

SOME CONSIDERATIONS REGARDING THE ORGANIZATION AND THE ACTIVITY OF THE PUBLIC NOTARIES IN ROMANIA

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ABSTRACT: *Public notaries in Romania play an essential role in the legal and economic system of the country. They are responsible for the authentication of the legal documents, ensuring that comply with the law and that the rights and obligations of the parties involved are clearly defined and protected. Their activity is regulated by Law no. 36/1995, the law of public notaries and notarial activity.*

In the current economic and social context, public notaries contribute to the safety and stability of civil and commercial transactions, thus facilitating confidence in the market. They ensure the transparency and fairness of these transactions, which is crucial for the efficient functioning of the economy.

The professionalism and impartiality of public notaries are guaranteed by rigorous training and strict compliance with deontological and legislative norms. Thus, public notaries in Romania are fundamental for ensuring legal certainty and for protecting the rights of citizens and legal entities.

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1. GENERAL ASPECTS

In Romania, the notarial activity ensures to natural and legal entities the establishment of non-litigious civil or commercial legal relations, as well as the exercise of rights and protection of interests, in accordance with the law.

Notarial activity is carried out by public notaries through notarial acts and notarial legal consultations, according to the law.

On the Romanian territory, the position of public notary is organized and exercised only under the law 36/1995¹, within the National Union of Public Notaries of Romania,

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hereinafter referred to as the Union, and the Chambers of public Notaries, hereinafter referred as the Chambers.

The public notary performs his duties in a notarial office. In Romania, the forms of exercising the function of public notary are (Moise, 2022):

- (a) an individual office;
- (b) a professional society.

In the individual office, a public notary, employees with higher education and auxiliary staff will exercise their functions.

The professional society consists of 2 or more associated public notaries. Within the professional society, associate public notaries may employ staff with higher education and auxiliary staff.

Public notaries associated in a professional company exercise their function personally and are individually responsible for their work.

The act performed by the public notary, bearing his seal and signature, is an act of public authority and has probative force and, where appropriate, enforceable force provided by law.

Notarial acts may be performed by the diplomatic missions and consular offices of Romania, as well as by other institutions, under the conditions and limits provided by law.

Notarial activity in Romania is carried out equally for all persons, regardless of race, nationality, ethnic origin, language, religion, etc. sex, opinion, political affiliation, wealth or social origin.

The public notary works at the headquarter in which he operates. In order to fulfill the professional obligations, the public notary can also travel outside the notarial office, within the territorial constituency of the first instance court in which he carries out his activity.

Where more than one office of notaries is operating in the district of a first instance court, the territorial jurisdiction of each public notary will extend all over throughout that constituency.

The territorial jurisdiction of the public notaries appointed in the municipality of Bucharest extends throughout the constituency of the Bucharest Tribunal.

In the constituency of each court of appeal there is a Chamber of notaries, with legal personality.

The Chamber will be made up of all the notaries operating in its constituency.

Public Notaries in Romania are constituted at national level in the National Union of Public Notaries like we said before, the only professional organization established by law, with legal personality of public interest, with its own patrimony and budget.

The Union is based in Bucharest and has its own stamp, which includes at least the name of the Union and the coat of arms of Romania. (Codrin Macovei, 2018)

The organization of the notary public profession in Romania is well structured and regulated by Law no. 36/1995, which provides a clear and detailed legal framework for the exercise of this profession. The organization in a unitary framework under the auspices of the National Union of Notaries Public and the Chambers of Notaries Public provides consistency and standardization in notarial practices, which contributes to professionalism and trust in notarial services.

The notary public profession is given a well-defined structure, with a clear organization into individual notary offices or professional societies. This organization allows notaries to choose how to exercise their function, either independently or in collaboration with other notaries. The system of association within the professional societies allows the sharing of resources and experiences, thus improving the quality of the services offered.

2. THE COMPETENCE OF PUBLIC NOTARIES IN ROMANIA

In Romania, the public notary performs the following notarial acts and procedures: drafting documents with legal content, at the request of the parties, authentication of documents, notarial succession procedure, certification of facts, in cases provided by law, legalization of signatures on the documents, specimens of signature, as well as seals.

Also, they are competent to give a certain date to the documents, to do the receipt in the warehouse of goods and documents of the parties, and the amounts of money, other goods, or documents found on the occasion of the estate inventory, in the limit of the space and utilities available to the notary office.

They do the legalization of copies of documents, they make and legalize the translations, the divorce procedure, under the law and any other operations provided for by law.

In Romania, public notaries can also give other legal consultations in notarial matters other than on the content of the acts they perform and may participate, as specialists appointed by the parties, in the preparation of legal acts of notarial character (Isache, 2024).

In carrying out his duties, the public notary has general competence, with the exceptions provided for in the following situations:

- a) the notarial succession procedure is the competence of the public notary in the notary office located in the territorial district of the court where the deceased had his last domicile;
- b) in the case of successive inheritances, the heirs can choose the jurisdiction of any of the public notaries who carry out their activity in an individual office or in a professional company in the territorial constituency of the first instance court in which the deceased had the last domicile;
- c) bills of exchange protest documents, promissory notes and checks will be made by the public notary from the constituency of the first instance court in which the payment is to be made;
- d) the issuance of duplicates on notarial acts, the correction of material errors or the completion of manifest omissions is made by the notary public in whose archive the original notarial acts are found;
- e) the divorce procedure is in the competence of the public notary with the headquarters of the office in the district of the first instance court in whose territorial jurisdiction is the place of conclusion of the marriage or the last joint residence of the spouses;
- f) the procedure for issuing the conclusion on the outcome of the checks carried out in the Register of the succession proceedings of the Chambers and in the national notarial registers of the Union will be performed by the public notary competent, under the law, to carry out the succession procedure;

g) any other situations provided by law.

Secretaries of local councils of communes and cities where are not public notaries offices to perform, they fulfill, at the request of the parties, the legalization of copies of documents, except for documents under private signature.

3. HOW TO OBTAIN THE QUALITY OF PUBLIC NOTARY IN ROMANIA

In Romania, the public notary can be the one who fulfills the following conditions:

- a) is a Romanian citizen, a citizen of a Member State of the European Union, a citizen of a State belonging to the European Economic Area or a citizen of the Swiss Confederation and has his domicile or residence in Romania;
- b) has full capacity of exercise;
- c) graduated the law faculty;
- d) has no criminal record resulting from the commission of an offense in connection with the notarial duties or the intentional commission of another crime;
- e) enjoys a good reputation, established under the conditions established by the notary statute;
- f) knows the Romanian language;
- g) is medically and psychologically able to exercise this profession;
- h) held for 2 years the position of trainee notary, and he graduated from the Romanian Notarial Institute and passed the final exam or exercised for at least 6 years a specialized legal position and promoted the admission contest to the position of public notary.

In Romania, in order to become a trainee notary, a person must cumulatively meet the above conditions and pass the exam or contest to acquire the quality of trainee notary, organized by the Governing Board of the Chamber in which he registered for the exam or contest.

The Governing Colleges of the Chambers will organize annually and simultaneously, on a working day, on a date determined by the President of the Union, the examination or contest to acquire the status of trainee notary.

The examination or admission contest as a trainee notary will consist of a written theoretical test, in the subject approved by the Council of the Union, which cannot be less than 7.00. Admitted candidates will occupy the seats within the limits of the positions approved by the College Director of the Chamber (Alexandru Laurențiu Mihai, 2024).

After passing the mentioned exam or contest, the trainee notary follows for 2 years the theoretical and practical training courses organized by the Romanian Notarial Institute.

During the traineeship, the trainee notary will bear the training expenses established by the Romanian Notarial Institute.

Failure to attend courses or not paying training costs leads to the termination of the status of trainee notary. The structure of the preparation and the conditions for the application of the sanction provided for in this paragraph and the procedure for the deployment of the traineeship will be determined by Regulation approved by the Council of the Union.

The theoretical training of trainee notaries is carried out by attending courses organized by the Romanian Notary Institute. The practical training is carried out within a notary office, designated by the Governing Board of the Chamber in which the trainee notary has taken the exam or the competition to acquire the quality of trainee notary, with the consent of the coordinator public notary.

The activity of a trainee notary can be guided only by public notaries with at least 6 years of experience in this capacity and who enjoy a good professional reputation.

After completing the 2 years of internship, the trainee notary must participate and pass the final exam organized by the Romanian Notarial Institute, hereinafter referred to as INR.

The final exam consists of two written tests, respectively one of a theoretical and one of a practical nature, from the contest theme. The minimum promotion average is 7.00, but not less than 5.00 for each competition test.

After completing the 2 years of internship, the notary trainee has the right to attend no more than two sessions of the final exam.

The rejection or, as the case may be, the unjustified absence of the trainee notary on two consecutive final exams leads to the termination of the position of trainee notary.

The Examination Commission for the final examination will consist of the following members: A member of the Council of the Union, who is also the President of the commission, a representative of the Ministry of Justice, a member of the teaching staff of the higher education specialty and 2 notaries with professional prestige, appointed under the terms of the rules of organization and conduct of the contest.

The results of the examination to be completed will be validated by the Council of the Union on a proposal from the Chairman of the examination committee.

The final exam, the competition to acquire the quality of public notary, the contest to acquire the quality of trainee notary is held in Bucharest. The regulation for organizing and conducting the final examination, and the contest for acquiring the quality of public notary is approved by order of the Minister of Justice, at the proposal of the Council of the Union.

Within 15 days of the validation of the results, the candidates who passed the final exam express their options for filling the places of public notary, in the order of averages obtained, on the seats in the Chamber where they took the exam or contest to acquire the quality of trainee notary and within the limits of the available seats.

After expressing the options for occupying the seats and communicating them to the Ministry of Justice by the Council of the Union, the candidates declared admitted will be appointed public notaries by order of the Minister of Justice within 30 days of the communication.

Can acquire the status of public notary also the person who cumulatively meets the conditions mentioned by law, has at least 6 years of experience in a legal specialty position and promotes the admission contest to the position of public notary organized by INR.

People who wish to acquire the status of public notary in these conditions must be registered with the Chamber in the constituency in which they wish to carry out their activity, in order to fill a position proposed by that Chamber and included in the update order issued by the Minister of Justice.

The admission contest consists of two written tests, respectively one with a theoretical character and one with a practical character, from the contest theme. The minimum promotion average is 7.00, provided that he obtains at least a grade of 5.00 in each test in the competition.

The President of the competition will submit, for validation, the results of the admission contest to the Council of the Union.

The contest for admission to the position of public notary for the persons who are at least 6 years old in a legal specialty position will be organized by the INR, at the request of the Council of the Union, whenever it's necessary, but at least every 2 years

Within 15 days from the date of validation of the results, the candidates who have promoted the admission contest express their options for filling the places of notary public, in the order of the mediums obtained on the places within the Chamber where they registered for the contest and within the limits of the places included in the update order.

After expressing the options for occupying the seats and communicating them to the Ministry of Justice by the Council of the Union, the candidates declared admitted will be appointed public notaries by order of the Minister of Justice within 30 days of the communication.

After the appointment by order of the Minister of Justice, the public notaries who obtained this quality are required to attend courses on practical training for the practice of the profession of notary, as well as for the organization of the activity of a notary office, courses organized by the INR for a period determined by the Council of the Union, with the payment of the related fees.

Can acquire, on request, without examination, the quality of notary public the judges of the High Court of Cassation and Justice, on the basis of Law no. 303/2023 on the Statute judges and prosecutors. The request for appointment will be addressed to the Minister of Justice, no later than one year after the expiry of his term of office or his dismissal, for reasons not attributable (Ionaș, 2021).

4. THE APPOINTMENT AS PUBLIC NOTARY

The public notary will be appointed by the Minister of Justice, on a proposal from the Council of the Union, on the basis of the request of the person concerned and after he proves that the conditions laid down by the law of public notaries are fulfilled.

After reaching the age of 75, the public notary can exercise his function only if he presents annually a medical certificate on the fulfillment of the health condition.

Exercising the office of public notary without right is a criminal offense and is sanctioned according to the criminal law.

After issuing the appointment order, the public notary will take the oath. The oath will be taken, in a solemn setting, by the public notary in front of the Minister of Justice and the President of the Union or of their representatives. The oath has the following content: *"I swear to respect the Constitution and the laws of the country, to perform with honor*

and public credibility, with conscience and without bias my duties and to keep professional secrecy. May God help me".

The reference to divinity in the oath formula changes according to the religious belief of the public notary. The public notary without confession will take the oath without religious formula, on conscience and honor.

5. THE TERMINATION AND SUSPENSION FROM THE PUBLIC NOTARY STATUS

The public notary status ceases by giving up in writing to the status of public notary, in case of finding incapacity for work, according to the law, in the event of failure to perform the function, without justification, a uninterrupted period for at least 6 months, by exclusion from the profession, ordered as a disciplinary sanction, according to the law, in the case of obvious professional incapacity, ascertained after the control exercised in accordance with the law, in case of final conviction for committing a crime in connection with the service or for the intentional commission of another crime, if the public notary no longer meets the conditions laid down in the law, in case of finding, under the conditions provided by law, an irreversible mental illness and by death.

The end of the public notary status will be established or, as the case may be, ordered by the Minister of Justice, on a proposal from the Executive Office of the Council of the Union, at the request of the public notary or *ex officio*. At the end of the public notary status, the Chamber will immediately collect the seals, registers and archives (Ionuț-Florin Popa, 2016).

The public notary is suspended from his office activity in case of incompatibility, during the period of the prohibition to exercise his function, ordered under the conditions of law or disciplinary action, in case of non-submission of the monthly statistical situation at the deadline established by decision of the Council of the Union, for two consecutive months, for non-payment in full, within two months of deadline of the statistical situations and until the payment of the debt and related penalties, in case of temporary incapacity of work, in the case of parental leave for caring and raising the child, under the law conditions, in case of the custody placement or house arrest of the public notary, until the end of the measure, upon request in writing, when he suffers from a mental illness, which doesn't allow him from exercising his function appropriately, under the conditions established by the regulation.

The suspension will cease if the circumstances will disappear.

Suspension and the end of suspension will be ordered by the Minister of Justice, on a proposal from the Executive Office of the Council of the Union, at the request the public notary or *ex officio* (Leș, 2016).

6. RIGHTS AND DUTIES OF PUBLIC NOTARIES IN ROMANIA

The public notaries exercise their functions and enjoy stability in office, and cannot be moved to another locality without their consent.

In order to ensure professional secrecy, professional acts and works of the public notary or in his office are inviolable, they can be checked or seized only under the law and in accordance with the provisions of the Criminal Procedure Code.

Professional contact between the public notary and his client cannot be prohibited or restricted.

According to the specific law, the public notary has the right to receive a fee for each act or notarial procedure fulfilled, under the conditions of the law, to elect and be elected in the governing bodies of the Union and of the Chambers, under the conditions laid down in the Statute, to bear the marks of the Union and of the Chambers, to benefit from annual leave under the established conditions by statute, to benefit from social security rights on the basis of the contribution to the social state insurance system and/or to the private system, according to the law, to receive financial support in case of interruption of the office activity due to temporary incapacity of work, and also to receive, upon request, legal assistance from the Union through specialist staff, in cases related to the professional activity;

Also, the public notary has the right to a 30-day vacation, under the conditions established by the statute but before this period, has the obligation to notify the Chamber in whose constituency he carries out his activity in relation to the period during which he will take the vacation.

Concerning the exercise of the profession of public notary this profession is incompatible with carrying out a salaried activity, except the university/higher education teaching activity and scientific research, the literary-artistic and the publishing activity and technical and scientific creation activity.

The incompatibility goes further, with the quality of deputy or senator or councilor in county or local councils, the exercise of a public office or of a public dignity other than that excepted by the law, the exercise of a position of judge, prosecutor, assistant magistrate or clerk, practicing the profession of lawyer, legal advisor, bailiff or insolvency practitioner, the direct performance of production, trade or other service provision activities, the position of administrator or chairman of a board of directors of a company (Teacă, 2018).

The public notary in Romania and the staff of the notary office have the obligation to keep professional secrecy regarding the acts and facts about which they became aware in their activity, even after the termination of the office activity, respectively after the termination of the employment relationship, unless the law or the interested parties release them from this obligation.

The public notary cannot be absent from the office for more than 5 consecutive working days, without informing the Chamber to which he belongs and without ensuring the functioning of the office archive, according to the law.

According to the Law no.36/1995, the public notary has the obligation to comply with the provisions of the law, regulations, the Statute of the Union, the Statute of the Insurance House of Public Notaries and the Code of Ethics of Public Notaries, to comply with the decisions of the elected bodies of the Union, the Chambers, the specialized committees or other entities established at Union level, to carry out the tasks entrusted to them and to act for the purpose of the Union, to participate in the meetings of the governing bodies of which they are members, to participate in the meetings of the general assemblies of the Chambers, to maintain the confidentiality of the debates, opinions and votes expressed in the governing bodies toward third parties, to behave in a dignified manner in the exercise of his office, to continuously improve their professional training, participating in professional training programs organized by INR, according to the organization and functioning regulations approved by the Council of the Union, to ensure the professional training of the trainee notaries assigned by the Governing Board of the Chamber, as well as of the staff employed and many other obligations provided by the law and statute (Codrin Macovei, 2018).

Civil liability of the public notary can be committed under civil law for breach of his professional obligations, when he has caused a prejudice established by a final court order, with guilt in the form of bad faith.

The disciplinary liability of the public notary intervenes when he violates the general, material and territorial jurisdiction established by law, he fails to comply with the provisions, decisions of the governing bodies of the Union and of the Chambers, issued under the law, he has unjustified delay or negligence in carrying out the work, unjustified absence from the office, repeatedly, inappropriate behavior and attitude in the exercise of professional activity in essence, any event likely to prejudice the prestige of the profession committed in the exercise of or in connection with the profession or outside the exercise of the office.

Disciplinary action against the public notary in Romania will be exercised by the Minister of Justice, the President of the Union or the Governing Board of the Chamber and will be judged by the Disciplinary Board of the Union.

This will happen only after the prior investigation has been carried out by inspectors from the Ministry of Justice or, as the case may be, from the Union or by the Governing Board of the Chamber.

The disciplinary action will be solved by a reasoned decision, which will be communicated to the parties and to the Chamber in whose constituency the investigated public notary carries out its activity, within 10 days from the pronouncement and can be applied disciplinary sanctions in relation to the seriousness of the disciplinary misconduct committed and are written warning, a fine from 5,000 lei to 40,000 lei, the suspension of the public from the exercise of his office for a period of 6 months even the exclusion of the public notary from the profession.

7. THE CONTROL OF THE NOTARIAL ACTIVITY

Regarding the control of the notarial activity in Romania, notarial acts are subject to judicial control. The activity of public notaries is subject to administrative professional control, under the law of public notaries.

Notarial acts may be appealed by the parties or any interested person by action for annulment before the court, in accordance with the provisions of the Civil Procedure Code.

At the same time, the disgruntled party can bring a complaint against the conclusion of the rejection of the request for the fulfillment of a notarial act, within 10 days from the moment of taking notice, to the court in whose district the notary office that refused to perform the act is located.

The complaint will be filed at the office of the public notary who refused the request, and he will immediately submit it to the court, together with the case file. The judgment of the complaint is done with the summons of all interested parties in the case. If the complaint is admitted, the court will indicate in the decision how the document should be drawn up.

The public notary is obliged to comply with the final judgment. Administrative professional control is exercised by the National Union of Public Notaries through its governing council.

8. CONCLUSIONS

In conclusion, the organization of the public notary profession in Romania is efficient and well regulated. Notaries' extensive skills ensure that they can perform a wide range of essential legal services. Verification of the work of notaries is robust, ensuring that professional standards are met. This organization significantly contributes to ensuring legal security and protecting the rights of citizens and legal entities, thus consolidating the important role of notaries in Romanian society.

REFERENCES

- Alexandru Laurențiu Mihai, O. I. M. V.-E. D., 2024. *Guide for admission to the notary*. 1st ed. Bucharest: Publishing House C.H. Beck.
- Codrin Macovei, C. N. B., 2018. *Notarial activity. From theory to practice*. 1st ed. Bucharest: Universul Juridic Publishing House.
- Codrin Macovei, C. N. B., 2018. *Notarial activity. From theory to practice*. 1st ed. Bucharest: Universul Juridic Publishing House.
- Ionaș, D. G., 2021. *Notarial Law. Course notes*. 1st ed. Bucharest: Universul Juridic Publishing House.
- Ionuț-Florin Popa, A. A.-M. (., 2016. *Law of public notaries. Commentary on articles*. 1st ed. Bucharest: Solomon Publishing House.
- Isache, D., 2024. *Notarial encyclopedia of the family, volume 3*. 1st ed. Bucharest: Monitorul Oficial .
- Leș, I., 2016. *Elements of notarial law*. 1st ed. Bucharest: Publishing House C.H. Beck.

- Moise, A. A., 2022. *Law of public notaries and notarial activity no. 36/1995 and related legislation*. 1st ed. Bucharest: Universul Juridic Publishing House.
- Teacă, M. I., 2018. *Notary Law. Selective course notes*. 1st ed. Bucharest: PRO UNIVERSITARIA Publishing House.

