are reports of the parties who have created legal work in the notary office, as well as the lack of mechanisms for clearer information about the parties. according to the relevant legislation, which then proceeds to the parties from the non-contentious procedure to the contentious one. Prospects for future research will focus on the cooperation of the Balkan countries in relation to the legal basis that would facilitate the work between the parties and the notary, making the legal works not create legal effects on the parties. In conclusion, the examination of notarial systems in the Western Balkans in contemporary times through notarial acts underlines the critical role of legal formalities and safeguards in guaranteeing the integrity and stability of legal matters. By validating contracts, wills, decisions, and construction agreements, notaries support the rule of law, protect property rights, and promote confidence in the legal system in the Western Balkans at the same time. The paper has pointed out the importance of notarial acts in mitigating risks,

resolving disputes, and promoting legal certainty in notarial acts. Through their expertise, impartiality, and commitment to upholding legal standards, notaries serve as pillars of the legal framework, facilitating fair and efficient property transactions that support economic development and social progress. While in the Western Balkans, we continue to navigate the evolving challenges and opportunities in its property landscape, the role of notarial deeds remains indispensable in protecting the interests of property owners, promoting transparency and accountability, and advancing the collective welfare of society. By embracing the principles of integrity, professionalism, and service, notaries contribute to maintaining an environment in the drafting of notarial acts. Some of the recommendations in the notarial system in the Western Balkans are improving the notarial system in the Western Balkans for notaries, and improving training and education courses for notaries directly related to maintaining ethical and

legal standards. We recommend the development of continuing education programs, including new legal and ethical issues related to the notary's role. It is important to increase awareness and transparency in the activity of notaries. We can achieve this by drafting and updating ethical codes and regulations, as well as by ensuring that information on disciplinary measures is easily accessible to the public in the notarial system at the same time in the Western Balkans. Cooperation with international organizations that protect the professional and ethical standards of notaries is critical to improving disciplinary measures. Interaction with the experiences and practices of other countries can bring new knowledge and perspectives for the development of the notarial system. It is important to have an ongoing mechanism for monitoring and evaluating disciplinary decisions to ensure consistency and fairness in handling cases. This monitoring may include the establishment of an independent supervisory commission or body.

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