

## THE DIGILIZATION AND CONNECTION OF NOTARIES WITH THE REPUBLIC REGISTERIES IN THE REPUBLIC OF NORTH MACEDONIA

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### Abstract

In a time of rapid social and dynamic changes, due to the legal security of the circulation of goods and services, in the Republic of North Macedonia, the need was felt to present the notarial service as a guarantee of safety for the parties, to be achieved through the state their legal security. This country applied the German-Latin model, which today is a safe step. With the independence of the Republic of North Macedonia from 1991, the need was felt for the legal circulation of goods and services. In order to facilitate legal transactions due to their multiplicity, in 1996, for the first time, we brought the corresponding law for notaries. They operate within various branches based on law.

Development of the notarial service as a public service, independent and self-contained, where the works of the type of public authorizations are performed based on the law.

In 2016, in certain articles, the innovation of digitally referencing the notarial document is established, respectively by placing them in the Central Notarial Archive, which includes: electronic certificate, certified electronic description and their archiving in electronic form. Whereas, as far as data submission is concerned, the recording and entry of notarial documents in electronic form in public registers and electronic communication of the notary with the notarial databases.

Today there are several links such as: 1. The electronic link with the Real Estate Cadastre Agency; Electronic connection with the Central Registry; Electronic connection with the Pawn Registry (movables); Electronic connection with the Debt Register; Electronic connection with the Official Gazette; Electronic connection with the Directorate for financial disclosure; Electronic connection with local self-administration units, etc. All these electronic links will be analyzed in this scientific paper!

*Keywords:* Notarial service in Republic of North Macedonia, Central Notarial Archive, Agency for Real Estate Cadastre, etc.

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### Introduction

Historically, the Republic of North Macedonia, before the last announcement of amendments to its constitution (Decision No. 08/184/1, 2019), as a state that respects the sovereignty, territorial integrity and political independence of neighboring states, has previously gone through three time period, until the adoption of the Constitution of the Republic of Macedonia on 17.11.1991. The first notaries in RMV started working in June 1998, and in the same year, the chamber of notaries in RMV, other bodies and branches were also founded. In the beginning, the activity of notaries in RMV was under the competence of non-contentious courts, while a part of them was also under administrative bodies. With the introduction of the Law on Courts, conditions were created for a part of the non-contestation procedure to be taken over by the courts, and with the Law on the performance of notarial work as the first law, they were given under the jurisdiction of notaries (Janevski, 2001, p. 24).

The notary is established as an independent and separate service in which works of the type of public authorizations are carried out based on the law and at the request of citizens, state bodies, legal entities, and other interested institutions, which positively influences the

comprehensive functioning of the legal system, especially in the establishment and increase of legal security.

About fifty years ago, the world and a large number of Western Countries began to develop and apply digital methods to the work of their notaries. The same has happened in several large countries, notably Russia and China, which have since transformed into the more or less market-oriented economies of the 1990s. Despite the short delay, the transition states in Central Asia, the South Caucasus and the Republics of the former Yugoslavia also followed a similar path of technology development. Despite the short delay, the transition states in Central Asia, the South Caucasus and the Republics of the former Yugoslavia also followed a similar path of technology development. The notarial systems in these countries were created and started their work late. Again, for better functioning, they have been created with the help of Western chambers of notaries, especially chambers from Germany, France and Austria, with efforts to remove the center as key elements of these notarial systems being created as functional. In some Western countries in the Balkans, actions aimed at removing the basic structures of fully functional notarial systems and reducing notarial powers in favor of lawyers (Bock, 2018, p. 22-23). Similarly, in Macedonia, there were similar actions with the same goal so each party involved in the negotiation of the transfer of real estate had to be represented by a lawyer at the notary's office.

All professional associations of notaries in the six countries of the Western Balkans, including Albania, Montenegro and Kosovo, are operating under difficult conditions. In addition to efforts to strongly establish the improvement of legal services, efforts have been made in the notarial process to reduce, suspend, or abolish the exclusive competence of notaries, which is considered as necessary to maintain an efficient and effective notarial system. This phenomenon can literally be seen in all transition countries that have decided to apply the Latin notarial system in the last twenty years. A legal regulation requiring the notary profession to go digital is constantly running through their systems

In this way, there was a need to add two challenges:

- A. Adoption of new IT technologies, and
- B. Globalization

### **A) New technologies**

Considering the factor of time and distance, new technologies quickly search for the data of the century CC (200), opening perspectives for notaries in two directions:

- a) First, they emphasize and adapt to the notion of authenticity

In this regard, we are presented with several questions:

- If the electronic form is able to offer us a type of evidence equal to written evidence on paper?
- Will electronic support replace paper support?
- How can an electronic signature have the same value as a manual signature?
- How to adapt the concept of authenticity offered by notaries to electronics?
- How can an electronic document guarantee the required fidelity and security?
- Isn't it natural for the notary, responsible for the public sector, to give credibility to the documents that will be designated as authorities that will verify the contracts that are connected electronically?

These opinions were first presented to the French Notary as part of the European Notary in the International Union of Latin Notaries and within the Informatics Commission. All these thoughts are evidence of the strong determination of the world notary for its MODERN arrangement.

- b) As a second level, the perspective that open before the notary through new technologies is also the creation of computer networks.

Networks will have to enable; establishing stronger communications between:

- Notaries themselves, files and public objects, whose correspondents they are,
- Notaries from the European Union and from all over the world.

The last part of the planning of information technology in the notary's office is the so-called **artificial intelligence**. It is believed that neither our colleagues nor the ministries know what exactly this term means. The use of its wording is more fashionable, so it is assumed that those who use this term have high expertise in IT. Creating a notarial document cannot be compared to assembling a product in a factory. In the production of almost every document in a pluralistic society with a differentiated economic structure and a high degree of protection, consumers have expressed many individual demands. The native intelligence needed in this process cannot be, or be replaced by artificial intelligence.

In addition, when artificial intelligence is used in the notary, it should be borne in mind that data security is almost impossible. This is because this technology consists of the component according to which the bearer of artificial intelligence (the robot) must constantly adopt mainly active or reactive algorithms that are sent to it during the process (because otherwise, it would not be able to work or process the processes correctly). As for the programming of artificial intelligence carriers, those systems should always be open.

- Digitization is beneficial and inevitable. We all know this, but creating sustainable notary IT systems takes time. This actually applies to the creation of all kinds of stable systems (Kordie, 2001, p.42-43).

This type of IT notary system is easy to use because it creates electronic documents through scanning or direct application with an electronic signature. The document is then made available or sent to state authorities, depending on the system. The electronic notary system is generally considered part of the superstructure of the general state information system. For notaries, its advantage is that they can directly consult various registers (state birth register, power of attorney register, criminal register), so notaries do not need to rely only on the documents presented by the parties, and we what can be faked. The system certainly offers a high degree of security for notaries regarding the identification and determination of the personal status of interested parties.

Of course, notarial documents should be encoded electronically, instead of leaving printed documents in uncertainty that would arise when the professional activity of a certain notary ceases. Ideally, encryption should be compliant with the highest current security standards;

The transfer path does not necessarily mean that it is secure. There are security gaps, especially in the electronic ones at the transfer stations. While encryption and decryption technology continue to improve, permanent unauthorized access to stored documents cannot be guaranteed.

The physical component also appears as a factor: data centers are often located somewhere abroad, for example in India, China, the USA, etc. It cannot be guaranteed that due to political changes in those countries or natural disasters in one or more data centers, they will not be shut down, disconnected from the network, or destroyed (Bock, 2018, p. 23). Unfortunately, in most countries in transition, the focus is more on short-term success than on long-term prospects for economic development;

Furthermore, data security requirements are generally not sufficiently met;

Finally, it should be noted that digitization is often subject to mystification by both commercial providers and responsible political factors. They know how to use it for political purposes, but the misuse of digitization is harmful to economic and social development in the long run (Kordie, 2001, p. 42-43).

## B) Globalism

For some, the national economy cannot be isolated from the world market where free trade and competition in a market economy are the driving forces of development. For others, globalization aims to impose a model of cultural, legal, economic, and moral behavior, thereby greatly destroying the specificities of each country, and as a result increasing the distance between the dominant rich countries and between the poor and indebted countries.

Developed by the WTO (World Trade Organization), the GATS 2000 service delivery project, which was to be discussed in Seattle, provided for the full implementation of free trade regulations among all legal professions. As for notaries, these ideas are used by a certain number of countries under the pressure of a certain number of organizations (such as the World Bank and the International Monetary Fund), which condition their financing on measures that are completely contrary to the basic principles of our institutions: freedom in determining the workplace, freedom of prices, domain restrictions and the extension of the notarial act. History teaches us that the market economy is a powerful engine of development and that without the existence of a market, the law is immovable, but without the enforcement of the law, the market will enforce the law of the strongest, or if you like, THE LAW OF THE JUNGLE. The balance and stability of the democratic society require the introduction of game rules and the presence of regulatory mechanisms between the market and the law.

The notary is one of the main and effective indicators in the regulation of contractual relations in the service of legal security and social harmony. The liberal aspect of his status allows him to intensify the private initiative in carrying out his public mission and to propose to those who are against globalization a kind of third way that has already given sufficient evidence in the regulation of the treaty order. It would be better not to resist the notarial services, but to consider the horizons that open up in globalization without the hegemony of the basic values of our civilization in the countries of written law. It will have to, while maintaining its values, **find a way to adapt to changes in the world** in order to remain one of the main drivers of a legal order in which competition cannot be avoided.

According to this, notaries:

- Must be integrated with world trends, orienting (in line with public services) their status and their activities towards greater openness to competition, for example: With the description of competencies for instrumentation,
- Adapting to economic and demographic development, with the number of notaries and increasing the legal network by opening offices.
- Increasing the field of activity in a field where it is necessary to refer to reliable documents,
- Noting the additional value of certified documents with private acts and their promotion.

For the Notary to fully and effectively play his necessary role in terms of legal certainty, the balance between the status of a civil servant and a liberal professional must be absolutely maintained, based on his efficiency.

The state must maintain this balance

- Counting on notaries, not only lobbyists for common actions but as Legal Assistants, partners of the state in search of common interests.
- Especially not giving up the pressures of those who know nothing about notaries, from the temptation to overemphasize the liberal side of the profession to the detriment of our public service mission.

The greatest technological advance for notaries in the last century has been the evolution of the self-inking seal, now commonly used as a notary seal (Holmes, 1993, 29).

Notarial seals have progressed from impressions in molten wax, to an embosser, to a seal with a special ink pad, to a self-ink seal. Very few states have adopted computerized notary stamps. In the future, however, with society transacting significant amounts of business via computer, there will be a greater need for notaries to verify transactions using computer-generated seals or digitized signatures to perform their notarizations.

Currently, the National Notary Association (NNA) is forming a committee to develop an Amended Notary Act, which will be completed by the year 2000. The NNA published the current Model Notary Act on September 1, 1984, but it has remained unchanged for the last ten years. The Revised Model Notary Act will hopefully provide states with the tools they need to send notaries into the next millennium.

However, the notary is a part of a professional structure that includes specialties defined by the government. In the typical European system, we find general legal advisers, litigators, and notaries. Legal advisers, for example, the Spanish 'abogado' or the French 'avocat', serve exclusively their clients and are responsible for promoting their legal affairs. Like the Spanish 'procuradores' who are responsible for advocacy in court. Both counsel and litigants are guided by adversarial ethics. But there are times when advocacy is not where counseling is most appropriate. Legislators in the civil law world have established that some legal transactions can be concluded without following an adversarial approach to law. The Latin notary is thus exclusively authorized to conclude certain legal transactions, and in this context, only that of the advisory parties is allowed to be legal. The notary is the judge of the legality of the transaction under normal circumstances (i.e. in the absence of court cases) and acts as a legal advisor or expert to the parties. The notary impartially advises all parties in a certain matter - his ethical duty is not only to the parties but also to the particular transaction.

In the Republic of North Macedonia, for the first time, the notarial document compiled electronically was treated in 2016. Articles 45-49 of the Law on Notaries establish the innovation that refers to the compilation of the notarial digital document (electronically) of notarial documents, respectively, documents in electronic form and their placement in the Central Notarial Archive. It includes electronic certificates, certified electronic descriptions, and their archiving in electronic form.

I. A special law that includes special conditions for the compilation of notarial documents in electronic form is the Law on data in electronic form and signature (Official Gazette of the Republic of Macedonia no. 34/01...35/15). However, this law has been derogated by the Law on electronic documents, electronic identification and trusted services, which began to be implemented on September 1, 2020, except for the provisions from Chapter II.

II. Electronic documents which start their application from December 20, 2019. According to Article 7 para. (1) of this law, the electronic document is compiled for the use of one or more accessible information and communication technology, only if it is not determined otherwise by another law (Dimitrova, Kocovski, Stoev & Tomanovic, 2023, p.118). Paragraph (2) of the same article contains data that are created, stored, found and reproduced in the information system, while it is archived in systems and electronic media that enable stability, security and immutability of the data. This type of archiving system is made possible by the Chamber of Notaries, through the establishment of the Central Archive System (Article 117 para. (5) of LN).

In this article, paragraph (3) defines the notarial document drawn up in electronic form, it has the quality of a public document and can be used only in cases defined by law. An example of this electronic document is the Leasing Contract..., the contract for granting the long-term concession of construction land owned by the Republic of Macedonia and the contract for granting the short-term concession of construction land owned by the Republic of Macedonia, which according to the Law on construction land of 2015 (entered into force from August 1, 2016), are drawn up in electronic form, respectively by providing the payment slip as

evidence of the payment made according to the real estate turnover tax, the buyer within 15 days electronically sends the contract to the notary for solemnization.

According to this, it appears that the notarial document compiled in electronic form is a document that has the quality of the original, and the same can be drawn up in cases provided by law, respectively, they do not refer to the electronic compilation of the notarial document for any legal work, but only for certain cases by special law (Dimitrova, Kocevski, Stoev & Tomanović, 2023, p. 119).

In para. (4) Article 45 of the LN defines the acceptance and use of foreign electronic documents in the Republic of North Macedonia. This type of document can be used in our country, only under conditions, or cumulative conditions have been met such as:

- there should be reciprocity;
- it must be determined by the law of the state, which notary has drawn up the document and
- it must be regulated by the law of the Republic of North Macedonia.

This provision from this paragraph must be applied in the same way as foreign notarial provisions for obtaining full power in the Republic of North Macedonia (Article 5 I LN).

The last paragraph of the same article refers to the notarial electronic document (which is original), where it determines that the notary can issue an extract in the form of paper and place a note on the extract, his signature, and official seal. It means to copy the example in written form, where a seal will be placed that it is a certificate from the electronic notarial document. In this part, the legislator has used the analogy of the provisions for the original and the certificate of the notarial document, which is compiled in hardcopy (paper). This type of notarial document is defined as a description and defines under what conditions it is legal. The formal aspect for issuing the notarial certificate is additionally regulated in Article 102 para. (2) in LN and Article 7 para. (1) of the Regulation on the form and manner of writing and marking notarial documents and verification and the manner of marking and binding the pages of notarial documents, according to which the authentication of the certificate of notarial documents is done by placing a stamp on the last page of the authentication, or by deregistering the contents of the seal on a computer, typewriter or other mechanical means of writing, which proves that the certificate is identical to the original of the notarial document. The notary submits this action by affixing the seal for certification of the certificate (example no. 7) from the Regulation on the form and content of the official seal, dry seal, wax seal and the signature of the notary, as well as the manner of their behavior, change, their acquisition and destruction.

Whereas, as regards the verified electronic description (Article 48 I LN), it includes the document in the form of paper which has been digitized into electronic form and for which the notary with a qualified certificate issued by the authorized issuer (electronic signature) certifies that the description of the document is identical to the source document or its verified copy, will be considered as a verified electronic copy of the document. Also for this electronic form, the conditions for digitization according to Article 9 of the Law on electronic documents, electronic identification and trusted services must be met.

Regarding the submission of data, the recording and entry of notarial documents in electronic form in the public registers and the electronic communication of the notary with the notarial databases. With the introduction of the Law on data and signatures in electronic form, conditions were created for fast electronic work and efficiency during the work of notaries and their connection with public registers such as:

1. Electronic connection with the Real Estate Cadastre Agency;
2. Electronic connection with the Central Registry;
3. Electronic connection with the Mortgage Registry;
4. Electronic connection with the Register of Debts;

5. Electronic connection with the Official Gazette;
6. Electronic connection with the Directorate for financial disclosure;
7. Electronic connection with local self-administration units, etc.

With this electronic communication, better access to the relevant information that is registered is possible, while on the other hand, the notary can use it during the notary service, from which it is possible to apply and quickly register to the legal affairs where the notary is a participant. As for the legal aspect of notaries' electronic access to public registers, in terms of viewing and extracting certificates from those public registers, as well as their extraction by the notary as an electronic document for registration in the public registers, from where until now implementation of the Law on data in electronic form and electronic signature (Official Gazette of the Republic of Moldova no. 34/2001, 6/2002 and 98/2008), great progress has been achieved.

The main basis of this electronic connection of notaries with the Real Estate Cadastre is foreseen in article 166 of the Law on Real Estate Cadastre of 2008, according to which the request for registration or change is presented in written form or electronic form signed, according to the electronic signature received, and according to the qualified certificate, their copies must also be placed at the same time, also electronically. The notary or authorized persons can be the bearer of the presentation form. This gives authorization to the notary, immediately after the compilation of any notarial document according to which a change in the Real Estate Cadastre is determined (for example, contract for gift, sale, etc.), at the moment when the conditions will be met, to place in the electronic information system of Cadastre, with which the form for registration is electronically completed, and the same is signed according to the electronic signature received according to the qualified certificate, and to the same, in electronic form - scan, submit the documents and copies according to which to create the change in the Real Estate Cadastre. In the same way, the presentation sheet for pre-notations and notes for any registration in the Real Estate Cadastre can be made. This form of presentation for the registration of the Real Estate Cadastre, where notaries have an active role, as part of the **e-katastar** project which started with the application on June 1, 2010, which enables easy, fast, safe, and efficient delivery of submissions and requests electronically for making changes to the GKIS stamp (geometric cadastre information system) or the surveyor's measurement system. Also, notaries have direct access to real estate, including all encumbrances and restrictions that are recorded in the title deed under list G.

Also, of particular importance is the Law on Amendments and Supplements to the Law on Real Estate Cadastre (Official Gazette No. 76 of 13.06.2012), where the possibility of data distribution from the GKIS system, through notaries and other authorized persons. These authorized persons receive the data from the Agency in electronic form, signed by the Agency, according to the valid certificate issued by the authorized institution, distributing them to the end users in a written form certified by the signature and seal, being considered in this form as public documents or documents with public authority. This in practice means that notaries, as authorized entities, have been given the privilege of using the e-kat sportele system, from which the notary can issue certificates of title to citizens or other interested persons, which are valid of public letters or documents.

With Article 20 of the Law on Amendments and Supplements to the Law on Real Estate Cadastre from 1.08.2014, which entered into force on 9.08.2014, a new provision was introduced in Article 141-v, which describes the obligation for electronic submission of requests and legal bases for data collection, according to which courts, ministries, public administration bodies, local self-administration units, notaries, bailiffs and other entities with public authorizations, all documents that carry a legal basis for registration and evidence for compensation paid, they are obliged to submit electronically to the Agency.

## Conclusion

The first notaries in the Republic of North Macedonia started working in June 1998, and in the same year, the Chamber of Notaries in the Republic of Macedonia and other bodies and branches were founded. The activity of notaries in RNM was under the competence of non-contentious courts, while a part of them was also under administrative bodies. With the introduction of the Law on courts, conditions were created for a part of the non-contestation procedure to be taken over by the courts, and with the Law on the performance of notarial work as a law, they were first given under the jurisdiction of notaries.

The concept of notaries was similarly defined by the Conference of Notaries of the EU (CNUE - Conference des Notariats de l'Union Européenne), in the Code of Notarial Deontology adopted in 1995 (amended on 11 December 2009). Meanwhile, to ensure the necessary independence of the activity, the Notary performs his service as a free professional that covers all non-controversial activities.

With the development of notaries today, there is a need for digitization for the executive power - notaries for their convenience and efficiency.

1. The demand for the digitization of notaries as much as possible is mainly a building block in the concept of the World Bank and of non-governmental organizations from the USA, which act in favor of the introduction of structures from Anglo-Saxon law in the above-mentioned countries. The higher the degree of digitization at the notary, the less important the role of the individual work of the notary;

2. Governments generally favor such activities. Unfortunately, and especially when it comes to some Asian countries, they are right when they point out that the work of a notary is limited to fulfilling certain formalities (verification of identity, use of standard contracts, reporting to government agencies), which can be digitized very easily. Unfortunately, it is difficult to understand that notarial systems and registration systems must be organized sustainably to continuously meet social and economic needs in developing structures;

3. Commercial IT providers encourage governments in their views because they find an open market in such digitization – state administration generally does not have enough qualified IT staff;

4. And finally, it must be said that decision-makers at the state level, and chambers of notaries, often ignore the fact that digitization is a technical process, not a master plan for solving fundamental problems. The use of digital processes in notarial and public registries is useful and inevitable, however, the essential criteria for the operation of the notarial system cannot be neglected, just as they cannot reduce the value of the notarial system in the service of the entire legal system in countries with a market economy.

Today, since 2016, the application and electronic connection with state institutions is related to 1. Electronic connection with the Real Estate Cadastre Agency; 2. Electronic connection with the Central Registry; 3. Electronic connection with the Mortgage Registry; 4. Electronic connection with the Register of Debts; 5. Electronic connection with the Official Gazette; 6. Electronic connection with the Directorate for Financial Disclosure; 7. Electronic connection with local self-administration units, etc.

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