

OPPORTUNITIES FOR ICT USE IN THE NOTARY PUBLIC SERVICE

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Abstract

This paper looks at the notary public service in general and its scope of activities. In addition, it deals with the Notarial Code of Conduct (Code of Ethics) written by Vladimir Pappafava in 1896 and, in a certain way, provides a historical overview and comparison of public notary service in respect of the powers now and then. It is indicated that the notary public service, in terms of powers, has not changed much to the present time. Nowadays, when the development of computer science and technology has reached the point when it is almost impossible to follow it, the question is how and to what extent the notary public service should take advantage of such a wide range of technological capabilities. Along its development, information technology has been penetrating more and more into every segment of human life - both business and private. In addition to many benefits provided by information technology (acceleration of business, communications, etc.), it has also brought some technical problems that can lead to complete interruption of business. The contribution and role of information technology in the notary public service in the European Union Member States including the Republic of Croatia, as well as certain ideas regarding the use of opportunities afforded by information and communication technologies are also discussed.

Keywords: *the characteristics of a person of public trust, information and communication technology, electronic registers, e-company, security of claims*

JEL Classification: K1, K10, K2

1. INTRODUCTION

1.1. GENERAL INFORMATION ABOUT NOTARY PUBLIC SERVICE

The very beginning of this paper presents the idea of authorities and mode of work of notaries public, i.e. notaries public services. Anyone at least once in his/her lifetime has a need to use a service of the notary public, and in such situation the expression that a document should be “notarized” by the notary is usually heard which leads to a wrong conclusion that the notary public “certifies documents” and even that it is his/her only job and authority. For clarification of the powers and mode of work of notaries public it is best to quote Article 2 of the Notaries Public Act reading as follows:

(1) Notary public service consists of official drawing up and issuing public documents on legal transactions, statements and facts on which the rights are based, official verification of private documents, receiving documents for keeping, as well as money and items of value for their delivery to other persons or authorities and carrying out the procedures established by law as ordered by courts or other public authorities. The notary public service also involves performing other duties stipulated by this Act.

(2) Notary public service is performed by notaries as autonomous and independent holders of the service who have the status of persons of public trust.

3) Notaries perform their service as a sole occupation during the period for which they are appointed. “(Notaries Public Act, Official Gazette No. 78/93, 29/94, 162/98 and 75/09).

The above quoted legal provisions show that “verification documents” makes only a small part of their work and that there is a series of powers of notaries in the performance of their service.

It should be remembered, which will be important for the rest of this paper, that the *characteristic of a person of public trust* has been given to the notary in paragraph 2 of the quoted Article, as well as that the notaries the procedures established by law as ordered by courts or other public authorities in paragraph 1.

In order to draw attention to tradition, contribution of current and future notary public service in addressing and facilitating the issues encountered by a natural or legal person in everyday life, a section from the preface of the No-

tarial Code of Conduct (Code of Ethics) written by the lawyer and historian of public notary service Dr. Vladimir Pappafava from 1896 should be quoted:

“None of all legal institutions from old times, reaching us through centuries and which in, a higher or lesser degree, have the same aim and grounds, found today in all educated nations, cannot be, in importance, compared with notary public service.

And it is because of the reputation and dignity of the notary profession, their highly confidential character, and finally, because of authenticity by which he/she supplies documents concluded in performing his/her activity.

The notary is a true family secretary, a mediator in disputes, a person of public trust. A person hit with misery or sudden disaster also asks him/her for a useful and reliable advice, friendly help and comfort. The notary also connects forever the hearts in love and lays the foundation of marriage; and when a person on death-bed declares the last will the notary is also invited to hear his/her last memory, last thought, last greeting to beloved, and to pass it to grandchildren.

Supplementing and supporting the judiciary by his/her activities, the notary contributes by his/her work to regulation of various civil relations settlements, conciliations and decisions of individual citizens with legal regulations and providing them the character of a public authority and firm authenticity; and so, as De Falco says, while warranting the rights to living people, they also transfer to future generations, along with rights, language, customs, aspirations, spirit, faith, in one word, everything that is expressed in the life of a nation.”(Pappafava; 1896, p. III).

After the notary public completed the official action and prepared a case file, the file is archived and kept in the notary’s archives (some hold that word *archives* originates from the Greek language, while some believe that its etymology comes from the Latin word *arca*, *archa* = *box coin box, cell*) pursuant to the rules prescribed by the rules of Notary Public Ordinance (*Javnobilježnički poslovnik*; Official Gazette No. 38/94, 82/94, 37/96, 151/05 and 115/12) and thus archived material can be re-issued, if necessary. As long as the notary is keeping a document, he/she may, at the request of the client and his/her successors who participated in drafting and verification of document, issue an engrossment, copy of the document, an excerpt of the document or certificate of

the facts arising from the document as defined by the (Article 93- 108, Official Gazette No. 78/93, 29/94, 162/98 and 75/09).

All nations in general, that acted upon laws, felt the need for an archive, to store documents related to identity and the rights of citizens in their private and public relations, as well as regarding monuments (*memoriae*) intended for social and political history. So Judea had its holy ark, blessed tent, and the magnificent temple of Jerusalem, Greece had the famous Delphi temple and Areopagus, etc.

The Romans placed archives in temples, under protection of pontifical choir, which was entrusted with drawing up the key annals of the Republic.” (Pappafava; 1896, p. 224).

“Notarial archives were also established and kept also in monasteries, and considering the general rules of those periods, it seems that three reasons particularly contributed to set-up such institution then, and explained today. The first refers to security, then provided by monasteries, which were hold by everyone as sacred and inviolable places; the second reason was that priests at that time were rare, not to say the only guardians of human knowledge and therefore it was advisable that they were entrusted with those acts, which required an education, and accordingly notary public service; and finally, the third reason refers to those huge properties which were, step by step, flowing into monasteries - from so many contributions of overzealous and simple-minded believers, in the name of absolving from sins (*and remedium animae*), which required that notarial documents, which testify to the source of a variety of properties are kept in those monasteries.”(Pappafava; 1896, p. 226.).

It is important to note that the notary archives was founded in 1260 in Bologna, then in Modena in 1272, in Messina in 1400 and in Venice in 1453.

This introductory presentation, and quoting the Notarial Code of Conduct of Vladimir Pappafava (1896) highlighted the tradition, opportunities and contribution of the notary public service to the community. Giving delegating new powers and activities to notaries it would certainly be in the public interest and the notary public service could give greater contribution to the development and emergence of modern electronic administrative and legal transactions.

2. INFORMATION COMMUNICATION TECHNOLOGY IN THE SERVICE OF PUBLIC NOTARIES IN SOME EU MEMBER STATES

Different solutions and methods of linking and use of electronic public registers in individual EU Member States to apply positive solutions and create new ones in the Republic of Croatia are dealt with in this section. First of all, when talking about the public notary service in European Union it is not meant that there is a unique type of notarial services for the entire European Union.

Since 1 January 2000, public notaries in Austria have to store each certified document in an electronic archive called CyberDOC. The system has contributed to the preservation, confidentiality and integrity of certified documents and is important for the electronic transfer of verified documents because of its link with public administrations, and it also simplifies the process of setting up companies and transfer (sale/purchase) of real estate.

Since 1 July 2007 each Hungarian public notary also has to store any copy of a notarized document to the Digital public notary archive whereby the electronic signature of a public notary warrants that digital documents are recognized as electronic notarial deeds.

European notaries are involved in the anti-money laundering system by verification of the clients' identity transparency of a legal transaction. In 2007 the Spanish notary public service intensified cooperation with administrations dealing with taxes and contributions and founded the Tax Cooperation Body, which provides them with required information. Council of the Notariats of the European Union – CNUE) has set the goal - gradual creation of the European Network of Registers of Wills - ENRWA) that will interconnect the national registers of wills. The register of wills in the Republic of Croatia was established in 2003, and since 6 October 2004 it has been operating as an electronic register.

In the German province of Bavaria public notaries maintain the register of lifetime partnerships in their professional Chamber which is responsible for keeping “the book of lifetime partnerships”.

In 2003 the German public notary service also established the register proxies-custodians for adults without legal capacity which is kept in electronic form (Central Register of Custody-Zentrale Vorsorgeregistar (ZVR)) which can be

used by custody courts in appointment of guardians for adults or in the manner that a person in person grants a general power of attorney to a third party in case of being without legal capacity.

Since 1997 the Hungarian National Chamber of Public Notaries has been keeping the electronic register of movable property and securities which enables granting of loans, checking the reliability of banking clients, strengthens the position of creditors so that they can at any time exercise their rights in respect of movable property and securities established in their favour.

3. INFORMATION COMMUNICATION TECHNOLOGY IN THE SERVICE OF PUBLIC NOTARIES IN THE REPUBLIC OF CROATIA

3.1. ELECTRONIC KEEPING OF REGISTERS AND DIRECTORIES

By amendments to the Notary Public Ordinance published in Official Gazette No. 37/96 Article 18a was added wherein notaries are allowed to maintain the registers and directories by an electronic method using personal computer in a uniform manner for all notaries. In addition to electronic keeping of registers and directories notaries shall also keep them manually.

The approval from the Ministry of Justice was required for electronic management and each notary public and the Croatian Chamber of Notaries was responsible for the application of a uniform methodology of keeping the registers and directories, and their maintenance. By the mentioned amendments to the Notary Public Ordinance in 1996 the possibility was opened for introducing information technology in the notary public services in the form of computerization in its full extent. By providing such opportunity to notaries public is of historical importance for the notary public service in the Republic of Croatia as it opened the way for the development of the service and the possibility of expansion of the powers of notaries. The first notaries public (notaries) on the territory of the Republic of Croatia appeared as early as in 11th century in Dubrovnik and were operating until the 2nd World War when they were abolished and then re-introduced 29 July 1993 by the Notaries Public Act. That whole period of time - covering the emergence of the first notaries public (notary) until Amendments to Notaries Public Act in 1996 can be considered as a pre-technological period, and after amendments in 1996 the possibility opened to

maximum use of information technology in its full scope and on an unlimited way (limited only by degree of technology development). It shall be noted that the notaries also before amendments of the Ordinance 1996 used technology in their work to make their work easier, using photocopiers, telefaxes, scanners and own databases stored on computers in the form of templates for contracts; however, it was only a small part in relation to the opportunities given by the mentioned amendment of the Ordinance. Information and communication technology primarily contributed to facilitating and accelerating affairs in the notary public service and opened the way and possibility of expanding the activities of notaries public activities.

Although the opportunity was given already in 1996, the first software tested by the Croatian Notaries Chamber for the electronic management of notarial registers and directories appeared in 2006 under the name *Notaio 1.0*. (27 May 2006) produced by *Omni Aspect d.o.o. Kutina*. By introduction of the programme in the notary public practice resulted in faster operation, data security, reduced operating costs, and most importantly, the possibility of compatibility with other applications and Internet services. The *Notaio* programme (software) is compatible with archival information system of the Croatian State Archives, Electronic receipt book of the Croatian Post Office (e-PK), Fiscalisation of Tax Administration of the Republic of Croatia and with the Windows operating system.

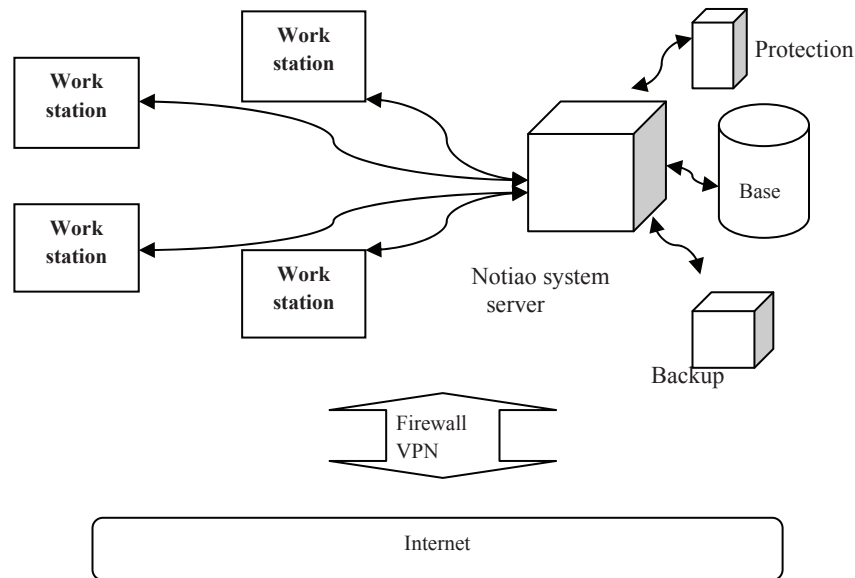
The *Notaio* programme contains several software modules that are complementary and enable automatic reading of information about clients, and contains all the necessary types of verifications and certificates; in addition to the automatic option there is also the option of independent editing the verification and automatic invoicing, all registers and directories, the possibility of creating and editing solemnization, monitoring of enforcement proceedings, support to work in the inheritance proceeding, preparation of notarial acts with the template base, support at establishment and amendments of the acts of companies, calendar, news, mail, registration of promissory notes and blank promissory notes, and also offers the possibility of remote access (Remote Access), daily and weekly security data storage (backup), automatic scanning, reading and checking identity cards and passports with storing photos and client's personal signature, cash-in-hand and working hours records.

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The program was created in accordance with the specifications of the Croatian Notaries Chamber and provides regular launching of new versions that comply with amendments in laws, rules, needs and ideas of notaries. The program provides protection against data erasure, unauthorized access, power failure, damage. The instant customer support is provided through secured internet network (VPN), by telephone or intervention on the spot and there is a possibility of integration with other online services and databases, which is very important for the development of the notary public service and the allocation of new entrusted tasks.

Figure 1 Operating scheme of electronic notaries public registers



Source: author according to

<http://notaiportal.eu/Javnibilje%C5%BEniciNotari/NotaioHR.aspx>)

Considering the above facts, it can be concluded that the current method of keeping electronic registers and directories provides great opportunities and greatly reduces the burden on public notaries but it should be remembered that the possibilities of information technology are far from their full exploitation. Namely, entrusting larger scope of operations to notaries would greatly speed up the procedures that are now conducted by certain administrative bodies and reduce the burden on the state budget, and in this field the information technology capabilities would show their true capabilities/capacities. Naturally, the legislative amendments have to precede the exploitation of information technology to its full extent, because in this case the law is the key element of all future positive changes in the notary public service and society as a whole. The legislative amendments refer primarily to the allocation of new tasks entrusted to notaries public and giving more powers to the notaries for which there is already a sound legal ground because the notaries are autonomous and independent holders of office *“which have the status of a person of public trust.”*

3.2. E-COMPANY

Pursuant to the Companies Act, notaries in Croatia participate in the founding and general assembly of a joint stock company, take minutes of these assemblies, and verify (certify) amendments to the articles of association.

In respect of a limited liability company and a simple limited liability companies, notaries public draw up memorandum of associations on founding or statements of incorporation if a company is founded by a sole person (natural or legal) in the form of a notarial deed or a private document certified by the notary public. In terms of amendments to the memorandum of association, notaries draw up decisions of company in the form of a notarial record or a notarial deed or a certified private document. Furthermore, notaries draw up declarations on acceptance of the appointment of persons authorized to manage the company, draw up agreements on transfer and takeover of a business share in the form of a notarial deed or private certified documents, and they are authorized to issue excerpts from the court registry. Up to 2008 notaries sent all these amendments in companies to a competent commercial court by mail and it took some time until the court received the mail and to make changes.

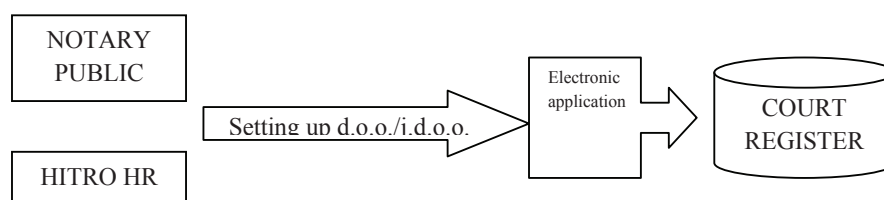
In 2008, after start of the pilot project of the Ministry of Justice and the Central State Office for e-Croatia in cooperation with the High Commercial Court, Croatian Notaries Chamber, commercial courts, notaries, FINA and In-2 d.o.o., it was enabled to establish a limited liability company within 24 hours from receipt of the duly made application by the competent commercial court. The application can be submitted from the notarial office or Hitro.HR office. Namely, the procedure for registration in the court register is activated by a written application with a specific request for registration or change data at the commercial court in writing or by electronic means (Article 9 of the Court Register Act: Official Gazette No. 1/95, 57/96, 1/98, 30/99, 45/99, 54/05, 40/07, 91/10, 90/11, 148/13). Notary public prepares an electronic application for entry, with required attachments in electronic form, sign by electronic signature and sends it to the commercial court. Electronic signature of the notary public replaces his/her personal signature and seal. After the notary public signed the application by electronic signature it is considered to be publicly verified. After receiving such application, the court registry identifies the sender and delivers reference number under which it was received. The moment of receipt of the application is recorded at the commercial court and is automatically assigned to a register judge

for processing. If the application is correct, the registration court will, within 24 hours, issue a decision on entry (registration), and if application is not correct, it will issue a conclusion. If the application is correct, a newly founded company is awarded OIB (personal identification number) and OIB together with OIB certificate is sent to HITRO system together with the registration number (MBS) and the decision on registration of incorporation.

The introduction of E-businesses has speed up the process of establishing a limited liability company (d.o.o./LLC) and a simple limited liability company (j.d.o.o./SLLC), notaries, HITRO HR offices, commercial courts and tax administration were connected, the possibility of certifying documents by advanced electronic signature was introduced, transcription of information included in the application is avoided, and they are automatically entered into the system and in this way the possibility of errors in transcription is eliminated, the documents required for entry of d.o.o. and j.d.o.o. are automatically stored in a digital collection of documents of the court registry, paper document are replaced by electronic documents with the possibility to follow a matter.

Although this system of the establishment of companies (LLC and SLLC)) led to significant mentioned changes and simplifications, it should be noted that the most significant change is reflected in the possibility remaining, i.e. the possibility of a further upgrade. These changes in the form of E-company has partially automated and facilitated only a small segment which refers only to the establishment of a limited liability / simple limited liability company while the question of other forms of companies and all changes that happen in companies have not been resolved. The present system of E-company could be schematically shown as follows

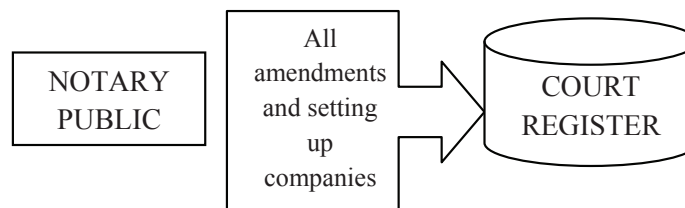
Figure 2 Scheme of the current functioning of E-company system



Source: Author

In order to fully facilitate and speed up the procedure for setting up companies and making changes related to companies it was necessary to go to a similar but fundamentally different principle. The principle similarity is reflected in the fact that only the technology basis that is currently used in E-company would be used. The principle difference is reflected in the fact that only notaries public participate in establishment of all forms of companies and changes related to all companies so as they directly perform registration of a new company in the court registry and make changes directly in the court registry relating to all types of companies. Now we again should refer to the legal fact that the notary public is person of public trust and that direct access, registration and carrying out of changes in the register should not be questioned. Such registration and change would not last 24 hours but it would be executed immediately and commercial courts would be significantly relieved. This concept could be schematically shown as follows:

Figure 3 Scheme of possible and simpler functioning of the E-company system



Source: Author

The presented solution may seem impossible and impracticable, but it should be noted that the law is the key element of all future changes. In this manner, commercial courts and state budget would be relieved in an even greater extent. The presented idea may be a bit extreme but it certainly gives the space for thinking and possibilities of delegation of more tasks, related to the entry into the court register, to notaries public.

3.3. REGISTER OF WILLS

In 2003 in the Republic of Croatia a register of wills was established and since 6 October 2004 electronic register has been in use. The Croatian Registry of Wills has been maintained by the Croatian Notaries Chamber (Article 1 of the Ordinance on the Croatian Register of Wills, Official Gazette No. 153/03,

164/04). Data in HUO (Croatian Notaries Chamber) are stored by the IT system at the Croatian Notaries Chamber and sent by the electronic data transfer.

“Notaries public, municipal courts and diplomatic- consular representations are obliged to ensure all conditions necessary for electronic data transfer (network connections, software, hardware).

Technical requirements for HUO maintenance will be determined by the Minister of Justice, on the proposal of the Croatian Notaries Chamber.

Any authorized person shall identify himself/herself within the electronic legal transactions, by own HUO user number, together with the security password(code).

HUO user number is allocated by the Croatian Notaries Chamber taking into account the criteria set out in Article 9 of this Ordinance in relation to giving authorizations.

Authorised person shall choose the security code/password by himself/herself. The security code shall be kept confidential and protected from abuse. The loss of security code shall be immediately reported to the Croatian Chamber of Notaries. “(Article 5 of the Ordinance on the Croatian Register of Wills, Official Gazette No. 153/03, 164/04).

The register of wills contains the following information: name and surname of the testator, date of birth, date of storing, will type and location of keeping a will.

3.4. REGISTER PROMISSORY NOTES AND BLANK PROMISSORY NOTES

The register of promissory notes and blank promissory notes is an electronic database that contains information on persons who issued promissory notes and blank promissory notes, types of debentures, and person-beneficiary of the debenture issued and whether someone and who has taken a guarantee from a promissory note or blank promissory note, the amount of claim to which has been issued, the data who certified the document with the date and reference number of the certificate. The register of promissory notes and blank promissory notes (the Register) is kept by the Croatian Chamber of Notaries. The form, content and manner of keeping the Register are determined by the Ordi-

nance on the register of promissory notes and blank promissory notes (Official Gazette No. 112/12). Notary public submits data into the Register.

The data is stored in the Register with the help of the IT system at the Croatian Notary Public Chamber. When registering each authorized person shall identify himself/herself by own user number and security code awarded by the Croatian Chamber of Notaries. The Chamber keeps records of safety codes. Only notaries and Financial Agency (FINA) have the access to information in the register.

After confirming a promissory note blank promissory note the notary is obliged to submit electronically the data from a promissory note immediately to the Register. From the above it is evident that in reality there a promissory note/blank promissory note written on paper and a promissory note in electronic form entered in the Register.

If a creditor fails to collect receivables from the debtor he /she can submit the promissory note/blank promissory note to the Financial Agency for collection. In order FINA could collect the promissory note, the main precondition is that it has been entered in the Register. The purpose of the Register is preventing abuse of promissory notes, falsifications and other manipulations.

However, the register of debentures could have a much wider purpose than it currently has, and for example, a notary public could find out, when issuing a debenture and at entry of the debtor's OIB, whether he/she (debtor) is heavily indebted or blocked and automatically disabled the issuance of new debentures to him/her. A debenture loses its purpose if it is issued by a person who does not have coverage or is over-indebted and that is certainly possible at this moment. In such a way, the creditors would get much higher security than having with them a promissory note of a blocked or an over-indebted individual or entity

4. PERSPECTIVE POSSIBILITIES OF NOTARY PUBLIC SERVICE

4.1. NOTARY PUBLIC AND INHERITANCE PROCEEDING

Pursuant to Article 176 of the Inheritance Act (Official Gazette No. 48/03, 163/03, 35/05, 127/13) inheritance proceeding in the first instance is carried

out before a municipal court or a notary public as a court trustee. The Court entrusts a notary public to conduct the inheritance proceeding and submit the death certificate to him/her. In practice, the municipal court submits the file containing the death certificate and the solution of the delegated task to notary public. After the notary public conducted the inheritance proceeding and rendered a decision on inheritance he/she returns the file to the Municipal Court that archived it. From the above it is evident that the file is physically moving on the relation court-notary-court because notaries do not have access to E-file, and because the courts keep records and manually, too, despite the existence of E-file

E-file is a unique information- communication judicial system which was introduced for test in February 2007 at the Municipal Court in Pula and is currently implemented in all courts in the Republic of Croatia. The accommodation and maintenance of E e-file is at the central location of FINA and all courts are connected by means of computer-communications network of state administration bodies to the central location.

From the above it is evident that there is a possibility of connecting notaries with E-file in the part relate to the tasks entrusted to them by the court in such a way that the notary receives the entrusted file electronically and solve it and archived in the shortest possible time and with as little paperwork as possible.

4.2. NOTARY PUBLIC AND LAND BOOKS

Land Registers show the legal status of real estate on the territory of the Republic of Croatia which is used as applicable in the real estate transactions. The land register is public and anyone can demand the access to the land register. The application of the Ministry of Justice allows anyone to inspect the experimental Central database of land registry offices of municipal courts in the Republic of Croatia, and the data from that database, for now have an informative and corrective role. The data and excerpts in the EDP land registry for now cannot serve as an official excerpt, and they are updated every 24 hours and the date of the last update is highlighted in the header of an informal excerpt. In the future, when the EDP land register is fully applied, it will enable the notary public service to participate directly in a way in the changes of its contents through entries, registrations, notes.

With the help of information technology, notaries public would have the option to make entries, registrations and notes in land registers, at conclusion of a contract of sale of real estate, notarial lien insurance on the basis of the parties' agreement, notarial insurance by transfer of ownership to the items and upon transfer of such rights to enter, register and make notes in the land registers without that it makes the party itself.

In the same way a notary public would, at conclusion of a sales contract, which relates to the property, submit it electronically to the competent tax office, while the current obligation of the notary public is to certify the signature of the seller (and buyer if necessary) at his/her demand. In order to realize such an idea, the exclusive legal competence to conclude such contracts and agreements shall be given to notaries public. Namely, fact, already in Brief notes to the law of 25 July 1871 no. 76, it was stipulated that the validity of certain legal matters and agreements was subject to drafting a notarial deed. Thus, it was determined that the notary act is necessary when entering into:

- "a) marriage contract;
- b) agreements on purchase and sale, exchange, on income and loan as concluded between spouses, as well as statement on debts mutually;
- c) receipts of dowry, no matter if not issued to the wife but to other person;
- d) all documents in a legal case between persons, blind and deaf-mute persons who cannot read or persons who are illiterate or who are not able to enter into transaction by their own intellect." (Pappafava;1896, p. 233).

Today, Article 53 of the Notaries Public Act (Official Gazette No. 78/93, 29/94, 162/98 and 75/09) states that the notary act is required for validity of: the contract on the disposal of assets of the minors, and persons who are deprived of legal capacity, deed of gift without handing things in immediate possession of the donee and all legal transactions among deaf persons who deaf who cannot read or mute who cannot write. It is this last provision that runs through the aforementioned Brief notes to Law of 25 July 1871 no.76 from it can concluded that the notary public person, through history and even today, was and is, a person who is legally given a special confidence of the parties who need special protection when concluding important legal transactions. Comparison of the acquisition of title to real property on the basis of legal transaction in the Republic of Croatia and Bosnia and Herzegovina shows that in

Bosnia and Herzegovina Article 53 of Proprietary Rights Act (Official Gazette of the Federation of BiH, No. 66/13), the right of ownership on the basis of the legal transaction that shall be concluded in the form of a notarized document, while in the Republic of Croatia s certification of the seller's signature is sufficient. Notaries public may conclude all other types of contracts only if the clients require it from him/her.

For activities related to the disposal of real estate, purchase, lease, pledge, it would be necessary to determine the legal form of a notarial deed thus to protect the interest of the parties, confidence in the land registry and proper collection of income tax. It means that the notary public will, after the sale contract of a real property is signed, immediately entered in the land register and submit it electronically to tax administration and stored it in his/her archives.

In this way, the issue of existence unregistered ownership of property would be solved, and encumbrance and note would we entered. For the same reasons stated above, the exclusive jurisdiction of notaries (which currently can also be alternatively done by courts) should include drawing up of the lifelong maintenance contracts, contracts of lifetime maintenance contracts, contracts for support until death, contracts of assignment and distribution of assets for life and agreement on the waiver of inheritance. In such way smaller scale of tasks would relieve courts. Prescribing the most stringent forms for legal transactions by which the ownership and other real rights on real estate (actual encumbrances, liens, easements, rights of construction ...) is either transferred or acquired would result in reduction of possible future disputes because the interests of both parties would be protected in a manner that notary public would control the status in the land register before e conclusion of the legal transaction, and after the conclusion notary public would conduct the registration of the new owner and payment of the purchase price through its account created for other persons.

Notary public would be required to submit electronically all such made contracts and agreements to the competent authorities and to thereby reduce the time required for the implementation of such agreements, queues in front of the land registry departments and offices of the tax administration would be shorter. An example of the sale of property shown schematically, the route the buyer and seller shall pass currently and under the outlined solution is presented.

Figure 4 Route of the seller and buyer at sale/purchase of a real property (current)

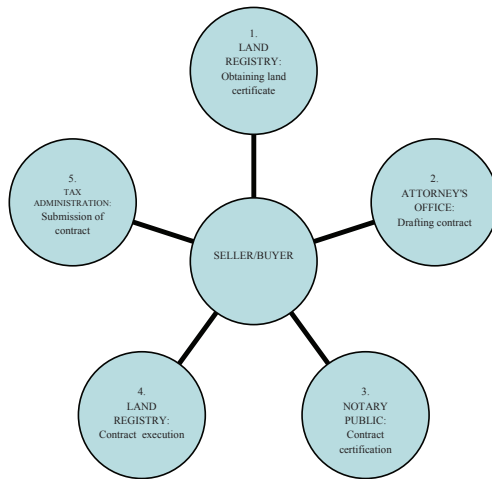
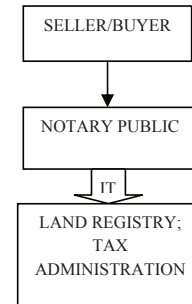


Figure 5 Route of the seller and buyer at sale/purchase of a real property according to proposed solution



Source: author

4.3. NOTARY PUBLIC AND REGISTER OF JUDICIAL AND NOTARY PUBLIC INSURANCE OF CREDITORS' CLAIMS OVER MOVABLE ASSETS AND RIGHTS

Pursuant to the Register of judicial and notary public insurance of creditors' claims over movable assets and rights (Official Gazette no.121/05), the rights and measures are entered on the basis of a notary deed or a court decision entered in any other public books, such as: lien on movables, right, share, stake and business interest in a company which is, pursuant to law, acquired by enforcement or security, lien on the totality of things that belong to the opposing party or the debtor or the totality of things of these persons that are in or on the certain area, whose contents can be changed by transfer of the ownership right to movables or transfers of any other rights in order to ensure compliance with law.

The register of judicial and notaries public securities of the creditors' claims is kept by the Registration department within Financial Agency and in the electronic form. The registering spots are located at existing business units of the Financial Agency and are connected to a unique database with a registration system in real time. The register is a public book and everyone has the right to ask to be allowed access to the register, look for excerpts from the general ledger and copies from the document collection. Search The register can be searched according to the criterion

of persons and items. Department of registration shall keep and store the information so that they are protected from unauthorized use, alteration or loss and data recorded on electronic media shall be kept permanently. The entry procedure is initiated by the proposal of a party or by virtue of the office.

In relation to public notary service, registration of a lien on the movable property and rights shall be made based on the agreement of the parties, and in this sense it represents the establishment of a voluntary lien. The agreement is made in the form of a notarial deed or solemnized private document which must contain the debtor's statement that he/she agrees that a lien can be created on some of his/her object to secure a monetary claim of the creditor. After the parties (debtor and creditor) draw up such a document at the notary's office, it shall be, together with the proposal submitted Department of registration of Financial Agency. However, with the opportunities provided by information technology in the notary public service and in general, such entry would be possible directly from the notarial office where the agreement was made. All that is necessary is to connect notarial software (Notaio) with the register of processing o of judicial and notarial securities of claims of creditors of Financial Agency. In this way, the notary who made or confirmed the agreement on insuring a monetary claim by creation of a lien on movable property or debtor's rights, the same right could now be realized immediately in the register of securities without having the parties submit it to the Financial Agency.

4.4. NOTARY PUBLIC AND ENFORCEMENT PROCEDURE

Pursuant to the provisions of the Enforcement Act (Official Gazette No. 112/12, 25/13 and 93/14) notaries public decide on the proposal for enforcement based on authentic documents (Article 278). Pursuant to the Enforcement, valid document is: bill, bill of exchange and check with protest and return invoices, public document, an excerpt from business books, a private document authenticated according to the law and document that is considered a public document under special regulations; the invoice also refers to calculation of interest.

At the time of writing this paper the Law on Amendments to the Enforcement Act came into force on 1 September 2014 which changed Article 8 of the Enforcement Act (Official Gazette No. 112/12, 25/13) which refers to the delivery (delivery of the writ of execution) in a way that the court or a notary public will, before sending the writ of execution obtain the exact address of the

enforcement debtor from the records of the Ministry of Interior. These changes are shortened and simplified the procedure of dispatch the writ of execution to the execution debtor as a significant part of the shipment returned marked with “left” or “not known at the address”. After the above-mentioned changes of the Enforcement Act service will be tried twice at the address obtained from the records of the Ministry of Interior, and if it is unsuccessful, it is sent the notice board of the competent court.

Currently, for every writ of execution obtains a certificate of residence for each execution debtor is procured in writing from the relevant police station, however, connecting notaries public with the electronic database of the Ministry of Interior is planned in near future as to those checks could be made in a simpler and faster way. In order the whole process of dispatch a writ of execution is covered electronically, it is necessary to provided notaries public with the possibility to access and send the writs of execution electronically to the notice board of the court (e-bulletin board).

CONCLUSION

Information technology and current level of its development provide wide possibilities of its application in notary public and other services. However, current achievements and possibilities of information technology, referring to the notary public service, exceed its usefulness, simply speaking, information technology provides opportunities that are used on a small scale, i.e. under-used. The benefits of information technology, in a greater extent, are used by the notary public service which can be explained by a longer tradition of use of information technology in the service. Nevertheless, if one looks at the possibilities of today's information technology, it can be concluded that it is largely present in the notary public services (hardware) but its capabilities are used on a small scale. The cause of the problem is lack of willingness to connect and better integrate databases of other institutions (Ministry of Justice, Ministry of Finance, Ministry of Interior...) with the notaries public databases.

Looking from other side, the question is how the benefits of information technology can adversely affect the notary public service changing its tradition and original purpose. The question is, whether notaries, by keeping the databases in electronic form, in the future perhaps electronic archives as well, question the status of a person of public trust. Namely, all data contained in elec-

tronic form are exposed to the possibility of unauthorized access (hacking) or possibly destruction due to malfunction or failure of technology. Theoretically and empirically speaking, technology can greatly accelerate and facilitate work processes, but it also can also completely disable it if we fully rely on it.

If we take a simple example of writing, for example a notarial deed by hand on paper fifty years ago and today on computer, it can be said that the completion of such act previously depended on the person who wrote it and now depends on the good functioning of technology (a computer used for writing and a printer which will print it). The presence of technology in work leads to certain everyday unconscious uncertainty and this uncertainty also leads to unconscious stress that is just another added stress that each person experiences in one day.

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Legislation:

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