HISTORICAL DEVELOPMENT OF NOTARY IN EUROPE

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Abstract: Historically, Notary Public is one of the oldest legal professions with a long tradition and a significant role in the legal systems of many countries in the world, although for the general public it is still identified as a newly formed profession. The Notary through its evolutionary process is recognized in different forms, flowing over into the legal profession which is of great importance for the stability of the legal order. Therefore, in order to better understand some of the basic characteristics and institutes of notary as a Public service, its retrospective on the road to historical development is inevitable.

Keywords: notary public, notary service, european law, organizational, functional model

INTRODUCTION

The starting legal-political postulate for the introduction of the Notary is legal certainty, both in the past and today. Initially, in a rudimentary form, the Notary service appears as a result of the needs of everyday life that imposed the need for administrative regulation of legal transactions in conditions of intensive development of economic and trade relations and protection of private property.

The Notary service, with its organization in the legal system, presupposes the existence of a modern state. In accordance with the Code of Notary Law adopted in 1995 at the Conference of Notaries Public within the European Union, a universal definition of a Notary Public as a free profession was accepted, as a holder of public office determined by law, to whom the state delegates public authority to compile public documents, their preservation, probative value and enforceability of the said documents. The Notary profession is one of the oldest legal professions with a long tradition and reformatory process of transformation, starting from the Roman *tabellion*, a scribe with special skills of shorthand writing, to the modern Notary Public as a person with public authority whose legal acts have recognized public and executive status. Notaries were appointed as note keepers by the supreme authority in order to prevent the possibility of legal lawlessness in private legal transactions concluded between individuals. In the beginning, the notary service as a matter of administration was underestimated by various categories of persons from freed slaves to priests and civil servants. Although the idea of the Notary originates from the Roman legal tradition, its more serious foundation is attributed to medieval law and the advanced ideas of the Bologna Law School, the Napoleonic Code, and the innovative statutory solutions of the Adriatic coastal cities. This makes the Latin model of Notary in Europe the most widespread form of organization today and work of Notaries with special exclusivity of the service (with the exception of some states in Germany where Notaries can be lawyers at the same time) as the function with the most authorizations.

1. DISCUSSIONABLE QUESTIONS ABOUT THE TERMINOLOGICAL CONCEPTS NOTARY PUBLIC-NOTARIUS?

It would be completely wrong to equate the meaning of the word Notary Public (Latin: *Notarius*) in its original form, meaning and significance with the current term Notary Public, understood as a person with public powers determined by law, who performs the Notary service freely, independently, professionally and impartially on the basis of the Constitution, laws and ratified international agreements. Namely, in the Roman period, more precisely in the legal sources dating from the 1st century BC, the Notary Public is mentioned as a stenographer or note keeper of public political speeches through the technique of fast writing and the parallel use of abbreviations. Hence the semantic root of the word Notary-Notarius derives from the word *nota* which means note, notation, abbreviation, shorthand. The word Notary was first used by the secretary of the Roman orator and politician Cicero, Marcus Tullius Tiro, who developed a shorthand system for recording Cicero's speeches. This shorthand

was called *Notae Tironinae*, after which the term *Notarius* was established for such a data recording system. [1]

It is certain that the Roman type of note keeper, denoted as a Notary, cannot be identified with the current type of Notary Public, especially with the modern form of the Latin Notary in which the Notary Public has significant powers and competencies. The notes used by Notaries were abbreviations typical of individual words and sentences that were most commonly used in rapid writing. The popularity of this profession is evidenced by the fact that in 131 of the new era, the first ever historically noted newspaper of Notaries known as *Acta diurna* was published in Rome. However, from the point of view of the category of persons who could perform this activity, it was very limited, considering that it was reserved only for the lowest class slaves and freed slaves who were not required to possess any legal knowledge and skills and later senior imperial officials and secretaries of the church administration to build their profile through it. As a profession that does not qualify as *artes liberals (*this term was used to denote free skills as the basis of the overall vocational training that slaves or non-free people could not engage in) [2], Notaries were not under the control of the state government, as they had no influence on the content of the acts they wrote, but were reduced to professional scribes or stenographers.

2. TABELLIO AND NOTARY PUBLIC, POSITION, SIMILARITIES AND DIFFERENCES

With the establishment of precise legal regulations on property relations, especially in the area of protection of the inviolable property right, its aim was, overcoming the permanent crisis of the Roman Empire expressed as a constant struggle for the land and frequent attacks on the property of slaveholders. After the period of the Punic Wars (264-261) BC the legal trade is experiencing unprecedented expansion, as it is the most economically favorable period in the history of the Roman state. The protection of private property and the legal status of its holder required detailed regulation of the relations arising on the occasion of real rights such as: sale, service, lease, etc. It is these social needs that will be crucial for the emergence of the institute Tabellio (Lat.*tabellio*) or a kind of counterpart to what is now called a Notary Public. [3]

The term Tabellio first appears in the Digests in the text of the jurist Ulpian in 215 BC, it is derived from the word tabella, which in Latin meant a wooden plate covered with wax known as *tabula cerata*, which was used by the Romans to note documents and legal acts. The Parisian historian Jean-Philippe Levy, in his study *„L'autorité des Instrumenta Publice Confecta"*, called Roman Tabellions the direct predecessors of Notaries, and C.A. Cannata thinks similarly when he points out that the tabellio from the time of the late Roman Empire is a prototype of the modern Notary Public in today's frameworks. There were eminent differences between Notarius and Tabellio, above all, in which category of persons could perform this function and legal knowledge. While Notaries did not have any legal qualifications, Tabellions were public registrars with their own offices (*statio*) trained with special skills and practice in writing and compiling various documents and legal acts: drafting lawsuits, documents for concluded legal acts, statements, giving various advice, assisted in litigation, etc. In essence, such documents, for which a special numbering system was used, took the form of minutes and were compiled before witnesses who were obliged in case of dispute to submit them before the court. At that time, bankers and wealthy merchants, such as financiers or creditors, had such authority, which unnaturally allowed the work of the Tabellions to be appropriated by persons who were in some way "over writers" (people who don't have the skill and authorization) because of their education and competence. [4] The Tabellions, as legal experts, charged for their services from private individuals, and the precondition for performing their activity was the license issued from the state.

The acts compiled by the Tabellion did not enjoy the status of a public document or fides publica and had no executive force. During the compilation of the documents, the mentioned Notaries actively participated with their technique of fast writing, where they compiled a concept which then served as a basis on which the Tabellion compiled the written document, which the parties were obliged to sign. Only documents compiled by the so-called *jus actorium magistrates* as holders of public office could be considered as publicly entrusted by the state. Over time, the acts compiled by the Tabellions did not constitute a mere authentic document; on the contrary, they gained the trust of the state so that the document was no longer required to be signed by the governor of the province in whose territory it was compiled.

3.THE LEGAL REGULATION OF THE NOTARY SERVICE AND THE IMPORTANCE OF THE NOTARY DOCUMENTS IN THE TIME OF JUSTINIAN

In the time of Justinian, a new legislative principle was established in terms of legal documents, the so-called *imponere fidem*. With the Order of 421 BC, the general rule for the burden of proving the authenticity of documents, which was accompanied by legal logic, is prescribed, that the one who compiles the document has an obligation to prove its legal correctness. This means that the possibility that the act compiled by the Tabellions could be challenged during a litigation procedure was not excluded. This facilitated the procedural position of the defendant in the proceedings from whom active procedural conduct was no longer required, except in cases where the judge had acquired a conviction of the authenticity of the act, the defendant had to prove alternatively that the other party was a forger or that the document has no property of authenticity.

Particularly significant is the order from 472 BC, which for the first time extended the competence of Notaries to the public composition of the *instrumentum publice confectum*: official decisions, contracts, minutes or documents compiled on forums that enjoyed greater probative value than private documents (except when private acts were reinforced with the signatures of at least three confidential witnesses). Justinian's legislative reforms also introduced new solutions in terms of the technique of compiling documents in a special procedure called *absolution*. The corrections were no longer written on wooden beams covered with wax, but there was an obligation to use a special papyrus from which the first page had to be marked with a protocol (*protocolluma).*

Unlike *instrumentum publice confectum, instrumenta publice* or copies of acts of public registers were introduced which had the force of authentic evidence as opposed to the mentioned acts which enjoyed the status of privileged evidence. One of the essential elements that had to be observed when compiling an *instrumenta publice* was the date. There was a triple dating system - the year of the emperor, the year of the consul and the year of the appointment of the consul with the month and day. Dating stating the years of the consul was a condition for the validity of the act, otherwise it did not produce a legitimate legal effect. In addition to the date of validity of the documents, it was necessary to pass the "test" of proof. Witnesses had the upper hand in the arsenal of means to prove the legal validity of the documents, then the Tabellions and their assistants, and finally the comparison of the manuscripts as a specific type of expertise remained.

4.MIDDLE CENTURY

The development of the Notary service in the form as we know it today, began in the early Middle Ages when Notary acts first gained the force of public documents. After a long historical period, the Notary is elected for his place in the legal systems of the countries of Western Europe: Italy, Germany, France and others, with elements that still exist today, once appointed by the supreme authority, the emperor and the Pope. [5] All this, thanks to the active work of the Bologna University of Law, which was a real source for the young avant-garde of Notaries who perfected the Notary skill of compiling and issuing Notary acts. The Roman law *Corpus iuris civilis* was studied at this university, which was conditioned by the creation of new socio-economic relations as a direct result of the rapid development of cities and production which led to a strong establishment of private property and the basic institutes of real law. The institutes that existed until then in the Justinian Code began to conform to the new circumstances and thus new branches of law necessarily appeared.

The founders of the Bologna Law School - *Irnerius, Salthieli i Passagari* were professors *ars notaria* in the field of science for the style of legal documents. Together with the post-glossators who appear in this period, they collected the Notary Acts of their predecessors - the Tabellions, defining their form in full through the comments they noticed between the rows and the edges at the end of each page. In addition to the technique of linguistic expression through speech, Notaries specialize in the field of written expression. The education and practice that the Notary received during his studies was a sure entrance to the higher social strata. Apart from scientific education, as one of the prerequisites for performing this activity, it was necessary for Notaries to be professionally engaged within the Notary colleges. When they reached the necessary age limit, they had to take a professional exam in order to confirm the acquired practice necessary for performing the Notary service. After passing the Notary exam with positive points, the Notaries received a diploma and based on that they were registered in the directory of Notaries. [6] The medieval Notary was characterized by a strong organization within

the *Collegium notariorum*, the professional organization of Notaries, with strict rules that constantly controlled the behavior of Notaries as its members and supervised their work.

4.1 FRANCE

During the reign of Louis IX as a follower of the works of Charlemagne on the territory of Paris, as many as seventy royal Notaries were established as a result of a radical judicial reform. The functions of distribution of justice and compilation of documents that had been accumulated until then and constituted the persona of a judge were separated, with the latter passing to the competence of Notaries. In France during the reign of King Philip IV the Beautiful, the Notary acts received its own royal seal. However, Notaries were not authorized to use this seal themselves, but the well-known "seal keepers" were in charge. The Notary institution was revised in such a way that notaries, with the exception of those operating in the Paris area, had to keep their own register in which had to record the acts they composed (*chartularium seuprotocollum*). [7]

In the time of Louis XVI, Notaries were authorized to affix the royal seal themselves, which officially confirmed their previous practice of certifying deeds with their signatures. On September 29, 1791, with the conclusion of the National Constituent Assembly of France, a new organization of Notaries was established, which abandoned the previous concept of inheriting the service and terminating the relationship that existed between the Notary and the courts. The Enlightenment ideas imposed by the Bourgeois Revolution of 1789 are reflected in the new concept of the Notary in France which gravitated around the principles of freedom, equality and order. A curiosity is that exactly in this period the Notary service was abolished again in 1803, with the enactment of the Law on Notaries from March 16, 1803 (also known as Ventosa law according to the way of counting time according to the Revolutionary calendar in which March 16 corresponds to 25 ventozea, XI year) the Latin system of Notaries was established, through which, the Notary is defined as a trustee of the state with delegated public powers by law. Notaries obtained a state seal, and were given probative value of a public document. For the first time, this law establishes the previous practice for the independence of the Notary service from other types of government, especially the judiciary.

4.2 GERMANY

Until its unification in 1870, the German state was economically-politically and territorially fragmented and divided. Due to this social situation, the Notary service was unequal for a long time. In most parts of the country on provincial level, various regulatory rules have been adopted in accordance with customary law. In legal life there was active competition between generally accepted rules and particular law. The success that has been achieved in regard to this question with the Notary Decree of 1512 during the reign of Maximilian I when the Notary service was unified, it remained unique. In 1961 the Federal Law on Notaries was adopted, but the attempt to establish a single system on the territory of the whole German state remained unsuccessful, because the law provided a different type of Notary for each German state. This law stipulates that in the areas where the Notary service is performed as a secondary occupation only lawyers with the same opportunity to practice law are appointed as Notaries. Historically, the emergence of this unprecedented Latin type of Notary is associated with Prussia in the 18th century, when lawyers could not survive by performing only a given profession, but were entrusted with the activities of a Notary. Thus, today in Germany there are three manifestations of Notary public notary: State Notary (notary officer), Independent Notary and Lawyer Notary (notary-lawyer). However, it is important to note that the German model of notary-lawyer appears as an exception and exists in parallel with the modern model of Notary as a free profession.

5. NOTARY SERVICE IN THE SEASIDE CITIES

In the early middle century, the organizational structure of the Notary service in the Adriatic seaside cities, more precisely in the part of Dalmatia and the Montenegrian coast, was strongly influenced by the Latin model of the Notary as a result of the developed trade relations with Venice, where the Notary inevitably emerged as a factor in strengthening legal certainty. The Notary public as an institution was regulated in accordance with the statutory provisions of the seaside cities for which the common denominator was the legal-nomotechnical superficiality and unnecessary repetitions due to which a very small part of the obligations of the Notary public were clearly defined.

Towards the end of the XII and XII century, because of its proximity to Italy by water, the Notary Public in the coastal cities received new qualities and education. It was not enough for the Notary Public to know how to write correctly, but he also had to be a good connoisseur of legal texts. The Notary Public starts using the real notary form and notarial sign. In addition to the name of the notary, the name of the city, for example, *Notaries Idertinus* (Notary of the city of Zadar) was obligatorily added, which expressed the competence of the local government in making the selection. Later, in all Adriatic seaside cities, the designation *iuratis notaries communis* was used to indicate city authority which appoints the Notary Public and the care of the commune that by taking the oath of the Notary Public the indicated public trust is guaranteed. [8] The fact of how important his role was speaks for itself that in the seaside areas certain statutes provided special procedure for selection even in times of emergency (plague, war, etc.). The Notary Public had the function of a clerk and the acts he compiled acquired the status of a public document with the certification of specially authorized persons for that function given by the state. In fact, in this way the state controlled their work and conditioned the validity of the composed act. They were called examiners or auditors and somewhere judges, and their task was to study the document from a material and formal legal point of view and after they approved it with their signature, it became a public document. Already in the XIV century the role of municipal notaries was derogated from the Italian professional notaries authorized to perform this service with the authority of the emperor, the pope and the Republic of Mleta. The municipal Notary Public - *iuratis notaries communis* compiled all official records and all other official and private documents, although this is not mentioned in the statutory provisions. [8]

CONCLUSION

The roots of modern Notary as one of the older institutions and legal professions in the service of legal certainty and preventive jurisdiction evolve across different periods and areas in Europe and beyond. The term modern Latin Notary did not come into being arbitrarily. The Roman *tabellio* is a counterpart to the modern form of Notary Public, establishing the foundations of the Notary service and the scope of work. However, not in the literal sense of the word and not as equivalents. First, it is unacceptably conceptual and historical because of the different variations over the long term, conditioned by different social, ideological and political influences.

In different historical turmoil, the meaning of the Notary service changed so that in certain periods Notaries were challenged, abolished, and then renewed depending on the political mood and social circumstances, but always surpassed their critics and today are present in the legal systems of many countries that more or less fully accept the Latin model of Notary. The development of the Notary in the form as we know it today begins in the Middle Ages in northern Italy, when notary documents were recognized as public documents, thanks to the Bologna School of Law and the work of Italian Notaries. Hence, it is not surprising that the first Notaries in the coastal cities of Croatia and the Montenegrin coast with a pronounced legal particularism were foreign, i.e. fellow Notaries from Italy. Another and very important merit is the secular or layman character of the Notary, which contributed to the abandonment of the previous practice of Notary-priests, which later proved to be completely unnatural given the character of the function. The Notary service marked its renaissance with the advent of Napoleon's Ventosa law, which today is considered the code of modern Notary worldwide. For the first time, the Notary Public is legally defined as a trustee of the state with part of the public authorizations and his own state seal. This law has undergone a radical transformation and many of its solutions have been replicated in different legal systems, modified and adapted to their specifics.

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