

# FEATURES OF THE ORGANIZATION OF THE LATIN NOTARY SYSTEM IN THE COUNTRIES OF THE MODERN WORLD

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## ABSTRACT

*The article is concerned with reviewing the Latin notarial system organization in the modern world. Conducted analysis of the newest researches and publications has allowed understanding significant differences of the legal status of the notary and his/her power and authority across the board; as a result, defense rights and interests of the natural and legal persons by notaries are made difficult. The bases of the Latin notarial system have been considering and it has pointed that uniform application is impossible. The concurrent existence of private and governmental notaries as characteristic of the Latin notarial system has been reviewed. Whereas the French and German models of the Latin notarial system have been received wide advertisement, their distinctiveness has been considered. The French model is mentioned as the classic Latin notarial system. It has been reviewed notarial system patterns of Germany, France, Italy, and Far East states. It has been made a conclusion; in the modern world, a common model of the organization and functioning of the notarial system shall be implemented.*

**Keywords:** Notarial System, Notary, Government Notary, Private Notary, Latin Notarial System, Notarial Act.

## INTRODUCTION

The institute of notarial system has been being in continuous for centuries. Since ancient Rome and Middle Ages, elements of this institute of rights and interest legal defense of the natural and legal persons have been known. Within states, which belong with the Romance and Germanic (continental) legal system, the Latin notarial system dominates. Statutory act is the main legal authority and other authorities, for example, a treaty of law-making character and a legal doctrine, have a limited field of application. In Russia, France, Germany, Spain, in most of the Latin America Group of the States, the being notarial system is referred to as the Latin. It based on the law enacted in France in 1803 that adjusted public officials who were entitled to notarization and the notarial institute has been constituted. Consequently, within states of the modern world, the pattern of the notary system and its responsibilities and main marks as a

nature of this institute of rights and interest legal defense of the natural and legal persons can be identified.

### **Problem Statement**

Across different states, the legal status of the notary and power and authority are distinguished resulting in there are issues of rights and interest legal defense of the natural and legal persons. Consequently, the research of issues has practical importance for modern jurisprudence.

The purpose of the work is, based on a comprehensive analysis of the theoretical and methodological foundations, legal frameworks and practical implementation by the public administration of the protection of the rights and legitimate interests of notaries, to develop provisions to improve existing legislation aimed at ensuring a proper balance of protection of the rights and legitimate interests of notaries and public interest of society.

### **LITERATURE REVIEW**

In the civil law right flied, the notarial system is some of the most successful forms to exercise the rights and obligations and some of the best and the cheapest forms of defense and delinquency of prevention (Borodina et al., 2016; Mayurov et al., 2019). Proximately issue of the legal status, specifically, of the notary and her/his responsibilities is the subject of various scientists' researches of different states. Emily Burns's points that in the USA, a government notary is a state employee assigned by the government executive and her/his functions are legal transaction management, submission of acknowledgment to provide reliability of the documents and other responsibilities ascertained by statute (Emily, 2016). Reviewing the legal status of the notary in Indonesia, they concluded notary, in terms of responsibilities, acts as a state employee because they are assigned by the government to satisfy society needs of legal document legalization (Muri et al., 2018). Exercising routine tasks, a notary is passive because they wait when society will visit those (Muri et al., 2018).

Santiago focuses on notary as a state employee is responsible for performing the original act which can be the evidence of the legal operation (Santiago, 2017). Concurrently, in Mexico, a notary acts as a state agent and an individual person who provides service. They exercise variety and important types of activity that are exercised by other subjects of power and authority, for example an estate agent, depositary office, and insurance companies in the rest of the world. (Monkkonen, 2016). In Belarus, as noted by Irena Kirvel, the possibility to exercise by a notary her/his usual responsibilities and responsibilities of a mediator between parties during resolution of a conflict is considered (Kirvel, 2017).

In Croatia, as noted by Uzelac the notarial acts as performing notarial orders are an instrument of the specific post Yugoslav civil process at which time getting the balance between the effective systems of the certification of the liquid debt is currently topical, in Croatia where notaries having European standard of consumer protection play an important role (Uzelac, 2018). In Montenegro, as indicated by Velibor Korać, a notarial act for any legal transaction obtains a public document and under specific conditions, it can obtain an administrative case (Korać, 2017).

It is to be noted the conception of the electronic notary is popular. As noted by Sukhovenko electronic form is the top choice of each notary services and electronic notarial system, as a new social institution, is the top choice of the notary services in relation to their quality, availability, and data security (Sukhovenko, 2020). In combination with moving to electronic form, this tendency has been mainstreaming. For example, this includes online customs filing of personal income by public officials etc. (Reznik et al., 2019). On the basis of the foregoing, it is evident that in different states, the legal status of the notary and her/him power and authority are distinguished, resulting in the appearance of issues of rights and interest legal defense of the natural and legal persons. For this reason, research of the notarial system is important.

## METHODOLOGY

Research of pattern of the Latin notarial system in the modern world has been conducted using dogmatic, rather legal, and critical analysis methods. The dogmatic method allowed finding out general approaches to understand the notarial system and the Latin notarial system as a part. Using the rather-legal method, concerning the experience of notarial functioning in the modern world is being done. The critical analysis method allowed evaluating strengths and weaknesses of the notarial system in the modern world and growth direction was determined.

The methodological basis of the work is dialectical and other methods and techniques of scientific knowledge.

The dialectical method made it possible to identify and analyze in dynamics the rights and legitimate interests of notaries as an object of the administrative-legal protection, thereby reaching a new quality by looking at them in a wide format to ensure the common good of society with the identification of the values of protection of notaries as the leading good of the legal system as a whole, as well as to identify at a scientific level and resolve contradictions in the sphere of issuing by-laws and regulations on the control of notaries - like those related to conflicts of interest. The main method was the method of comparative analysis of social and legal values to protect the rights and legitimate interests of notaries and to ensure the public interest of society as a whole, which made it possible to clarify the legal nature of the phenomena in this area.

Universal and those that were used were: the general scientific logical-semantic method of scientific knowledge, which made it possible to analyze the opinions of scientists and isolate rational factors from them; general logical methods of analysis and synthesis, provided a conditional decomposition of complex substantive phenomena into "*elementary*" legal particles and provided the opportunity to form new, more complex legal categories on their basis; the formal dogmatic method, which provided an analysis of the law in its positivistic "*purity*".

The deduction method made it possible to analyze the general theoretical principles of various classical legal categories and, on this basis, to form the specifics of the content and mechanism of administrative legal protection of the rights and legal interests of notaries from general to individual. The induction method has become indispensable when forming special administrative tools.

## FINDINGS AND DISCUSSIONS

The Latin notarial system is based on:

1. A notary is an individual person but in any case he/she is a public officer having legal enforcement functions;
2. A notary exercises legal enforcement functions and he/she does not depend on government authorities;
3. A notary acts on behalf of the state and defends rights of citizens, society and state compliance with the requirements of legitimacy;
4. The main responsibility of the notary is to provide competent legal assistance;
5. A notary must not exercise judgeship and public justice must not be superseded by a notary;
6. Specific legal value of notarized documents;
7. A notary acts as a legal consultant;
8. Notaries are unionized agencies having self-regulating rights (to define rules of professional conduct);
9. Number of the notary positions is limited with a resolution of the notary chamber and judicial authorities;
10. Notarial activity is paid;
11. Notaries are financially liable for their professional activity (Piepu & Yagr, 2001).

Nevertheless, these bases are rarely turned into reality when the Latin notarial system is being created in the modern world.

In the modern world, the Latin notarial system currently dominates. In 1948, the International Union as an International non-governmental organization was created to develop the notarial function and notarial activities by extension. From the outset, the representatives from 19 states participated in the Union (a review of the XXII the International Latin notarial congress). In 2012, the number of participants equaled 83 including 21 participants from 27 states of the European Economic Community. In 2020 there is the Latin notarial system in 120 states including notaries of Austria, Belgium, Spain, Switzerland, France, GFR, Italy, Luxembourg, the Netherlands, Russia, and most of the Latin America Group of the States. Provided however, the Latin notarial system is accepted across some of the states of the USA and in London, there are notaries applying the Latin notarial system. The result is that belonging to the Romano-Germanic legal family is not attributive of the Latin notarial system.

Within states of the Latin notarial system, a private notary and a state notary can be. The result is that there is a significant difference of this institute's functioning and responsibilities of the notaries. Bases of the government notary functioning can contravene to bases of private notaries. In a number of states, a post of the notary is allowed to coordinate with power and authority of lawyer, a legal adviser practicing privately, justice of the peace. Within states, signed suitable international agreements and which are applicable to the Latin notarial system; there are differences between the notary within Romano-Germanic legal family and states of common law family.

For example, as based, it is submitted that a notary is an independent representative acting on behalf of the state. He/she is an individual person vested with public authorities who is financially liable for their professional activity (Repin, 1994). There is the governmental notarial system within some cantons of Switzerland. As well there is the governmental notarial system within Baden-Wurttemberg federated state of GFR, Portugal, China, DPRK and South Korea. A government notary is not an individual person. He/she shall act honestly and in accordance with the law. Nevertheless, he/she is not financially liable for their professional activity except when otherwise expressly provided for the law. The general rule is that the state assumes financially

liable it can be insurance, disciplinary responsibility, and a civil suit. In accordance with the foregoing, the condition is created to abuse practice with notarial authority and spread corruption (Kulish et al., 2018).

In respect thereof, the legitimate question regarding the necessity of the notary as a specific institute of rights and interest legal defense of the natural and legal persons. In this context, civil registry bodies, city administration, a head of the department of sectorial management, a public sector official of a territorial administration (prefects) having necessary qualification and specialist legal knowledge can act as a notary (Piepu & Yagr, 2001). A government notary has the qualification of different public officials regarding legally significant actions within the competence of the notary but his/her legal status is no different from central and local government employees. The priority of this institute is its universality of performance of legally significant acts that are notarial. A notary does not depend on the government service and he/she is financially liable for the legitimacy of notarial actions, as a result, the authority of this institute is reduced.

Within the European Union, there are the German and French models of the Latin notarial system. The German model considers that a notary shall evaluate the compliance with formalities to draw up legal documents and exercise notarization. It was not anticipated a notary draws up the document, coordinates the position of the parties, consults, and executes other actions before notarizing. A notary covers process of preliminary justice. By applied notarized document, the property of the debtor can be vindicated. A notary helps the system of justice and can combine judicial functions. Judicial districts equal notarial districts and an administrative notary is assigned by the district judge instead of the absent notary (Goncharov & Scherbinin, 2009).

The Trench model does not consider a notary draws documents. Individual approach to each customer is an advantage but there is a weak legal part and unification of documents drowns by a notary as negative. A French notary has the right to provide services as an estate agent (Kvitko, 2012).

As a rule, most of the Italian notaries work for the government and a notary has the right to enforce notarized documents. A notary examines legal documents and notarizes them; they draw a testament and collect property taxes during changing real estate title transfer.

In XV-XVI, Far East states accepted the Latin notarial system its provisions for law were adopted from Spain and the Netherlands (Balk & Dijk, 2007). However, notary of the common law family acts with limitations within Japan, Singapore, Malaysia, etc. Within these states, notaries are not common spread. Consequently, local government bodies, bodies of executive power, excise notarial function. Within PRC and Japan, 30% of notarial actions were associated with foreign elements. Within these states, requirements to a form of legal transaction generally are less strict. For example, a testament can be in written or oral form, a property conveyance contract can be in written form etc. (Baum, 1996).

## **RECOMMENDATIONS**

To develop notarial legislation, a common model of the organization and functioning of the notarial system shall be implemented in the modern world. Within international trade relations, there is an issue that across borders, persons exercising notarial actions have a different legal status, scope of authority, and legal force of notarized documents. Specialization of the

notarial institute acting in legal relations with a foreign element seems advisable. Within international business, the legal status of these notaries and legal force of notarized documents shall be harmonized.

It was established that in the implementation of lawmaking in the provision of notarial services, two factors should be taken into account that exhibit certain contradictions: firstly, to prevent legislative shortcomings that made it possible for notaries with low legal culture and legal awareness to violate the rights of individuals and legal entities; secondly, to ensure the legal regime defined by law for legal entities, in which public administration entities do not have the right to intervene and clearly define the grounds for notary audits, their dates and procedures, as well as administrative sanctions, which should be applied to notaries in violation of notarial norms.

It was revealed that at the level of declarative norms, notaries are well protected from the interference of people who are vested with powers of authority, but in practice, as a rule of law, there are a number of problems, among which there is a violation of the procedure for conducting notary checks; re-checking on the same issue; disconnection of notaries from state registers without a court decision and not at a specified time; extortion of material assistance from notaries by some officials of territorial administrations, which in its essence is an act of corruption.

Therefore, amendments and additions to the current legislation should take place with the aim of increasing the effectiveness of the protection of notaries as balancing the norms of administrative law to prevent legislative shortcomings that have enabled notaries with low legal culture and legal awareness to violate the rights of individuals and legal entities; regarding the legislative definition of the legal regime, in which public administration entities do not have the right to intervene; regarding a clear definition of the grounds for notary checks, their timing, and procedures.

## CONCLUSIONS

Within the Latin America Group of the States and European states, characteristic of the Latin notarial system is that private or governmental notary dominates. Herewith coordination by a notary of different occupations or a net notary is an intrinsic part of the Latin notarial system. The French model is the classic Latin notarial system. Initially, notarial functions were exercised by local officers that have become a part of their legal culture and specific nature of the notarial system within Far East states. Besides that, within these states, the need for notarial services is less because of the conciliatory method solution to a conflict is popular but a notary is required during documents notarizing in relations with a foreign element. This situation requires developing a common model of the organization and functioning on the notarial system to defense rights and interests of the natural and legal persons by notaries across the board.

Summing up, it can be argued that written notarial acts play a significant role in the system of Latin notaries since it is in them that the result of the decision of specific legal cases on providing probability and authenticity to certain objects is drawn up. Notarial acts in the Roman-German legal system is a special form of evidence that does not require additional verification and is a confirmation of legality.

It is proved that in countries where the system of Latin notaries operates, the notarial deed is considered to be the result of the actual execution of the notarial action. Notarial acts relating to any legal agreements are acts certified by a notary.

Notarial acts in the system of Latin notaries are a special form of evidence that does not require additional verification and is a confirmation of legality. Notarial acts have both a presumption of legality and a presumption of the correctness of their content and can be appealed exclusively in a judicial proceeding. Notarial acts are endowed with evidence and executive power.

The effective experience of developed countries in the administrative and legal protection of the rights and legitimate interests of notaries in the EU member states consists in the awareness of the high role by notaries and by citizens - of the urgent need for honest, independent, and protected from unlawful encroachments notaries, in the protection of notaries by law at the level of public servants, the establishment of strict legal responsibility for fraudulent publication of a notary public, the duties and rights spelled out in laws, the grounds for prosecuting notaries and the functioning of an effective two-level notarial self-government, without a detailed investigation of which the Minister of Justice cannot independently bring a notary to disciplinary liability, in particular, suspend his (her) activity or deprive the legal status of a notary.

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