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THE TRANSFER OF NON-CONTENTIOUS CASES TO NOTARIES IN THE REPUBLIC OF NORTH MACEDONIA - TRUSTEES OF THE COURT

Irma BAJRAMI [1], Bukurije ETEMI-ADEMI [2]

[1*] *Associated Professor, Department of Civil Law, Faculty of Law, University of Tetova, MK*
[2*] *Assistant Professor, Department of Civil Law, Faculty of Law , University of Tetova, MK*
[*] *Corresponding Author: e-mail: irma.bajrami@unite.edu.mk , bukurije.etemi@unite.edu.mk*

Abstract

As the Republic of Macedonia declared its independence, the Act on Notaries came into force, and a rapid flow of goods and services was established. In this case, some of the non-contentious cases needed to be transferred to notary services. On September 16, 1986, the Committee of Ministers of the Council of Europe approved the Recommendation regarding the measures to reduce the overload of the courts, especially from cases that are not included in the typical judicial function. An effective solution was considered that non-contentious matters can be solved by transferring some powers from the courts to bodies outside the judicial system.
With the transfer, the so-called non-judicial process would be carried out. This process usually begins with the notaries' trust in the verification process, and then with the procedure of removing the ability to act, removing parental rights, consensual divorce, the regulation of relations between co-owners, the dissolution of co-ownership, the regulation of boundaries, etc. This transfer would be justified in the matter of regulating property relations that are regulated by dispositive norms, rather than highlighting the public interest. Mainly, it would be presented as a means of regulating *inter partes* relations. In this case, it is important to note that transposing judicial duties to notarial ones in the uncontentious status procedure needs to be avoided, especially when the transaction is not mainly dispositive.

Keywords: Act on Notaries, non-contentious cases, notary services, court workload, etc.

1. Introduction

Before the independence of the Republic of North Macedonia (Decision no 08-184/1), we as a state have gone through three important time periods that define our overall history relating to notary services. The first notaries in the RNM began to be applied in June 1998. The Chamber of Notaries was established in the same year as other bodies and branches of the judicial nature. The activity of notaries in the RNM was under the jurisdiction of non-contentious courts, while some of them were also under the administrative bodies. With the adoption of the Court Act (Official Gazette no nr.58/06), conditions were created for a part of the non-contentious procedure to be taken over by the courts and with the Act on the Performance of Notarial Work (Official Gazette no 59/96) as the first law to be given under the jurisdiction of notaries.
The transfer of non-contentious cases to notaries as court trustees is a practice that dates back to 1986, when the Committee of Ministers adopted a Recommendation on measures to prevent and reduce the overloading of the courts with the aim of "relieving them from the cases that are not included in the typical judicial function". The transfer of some competences from the courts to bodies outside the judicial system for non-contentious cases is an effective means of allocating the burden (Јаневски & Повлакиќ, 2013). Which in this case is seen as a positive context having in mind numerous consequences that Macedonia was experiencing at the time.
The notary service includes several duties and tasks that can be taken within the legal framework, for example: The drafting and issuing public documents for legal matters in the form of a notary act; declarations and certificates of facts based on which rights and obligations are established; adoption of decisions in the procedure for issuing notary payment orders;

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issuing certification of private documents (solemnization), the issuance of certificates; the verification of signatures and fingerprints; descriptions; translations; the acceptance for storage of documents, money and paper of value for delivery to other persons or bodies, as well as the performance of entrusted tasks determined by law. This role of the notary as a "preventive judge" has increased legal certainty, reduced the number of disputes over the validity of legal matters, and facilitated the work of the court. In this context, this paper aims to analyze the role and consequences that have been manifested in our judicial system due to the so-called transfer of non-contentious cases.

2. The so-called transfer of non-contentious cases

With the establishment of the notary as a separate public service, some of the judicial jurisdictional tasks related to the preparation of documents, taking statements within record proceedings, verifying copies, signatures, etc., have been passed into the jurisdiction of the notary services, which are based throughout the basic courts at the republican level. As for the question of what non-contentious matters include, the answer is explicit! We have the wider definition that everything that does not involve conflicts or any kind of dispute between the parties can be prescribed as non-contentious. Having in mind the core nature of non-contentious cases, and the idea of non-contentious procedure in general, we know that the abovementioned definition is not sufficient. In this case, the solution is going to be found on the legal criteria (Janevski & Tatjana, 2009). According to these criteria, non-contentious cases that can be part of notary duties are:

- Legal or testamentary inheritance;
- Legalization of documents;
- Agreements on the division of joint property;
- Procedures for the verification of legal facts, such as the verification of signatures or the content of documents, etc. (Закон за нотаријатот). First of all the role of notaries was on verification and drafting of documents; second they had to ensure that the documents submitted are accurate and comply with the law; third they could have counseling role with the parties ore between parties, for example they can assist by explaining the legal aspects of their actions; and fourth one is that solving any procedural issues, for example they can make decisions that were previously the responsibility of the courts.

Between authors, there are several advantages of transferring those duties to notaries: first, speedy proceedings (more quickly solved by notaries' services, avoiding court delays, and procedural burden that parties must experience throughout the judicial proceedings); second, parties can have an outcome by having lower-cost proceedings. Third, and the one which is most important, is the reduction of the court workload, the judges and courts can focus on contentious issues that require serious and professional commitment (Јаневски & Повлакиќ, 2013). The situation of transferring competence also has its disadvantages. The first one is that the notaries' decisions in non-contentious matters can be appealed to the court if a party considers that its rights have been violated. The second one is that there are some limitations in the work that the court cannot be part of the notary's agenda, for example, notaries cannot handle matters involving conflict or complex interpretations of the law.

3. Prerequisites for the transfer of competence by the courts

According to the Notaries Act the parties must approve that the procedure will take place notary in the sight of a specific notaries services, and so this person must be legally authorized and comply with ethical and professional standards. The individuals who become public officials, they have the authority to recognize signatures, administer oaths, accept testimony and issue subpoenas for witnesses, and perform other kinds of duties. In this case the authorization is given by the state to notarize certain documents (Upcounsel, 2024). Some notarizations also require the Notary to place the signer under oath, declaring under penalty of perjury that the information contained in a document is true and accurate, property-related acts, wills, and powers of attorney are examples of documents that typically require a specific public authorization (The Society of Notaries Public of BC, 2011).

North Macedonia was the only system which made such transfer, the idea came from practical reason due to a more practical mechanism for resolving legal issues. Throughout the years, the most widely applied system by states has been the Latin system. Notaries have been the main body of notarial acts in matters of inheritance, family matters, and property relations. (Gomez-Bassac & Pidoux , 2011). In fact, trends for reform are widespread across legal systems, creating a unification of concepts that are generally accepted by all states, and other procedural aspects remain part of the discussion on the greater effectiveness of one or another legal system.

The role of the notary in our country, but also between states today, is related to many areas of work and legal transactions in general. Whether legal relationships of small or large value (such as the situation with immovable property), whether they are status or marital relationships (the case of a marriage contract, or situations other than the establishment of economic entities), etc. Citizens. normally, by choosing a notary to process a request, they transfer a form of trust on him, but the question arises as to whether they have alternative options other than to turn to a notary service. Here several dilemmas arise, the first being that there are situations in which a certain formality is not necessarily required, and here the parties voluntarily choose a notary (due to lack of knowledge different from the sphere of justice); the second has to do with alternative cases, and finally what is perhaps even more important is the indirect binding form because the result of not involving a function with public authorizations is equivalent to not producing legal effects.

There are several approaches regarding the nature of the notary at the moment of joining the process! The discussion is whether the notary has a monitoring or advisory function apart from the basic notarial duties. What we believe is most correct is the opinion of the author Dika, according to whom: "The first duty is to take care of the interest of the party; to apply and establish the true will of the parties who wish to reach the moment they turn to the notary; to instruct and explain the eventual consequences of that legal work, etc." (Дика, 2001).

The role of the notary in some countries in the region is expanding its powers, specifically in Croatian law the notary performs tasks related to voluntary pledges and fiduciary insurance (Канцељак, 2013). At the same time, in Croatia, but also in other part of the world, work and activities related to the reliable document are foreseen (Korač, 2018). In fact, this refers to activities that are included in the framework of enforcement activities (Article 31, Enforcement Act of Croatia). This approach was abandoned when the Constitutional Court abrogated the provisions that were foreseen in Enforcement Act (2016).

Act on Notaries has a quite broad definition of how they can proceed cases as trustees. The important part, which is quite relevant is the work of the notary during the inheritance. According to Notaries Act article 133, par. 1: "*The powers of notaries to discuss inheritance are regulated by the law that regulates that procedure".* In this instance, it is not only about the role as a trustee of the court but also of other bodies (article 134). The court or other body may entrust a notary with all matters specified by special law (article 134, par.1), and a contrary all

the duties can be taken or withdrawn from a notary at any time (par. 2); the court or other institution must have a justified reason (par 3, article 134). Having said the abovementioned we have to mention some specific issues: performance of notaries is going to be regulated by a specific Act; Everything related to their work must be reported to the court or trusted body (article135); The notary must apply the rules governing the procedure in which he is entrusted with the performance of certain matters, in particular the rules on exclusion, on referral, on requesting legal assistance, information and more (article 135, par. 1); The notary shall be liable for damage caused by any body as a guardian to the parties (article 134); Supervision of the work of the notary as a custodian of a specific authority is carried out by the notary body (article 136); and as for the end all the cases munt be prepared put into official archives (article 137).
The trust of the inheritance discussion procedure to notaries is often represented in comparative legislation. It is accepted in the legislation of Serbia, Croatia, Macedonia, the Federation of Bosnia and Herzegovina, the Republic of Serbia, Austria (certain acts), Hungary, etc. It is believed that it will significantly facilitate the work of the courts and will enable faster and more efficient implementation of the verification procedure, more direct communication with the participants in the verification procedures and ensure the resolution of disputes within a reasonable time. It is expected that these goals will be achieved and the working conditions of notaries.
In terms of professional qualifications, notaries do not differ from judges. Any notary can be appointed as a judge, which guarantees that notaries will complete inheritance issues quickly and efficiently. If it is known that in our law the inheritance is acquired at the moment of deletion, *ex Lege*, and that the decision on the inheritance has a declaratory character, then the duty of the notary is to determine who is the heir of the deceased, to whom it belongs. For heirs, legatees, and other persons, there will not be any particular difficulties. The lack of disputes in the probate procedures and the need to relieve the courts from cases in which there is no need for judgment, the legislator's decision to remove the procedure for arguing the inheritance from the jurisdiction of the court and transfer it to notaries was a positive step. The independence and impartiality of notaries as public trust officials are a guarantee that the rights of heirs and legatees during the probate procedure will be effectively exercised and protected

4. Conclusion

In every period, there is a tendency among countries. On the one hand, there is the tendency to be more effective and faster in time; on the other hand, it is crucial to be the first in terms of courage to include new duties for the notary in national legislation. Macedonia, since the beginning of independence, has had tendencies of this nature, with the sole purpose of avoiding the situation that the courts were overwhelmed by the burden that was constantly put on their shoulder.
As a result of this, in the future, it is expected that in some laws foreseen such as: The Family Act, will provide for the possibility of recognizing paternity rights before a notary as a person authorized to draw up public documents. It should also provide that a notary concludes a marriage contract, a contract on property relations of extramarital partners, and a contract on property relations in a family community. Meanwhile, the Inheritance Act provides for concurrent jurisdiction to make a will. According to this, the testator may draw up a will from a notary according to the rules of the non-contentious procedure, where notaries are not represented as authorized by the court.

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