

LEGAL BASIS OF NOTARY PUBLIC SERVICES

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Abstract: *In modern legal systems of European countries dominate the Latin model of the notary public, and this model was accepted by Serbia¹ too. Notary public occupation is the constant occupation of notaries.*

The traditional domain of notary public activities relate to inheritance law, family law, and legal issues related to disposal of property, different status and different things, like handwriting authentication, signature, transcription, translation, and the like. Ratio legis of notary public service is in fact of taking jurisdiction regarding proper preparation and issuance of documents, official certifications, deposit and court-ordered treatment.

Keywords: *notary public, jurisdiction, legal and protective purpose, legal security, court de-jurisdiction, authentic form, a public document*

INTRODUCTION

The constitution and law, court order and agreement between the parties determine notary public service. According to the type of notarial acts, the jurisdiction of notary public is determined by the law, court order - court document and optional - logic, according to the initiative of the party. Law provides notary jurisdiction and it applies to its work. Notary public Act of Serbia provides acting of notary public as its only work and according to court order. A court order is a legal basis for the jurisdiction of the notary public in court proceedings. Optional jurisdiction is determined by agreement of the parties and to the law when it is not explicitly defined. Disposition to choose the form of notary public for legal issues they want to contract of the is left to parties, but they may decide that certain actions are performed by a notary public, such as, for example, public sale or inheritance before starting the procedure.

All proceedings transferred to a notary public, legal and protective goal extends through preventive care and ensuring the safety of citizens in carrying out their activities. Transfer of powers i.e. judicial de-jurisdiction is conditioned by the preventive protection of citizens. The criteria for the transferring responsibilities from the individual operations are determined by the form of protection, the content of legal relations that requires a declaration and by the legal certainty of authoritative bodies. The marginal role of the court in these proceedings is a relevant criterion for the transfer of jurisdiction, because it does not

¹ Zakon o javnom beležništvu (ZJB) „Službeni glasnik RS“, broj 31/11.

require its decision or discussing disputed legal relationship or on the disputed factual issue. A request for a guarantee of safety is manifested in the legal system through the notary public document. Delegation of proceedings by court order is caused by its relief, and by taking certain actions and procedures that ensure the implementation of these actions through the guarantee of security. Acting on the court orders still requires court supervision over the work of the notary public. Notary public has taken the preliminary and provisional measures and protection measures from the inheritance and enforcement proceedings, which form a part of these proceedings, as they begin enforcement and inheritance proceedings or are a part of their security, but these procedures do not end with them.

We conclude that in the extra-judicial proceedings certain financial and legal situation shall enjoy legal protection no matter what the extra-judicial proceedings does not encompass disputed factual issues. These procedures cannot "come out" from court protection.

The process of division of common things implies two opposite sides and two opposing interests of the parties in order to divide the joint property. Proponent and an opponent of the applicant do not always have a common goal - the division of things. In practice, it is common that the opponent has the possession of the applicant's properties and do not want to perform division. As a rule, a thing with which is required the division is indivisible. In this case, the applicant requests that the court's decision may be addressed at the public sale, which is executed by the rules of enforcement proceedings.

A different situation is when the parties agree on the division and then this agreement may be presented to the court record or can be made before the notary public, and in that case, the court protection of the parties is not necessary.

In extrajudicial proceedings there are numerous official procedures such as, for example, deprivation of legal capacity, the declaration of death of the disappeared, deprivation of parental rights and others. These procedures require the court to determine some of the facts, as, for example, whether a person is deprived of legal capacity capable of taking care of their rights and interests or it is a spendthrift. The court is obliged to provide expert evidence, hiring neuro-psychiatrist to take evidence of whether this person can take care of itself, its rights and interests and that it is oriented in space and time. These procedures establish important facts about the status of a person and these procedures require the legal protection that guarantees stronger instruments not only security that is achieved by preventive care. Extrajudicial proceedings in which there is no discussing on controversial legal and factual issues and in which is not necessary to provide legal protection, make "undisputed part of preventive justice"² and depending on the organization of each state are put in authority of notary public, administrative body or extra-judicial court.

Therefore, we conclude the notary public took a procedure of assembling of documents and received an extensive jurisdiction and powers of the probate proceedings.

² Fabbender, Grauel, Kemp, Ohmen, Roemer, Notariatskunde, Četnaest. Auflage, München, 2001 p. 21 believe that the word "preventive" is more appropriate than the word "extrajudicial" for marking the undisputed act of extrajudicial proceedings

I. TRANSFER OF JURISDICTION FROM THE COURT TO PUBLIC NOTARY

Domestic law³ determined by a general provision that the court may with its decision to entrust the process or taking certain actions to notary public and give the court discretion right to decide which processes and activities will entrust to a notary public. In our law, the action of the notary is not regulated by court order, this matter will be determined by the judicial and public notarial rules and after the amendment of many laws, for example, the Law on Extrajudicial Procedure, Code of Civil Procedure, Heritage Act, the Law on Mortgage, Company Law and others. Looking at our legal solution and solutions from comparative law, we conclude that the court will delegate to notary public the authorities of the specific procedures for determining its jurisdiction, based on court order or as a self-defining activity. We should distinguish court-ordered treatment of the transferred business from the court to the notary public. In some procedures, the competitive competence of the court and notary public is determined. A notary public will handle the probate and civil proceedings by court order.

1. THE POWERS OF A NOTARY PUBLIC IN PROBATE PROCEEDINGS

Conducting of a notary public in the probate process in most countries, for the basis takes the court document.

In the probate process is determined the legacy of the decedent, who are the heirs and how big their heritage is, whether one's inheritance law is limited by condition, order or deadline. In addition, the probate process has some secondary objectives that achieve depending on specific circumstances. These are temporary measures necessary to protect the legacy of inventory, evaluation of legacy, keeping the legacy, the sealed legacy, which are given in the jurisdiction of the notary in most countries; this notary public performs these actions according to a court order.

Process court action in the probate process is moving toward the field of undisputed factual situation, but when disputes arise among the participants about the factual or legal matters, probate proceedings shall be terminated and the parties are referring to the lawsuit. Litigation appears as an additional way for solving inheritance related issues. Probate court does not have a passive role, it is determined the facts, and which facts in dispute are relevant for solving heritage questions. Probate court will only then refer parties to litigation. In theory⁴, this relationship this civil and probate court is criticized because of delays in the proceedings, delaying a final decision on succession, to the detriment of vigilance parties.

Litigation appears as a corrective manner to the inheritance. Given the division of the probate court decision that binds the parties and one that does not bind the parties, there is a possibility of correction of the probate proceedings. These are cases where the probate proceedings should be amended by the lawsuit, which was not done, when new property is found, and there is a successor that waived inheritance before, or a person with hereditary-legal requirements and did not participate in probate proceedings, or finding a new bequest⁵. Probate solution is declarative in nature and has its subjective and objective limits. It binds

³ Article 4, paragraph 3. Article 99, of the law on notary public of the republic of Serbia

⁴ Marković, S., , *Nasledno pravo*, Beograd, 1930, str. 314

⁵ Article 129 of the Law on Extrajudicial Proceedings, Official Gazette of RS, no.18/2005

individuals who participated in the proceedings, and includes those facts that were known at the time of conducting the probate proceedings. Therefore, it does not always have the validity. Therefore, more and more notary public wins probate proceedings because the implementation of the probate process in some countries is given to notary public (in Hungary), but the supervision of a notary exercise courts. Croatia is more close to this solution.

In general, it can be separated the criteria for court-ordered treatment. Court order relate to the conducting of the notary public on the previous actions and measures to secure the inheritance. Most legal systems decided to implement following notary public operations inventory, assessment, inheritance stamping, assembly and other death certificates. Our law⁶ has accepted this solution. These actions are implemented to ensure the decedent's assets and obtain legal protection is realized that the authorized holder of rights, as the successor would not be thwarted in gaining inheritance. In the previous procedure, preventive care can be achieved, because this procedure is part of a previous probate proceeding.

Court order in certain legal solutions includes the implementation of the probate proceedings. This solution provides a process notary public activity in the area of undisputed factual situation, but when a dispute arises between the parties, the decision refers to a civil court.

1.1. Measures to protect the legacy

Law on Notary Public Affairs determines the acts by the orders of the court, because it predicts that the notary public may make a report in the event list and estimates based on the legacy of the previous consent of the court and the facts on which depends the security measures. The approval of the court is required even though the court notary public does not give an order; it follows from the court retained jurisdiction for conducting probate proceedings. The court must be informed of these actions by a notary public and when initiating by parties.

Notaries as court commissioners will conduct activities from the previous procedure and implement measures to protect the legacy. On the undertaken action, a notary public shall make records and issue a certificate to parties. His duty is to inform the court about the action undertaken. In the event of an appeal of the parties, probate court may revoke the subject of notary public and make an action. The actions that will be delegated to notary public are inventory and assessment of the legacy, keeping things as setting notary inheritance custodian and administrator of inheritance, In addition, it will definitely take other jobs: taking the successor statements, preparing the death certificate.

We believe that the transfer of responsibilities to the notary public should take place in stages. The first phase would include tasks by court order from the previous procedure and measures to secure the legacy of the second phase would involve implementation of the probate proceedings. We believe that caution is justified and would have to be kept competitive jurisdiction in the first stage of the law. However, it is possible that management will be transferred to the probate proceedings to the notary public, and the acceptance of this solution will depend on the facts concerning the inheritance overburdened court cases and requirements for its unloading and preparation of candidates for the profession of notary public.

⁶ Article 88, paragraph 3 of the Law on Notary Public, "To prepare a report on the inventory and assessment of inheritance, based on prior court approval"

1.2. Realization of the probate proceedings

Croatia has transferred responsibility for managing the probate proceedings to the public notary. He acts on the orders of the court. Notary public may not decide to cease the proceedings or the decision on measures to secure the inheritance if there is a dispute between the parties, because it requires the full consent of all parties. In our opinion, should be accepted by the broader concept of transferred competence in our law, he could make a draft decision would be accepted by the court.⁷ The process reduces the activity of the notary public to determine the composition and the legacy of proclaiming a successor, or the making of a declaratory decision. It also refers to the process taking actions that serve to protect the rights of heirs (list, assessment, etc.), and are aimed at determining the composition of its legacy and security.⁸

1.3. Surveillance Court

Entrusted jobs require the supervision of the court. Public-notarial and court rules shall determine the way of notary public treatment by court order. Dissatisfied party will be able to object to the court and the court will decide that it was entrusted to him the action or proceeding. The law requires application of the provisions of law against the payment order. Under supervision, the court will be able to take away the subject to notary public, if there are justifiable reasons and solve it itself or will give it to another notary public.

2. THE POWERS OF A NOTARY PUBLIC IN ENFORCEMENT PROCEEDINGS

In enforcement proceedings, according to our legal solution notary does not act on the orders of the court. However, the notary public has taken the security procedure referred to in this procedure. The procedure of securing the enforcement procedure is intended to reduce risk, not to thwart the success of execution, and that title of authorized law, the creditor would not be thwarted in obtaining their rights. Transfer of responsibility for the conduct of the notary public in the enforcement procedure is limited to taking enforcement actions in the security measures.

Notary public acts are derived from this procedure and present his own business. They are related to the implementation of an executive title (notary public or private documents) relating to the provision of creditor claims. Consequently, they have the same legal effect as a court action. Enforcement action that takes notary based on the agreement of the parties, in such manner that coercion inherent in enforcement proceedings. Transfer of responsibility for the conduct of the notary public in the enforcement procedure is limited to provisional measures and security measures, because these early preventive measures or achieved "relative" legal protection, while some authors this provisional measures of protection in the process of execution considered factual⁹ because third parties do not protect the creditor interim measure. In other preliminary measures that can be achieved by legal protection, or they have a real effect, because the effect on third parties and time are limited. The main objective measure of security to the creditor that his claim that the executive has not provided in such a way that is what the future may enforce its rights in enforcement proceedings.

⁷ This solution was accepted in our law, a draft conclusion on the basis of valid documents is made by the executor, Article 256, Law on Enforcement and Security, Official Gazette of RS, No. 31/2011

⁸ Antić, O., *Nasledno pravo*, Beograd, 1988, pp. 353-355

⁹ Triva, S., Belajac, V. Dika, M., *Sudsko izvršno pravo*, Zagreb, 1980, str. 322

2.1. Executive, notary public document

Notary public document may have an executive power, if it has an obligation to do or permit something if in terms of such obligations is allowed disposal on condition that the borrower agrees with the voluntary execution.¹⁰

Notary public will be able to receive the record a statement of the creditor to extend the deadline for the execution debtor's obligations set forth in the enforcement document. It is also envisaged, the agreement of the parties about the existence of money and time of its maturity, and their consent to the entry of the lien on real property the debtor, or the establishment of a lien debtor's personal property inventory, and provides a monetary claim which has the force of a court settlement. Namely, the agreement of the parties before the notary eliminates court order and request for judicial protection.

2.2. Acts of commission

Treatment provided for notary public relate to the preparation of executive and notary documents in connection with its implementation. To notary public were allowed to independently take enforcement action, at the request of a party to fulfill due to the performance date agreed to by the borrower. These actions include implementation of a mortgage or keeping things, submission and more.

The parties may at the conclusion of the notary public enforceable document, to agree to carry out enforcement actions immediately notary (i.e. maturity of debt, the notary is obliged to deliver a warning to the debtor). He can make a record on the list of things that kept the same. In enforcement proceedings, as an interim measure to implement the judicial lien, when it comes to securities claims and the implementation is done by filing securities to pay the sale depending on the type of securities. The action is reflected in the notary keeping the amount paid or storing things. This action "replaces" a temporary measure with which the court determines the ban on keeping and disposing things by the debtor. This unique mode of keeping things belongs to the self-employed notary public, because it is based on the agreement of the parties. In addition, it can perform other actions to implement the legal work to secure the claim. For example, when securing a claim, which is given as a pledge, the pledge effect appears only when you inform the creditor of his debtor's consent. Notary can verify this statement by the creditor and by order served on the debtor. This type of delivery is one of the notarial acts such as is used for the implementation of legal work.

In our law was introduced extra-judicial authority and it is not just acting on the orders of the court. Our laws and other rights that recognize the institute (private) enforcement officers entrusted the execution to executor. The difference between these two extra-judicial bodies is expressed as a notary public enforcement actions carried out by agreement of the parties by preventing initiation of enforcement proceedings and the officer contributes to the realization of this process by applying coercion.

In the laws, they do not know the (private) executors¹¹, notary public in this process operates by court order, as for example, the Serbian Republic, the Federation of Bosnia and Herzegovina as follows seizure claims based on securities, claims to surrender and deliver personal property or to surrender to the division of real estate matters. Notary in individual rights given judges the authority of first instance court in enforcement proceedings. Making decisions based on valid documents is the responsibility of the notary public in certain jurisdictions, this solution has Croatia, and according to our law, this responsibility was given to private executor.

¹⁰ Article 6 of Law on Notary Public

¹¹ Zakon o izvršenju i obezbeđenju (ZIO) „Službeni glasnik RS“ 31/2011

3. THE TRANSFER OF SOME RESPONSIBILITIES FROM CIVIL PROCEEDINGS

3.1. Preservation of evidence

According to our current regulations, the Civil Procedure Code regulates providing evidence. According to the Law on Public Notaries of the republic of Serbia,¹² the procedure of providing evidence falls within the self-employed notary public and a parallel jurisdiction will be retained.

Notary public can prepare a report providing evidence before the initiation of litigation or contentious proceedings, or before initiating proceedings for the imposition of security measures, and before the administrative proceeding, subject to certain procedural law. Notary will be able to perform the tasks of securing the evidence in those cases where there is reason to fear that some evidence later will not be available for valid reasons. Notary public will provide the evidence before initiating these procedures by making the record.

3.1.1. The examination of witnesses

Notary public act¹³ provides that a notary public may hear witnesses in the process of legal assistance and under the terms of the Code of Civil Procedure. In this case, a notary public, acting at the request of the court, the execution of this evidence must comply with all provisions of the Code of Civil Procedure governing the manner of performance of this evidence and the rights of witnesses.

3.1.2. Notary public testimony as providing evidence

The self-employed notary activity includes the testimony of various facts and statements that have the same legal force as the securing of evidence. The intervention of the notary public testimony at the trial replaces the securing of evidence. Verification of actions that include establishing legal relations, for example, offer, make a different statement or receipt, may be used in court proceedings as evidence that a legal certainty and the validity of the court to secure evidence. The intervention of a notary public in the testimony of various facts not only replaces the provision of forensic evidence, but also contributes to legal certainty and unloading of courts.

4. THE POWERS OF A NOTARY PUBLIC REGARDING THE NEGOTIABLE INSTRUMENT AND CHECKING PROCEDURES

In our law provides for the contentious jurisdiction of the court to protest negotiable.¹⁴ This will keep the contentious jurisdiction of the court at the beginning of implementation of the Law on Public Notary¹⁵. Negotiable instrument Instruments Act provides that this Court

¹² Član 88. ZJB Srbije

¹³ Član 88. tačka 2. ZJB Srbije

¹⁴ Član 69. Zakon o menici (ZM) SR Jugoslavije, „Službeni list SRJ”, broj 46/96

¹⁵ Postupaki protesta menice prečiće u isključivu nadležnost beležnika primene zakona 24. 5. 2013, a koji datum je predviđen članom 182. ZJB

may delegate the duty to the authorized official.¹⁶ Notary Public Act provides that the certificate of protest that has been done among the activities of notary public.¹⁷

Protest of negotiable instrument is a public document issued by a notary public and certifying that the negotiable instrument person that has an obligation in whole or in part refused acceptance or payment of bills or refused any other negotiable instrument act (dating of acceptance on the negotiable, submitting the original negotiable, etc.). Protest of negotiable instrument primarily is a measure of a guarantee of negotiable instrument legal rights, primarily the right to recourse. The notary public will take over jurisdiction of the protesting authority. Its function checking whether negotiable instrument of checking borrower accepted or rejected the requested action. In the event of rejection, notary public raises the protest. He does not care about validity of demands of negotiable instrument and checking rights or is that right is obsolete.

5. THE POWERS OF A NOTARY PUBLIC IN THE LAND REGISTRY PROCEDURE

Based on the notary public record that contains a commitment to establish, communicate, restrict or abolish the land registry law, can be immediately implemented the registration of immovable property if the taxpayer expressly agree to this in that record.¹⁸ Here we talk about carrying out¹⁹, because it is about giving *clausulae intabulandi* in the form of notary public records - acts. Based on the notary public-records laws can be directly implemented land registration and cadastre of real estate, so that the executive notary public record replaces the decision of the land registry of the judge and based on it land registry changes can be directly carried out.

6. THE POWERS OF A NOTARY PUBLIC IN THE COMPANY'S PROCEDURE

In domestic law provides more legal forms of companies, which are partnership, limited partnership, limited liability companies and joint stock company. Company Act of Serbia²⁰ does not form public-notary documents for the founding act, statute, decisions of the assembly, certification records, as well as status changes. Company Law in the general provisions expressly require that the memorandum of association of all types of companies must be passed in the form of a decision and request verification of signatures on the articles of association, it does not require a notary public form, but is determined to certify the signatures must be in accordance with the law governing the certification of signatures. Verification of signatures is required for changes to the decisions of the charter and statutes, records and assemblies, etc.

The activity of the notary public in the area of commercial law, and considering the comparative legal solutions is reflected in the drafting of the founding documents

¹⁶ Član 70. ZM SR Jugoslavije

¹⁷ Član 91. stav 5. ZJB Srbije

¹⁸ Član 85. stav 2. ZJB Srbije.

¹⁹ Dika, M., „Sudsko i javnobilježničko osiguranje prijenosom vlasništva na stvari i prijenosom prava”, *Javni bilježnik*, broj 9/2000, Zagreb, str. 553

²⁰ Zakon o privrednim društvima (ZPD) Srbije, „Službeni glasnik RS”, broj 36/2011

shareholding companies, limited partnerships, equity firms, which provide comparative law depending on the intended form of society. The notary public is also an advisor and founder of the company that fulfills its function of counselors in the first place, which is examining the legal form best suited to meet the goals of the founders of the social, tax, and sometimes also in social terms. We believe that the legislature a notary public document predicts for the memorandum of association and any change of status of companies.

6.1. Notarization of minutes

Act introduces a notary public form of status matter, predicting mandatory form of certification only with shareholders. Notaries Act provides two options, first is that only a notary public certify the decision of the management, not to attend the meeting. To attend the second session of the Assembly, but then has to enter all essential elements of the record as required under the Companies Act (to determine identity of the members present, day and hour of the session, to read as follows decisions made, a summary of the discussion on each agenda item, the method and results of the vote). If a notary public only called upon to certify the decision of the management of legal persons, the session in which he did not keep records, it will be required to bring all elements of the document provided for the preparation of the minutes. It should be noted that the body (board of directors or similar body) of legal entities to attend the meeting called him in certain day. Shall certify the text of the decision and state the date and time of the meeting at which the decision was made. The notary public is not required to establish the identity of persons who participated in the session, unless it is explicitly required. It must establish the identity of the president of the session, which is normally required and to sign the record. If the chairperson of the meeting refused to sign the record, notary public will enter his plea to the chairperson of the meeting offered to sign the record and that he refused to do so. Company Law and Law on notaries were adopted at the same time, so they are not aligned.

II. INDEPENDENT ACTIVITY OF NOTARY PUBLIC

Independent activity of notary public resulting from court de-jurisdiction. The process of preparation of documents, their contents confirmation and authentication, storage of documents or other items do not require court action, because action in these proceedings the court has no role verdict. The court here has a marginal activity because they do not decide on disputed legal relationship and not make a decision. In these proceedings, legal assistance to the parties and the court here operates by providing "protective aid" is here it is its preventive role. Procedures concerning the preparation and certification of documents, which are regulated by the extra-judicial proceedings²¹ were transferred to the independent jurisdiction of the notary. The process of deposit, that is, storing documents and valuables aims to guarantee the legal security of the parties and the jurisdiction of this Court transferred the deeds, but by keeping parallel with the court.

1. THE FORM OF THE NOTARY PUBLIC RECORD

In the system of the Latin notary, notary public form provided records for legal affairs that the legislator give special protection. These legal matters legislator imposes "a necessary authenticity," anticipating the imperative of notary public forms of evidence that can be achieved under certain conditions, the executive power of public-notary documents. Respecting of the notary public forms is a condition for the validity of the legal work.

Notary Public-form contains the basic rules that are set in the law is imperative. These rules relate to the reliability of public notarial document (document must be legible, indelible, on paper, which will guarantee the preservation act and it cannot contain loopholes that would make it impossible to act in a certain number or insert additional clauses). Our law provides the imperative form of legal matters for family law and inheritance law.

Legal affairs of family and inheritance law character in our law have special importance and as such they were given special legal protection, which is manifested in the form of a preemptory records. The second criterion relates to the legal issues that are envisaged in respect of authentic forms provided by the special procedures for processing documents, after which these legal activities receiving public form. Notary has taken the procedures of preparation of documents and confirmation of documents and its verification, and contracts were drawn up by the court, confirm and validates moved to its jurisdiction. In addition, the estimated individual designated contracts (the contracts on the transfer and distribution of property for life contracts on lifelong support, and the promise of a gift deed of gift in case of death). Bearing in mind that the aim of preventing disputes notary services, the legislature has if the notary can make adjustments and hence the resulting records form the legal nature of family arrangements. The application of the law is expected after two years from the date of its adoption, and the contracts for which the law provides for a mandatory form of public-notarial records produce legally effective only if it is concluded before a notary public (1 September 2014).

In our law provides for the mandatory form of notary public records for: agreements on the property relations of spouses; contracts on property relations between unmarried partners, the division of joint property between spouses or common-law partner, serving the legal agreements, contracts for the disposal of real estate entities that are incapable of doing

²¹ Član 164–210 ZVP Srbije. Isto rešenje imaju Slovenija (član. 150–167. ZVP), Crna Gora (član 186–231. ZVP).

business, contracts on the transfer and distribution of property for life; contracts on lifelong support, and the promise of a gift deed of gift in case of death.²²

Optional choice of notary public records that is left to parties contributes to legal certainty in legal affairs and is a "useful domain" the authenticity of the notary public records. Parties often enter into contracts in the form of public notarial document and when this form is not provided due to the imperative of legal security.

Serbian law determines the form of records in two ways, as an imperative, optional, and competitive. In the first case, determines the imperative form of records legal matters and thereby leaves a space and the possibility that other regulations specify the form. In the second case does not require this form of the imperative, but an exhaustive listing of legal affairs and statements that may have this form, and in this way determines the competitive form of records. These are agreements on the disposal of real property, contracts available movables or rights; statements and disposal of property for the establishment or endowment fund for life or for death or endowment fund founder, a record of the annulment of lost, damaged or destroyed documents; testament (will); a statement that a person is deprived of the inheritance; statement that the gift is given not counting future successor to his heir, in accordance with law; statement of recognition of paternity or maternity.

The laws of the notary of the former Yugoslav republics provided the required records for a particular form of legal affairs and left the room to be determined by it and other laws. The legislature of Serbia is in the same way choose the imperative form of records, but it was determined and competitive form of records for certain legal matters for which jurisdiction is provided, and other organs, so determined and competitive jurisdiction of the notary public. This example gives a bequest, the form of which may be made in several forms (personally, before witnesses, court, etc.) and the various organs of authority (court, diplomatic and consular representatives, public notary). The importance of certain statements of family law and inheritance of characters the same conditions competence of various organs. Statement on recognition of paternity may be given before the court, guardianship, or notary public. Therefore, it is not necessary to have intended to abolish the jurisdiction of administrative bodies (registrars, social welfare centers) and the Court, because the jurisdiction of the notary public to prevent anticipated proceedings before a court and easier, faster and protection of parties.

1.1. Settlement in front of the notary public

Settlement achieved in the form of public-notary record has the same effect as a settlement concluded before a court, because that prevents new cases with an identical object on which the settlement is concluded. Settlement of the notary public has the importance and power of a court settlement concluded in contentious proceedings. Our law provides that the notary can only make a settlement before a court or administrative proceeding for the reasons of legal security that would run parallel processes, i.e., duplicate the "identical to the requirements of the parties. Namely, if there is an agreement between the parties during the proceedings, then they can in this process to draw up a settlement. Before the notary public the party can cover several disputes, and in addition they can nominate a notary public to take certain actions to implement the settlement, if it contains and enforceable.

²² Član 82. ZJB Srbije

2. NOTARY PUBLIC CERTIFICATION

Notary public certification is a kind of public notarial document which includes the actions of the notary public on the basis of which private documents can be obtained probative force of public documents (in the formal and material sense), or in the part where the verification is performed and does not change the contents of a private document because it gets probative only in a formal sense. Laws on Public Notaries of Latin organizational types do not make this distinction meaningful only provide certification as a notary activity citing its kind.

In domestic law, the procedure of ratification of the document content and its certification is one of the extrajudicial procedures.²³ This process will be transferred to the jurisdiction of the notary public. This procedure provides the effect of public documents required for the validity of legal transactions, legal issues and financial statements of the will. By checking the contents of a private document and its verification in court, documents received power of a public document. In our law confirmation of the contents of private documents is required by the contract on life support, distribution of property for life and marriage contracts. This procedure is marginally administration of justice²⁴ because it does not solve the controversial question of law, nor it is necessary the court's decision, and that is the reason for the transferred jurisdiction of the new institute. The court decision is needed when it comes to unlawful application for certification.²⁵ Law on Contested Procedure refers to the process confirmed the contents of documents conducted under the provisions of compiling the documents, although these are two different procedures. Confirm the contents of a private document and it puts it over. The preparation of documents is governed by the provisions of the law but not covered by the rules of procedure and, as Poznić²⁶ concludes, confirmation of documents "is equivalent to compiling the document."

In domestic law, procedure and contents of documents confirming its certification was transferred to the jurisdiction of the notary public. In jurisdictions that have recently had the same legal order, such as systems in Croatia, Slovenia, the Republic of Serbian, Macedonian, the Federation of Bosnia and Herzegovina, Montenegro the same is arranged. This procedure is different terminology defined - as solemnization²⁷ or as a certified record²⁸ of a private document.

²³ Član 183-185. ZVP-a

²⁴ Čalija, B., Omanović, S., *Građansko procesno pravo*, Pravni fakultet, Sarajevo, 2000.str. 366: "The character of justice, this activity has in the fact that due to court preparation and verification of the contents of documents provided by the onset of action is a substantive statement of will for the establishment, change and termination of specific legal issues, in case when legal protection reasons require so."

²⁵ The Belgrade District Court, Gz. no. 588/06 of January 25, 1956, Archives of the Municipal Court in Belgrade. From the reasoning: "With challenged draft resolution as unfounded the applicant's proposal was rejected. In this case, bearing in mind the quoted statutory provisions, no requirements for certification of contract maintenance for life, given that proponents have not provided any evidence that the movable and immovable assets, which are the subject of the contract, are the property of the receiver of support." Namely, in the process of verifying contract for life care, the court shall confirm the contents of the contract confirming that with verification will become public documents with legal effect. This certification is different from the verification of signatures, handwriting and transcriptions, which can be done without restriction, it is subject to the will of the participants, and the court is not responsible for that.

²⁶ Poznić, B., *Građansko procesno pravo*, Beograd, 1991, str. 438.

²⁷ Član 59. Zakon o javnom bilježništvu (ZJB) Hrvatske „Narodne novine R Hrvatske“ broj 78/93, 29/94 i 16/07, član 58. ZJB Kraljevine Jugoslavije Jugoslavije (ZJB KJ), „Službene novine Kraljevine Jugoslavije“, broj 220/1930, od 26. septembra 1930.predviđao je solemnizaciju

Participation of the notary public. Procedures of confirmation of documents and its validation and drafting of documents have been transferred to the jurisdiction of the notary public. However, a distinction is made in the mode of application of both procedures in relation to the court. The law provides a form of public notarial records for the lifelong care contracts, contracts for the distribution of property for life, marriage contracts²⁹ the content of which the court affirmed in this case is taken over an assembly of documents. Form of records is used in the process confirming the contents of documents and its verification. The parties were allowed to require the notary to draw up their contract or contracts required to use for their confirmation and verification of the contents or solemnization. However, in individual rights, which give the example of Serbian Republic and the Federation of Bosnia and Herzegovina, the parties may bring prepared contracts provided for a record, such as marriage contract and the notary will then verify its contents and then use the procedure and its confirmation documents certifying. If the parties require from him to draw up a contract, then he will prepare a contract in the form of records. In our real confirmation of documents and its certification was transferred to the institute of notaries in solemnization. The law requires the same conditions that were required with confirmation of documents and verification of its (reading the contract, Taking note of agreement of the parties, a lesson about the consequences of legal work, etc.). The difference does not exist in the taken procedure of certification; the court in contentious proceedings brought parties prepared a contract that is identical to the procedure and notarized. After verification, the documents become public documents in full. In relation to the court, the difference is expressed as notary public, notarized the procedure can confirm the contents of any contract, and certify it, and so private document gives full force of public documents.

In our law and procedure solemnization certification decision of the management of legal persons are accepted as verification in the narrow sense. The law requires the form of solemnization records until the certification decision of the management of legal entities form the record. Other verification of non-public documents, appointed by the law (translation certification, transcripts, and signature) is treated as verification in a broader sense, as an administrative procedure, requiring the minimum requirements. They have a material effect in the part where he stated that the stamped signature. For verification of the legal person management decisions, the notary public makes the minutes, but this certification has full power of public documents because the notary shall have the entire course of the meeting recorded in the minutes. The fundamental difference is reflected in the participation of a notary in the time and their probative force. In our law proceedings confirming the contents of documents taken from the contentious procedure and transferred to the institute of notaries, but the terminology is different and is determined not only applies to contracts for the content of which was confirmed and notarized by court, but to all non-public documents, which cover different legal actions and statements.

2.1. Types of certification of non-public - private documents

Serbian law explicitly lists the types of authentication of private documents. These are the signature verification, transcription, translation, and the decisions of management. These types of certification are among the individual activities of notary public.

²⁸ Član 54. Zakon o notarima (ZN) Crne Gore, „Službeni list R CGore“, broj 48/05

²⁹ The court affirmed and notarized the contents of the contract in contentious proceedings (article 164 of ZVP of Serbia). The form of notary-public records is provided for other legal matters (Article 82 of ZJB of Serbia).

3. NOTARY PUBLIC CERTIFICATION

Notary public certification is defined in the literature³⁰ as "evidence of the facts and the facts of the anticipated legal form." Notary public confirms the legally relevant facts and events. Notary public certification is essentially a statement made before a notary public that certificate proving documents, facts, situations.

3.1. Types of notary public certificates

Notaries are authorized to issue certificates. Domestic law and European legislation on notaries distinguish between the duties and powers of a notary public certification. At the request of a party notary public shall, in addition to public notarial document, and strangers to issue a certificate that the notary public documents drawn up, as well as confirmation of the collected charges. Notary Act explicitly states that certification of a notary public is authorized to issue. These are proof that a person is live, that certain documents are submitted for review, a statement about the statement, the negotiable instrument protest. Comparative legal solutions remain competitive competence of other bodies and persons authorized by law.

4. NOTARY PUBLIC DEPOSIT

Domestic law provides that the deposit belongs to the independent scope of work, but the notary retains jurisdiction. However, the notary will be able to act and by court order, for example, keeps the testator. Comparative law has reserved jurisdiction in relation to a deposit. Jurisdiction of notary derived from the ordinary court. Retaining jurisdiction of the court is required in cases where keeping the money and securities sought legal protection of the endangered rights of a party or to the right when thwarted in the exercise of its compulsory. For example, in contentious proceedings in the case when the owner does not want to receive the rent, the court shall invite the opposing side - the lessor to determine whether the client is entitled to request the court to receive the money in the deposit and the reasons for refusal of rent by the lessor.³¹ The court must engage in the establishment, which is not allowed in the notary process, whether there are disputed facts, the law, or not already running litigation, and if so the process of opening deposit must be discontinued until finalization of litigation proceedings.³² Keeping the competition authority of the court is required to provide legal protection that includes the proper enforcement of legal instruments "to protect endangered right", a procedure that does not include the notary as it is based on the free will of the parties and the risk of defaults.

In some comparative law is determined to take notary ban on keeping the money, securities, etc. If not submitted in the preparation of notary public documents, causes retention of jurisdiction of the court, and therefore excluded the jurisdiction of notaries optional for storing money and other, if not related with a document that is produced.

³⁰ Омарбалиев, Х., *Ръководство о ноариялни производства*, София, 1995, стр. 65

³¹ Owner can point out the fact that the client - the proponent has no legal basis for using the flat, for example, is no family with previous tenant with whom the landlord had contract on leasing, using, or the litigation for eviction is in progress.

³² At the same act, the court when the applicant requires disposal of more cases that should be handed over to different persons, among whom there is a dispute. The court must send them to a civil action to establish its right to the deposited subjects.

Our right to have an opposing view provides notary public to receive money and other things and when he didn't made a record for parties. In this context, the parties can turn to him when the contract is a subject that they want money, securities, valuables kept by a notary public in order to provide the parties. In this case achieves the goal of deposits, protection of the parties. The justification of this attitude is reflected in the fact that the Notary given the public trust.

4.1. Legal nature of the notary public deposits

The effect of domestic law notary public deposits equals the with the court deposit³³. The same solution has Croatia, Montenegro, Bosnia and Herzegovina and Macedonia, while the Slovenian regulation expressly provides that the notary public deposits have the effect of a court deposit. The difference that manifests itself in court and notary public deposits is that the institution of judicial deposits occurs because one side does not perform its duty, and when it runs by the law allows the exercise of compulsory obligations. Notary public deposit are intended to protect the parties from the risk of defaults, and to the concluding stage, where he expressed free will of contracting parties, so that the forced fulfillment of the obligation can be reached only by initiating legal proceedings. A fundamental difference exists in the way of providing protection for the parties and the court may order the admission in court deposit, money, securities or documents when you are against the other party. However, this difference does not always manifest itself for maintaining the competence of the court, when this is manifested as a competitive jurisdiction for storing documents such as, for example, depositing bequests.

RESUME

In all of these legal proceedings provides legally protective objective is available through the scope of preventive protection and ensuring the safety of citizens in carrying out their activities. Transfer of powers i.e. court de-jurisdiction is caused by the preventive protection of citizens. The criteria for the transfer of responsibilities from the individual operations are a form of protection, the content of legal relations that requires a declaration by the legal certainty of authoritative bodies. The marginal role of the court in these proceedings is a relevant criterion for the transfer of jurisdiction, because it does not require its decision or discussing disputed legal relationship or on the disputed factual issue. A request for a guarantee of safety is manifested in the legal system through the notary public document.

Delegation of the proceedings according to a court order is subject to its relief, but by taking certain actions and procedures that ensure the implementation of these actions through the guarantee of security. Acting on the orders of the court still requires court supervision over the work of the notary public. Notary public has taken the preliminary and provisional measures, and measures to protect the inheritance rights in some of the enforcement procedure, which form part of these proceedings, as they begin enforcement proceedings, and probate or only part of their security, but these procedures do not end them.

³³ Član 174. ZJB Srbije

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