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SOME NEW ASPECTS IN EXTENDING THE COMPETENCIES OF LATIN-TYPE NOTARIES IN THE LEGISLATION OF THE REPUBLIC OF CROATIA – A NEW CONTRIBUTION TO THE MODERNISATION OF THE JUDICIARY*

ABSTRACT

In recent years, we have witnessed the trend of extending the competences of Latin-type notaries in certain European jurisdictions, including in the Republic of Croatia. The dual nature of the notary service and the expertise of notaries are elements that make this service particularly suitable for entrusting powers in non-contentious proceedings. In this paper, the authors give an overview of some procedures in which a notary public acts as a court commissioner. The Act on non-contentious proceedings expanded the range of non-contentious proceedings in which notaries participate as court commissioners. It is about the non-contentious procedure of consensual arranging of abuttal, dissolution by mutual consent of the joint ownership and the procedure of declaring a missing person dead and proving death. From November 2022, amendments of the Land Registers Act made it possible to entrust the work of establishing or renewing the land register to notaries public as court commissioners. Since 2023 Croatian Obligatory Relations Act also provides for the establishment of a Register of lifelong support contracts and contracts for support until death, which should be established and managed by the Croatian Chamber of Notaries. In some legislation the Family Act has given notaries the power to proceed divorces where spouses are in agreement and there are no minor children involved. In this paper we will include short analysis and discussion of notarial divorce from a Croatian perspective, because they still do not have that competence in our legislation. Therefore, the aim of this paper is to try to answer the question of what are the advantages and what are the disadvantages of the powers of notaries in certain procedures. The aim is to analyse and discuss the competence of the Latin-type notaries in the field of civil law.

Keywords: notary public, court commissioner, disburden the courts, non-contentious procedure.

1. INTRODUCTION

The modern notary public services in the Republic of Croatia were introduced by the Notary Public Act¹ of 29 July 1993, which came into force on 1 October 1994.² The reform of the legal system in the Republic of Croatia after the attainment of independence, which was also reflected in the adoption of regulations on trading companies, a reorganisation of property relations and the need to transfer some administrative and judicial functions to other bodies, made it necessary to reintroduce the notary public's office as a special public service in the Republic of Croatia.³ The Croatian legislator decided in favour of the Latin type of notary public, which implies the autonomy, independence and separation of the institution of the notary public from the institution of the court and the legal profession.⁴ The Latin type of notary is widespread in neighbouring countries (Bosnia and Herzegovina, Croatia, Macedonia, Serbia, Slovenia, Hungary, Albania, Montenegro), but also in European countries and beyond (Austria, Belgium, Greece, Luxembourg, Italy, Germany, Portugal, Spain, Vatican, Switzerland, as well as in South American countries, the majority African countries, Japan and China) and it defines the activity of the notary public as the activity of a person to whom the state has delegated part of the public powers.⁵

In the Republic of Croatia, efforts have been made in recent decades to modernise the judiciary, reduce its workload, redefine the basic functions of the court and electronise legal transactions. Notaries, as persons of public trust, are independent and autonomous holders of their office and can also act as court commissioners in some proceedings. With their work, they contribute to the legal security of citizens

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¹ Notary Public Act, Official Gazette No. 78/93 (hereinafter: NPA).

² For more see: Crnić, I., *Početak djelovanja javnih bilježnika u Republici Hrvatskoj*, Zbornik Pravnog fakulteta u Zagrebu, vol. 59. no. 6., 2009., pp. 1355-1374.

³ See: Šago, D., *Neki aspekti uloge javnog bilježnika kao povjerenika suda u sudskim postupcima u Republici Hrvatskoj*, Aktualnosti građanskog i trgovačkog zakonodavstva i pravne prakse, no. 18., 2021., Mostar, p. 173.

⁴ Also Butković, M., *Pravni režim obavljanja javnobilježničke djelatnosti u Europskoj uniji*, Javni bilježnik, Časopis Hrvatske javnobilježničke komore, XVII, May, 2013., no. 38., pp. 32 – 42., *op. cit.* p. 33.

⁵ See: Bodul, D., *Prilog raspravi o normativnoj konvergenciji Europskoga latinskoga javnog bilježništva*, Zbornik radova Aktualnosti građanskog procesnog prava – nacionalna i usporedna pravnoteorijska i praktična dostignuća, Split: Sveučilište u Splitu, Pravni fakultet, 2015, pp. 357 – 389.

and legal entities and directly relieve the workload of the courts by exercising the delegated judicial powers in certain proceedings. They are an important part of the Croatian judicial system, whose tasks and competences are constantly growing. In the context of relieving the courts, certain types of non-contentious proceedings have been entrusted to notaries as court commissioners. In recent years, there have been some interventions in the existing IT structure of the Croatian Chamber of Notaries – for example, the establishment of an information system for remote work, the digitisation of notarial archives, the connection of the Croatian Chamber of Notaries' information system with the *eSpis* system for tasks performed by notaries as court commissioners, the connection with the court register, the establishment of a register for certified and notarial deeds and a register for all enforcement titles.

The "One-Stop-Shop" (OSS) – a single point of access to land register and cadastral data – enables land register extracts to be issued and authorised users (notaries, lawyers and state attorneys) can submit applications for the registration of properties electronically. The concept of notaries as court commissioners in inheritance matters was already accepted in 1993.⁶ Article 156 of the NPA stipulated that the powers of notaries to conduct inheritance hearings would be governed by the law that would regulate inheritance proceedings. The Succession Act⁷ stipulates that inheritance proceedings are conducted in the first instance before the municipal court or before a notary as a court commissioner and that the court entrusts the notary with the conduct of the inheritance proceedings and hands over the death certificate to him (Article 176, paragraphs 1 and 3 of the SA). When a notary acts as a court commissioner in inheritance proceedings, he is authorised, in the same way as the judge and the court advisor of a municipal court, to perform all acts in the proceedings and to make all decisions, with the exception of decisions for which the SA provides otherwise (Article 176, paragraph 4 of the SA). This defines the limits of the notary's actions in inheritance matters. Art. 244 of the SA stipulates when a notary is obliged to return the file to the competent court (paragraph 2) and when he may only make decisions with the consent of all parties to the proceedings or, if there is no consent, is obliged to return the file to the competent court (paragraph 3). The criterion used by the legislator for the division of powers between notaries and courts is based on whether or not certain facts are in dispute between the parties. If some facts are in dispute, the notary is not authorised to decide on the matter but must return the file to the competent court. It should be noted at this point that the European Certificate of Succession can also be issued by a municipal court or a notary as a court commissioner

⁶ See: Kontrec, D., *Javni bilježnici u Republici Hrvatskoj kao povjerenici sudova u ostavinskom postupku*, Javni bilježnik, Časopis Hrvatske javnobilježničke komore, no. 32., 2010., pp. 27 – 36

⁷ Succession Act, Official Gazette no. 14/19 (hereinafter: SA).

(Regulation (EU) No 650/2012 of the European Parliament and of the Council).⁸ The municipal court or notary who issued the certificate may correct, amend or revoke it ex officio or at the request of a party who can demonstrate a legal interest.

Article 157, paragraph 1 of the NPA provides for a relatively far-reaching possibility of entrusting notaries with certain tasks. Thus, a court or other authority may entrust a notary with the inventory and sealing of estate assets and bankruptcy assets, the valuation and public sale of movable and immovable property in non-contentious proceedings, in particular in voluntary sales, the conduct of hearings on the distribution of the sale price in enforcement proceedings, the preparation and examination of accounts submitted by custodians or administrators of major assets, and any other tasks that may be assigned to them under specific legal provisions. These are all tasks that are entrusted to notaries and for which they act as commissioners. In this context, the notary, as commissioner of the court or other authority, is subject in an appropriate manner to the provisions on the procedure in which he is entrusted with the performance of certain tasks, in particular the provisions on exemption, service and obtaining legal assistance and information (Art. 158 para. 2 NPA).

The 2020 amendment to the Enforcement Act⁹ made significant structural changes to the provisions on enforcement based on an authentic instrument. Notaries, who were originally responsible for enforcement based on an authentic instrument, were converted into court commissioners. Accordingly, applications for enforcement based on an authentic instrument are automatically entrusted to notaries as court commissioners, in alphabetical order of their surnames, in accordance with the provisions on the notaries' jurisdiction and seat (Article 39a, paragraph 4 of the Enforcement Act). When a notary performs procedural acts in enforcement proceedings, he does so as a court commissioner (Article 278, paragraph 2 of the EA).¹⁰

When a notary receives a proper application from the enforcement officer, the application for enforcement is served on the party against whom enforcement is sought together with a notice and a demand for fulfilment of the debt. After

⁸ Act on the Implementation of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, Official Gazette no. 152/14, in force since 17 August 2015.

⁹ Enforcement Act, Official Gazette no. 112/2012, 25/2013, 93/2014, 55/2016, 73/2017, 131/2020, 114/2022, 6/2024 (hereinafter: EA).

¹⁰ For more: Maganić, A., *Dejudicijalizacija ovršnog postupka u Hrvatskoj i nekim zemljama njezina okruženja*, Zbornik Pravnog fakulteta u Zagrebu, vol. 68, no. 5-6, 2018, pp. 707-737.

"dispatch" of this notice to the party against whom enforcement is sought, if the creditor does not withdraw the enforcement application within fifteen days, the notary will issue an enforcement decision and serve it on the parties. In addition, the Act on Amendments to the Enforcement Act 20 prescribes a standardised fee for the activities of notaries in compulsory enforcement. If a notary performs procedural acts in enforcement proceedings after the Act on Amendments to the Enforcement Act 20 came into force, he does so as a court commissioner.¹¹

2. SOME NEW POWERS OF THE NOTARY FROM THE LAND REGISTER ACT

2.1. The role of the notary in the digitalization of land registers

The Land Register Act 2019 (hereinafter: LRA 2019) introduced a new competence of notaries, namely Art. 105, which was further amended by the Act on Amendments to the Land Register Act of 2022 (hereinafter: LRA 2022).¹² The LRA 2019 introduced the rule that the land register is kept exclusively electronically, but it was still possible for applications for entry into the land register to be submitted in writing.¹³ The LRA 2022 stipulates that an application for entry into the land register must be submitted exclusively electronically, via notaries, attorneys, the competent state attorney's office as mandatory users of electronic communication with the court, via the Joint Information System.¹⁴ The introduction of exclusively electronic submission of applications for registration through notaries and attorneys does not restrict or impede access to the court, as the offices of notaries and attorneys are geographically dispersed throughout the territory of the Republic of Croatia. However, the question arises as to why users of the e-Citizens (*e-Gradani*) system can no longer submit a registration proposal but must also use the services of notaries and attorneys, even though this is also an electronic method of communication. In cases where other public law bodies submit their decisions for implementation in the land register, they are also obliged to communicate electronically with the land register departments.¹⁵ Also

¹¹ Aras Kramar, S., *Ovrha na temelju vjerodostojne isprave prema Noveli Ovršnog zakona iz 2020. godine*, Pravo i porezi, no. 12., 2020, p. 16.

¹² Act on Amendments to the Land Register Act, Official Gazette no. 128/2022.

¹³ See Simić Rukavina, A., *Podnošenje prijedloga za upis u zemljišnu knjigu elektronički – putem javnog bilježnika*, Javni bilježnik, Časopis Hrvatske javnobilježničke komore., XXIII, October 2019., no. 46., p. 58.

¹⁴ Šago, D.; Boban, M., *Neki aspekti novina u elektroničkoj komunikaciji pred sudovima*, V. Međunarodno savjetovanje Aktualnosti građanskog procesnog prava - nacionalna i usporedna pravnoteorijska i praktična postignuća, Split, Hrvatska, 2019. pp. 471 – 497.

¹⁵ See Bulka, Z., *Što donosi novela Zakona o zemljišnim knjigama*, Pravo i porezi, no. 1., 2023. p. 49.

prescribed is the obligation of the notary to submit a proposal for registration after the preparation of a notarial deed, notarisation or verification of the signature on the document that is the basis for registration in the land register, unless the party expressly objects to this.¹⁶

In addition to the application for registration, all other submissions to the land registry court are also submitted electronically. Art. 105 of the LRA 2022 prescribes the obligation to submit a proposal and to transmit documents that form the basis for registration (registration, provisional registration and annotation). This raises the question of what about other submissions that the parties make to the court that do not lead to an entry in the land register. The problem is that the involvement of legal professionals is not required in the preparation of documents in property transactions. If we look at the provision of Art. 196 of the LRA 2022, which stipulates that applications for registration of something that is not registered in the Land Register, as well as objections that an entry or its order of priority should be amended, supplemented or deleted must be submitted in writing, it can be concluded that the legislator did not have in mind the complete abolition of written applications and objections in favour of exclusive recourse to the land register court through the mediation of the Joint Information System. On the one hand, this is done for notaries via the *eNotar* system, which provides for the transmission of applications in accordance with Article 105 of the LRA 2022, and on the other hand, we have the legislator's wish that all types of submissions to the land registry offices be transmitted via the mediation of authorised users. We believe that the intention was to involve lawyers more in the process of submitting applications to the land registry department through the Joint Information System, especially when they are also the authorised representatives of the parties in a particular court case which due to their complexity require the involvement of lawyers.¹⁷

The court will reject a submission that is not filed electronically via the Joint Information System. Such a provision could affect the parties' right of access to the court, especially in view of the fact that the parties have a certain number of documents that they have not submitted for entry in the land register and now have to go to a notary or lawyer to submit an application for those documents. The aforementioned provision is contrary to the efforts to make the data in the land registers as accurate as possible and to register as many rights in rem as possible in the land registers, i.e. to reduce "off-book ownership" as much as possible and

¹⁶ For more: Maganić, A., *Javni bilježnik u elektroničkom pravnom prometu*, Zbornik radova Pravnog fakulteta u Zagrebu 63, no. 2., 2013., pp. 383 - 431.

¹⁷ See Šago, D., *Neki aspekti uloge javnog bilježnika kao povjerenika suda u sudskim postupcima u Republici Hrvatskoj*, Aktualnosti građanskog i trgovačkog zakonodavstva i pravne prakse, no. 18., 2021., Mostar, pp. 183 – 187.

to increase security and the application of the principle of trust in the land register.¹⁸

With regard to the electronic submission of applications, the LRA 2022 also provides that the notary or lawyer through whom the application has been submitted is not the authorised representative of the party, unless he or she meets the requirements for an authorised representative under special regulations. This means that a lawyer or notary who cannot refuse to submit an application for registration is not obliged to read the document for which he is submitting the application or to point out to the party any defects and irregularities in the document if he has not drafted it himself. In this way, there is a possibility that some of the applications submitted to the land registry courts through lawyers and notaries will be rejected due to defects in the documents or unenforceability due to the state of the land register. The question arises of how parties who do not have the necessary legal knowledge will understand the fact that the submission of the application for registration by a lawyer – who is undeniably a competent professional for the matter – does not automatically mean that the land registry court will rule favourably on the application.

The continuation of electronic land register management was also continued by the provision of the LRA 2022, which states that the file in the regular land register procedure is kept in electronic form. Until the aforementioned amendment, the minister responsible for judicial matters was required to issue a decision that the file would be kept in electronic form at a specific court if the technical requirements were met. The LRA 2022 provides for the collection of documents to be kept in electronic form.

Applications must be signed with a qualified electronic signature, which has the same legal effect as a handwritten signature and a stamp impression issued by a qualified service provider. All attachments specified therein must be included with the application and amendment in electronic form. If the application for registration and the amendment to the application are submitted via an online service, they may be electronically signed with a valid certificate issued by the authorised user's system administrator. Written attachments submitted in original or certified copy (photocopy) are transferred into electronic form by the authorised user and each attached document is provided with a qualified electronic signature. The problem with this is that the party submitting the document only has a copy and the notary guarantees with his advanced signature that it corresponds to the original (or certified copy or authenticated copy or printout of an electronic

¹⁸ Also Hobljaj, H.; Nikolić, V.; Grbac, M., *Javni bilježnici i zemljišnoknjižni postupci*, Pravo i porezi, no. 3., 2023., pp. 14 – 16.

document on paper) that he has seen and scanned, which would not be the case in the latter example.¹⁹ Unlike the certification of a copy, which a notary makes as part of his regular work and where the nature and details of the certification are read out in the certification stamp itself, only the notary's qualified signature is present when signing documents sent to the land registry.²⁰

The land registers will be fully digitised, which means that collections of documents will also be digitised, not just the main registers as was previously the case.²¹ In accordance with the new Art. 30 of the LRA 2022, the collection of documents will be kept exclusively in electronic form.²²

Original documents or attachments for the electronic submission of applications for entry in the land register that are submitted via notaries and lawyers will be stored by them in accordance with their own retention regulations. The Land Register Department stores attachments in the collection of documents in electronic form, thus creating the conditions for the creation of an electronically managed collection of documents.²³

2.2. Establishment and renewal of the land register

The idea of entrusting the execution of the procedures for the establishment and renewal of the land register to notaries was envisaged due to the adoption of the multi-annual programme for the cadastral survey of construction areas for a period of ten years, but there are courts that do not have a sufficient number of their officials for the smooth operation and execution of the procedures for the establishment and renewal of the land register. It is therefore planned to entrust this work to public notaries.

The procedure for the renewal and establishment of the land register should also regulate the linking of the land register with the book of deposited contracts, where this has not yet been done. Pursuant to the Regulation on the Linking of the Land Register and the Book of Deposited Contracts and the Registration of Ownership

¹⁹ *Ibid.*, p. 14.

²⁰ For more: Grbac, M.; Grbac, A., *Javne isprave i elektronički zemljišnoknjižni upisi*, Javni bilježnik, Časopis Hrvatske javnobilježničke komore, XXII, November 2018., no. 45., pp. 9 – 24.

²¹ Turković, M., E-upis u zemljišne knjige putem javnih bilježnika, accessed 21 January 2025., <http://www.iusinfo.hr/DailyContent/Topical.aspx?id=30288>.

²² On January 1, 2022, the minister issued a decision that the collection of documents for all courts shall be maintained in electronic form.

²³ See Bulka, Z., *Novela Zakona o zemljišnim knjigama iz 2022.*, <https://www.iusinfo.hr/strucni-clanci/novela-zakona-o-zemljisnim-knjigama-iz-2022>

of a Special Part of the Property (Condominium Ownership), the procedure for linking the Land Register and the Book of Deposited Contracts must be initiated by the property manager, who should be involved in it on behalf of all co-owners. The Land Register Act authorises notaries to link the Book of Deposited Contracts and the Land Register as part of the procedure for renewing or establishing the Land Register, which is entrusted to them by the courts. The Ministry of Justice and Public Administration believes that the involvement of notaries public in the renewal of land registers will speed up the entire procedure, as the courts are overloaded with other cases.

At the end of October 2022, the Act on Amendments to the Land Register Act was passed, which, among other things, added nine new articles under Art. 186, numbered from 186a to 186i, which introduced notaries as court commissioners in the procedures for establishing and renewing the land register on the basis of a new cadastral survey. The explanatory memorandum to the Act states that the procedures for the establishment and renewal of the land register are matters of interest to the Republic of Croatia and have a direct impact on the growth of economic activity. Due to the large number of establishment and renewal procedures in some areas and also due to the large number of land register cases, the competent courts are not able to properly carry out the procedures for the establishment and renewal of the land register with the existing human resources. In view of this, these amendments to the Land Register Act provide that court presidents who at any given time do not have a sufficient number of employees to regularly perform the tasks in the land register departments and to carry out the procedures for the establishment and renewal of the land registers may decide by resolution that the task of establishing or renewing the land register for a particular cadastral municipality be entrusted to a notary.²⁴

The establishment and renewal of the land register shall be carried out *ex officio* by the court in whose territory the cadastral municipality for which the land register is being created or renewed is located, on the basis of a decision by the Minister of Justice. In the decision, the Minister of Justice specifies the period within which the procedure for the establishment or renewal of the land register must be completed and, together with the decision, submits to the competent court his opinion on the assignment of the tasks of establishing and renewing the land register to a notary, taking into account the burden of land register cases on the competent courts, the procedures already initiated for the establishment and renewal of the land register, the available number

²⁴ Also Šćulac, N., *Mogu li javni bilježnici kao povjerenici suda u postupku osnivanja odnosno obnove zemljišne knjige ubrzati rješavanje problema s neusklađenošću zemljišnih knjiga*, Pravo i porezi, no. 10, 2023, p. 71.

of clerks and court counsellors at a given court and other circumstances that may affect the efficient conduct of the procedure for the renewal of the land register, all subject to the prior opinion of the Minister of Finance.

After the court has received the decision and opinion on the delegation of the tasks of establishing and renewing the land register to a notary, the president of the court may by decision delegate the procedure for establishing or renewing the land register to a notary. The court shall notify the Ministry of Justice, the body responsible for the cadastre and the notary to whom the procedure has been delegated of the decision to delegate tasks, as well as of the cancellation of tasks when this occurs. If several notaries have their seat in the district of the court, the cases are assigned to them for processing equally in alphabetical order of the notary's surname. Tasks entrusted to notaries may also be undertaken by notarial advisors or assessors in the notary's office. In exceptional cases, the notary who carried out the land register renewal procedure may also conduct a hearing for rectification or issue a decision in accordance with the rules of the non-contentious procedure.

If notaries in a certain area are overburdened with procedures for the establishment and renewal of the land register, if there is a shortage of notaries in a certain area and the like, the court may, by prior decision of the Ministry of Justice, transfer the execution of the procedure for the establishment or renewal of the land register outside the official area for which the notary was appointed. If the notary has not carried out the procedure for the renewal or establishment of the land register within the prescribed time limit, he may submit a report to the court; the court may extend the time limit or withdraw the notary's right to continue carrying out the procedure.²⁵

Time will tell whether the procedures for establishing and renewing land registers will really be speeded up by transferring them to notary's offices.

²⁵ Hobljaj, Nikolić, Grbac, *op. cit.* note 18, pp. 14 – 16.

3. NEW AUTHORISATIONS OF NOTARIES FROM THE ACT ON NON-CONTENTIOUS PROCEEDINGS

The Act on Non-Contentious Procedure entered into force on 10 June 2023.²⁶ It is important to emphasise that the decision contained in Article 56, paragraph 2 of the ANCP, including the decision contained in Article 52 of the ANCP on the entrustment of notaries with certain non-contentious proceedings, (only) entered into force on 1 September 2023 (Article 123 of the ANCP). In addition, within 60 days of the entry into force of the provisions of Article 52 of the ANCP (i.e. from 1 September 2023), the Minister responsible for judicial affairs shall issue regulations on the manner of assigning cases to a notary and on the amount of remuneration and reimbursement of costs of a notary as court commissioner for tasks assigned to him by the ANCP (Article 121, paragraph 1 in conjunction with Article 123 of the ANCP).

The third chapter of the first part of the ANCP regulates the participation of notaries in non-contentious proceedings. In this context, the provisions that determine the behaviour of notaries on the basis of their original competence and as court commissioners, appeals against notarial decisions, supplementary decisions and corrective decisions, cases entrusted to a notary and issues related to court and notarial fees in non-contentious proceedings are relevant.²⁷ There is also the provision of Article 52 of the ANCP, which contains the basis for the issuance of regulations by which the minister responsible for judicial matters is to prescribe the type of case assignment and the amount of remuneration and reimbursement of costs for notaries as court commissioners.

The ANCP still sets relatively narrow limits to the competence of notaries in non-contentious proceedings: by specifying two particular non-contentious proceedings that the court must entrust to them, proceedings that are not otherwise regulated in the ANCP itself (Article 52 of the ANCP); by specifying the court's duty to entrust notaries with the conduct of proceedings to establish the death of a missing person and proof of death (Articles 54-67); by establishing the "original" (concurrent) competence of notaries to conduct the procedure for voluntary appraisal and sale (Articles 58 to 66 of the ANCP) and to conduct the procedure for the establishment, administration and liquidation of notarial deposits (Articles 77 to 100 of the ANCP). The adoption of the ANCP was not used to significantly expand the competence of notaries in those non-contentious proceedings in which the parties can freely dispose of their rights, for example to expressly regulate the

²⁶ Act on Non-Contentious Procedures, Official Gazette no. 59/2023 (hereinafter: ANCP).

²⁷ See Aras Kramar, S., *Proглаšenje nestale osobe umrlom i dokazivanje smrti*, Pravo i porezi, no. 7-8, 2023., pp. 65-69.

procedure for divorce by mutual consent if the spouses have no minor children in this act. In this context, notaries could also have been entrusted with the settlement of property relations between former spouses. The opportunity was not taken to explain the possibility of notarial preservation of evidence in more detail. The opportunity to make a significant contribution to relieving the burden on the courts by extending the competence of notaries in non-contentious proceedings and to entrust all matters that fall within the competence of the courts, which do not require a hearing in the narrower sense and are essentially dispositive in nature, to notaries, who have so far proven themselves in practise through their expertise and speed in resolving non-contentious inheritance and enforcement matters, was therefore not utilised.

3.1. Regulation of abuttals and dissolution of joint ownership at the notary

The court shall entrust the conduct of the proceedings to a notary established in the territory of the competent court if the parties have submitted: 1. a proposal for the amicable settlement of abuttals; 2. a proposal for the amicable dissolution of joint ownership.

The provision of paragraph 1 of Article 52 of the ANCP establishes the obligation of the court to entrust notaries with the conduct of two types of non-contentious proceedings – proceedings that are not otherwise regulated in the ANCP. These are proceedings initiated by an application for amicable settlement of abuttals and proceedings initiated by an application for amicable dissolution of joint ownership.

Since the Act on Ownership and Other Real Rights²⁸ essentially only laid down the substantive legal requirements for the decision on applications to initiate the aforementioned proceedings, but that these provisions implicitly referred to the application of the statutory provisions of the Act on Judicial Non-Contentious Procedure from 1934 to these proceedings, which until the entry into force of the ANCP, regulated a special non-contentious procedure for the regulation of abuttals and for the dissolution of joint ownership, rules whose application ceased with the entry into force of the ANCP (Article 122 of the ANCP), the question arises as to the rules on the basis of which the aforementioned non-contentious procedures

²⁸ Act on Ownership and Other Real Rights, Official Gazette no. 91/96, 68/98, 137/99, 22/00, 73/00, 129/00, 114/01, 79/06, 141/06, 146/08, 38/09, 153/09, 143/12, 152/14, 81/15, 94/17 (hereinafter: AOORR).

should be conducted after the entry into force of the ANCP.²⁹ The absence of specific provisions for these two procedures that are not contained in the AOORR – for the dissolution of joint ownership in Articles 48 to 56 and for the regulation of abutments in Article 103 - i.e. provisions that are actually of a substantive nature, inevitably points to the corresponding application of the general provisions of the ANCP. Since the general provisions of the ANCP cannot serve as a sufficient basis for the regulation of special procedures for the regulation of abutments and the dissolution of joint ownership, it can be assumed that, in the absence of corresponding special provisions in the ANCP, these procedures will continue to be carried out under the corresponding application of the special legal norms of the Act on Judicial Non-Contentious Procedure on these procedures, insofar as they do not contradict the general provisions of the ANCP.

The Minister responsible for judicial matters will issue an ordinance specifying the manner in which cases are to be assigned to a notary and the amount of the notary's remuneration and reimbursement of costs as court commissioner for the aforementioned matters.

3.2. The procedure for declaring a missing person dead and proving death before a notary public

With the entry into force of the ANCP, the application of the legal norms of the Act on Judicial Non-Contentious Procedure for the Kingdom of Yugoslavia from 1934³⁰ ceases to apply, and the provisions of the Act on the Declaration of Missing Persons as Dead and Proof of Death from 1974 no longer apply (Art. 122 of the ANCP). The provisions of the ANCP on the declaration of missing persons as dead and proof of death are modernised solutions to the 1974 Act.³¹ According to the ruling contained in provision of Art. 119, para. 1 of the ANCP, proceedings that were initiated, but have not been concluded before the entry into force of the ANCP are concluded in accordance with the regulations and legal rules in force or applied until the entry into force of the ANCP. However, an exception is also provided for in relation to the entrusting of notaries with proceedings to establish the death of a missing person and to provide proof of death.

²⁹ Also Dika, M., *O „općem statusu“ javnih bilježnika u izvanparničnom postupku prema Zakonu o izvanparničnom postupku iz 2023*, Javni bilježnik, vol. XXXVIII., no. 51., 2024., pp. 18-19.

³⁰ Act on Judicial Non-Contentious Procedure for the Kingdom of Yugoslavia (Non-Contentious Procedure) with the Introductory Law from 1934, Official Gazette no. 175-XLV.

³¹ Act on the Declaration of Missing Persons as Dead and on the Proof of Death from 1974, Official Gazette of the SRH, No. 10/74; Official Gazette no. 53/91.

Exceptionally, upon the entry into force of the provisions of Articles 52 and 56, paragraph 2 of the ANCP, the court will entrust cases for which the ANCP has determined that they be entrusted to notaries public, and in which the court has not taken any action until the date of entry into force of the ANCP, to notaries public (Article 119, paragraph 2 of the ANCP). The ANCP stipulates that the court will entrust the conduct of the procedure for declaring a missing person dead and for proving death to a notary public at the official seat in the territory of the competent court.

The provision of Article 55 of the ANCP regulates the conditions for establishing the death of a missing person and proving the death of a person for whose death there is no proof provided for in the Act on State Registers, as well as the procedure for deciding on this.

A missing person may be declared dead if there has been no news of his/her life in the last five years and seventy years have passed since his/her birth; if there has been no news of his/her life in the last five years and the circumstances under which he/she disappeared make it probable that he/she is no longer alive; if he/she disappeared in a shipwreck, aircraft crash, traffic accident, fire, flood, earthquake or other imminent danger of death and there has been no news of his/her life for six months from the time when this danger ceased to exist; if he/she disappeared during the war or in connection with war events and there was no news of his/her life for one year from the date of the cessation of hostilities; if he/she disappeared during the Homeland War or in connection with war events and there was no news of his/her life for one year from 30 June 1996.

All time limits are counted from the day on which the missing person was unequivocally alive according to the latest news. If this day cannot be precisely determined, these time limits shall begin to run at the end of the month or year in which it was established that the person was alive.

The municipal court in whose territory the missing person last resided is responsible for determining the death of the missing person and providing proof of death. If the person had no place of residence, the municipal court in whose territory the person had their last place of residence is responsible.

In addition, there is the decision contained in paragraph 2 of Article 56 of the ANCP, which provides that the court shall entrust the conduct of the proceedings

to a notary according to the place of jurisdiction in the territory of the competent court (from Article 56, paragraph 1 of the ANCP).³²

A proposal to declare a missing person dead may be submitted by any person who has a legal interest in doing so, the state attorney, and the Croatian Institute of Social Work. The application must contain the applicant's data, the name, surname and date of birth of the missing person whose death declaration is proposed, their last place of residence or temporary residence and their personal identification number, if they had one. In addition, the application must also contain the facts on which the application is based and the evidence of these facts.

If the court or notary concludes that the conditions for determining the death of a missing person are likely to be met, it appoints a temporary representative for the missing person and notifies the Croatian Institute of Social Work or requests the Croatian Institute of Social Work to appoint a special guardian within a certain period of time and to carry out the procedure. The final decision to declare a missing person dead is submitted to the competent civil registrar for entry in the state registers. If they conclude that the conditions for initiating the procedure are not met, the court or notary will reject the proposal.

4. REGISTER OF LIFELONG SUPPORT CONTRACTS AND CONTRACTS FOR SUPPORT UNTIL DEATH

An innovation in the regulation of contracts is the introduction of the Register of lifelong support contracts and contracts for support until death, which is established and maintained by the Croatian Chamber of Notaries (Article 4 of the Act on Amendments to the Obligatory Relations Act 2023).³³ The content and manner of keeping the register, the registration fee and the right of direct access to the data from the register, as well as the issuance of a certificate on the data from

³² The draft ZIP from March 2023 envisaged the participation of a notary public as a court commissioner in a larger number of non-contentious proceedings, specifically in relation to proposals for amicable boundary settlements, amicable division of joint ownership, amicable divorce of spouses without minor children, amicable termination of life partnership if no minor child lives in the partnership, as well as for declaring a missing person deceased and proving death. However, these projections in the area of status-related non-contentious proceedings were partially abandoned between the two readings in the Croatian Parliament. See the Proposal for the Law on Non-Contentious Proceedings, first reading, P.Z.br.458, Zagreb, March 2023., <https://www.sabor.hr/prijedlog-zakona-o-izvan-parnicnom-postupku-prvo-citanje-pz-br-458-predlagateljica-vlada-republike?t=137552&tid=211439> (25 May 2023.).

³³ Obligatory Relations Act, Official Gazette no. 23/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22, 155/23.

the register, are determined by a regulation of the Minister responsible for judicial matters (Article 580a, paragraph 7).³⁴

According to the data of the Croatian Chamber of Notaries, 5,123 lifelong support contracts were concluded before notaries in 2023, of which 2,677 were in the form of a notarial deed, and 2,446 were solemnised. In the same period, 1,542 contracts for support until death were concluded, of which 608 were concluded in the form of a notarial deed and 934 were solemnised, with a multi-year growth trend in the number of lifelong support contracts concluded before notaries.³⁵

The register is set up to systematise and verify the number of contracts concluded.³⁶ The register shall ex officio record data on: contracts concluded, their amendments, termination, proceedings initiated for their amendment, termination, nullity or annulment, the manner of final termination of these proceedings and the termination of the obligations arising from these contracts (Article 580a, paragraph 2). The judge and the notary must, ex officio, immediately enter data on the conclusion, modification and termination in mutual agreement of lifelong support contracts or contracts for support until death in the register (Article 580a, paragraph 3).³⁷ The court of first instance must, ex officio and without delay, enter in the register information on the proceedings initiated for the modification, termination, annulment or cancellation of a lifelong support contract or contract for support until death (Article 580a, paragraph 4). The same court shall also enter the information on the manner of final termination of the said proceedings in the register. The support provider may apply to a notary to register the termination of the obligations arising from the contract by fulfilment. The application must be accompanied by the lifelong support contract or contract for support until death and a document proving the death of the support recipient in accordance with the Act on State Registers (Article 580a para. 6).³⁸

It is important to note that before any notarisation, i.e. the drawing up of a contract, the notary or judge must check the register of lifelong support contracts and

³⁴ Regulation on the Register of lifelong support contracts and contracts for support until death, Official Gazette no. 65/2024.

³⁵ Ombudswoman's Report for the year 2023, Analysis of the state of human rights and equality in Croatia, Zagreb, March 2024, Accessed on 28 January 2025. <https://www.ombudsman.hr/hr/interaktivno-izvjesce-za-2023/> p. 65.

³⁶ Bukovac Puvača, M., *Novo uređenje ugovora o uzdržavanju u Zakonu o obveznim odnosima*, *Novi Informator*, no. 6820 from 29. January, 2024., pp. 1-4.

³⁷ See Nikolić, V.; Marčinko, I.; Grbac, M., *Ugovori o doživotnom i dosmrtnom uzdržavanju uz pregled izmjena zakona iz 2023. godine te osvrt na način postupanja javnih bilježnika*, *Javni bilježnik*, vol. XXVIII., no. 51, 2024., pp. 69-94.

³⁸ See Aras Kramar, S., *Registar ugovora o doživotnom i dosmrtnom uzdržavanju*, *Pravo i porezi*, no. 6., 2024., pp. 55-58.

contracts for support until death to see the number of support recipients with whom the support provider has entered into lifelong support contracts and/or contracts for support until death.³⁹

The new regulation also prescribes the time limits within which the court of first instance must enter information in the register on the manner in which the procedure for amending, terminating, annulling or cancelling the above-mentioned contracts has been concluded, namely within 30 days of the decision becoming final if no appeal has been lodged against it, or within 30 days of notification of the final decision of the higher court. If it decides on an extraordinary appeal, changes to the information on the manner in which the proceedings were concluded must also be entered within 30 days of the decision on the extraordinary appeal becoming final.

Practise will show how easy it will be to implement the envisaged solutions in the register in practise and what possible difficulties the contracting parties and authorised representatives will face.

5. POSSIBILITIES OF EXPANDING NOTARY JURISDICTION IN THE FIELD OF STATUS-RELATED NON-CONTENTIOUS PROCEEDINGS

Among the topics of modernising the judiciary and relieving the courts, the question of the possibility of settling divorce before notaries also arose.⁴⁰ As justification for establishing notaries' competences in this area, the simplification, flexibility and acceleration of the procedure for the parties were emphasised. The last reform of family legislation simplified and accelerated the divorce of spouses who do not have common children over whom they exercise parental care by prescribing a non-contentious procedure as a method of legal protection (Article 50, paragraph 1, Article 453 - Article 460 of the Family Act).⁴¹

Under Croatian law, in non-contentious proceedings for divorce by mutual consent of spouses who do not have common children over whom they exercise parental

³⁹ For more Šago, D., *Novo uređenje ugovora o uzdržavanju u zakonodavstvu Republike Hrvatske*, Zbornik radova X. Međunarodnog savjetovanja Aktualnosti građanskog procesnog prava - nacionalna i usporedna pravnoteorijska i praktična dostignuća, Šago, Dinka; Dika, Mihajlo; Uzelac, Alan et al. (ur.). Split: Pravni fakultet Sveučilišta u Splitu, 2024. pp. 505-526.

⁴⁰ Also Maganić, A., *Javni bilježnik u izvanparničnom postupku*, Javni bilježnik, vol. 26, no. 49, 2022, pp. 25-34.

⁴¹ Family Act, Official Gazette no. 103/15, 98/19, 47/20, 49/23, 156/23.

care, the court issues a decision on the basis of the spouses' agreement to divorce. The prerequisite for a divorce by mutual consent is not the mutual division of the marital property and the settlement of other issues of their property relations. The judge's task is to grant the divorce on the basis of the spouses' mutual application. The spouses may settle the division of marital property, maintenance and their property relations on the basis of the divorce by mutual agreement before a notary (Art. 45, Art. 302 of the Family Act 15).⁴² In this context, the role of the notary in requesting an appropriate registration of the transfer of rights to real estate on the basis of an agreement between the spouses should also be mentioned. The provisions of Art. 105, para. 1 of the Land Register Act provide for the possibility of submitting an electronic proposal for entry in the land register through a notary, among others. The recent reform of family law and family procedure has simplified the divorce by mutual consent of spouses without common children over whom they exercise parental care, as well as the competences of notaries in relation to the amicable settlement of property relations between spouses and the possibility of submitting land register proposals for registration by electronic means, and raises the question of prescribing the competences of notaries for amicable divorce in the form of a notarial deed.⁴³ In addition to the reasons of gradualness, simplification, modernisation and electronisation of justice, the principle of "everything in one place" also speaks in favour of prescribing such a form of divorce by mutual consent. In addition to the divorce, the spouses could also reach an agreement with a notary on certain issues relating to their property relations, maintenance and the division of marital property and ask the notary to submit the corresponding land register applications electronically for registration. This would considerably simplify and speed up these procedures and would also have a positive impact on the issue of the costs of such procedures. It should be emphasised that in our legal system there is no mandatory legal representation of spouses in a divorce by mutual consent, which should be taken into account when analysing the costs of the notarial form of divorce by mutual consent from a Croatian perspective.

Our system is based on the principle that an agreement between the spouses on the division of marital property and other property issues is not a prerequisite for a divorce by mutual consent.

⁴² Aras Kramar, S., *Javnobilježnički razvod braka u reformiranom slovenskom pravu*, Pravni vjesnik, 36., no. 3-4, 2020., pp. 239-241.

⁴³ Also Aras Kramar, S., *Širenje nadležnosti javnih bilježnika na području obiteljskopравnih odnosa*, Zbornik radova s III. međunarodnog savjetovanja Aktualnosti građanskog procesnog prava – nacionalna i usporedna pravnoteorijska i praktična dostignuća, Split, Pravni fakultet Sveučilišta u Splitu, 2017., pp. 299-321.

Considering the Croatian legal system, in particular the fact that the last reform of family law and procedure simplified and accelerated the procedure in the area of divorce by mutual consent of spouses who do not have common children over whom they exercise parental care, and thus there is no obligation for mandatory counselling, reasons of gradualness speak in favour of prescribing the competence of notaries for divorce by mutual consent of such marriages in the form of a notarial deed. In this case, the notary has no judicial function but draws up a notarial deed if the conditions for such a form of divorce by mutual consent are met (free will of the spouses, no common children over whom parental care is exercised).

At European level, the adoption of the new Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast)⁴⁴ should also be mentioned. BU II *ter* expressly recognises such forms of divorce by mutual consent and the competencies of notaries. This creates the basis and the possibility for the recognition, acceptance and legal transactions involving notarial deeds on divorce by mutual consent even in those EU Member States that do not (yet) recognise such competences of Latin-style notaries (see point 70 of the preamble to BU II *ter*).⁴⁵

On the other hand, possible objections to the possibility of divorce by mutual consent before notaries are that this leads to hasty and ill-considered divorce decisions, and that the understanding of marriage as an institution requires a conventional approach, the judicial divorce procedure. We believe that the argument of gradualness should be taken into account when regulating a divorce by mutual consent before a notary and that this option should be prescribed for those spouses who do not have common children over whom they exercise parental care. At the same time, consideration should certainly be given not only to simplifying and speeding up such procedures for a divorce by mutual consent, but also to the costs of the procedure itself. Arguments of completeness and coherence of the regulation would also support the provision of notaries' competencies for the dissolution of a civil partnership, analogous to the solutions that would apply to an amicable divorce of married spouses.

⁴⁴ Council Regulation (EU) 2019/1111 of June 25, 2019, on jurisdiction, recognition, and enforcement of judgments in matrimonial matters and matters relating to parental responsibility, and on international child abduction (recast). ST/8214/2019/INIT SL L 178, 2.7.2019, p. 1–115.

⁴⁵ Aras Kramar, S., *Javnobilježnički razvod braka u reformiranom slovenskom pravu*, Pravni vjesnik, 36., no. 3-4, 2020., p. 241.

6. INSTEAD OF A CONCLUSION – FURTHER POSSIBILITIES FOR EXPANDING NOTARY COMPETENCIES

The ANCP regulates the position of notaries in non-contentious proceedings in a fragmentary manner in relation to proceedings whose implementation is entrusted to notaries by a court decision. In procedures in which courts and notaries are originally competent, the actions of notaries, when they do not make concrete decisions but only draw up deeds, raise various implementation problems in practise, above all the question of the possibility and manner of controlling the way in which the notaries will implement the said procedures. The question of the possibility for a dissatisfied party to initiate corresponding proceedings in court after being denied the right to the legal protection it seeks by the notarial deed could also be raised here.

The legislator will have to review the way in which these procedures are regulated, in particular the possibility of judicial control of their implementation, which would further protect the rights of the parties involved. The Republic of Croatia has finally adopted the ANCP in 2023, but now it should be examined how the already existing special legal regulations for certain non-contentious procedures can be brought into line with the ANCP, how to review these regulations, but also considered should be the possibility that some of the non-contentious procedures – e.g. the court non-contentious procedure for the provision of evidence (Art. 272 to 276 of the Civil Procedure Act)⁴⁶ and the non-contentious procedure for concluding a court settlement (Art. 321 to 324 of the CPA) – could be adapted to be applied by notaries. In the case of a notarial settlement, for example, the notary could be authorised to conduct this procedure with the powers of an arbitrator, which could give such a settlement the status of a specific court settlement. The adoption of the ANCP should also be taken as an opportunity to examine the possibility of entrusting notaries with the resolution of certain non-contentious, essentially dispositive family and status-related legal matters, such as the conduct of proceedings for divorce by mutual consent. Also reviewed should be the possibility of notaries to, based on prior consent given by the parties in an underlying contract, issue appointments, set deadlines and take other actions in the same way as courts are authorised to do without the prior consent of the parties

⁴⁶ Civil Procedure Act, Official Gazette of the SFRY no. 4/1977, 36/1977, 36/1980, 6/1980, 69/1982, 43/1982, 58/1984, 74/1987, 57/1989, 20/1990, 27/1990, 35/1991, Official Gazette no. 53/1991, 91/1992, 112/1999, 129/2000, 88/2001, 117/2003, 88/2005, 2/2007, 96/2008, 84/2008, 123/2008, 57/2011, 25/2013, 89/2014, 70/2019, 80/2022, 114/2022, 155/2023 (hereinafter: CPA).

(Articles 117 and 118 of the ANCP). This should also include the possibility for the parties to authorise the notary to do so by subsequent agreement.⁴⁷

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