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## The assertion of fundamental principles relating to civil law notaries in the 21<sup>st</sup> century with special focus on Hungary

### ABSTRACT

*In our present paper, we tried to introduce the principles of notaries through the Hungarian notary's glasses. We did this through the challenges of the 21<sup>st</sup> century. Prior to the detailed description of the principles, we introduced the position of the Hungarian notary, where we also discussed the provisions of the Hungarian Constitution. Subsequently, more important legislation on Hungarian notary was mentioned and we discussed the diverse notarial procedures. In this connection, it is important to note that not only the notarial deeds are found in the Hungarian notary's procedures, but also the keeping of notarial registers. The paper deals with the responsibility of notary, the notary's and advertising relationships, the emergence of electronization and digitization. The paper presents the most important principles of notaries, including the principle of independence, impartiality and public authenticity.*

**Keywords:** non-contentious proceedings, notarial non-contentious proceedings, civil law notary

### ABSZTRAKT

*Jelen tanulmányban a magyar közjegyzőség elemzésén keresztül teszünk kísérletet a közjegyzőségre vonatkozó egyes alapelvek bemutatására. Az első fejezetben a magyar közjegyzőségre vonatkozó általános szabályok kerültek bemutatásra, köztük a magyar közjegyző jogállása. Ezt követően a közjegyzői eljárások csoportosítása és bizonyos szervezeti jellemzők értékelését kíséreljük meg. Ezzel kapcsolatban taglaljuk, hogy nem kizárólag okirat-szerkesztési, hanem regisztrációs eljárások is a magyar közjegyző hatáskörébe tartoznak. A tanulmányban a közjegyzők felelőssége, reklámra vonatkozó tevékenysége, valamint az elektronizáció és a digitalizáció számos kérdése is elemzésre kerül. A tanulmány bemutatja továbbá a közjegyzőkre vonatkozó legfontosabb alapelveket, köztük a függetlenség, pártatlanság és a közhitelesség elvét.*

**Kulcsszavak:** polgári nemperes eljárás, közjegyzői nemperes eljárás, közjegyző

In this paper we are attempting to present certain fundamental principles relating to notaries through the analysis of Hungarian notaries. We endeavour to examine the fundamental principles formed by the *Union Internationale du Notariat Latin* (hereinafter: UINL) and compare them from the aspect of how up to date these principles are and if they are relevant for the activity of Hungarian notaries.

The examination of the principles is not autotelic. Notaries are looking forward to unprecedented challenges in the 21<sup>st</sup> century: after the appearance of digitalisation, artificial intelligence or crypto-currencies, we have to rethink the duties and the role of notaries. The fundamental principles may help us to understand the role of notaries in the “new world.”

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The most crucial question of the 21<sup>st</sup> century from the aspect of notaries is whether they can find their place after the digital changes, and whether there will still be a need for them. In our opinion social and economic life will always need notaries, since trust is an important chain-link in the digital world, too. The civil law notary endowed with public authenticity as a trusted person may help to make legal transactions safer in digitalised proceedings.

This study consists of two parts. In the first chapter we present the general rules concerning notaries in Hungary, including the legal status of Hungarian notaries, the classification of notarial proceedings, the regulation of liability and advertising, and the evaluation of certain organisational features. In the second chapter we examine the scope of notarial principles, with special regard to the validity of principles formed by the UINL.

## 1. The Hungarian notaries

### 1.1. *The place of Hungarian notaries in the notarial systems worldwide*

Hungarian notaries have already had an over 700 year-old history, which is unique even in Europe.<sup>1</sup> The institution of the Hungarian civil notaries was established in 1874.<sup>2</sup> Later, the period between 1949 and 1991 was the era of state notaries, and then in 1991 the former Latin-type notarial institution was reorganised.<sup>3</sup>

The legal status of Hungarian notaries can be characterized by duality; it can be described as being Janus-faced, since it is positioned somewhere between the lawyer and the judge. Regarding the Hungarian legal literature, “the status of a notary is the closest in nature to that of a judge.”<sup>4</sup>

If we intend to view the function of Hungarian notaries from an international perspective, it can be stated that Hungarian notaries comply with the *five-pillar theory of Latin-type notaries*.

The law pertaining to Hungarian notaries govern certification proceedings, selection proceedings which assures that only the best-prepared are appointed to the notary’s position, the quantitative limit of notarial seats (*numerus clausus*), the expansive and exclusive authenticating power, and the fixed charges.

### 1.2. *The constitutional approach of Hungarian notaries*

In the practice of the Hungarian Constitutional Court several recurring features can be detected concerning notarial activities, the features of which can be summed up as follows: the notaries’ activity is part of the administration of justice of the State;

<sup>1</sup> See further details in Tóth, Ádám: A magyar közjegyzőség gyökerei dióhéjban. *Közjegyzők Közlönye*, 2008/10–11, 3–8.

<sup>2</sup> Act XXXV of 1874 about the royal notaries.

<sup>3</sup> See further details in Horváth, Gyöngyi: A közjegyzői kamarák rendszerváltáskori újjászületése Magyarországon. *Magyar Jog*, 2017/7–8, 431–442.

<sup>4</sup> Tóth, Ádám: The Notaries’ Profession in Hungary. In: Sándor, István (ed.): *Business Law in Hungary*. Patrocinium, Budapest, 2016, 82.

the notaries' activity is state activity; notaries act as jurisdictional authorities; the notaries' activity involves public trust.<sup>5</sup>

It may be established that what these designations have in common is the emphasis placed on the official and public character of Hungarian notaries. We can also find views which highlight that notaries do not practise public authority as part of the system of the State in dependence but as liberal professionals.<sup>6</sup>

If we examine the effective Hungarian Fundamental Law, we can see that it does not expressly name the notary as such. There is no regulation in the Fundamental Law either that would determine that the State should ensure the institution of notaries. This "omission" in the Fundamental Law does not mean that we could not examine the activity of notaries from the perspective of the constitution or that there is no need for notaries.

The literature differentiates between a wide and a narrow meaning of the administration of justice. *Attila Rácz* summed up the conceptual elements of the narrower – substantial – sense of the administration of justice as follows: "*the administration of justice means when a legal dispute or infringement is resolved or judged on the basis of law.*"<sup>7</sup> Notaries are excluded from this definition, however they are covered by its wider meaning.<sup>8</sup> The Constitutional Court pointed out that the activities of the so-called quasi-courts may be included in the wider concept of the administration of justice.<sup>9</sup>

The Hungarian Fundamental Law declares that "courts carry out jurisdictional activities,"<sup>10</sup> and, what is even more important, "in certain legal disputes the law may allow other authorities to proceed."<sup>11</sup> The Fundamental Law directly provides constitutional empowerment for authorities other than the courts – including notaries – to act as jurisdictional authorities.

It must also be pointed out regarding the notarial activity that from the aspect of public authority it is a narrower concept than that of the administration of justice, especially than the wider concept manifested in the practice of the Constitutional Court. The most suggestive example of this is illustrated in Constitutional Court Decision 1208/B/2010, according to which lawyers may fall within the wider meaning of the administration of justice, even though their activity does not involve any form of public authority.

With regard to the legal status of Hungarian notaries, it is important to underline the judgment delivered by the European Court of Justice in Case C-392/15 in 2017.<sup>12</sup>

<sup>5</sup> Paczolay, Péter: A közjegyzők alkotmányos helyzete. A közjegyzők és a közhatalom. *Közjegyzők Közlönye*, 2013/1, 11.

<sup>6</sup> Köblös, Adél: A közjegyzők és az Alaptörvény. *Magyar Jog*, 2014/3, 136.

<sup>7</sup> Rácz, Attila: *Az igazságszolgáltatási szervezet egysége és differenciálódása*. Akadémiai Kiadó, Budapest, 1972, 9.

<sup>8</sup> See this also in Udvary, Sándor: A közjegyzői fizetési meghagyás és a bíróságok igazságszolgáltatási monopóliuma. In: Szécsi, Gábor (ed.): *De iuris peritorum meritis 7. Studia in honorem Endre Tanka*. KRE ÁJK, Budapest, 2010, 97–106.

<sup>9</sup> Such as arbitration courts, authorities for consumer protection, civil law notaries.

<sup>10</sup> Fundamental Law of Hungary, Section 25 Subsection (1).

<sup>11</sup> Fundamental Law of Hungary, Section 25 Subsection (6).

<sup>12</sup> Judgment of 1 February 2017, C-392/15 European Commission v Hungary (ECLI:EU:C:2017:73).

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The European Court of Justice held that the activities of Hungarian notaries are not connected with the exercise of official authority when deciding on the nationality requirement for the appointment of notaries in Hungary. The judgment eventually obliged Hungary to abolish the citizenship criteria.

Some explanation is required regarding the notarial activity of drawing up deeds. From an academic perspective, procedural law views the drawing up of public deeds by notaries as an independent non-contentious procedure. This entails that legally speaking the client does not solicit the services of the notary on a private law basis but subject to an application filed by the client, thus their legal relationship is of an official public nature. The procedure initiated upon request is considered to be similar to German law.<sup>13</sup>

In conclusion, it may be stated that the Hungarian notaries are part of the Hungarian administration of justice, and they are considered as an authority owing to their non-contentious proceedings.

### 1.3. Organisations of Hungarian notaries

Notaries cluster in chambers in each country, just like in Hungary. Here the lawmakers decided on a two-level model, which resulted in the formation of the Hungarian Chamber of Civil Law Notaries as a public body and five territorial chambers in the country. Notaries, deputy notaries and trainee notaries are members of the local territorial chambers.<sup>14</sup>

### 1.4. Sources of law concerning Hungarian notaries

When we examine the sources of law regarding the effective law on notaries, it may be stated that it is based on two major statutes. Act XLI of 1991 on Civil Law Notaries (hereinafter: Act on Notaries), and Act XLI of 2008 on Particular Non-contentious Notarial Proceedings (hereinafter: Non-contentious Notarial Proceedings Act) encompass the general rules concerning notaries and non-contentious proceedings conducted by notaries. The regulatory systems of these two statutes are in extensive correlation with each other.

We must point out that the system of laws concerning notaries is based on these two statutes as two pillars. In the background as an underlying body of laws, just like for each Hungarian non-contentious procedure, there lies Act CXXX of 2016 on the Code of Civil Procedure.

The Act on Notaries is peculiar in the sense that it contains substantive and procedural norms, while the Non-contentious Notarial Proceedings Act contains only the collection of procedural norms. It is also worth mentioning the relationship of the

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<sup>13</sup> „Der Notar wird auf Ersuchen tätig, nicht wie der Rechtsanwalt aufgrund eines Geschäftsbesorgungsvertrages, Auftrages oder eines Vertrages.” Bamberger, Hanna-Barry, Sebastian-Führ, Thorsten-Kilian, Thomas-Otto, Dirk-Ulrich-Roemer, Heiner-Wittkowski, Ralf: *Notariatskunde*. Deutscher Notarverlag, Bonn, 2017, 60.

<sup>14</sup> The territorial chambers of civil law notaries of Budapest, Miskolc, Szeged, Pécs, and Győr.

two laws, as the background legislation of the Act on Notaries is the Non-contentious Notarial Proceedings Act – unless the Act on Notaries provides otherwise, or the characteristics of the procedure imply otherwise.

The Act on Notaries entrench the general principles pertaining to the legal status of notaries in a comprehensive manner,<sup>15</sup> as well as the general rules of the notary's territorial jurisdiction, the major elements and bodies of the notarial self-government, the formation, cessation and termination of the notarial service, regulations relating to the employees of the notary, the management of the notary's office, the replacement of the notary, the supervision of the notary's activity, the disciplinary liability of the notary, and the detailed rules of disciplinary procedure. The Act on Notaries defines the general and special rules for drawing up notarial deeds, that is the non-contentious procedure of drafting notarial deeds, as well as the provisions concerning depository matters and the notarial archives.

The Non-contentious Notarial Proceedings Act contains civil procedural rules in two larger chapters. The first chapter summarises the general rules of non-contentious notarial proceedings. This chapter lays down the essence of notarial proceedings, since it determines the general rules of notarial proceedings in relation to civil action and non-contentious court proceedings. Among them there are such crucial provisions as the declaration that as a main rule evidence is not admissible,<sup>16</sup> or that it sets out rules concerning the recusation of the notary which are similar to those of judges.<sup>17</sup>

If it is possible to highlight a provision from the complex regulatory system of the Non-contentious Notarial Proceedings Act it would no doubt be the effect of the decision made by the notary. The effect of the notarial decision is equal to that of a ruling of the district court in terms of legal remedies. Its significance can be grasped in that regarding the enforcement of the right to appeal it falls within the competence of the regional court to adjudicate on an appeal. Consequently the Non-contentious Notarial Proceedings Act declares that the (regional) court exercises procedural control over notarial proceedings through its decisions.<sup>18</sup>

The Non-contentious Notarial Proceedings Act lays down the overall prevalence of the principle of proceeding upon request in notarial proceedings, when it determines the temporal and substantive dimensions of an application initiating notarial proceedings.

Apart from these two statutes there are further Acts concerning notarial law such as Act XXXVIII of 2010 on Succession Proceedings and Act L of 2009 on Order for Payment, which also encompass procedural norms. Although the present Fundamental Law does not contain express provisions on notaries, it does not mean that there are no provisions implied concerning notaries.

In the hierarchy of the sources of law on notaries, ministerial decrees constitute the next level of body of laws. In this regard we must mention the decrees by the

<sup>15</sup> We can also mention the principle of public authenticity here.

<sup>16</sup> Section 9 of Act on Particular Non-contentious Notarial Proceedings.

<sup>17</sup> Section 3 of Act on Particular Non-contentious Notarial Proceedings.

<sup>18</sup> Section 13(1) and (2) of Act on Particular Non-contentious Notarial Proceedings.

Minister of Justice, which specify the detailed rules of the proceedings regulated by statute.

Also, we must not forget the internal norms pertaining to notaries. The Board of the Hungarian Chamber of Civil Law Notaries may decide on adopting guidelines, consequently the adopted guidelines are mandatory for notaries. The Board of the national chamber has adopted 113 guidelines so far, most of which set out detailed rules that enable the interpretation of Acts and decrees. The aim of the guidelines is also to resolve legal loophole issues. The Board of the national chamber also passes regulations – of which there have been six so far – and decisions. We can also mention a body of norms consisting of resolutions which are adopted by certain committees of the chamber.<sup>19</sup> The decisions of the chairman and the presidency of each territorial chamber may be authoritative for notaries, especially in terms of ethical and professional issues.

The statutory level of regulation makes the body of laws pertaining to notaries more entrenched and solid.

### *1.5. The competence of Hungarian notaries*

The diversity of notarial proceedings can also be seen clearly through their great number and their legal background. In Hungary besides the more than 100 non-contentious court proceedings a significant 23 non-contentious proceedings are the competence of notaries, showing an increasing tendency in the previous decade. We can classify notarial proceedings in several ways, with regard to the objective of the non-contentious proceedings they fall within the category of preventive justice, whether actually preventing, substituting or avoiding legal action.

We can classify Hungarian non-contentious proceedings as follows:

- drafting notarial deeds (deeds on legal acts and deeds attesting facts),
- keeping notarial registers (registration proceedings<sup>20</sup>),
- Hungarian and European order for payment,
- enforcement proceedings (based on enforceable notarial deeds and order for payments, issuing a European Enforcement Order),
- non-contentious proceedings involving succession matters (succession proceedings, issuing European Succession Certificates),
- proceedings involving evidence: preliminary evidence before a civil law notary, appointment of a forensic expert in a notarial procedure
- out-of-court settlement before the civil law notary,
- depository procedures: safekeeping instruments, deposit of wills, custodial services (cash, valuables and securities), notarial escrow,

<sup>19</sup> At present there are five effective resolutions, which make observations on the interim deputy (Resolution 1), on ethical issues (Resolutions 2 and 3), on the duties of trainee notaries (Resolution 4), and a resolution concerning the enforcement clause in case of notarial deeds issued regarding pecuniary claims denominated in a foreign currency.

<sup>20</sup> The notarial registration proceedings are the following: Administering the Register of Declarations of Cohabitation, Register of Security Interests, National Register of Pledges, Register of Pledges over Motor Vehicles, Register of Marriage and Partnership Contracts, National Register of Wills.

- other notarial proceedings: dissolution of registered partnerships by a civil law notary, annulment of securities and documents.<sup>21</sup>

### 1.6. Keeping notarial registers

Emphasising the importance of notarial registers may have been quite neglected besides compared to other notarial non-contentious proceedings. The reason behind it may be found in the fact that these proceedings are mostly *ex parte* proceedings which do not involve an opposing party, making the proceedings rather “quiet.”

Each notarial register serves one of the legal institutions of Hungarian civil substantive law. Their purpose is to promote the given substantive legal institution. It is justified by the National Register of Wills in the case of wills, the National Register of Pledges and the Register of Pledges over Motor Vehicles in cases of pledges and the Register of Security Interests in cases of pledges, factoring contracts, finance lease, and retention of title.<sup>22</sup> We can also mention the Register of Declarations of Cohabitation concerning partnerships, or the Register of Marriage and Partnership Contracts involving matrimonial property or the property interests of cohabitants.

The differentiation between the registers is based on whether they can be regarded as authentic registers, which is also their special feature. While the National Register of Pledges is an authentic register, the Register of Security Interests cannot be considered as such.

The common feature of Hungarian notarial registers is that in order to meet the requirements of our age, they are not paper-based registers but modern digital systems maintained by the Hungarian Chamber of Civil Law Notaries.

As the general objective of registration proceedings, we can state that they function as public registers certifying rights and facts whether authentic or just partly so. Consequently, their role is to avoid legal disputes and to strengthen the security of transactions, which may eventually lead to a decrease in the number of lawsuits.

During notarial registration proceedings, the notary’s function of providing preventive justice comes to the foreground. It may be noted that these procedures are of a unilateral nature, as there is no opposing party involved. However, there are also exceptions for bilateral proceedings, such as the persons of the pledgee and the pledgor in the Register of Security Interests. The Hungarian Chamber of Civil Law Notaries plays an important role in keeping the registers, considering that the national chamber manages and maintains the underlying IT system.<sup>23</sup>

A characteristic feature of the proceedings is the general absence of hearings. As an exception we must mention the Register of Declarations of Cohabitation, where the notary acts on the basis of a record drawn up in the course of a hearing, issuing a decree on the registration.

<sup>21</sup> The Procedure for Certifying Probable Right of Inheritance Relating to an Asset Placed in a Public Collection was abolished as of 1 February 2020.

<sup>22</sup> See further details in Tóth (2016): *op. cit.*, 93–94.

<sup>23</sup> This centralised management can be detected in Hungarian court registers through the role of the National Judicial Office and its information technology system.



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A remarkable example of electronic proceedings – entailing a complete lack of orality and the principle of directness – is the registration in the Register of Security Interests, in which case the parties do not have to be present together in the notary's office, as they communicate through their declarations filed in the system, thus creating, modifying and terminating their legal relationship. Consequently, the duration of the proceeding is shortened, but the principles of orality and directness do not play a considerable role.

### 1.7. *The liability of the notary*

The civil liability of the notary is regulated by statute in Hungary. The Act on Notaries divides the liability of notaries into two groups, in the case of damage caused while practising as a notary and in the case of paying a grievance award for the infringement of personality rights.<sup>24</sup>

Act V of 2013 on the Civil Code regulates the notary's liability for damages at the same level as the liability of judges, prosecutors or court bailiffs for damage caused in the course of exercising their powers. The liability of the notary falls under the same category as damage caused in exercising administrative powers.

In Hungary there is an obligatory liability insurance, according to which from 1 January 2018 notaries must take out a liability insurance worth at least 100 million HUF.<sup>25</sup> This insurance is not concluded individually, but by the national chamber.<sup>26</sup> Beyond this insurance the notary is entitled to take out a supplementary liability insurance.<sup>27</sup> The amount of the obligatory liability insurance was 50 million HUF.<sup>28</sup>

As for the liability of deputy notaries and trainee notaries, the notary is the one who is liable to a third person, since they act under the instructions and liability of the notary.

The liability of retiring notaries is also an interesting issue, taking into account that in case notaries who retired before 1 January 2003 did not take out insurance for post-coverage, they must cover the amount from their own personal property if the court condemns them. In the case of notaries retiring after this date the Hungarian Chamber of Civil Law Notaries assumes such insurance at its own expense, meaning that notaries retiring later are insured for any damage caused during their active period.

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<sup>24</sup> Section 10(1) of Act on Notaries.

<sup>25</sup> Approximately EUR 280,990 calculated on the basis of the daily exchange rate of 24 April 2020, which is equivalent to GBP 244,842.

<sup>26</sup> Section 10(2) of Act on Notaries.

<sup>27</sup> For example in the GDPR Data Protecting Liability.

<sup>28</sup> Approximately EUR 140,557 calculated on the basis of the daily exchange rate of 24 April 2020, which is equivalent to GBP 122,421.



### *1.8. Occupying notarial seats*

Access to the notarial profession in the Hungarian model is limited. This limitation is partly personal, while on the other hand it is rooted in the fixed number of positions. In terms of personal limitation, the Act on Notaries regulates who may become a notary.<sup>29</sup> In respect of the appointment of notaries, the “citizenship criteria” was abolished, meaning that only Hungarian citizens had been eligible to become notaries before.<sup>30</sup>

Among further conditions, the person cannot be deprived of practising public affairs, must have a law degree, and must have taken the bar examination, must certify at least three years of legal practice as a deputy notary, must not be under conservatorship for lack of capacity, must take a successful notarial examination, must be proficient in Hungarian and must take a career aptitude test.

In Hungary the number of notaries is restricted, consequently in 2020 313 notaries are in service. The establishment of further seats is within the scope of the Minister of Justice.

Notarial appointment takes place in a well-defined process, by means of application. The territorial chambers are entitled to arrange the applications. The professional experience of the applicants is examined and assessed by the presidency of the territorial chamber during a personal interview.

### *1.9. Notaries and advertising*

In Hungary there are strict rules regarding the publicity of notaries. The regulation practically means complete prohibition; hence notaries must not advertise their activities. The opening of a notarial office is an exception, as it is allowed to publish it in a daily newspaper. With regard to advertising, the placement of the nameplate of the notary’s office is also limited by law.

The prohibition of advertising also affects the presence on the Internet.<sup>31</sup> The website publishing information about the given notary may contain only the data listed here: reference to language licence, contact information (such as a map), address, post office box number, bank account number, tax number, corporate registration number, statistical identification number, means of communication (phone number, fax number, e-mail address), opening hours, office hours, introduction of the notary, the notary’s short CV in no more than 120 words, and the data of the website (the impressum).

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<sup>29</sup> Section 17(1) of Act on Notaries.

<sup>30</sup> See more details in the judgment delivered by the European Court of Justice in Case C-392/15.

<sup>31</sup> Guideline No. 60 of the Hungarian National Chamber of Notaries about the unification of the presence of notaries on the Internet.

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### 1.10. Introducing digitalisation in the notarial profession

In Hungary the notarial fees cannot be paid in bitcoin or in other cryptocurrencies.<sup>32</sup> In terms of digitalisation the Hungarian notaries are pioneers overtaking even Hungarian courts. In the early years of the 2000s electronic registers were already being used, such as the National Register of Wills or the National Register of Pledges. The great change began when in 2010 the electronic order for payment was introduced. Hungarian order for payment is partially automatized, and electronic forms are used to launch the procedure, and decisions are also issued electronically by the notary. Video conferences, however, are not applied in Hungarian notarial proceedings, unlike in Hungarian court proceedings, where these tools are available.

There is opportunity in several notarial proceedings to submit a request electronically, which is accessible for the notary through a so-called authorised gateway. Digital estates and digital documents may be expected to become more extensive in the next few years, for which Hungarian notaries have prepared both technologically and professionally. Hungarian notaries have qualified electronic signatures, by which they can issue electronic deeds and decisions.

It shows the expansion of digitalisation that as of 1 January 2020 electronic administration is mandatory in all notarial procedures.<sup>33</sup> The national chamber introduced a new electronic file management system to implement such policy. The notary must conduct the affairs and issue decrees in such an electronic domain.

The procedure of drafting notarial deeds is an exception to the mandatory rule of managing cases and files by electronic means. At present the notary draws up paper-based notarial deeds bearing the signature of the parties and that of the notary. There is no doubt, however, that notarial deeds will soon be electronic, except for wills and statements on personal status.<sup>34</sup> This means that notarial deeds prepared electronically and electronic signatures will replace the paper-based procedures in effect so far.

### 1.11. Is the era of robot notarisation coming?

Technological development can radically transform all areas of law over the next decades.<sup>35</sup> However, I believe that despite the use of artificial intelligence and the

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<sup>32</sup> The decree on notarial tariffs containing mandatory rules does not regulate the denomination of the currency in which notarial fees are to be paid, however, Article K) of the Fundamental Law sets out that "The official currency of Hungary shall be the forint." Furthermore, Section 12(1) of ME Ministerial Decree 9000/1946 (VII. 28.) which is still in force to date states that "As of the 1<sup>st</sup> day of August in the year of 1946 any sum due under any public deed, including decisions issued by the court or any other authority, shall be determined in forints, even if the pleading or the statement of claim on the grounds of which the decision is made was filed prior to the 1<sup>st</sup> day of August in the year of 1946."

<sup>33</sup> Section 5(1) of IM Ministerial Decree 29/2019 (XII. 20.) on the rules of notarial administration.

<sup>34</sup> Even though electronic wills are not acceptable under Hungarian law to date, however there are a number of examples in other countries where the court has taken the last will of the testator made by electronic means into account. See: Boóc, Ádám: *Technológiai kihívások a polgári jogban, különös tekintettel az öröklési jogra*. In: Homicskó, Árpád Olivér (ed.): *Technológiai kihívások az egyes jogterületeken*. KRE ÁJK, Budapest, 2018, 31.

<sup>35</sup> [https://www.portfolio.hu/vallalatok/it/jonnek-a-robotkozjegyzok-es-a-virtualis-ugyvedek\\_-video.305471.html?fbclid=IwAR3iBTBpWfX2Ha8wfbGzbq7Hv5FLPbY5HOGJC5wiTMmyP3PXgOGRa6rxaK4](https://www.portfolio.hu/vallalatok/it/jonnek-a-robotkozjegyzok-es-a-virtualis-ugyvedek_-video.305471.html?fbclid=IwAR3iBTBpWfX2Ha8wfbGzbq7Hv5FLPbY5HOGJC5wiTMmyP3PXgOGRa6rxaK4) (01. 04. 2020).

spread of blockchain systems, the human factor remains an indispensable element of the world of law. Nowadays, with big data, it is possible to produce judges' and lawyers' profiles or even to predict the probability of the expected outcome of proceedings, however algorithms and software are still unable to cope with the paradoxes of man-made systems, including law.

Furthermore, analytical algorithms and software cannot set targets, and for the time being, complex legal relationships require notaries, lawyers, and judges. In view of all of this, in my opinion, there is no need to keep robots from taking over the confidentiality of notarial activity.

## 2. Fundamental principles of notarial proceedings

### 2.1. Analysis of the principles of the UINL

Before analysing the fundamental principles concerning Hungarian notaries, it is worth reviewing the international principles. The biggest organisation of Latin-type notaries as a legal profession is the International Union of Notaries, or UINL. Functioning as a civil organisation, UINL was founded in 1948 in Buenos Aires, with 19 member states. Today UINL has 89 member states, including Hungary.<sup>36</sup>

UINL has dealt with the issue of devising the fundamental principles several times, in 2004 in Mexico and in 2005 in Rome, and then in 2013 in Peru these principles were actualised and consolidated. Even though the fundamental principles devised for Latin-type notaries are not binding, they serve as guidelines and may be used as sources by member states in their legislation.

In general, we can describe the fundamental principles as not having only procedural content, but also organisational, management and ethical requirements. The principles were accepted in the hope that the notaries in all UINL member states will observe and apply them, consequently they will be realized in the sense that the principles will prevail. The catalogue of the principles of the UINL consists of 60 articles and five longer chapters, which are differentiated in terms of content.<sup>37</sup>

In the first chapter titled "Principles and organisation of notaries" the principles and rules of organisation are collected. The second chapter titled "Relations of the notaries with the State" regulates the position of the notary in each country's justice system. The third chapter, titled "Relations of notaries with chambers and professional associations" contains the vertical relationship between notaries, and the integration of the organisational system of notaries into the justice system.

Chapter four titled "Relations of notaries with other notaries, employees and clients" contains regulations about the horizontal relationships and daily activities of notaries. And finally chapter five, titled "Conflict of interest, a system of prohibitions and sanctions" closes the recommendations.

As a summative analysis of the principles created by the UINL, we can highlight the following principles. Notaries are vested with (public) authenticity during their

<sup>36</sup> <https://www.uinl.org/mission> (01. 04. 2020).

<sup>37</sup> <https://www.uinl.org/organizacion-de-la-funcion> (01. 04. 2020).

proceedings, and they give advice to those who seek their services. Impartiality and independence are crucial principles, just like the fact that the activity (or service) of the notary is regarded as a jurisdictional activity in uncontested matters. Uncontested matters involve (non-contentious) proceedings without litigation.

Notarial deeds are entrusted with public authenticity. A notarial deed may incorporate any kind of legal act. Public authenticity is based on the signature, date and content of the deed. The parties have the right to be given certified office copies as the original notarial deed remains in the custody of the notary. Notarial deeds may be disputed only through the courts, and they have the effect of direct enforcement in other countries too. The number and territorial jurisdiction of notaries are determined by national law, and the principle of self-government must be ensured for notaries.

The fourth chapter contains ethical rules. The duty of the notary is to act in good faith and fairly, not only with the client but also with other notaries. The secrecy of the notary is also mentioned here. In order to enforce ethical rules, member states have to maintain permanent disciplinary committees. It must be highlighted that the right to choose a notary – the so-called principle of the free choice of notary – appears several times.<sup>38</sup>

In terms of notarial fees the UINL states that a transparent system of fees must be established. Notarial fees must be regulated as a main rule by law. As a further rule, notarial fees must ensure the impartiality and independence of notarial services, just like the general accessibility of citizens to notarial proceedings. It is also important that the notarial fees must be simple, transparent and easily accessible to the public.

## 2.2. The principle of independence

Notaries are independent, declares succinctly *Eric Deckers*, a Belgian notary.<sup>39</sup> Independence is not solely the specificity of the Hungarian notary, German law also lays down that the notary is independent.<sup>40</sup>

By the term independence, however, we mean several cases and conditions determined by law. But what are these conditions and are they justifiable with regard to Hungarian notaries?

Independence is one of the most important (jurisdictional) principles of notarial practice, without which notaries would become dysfunctional. According to *Eric Deckers*, “*notarial independence is a qualitative requirement which protects notaries from the harmful effect of any pressure or influence, which sets other goals for professional practice than those dictated by professional conscience.*”<sup>41</sup>

We think that notarial and judicial independence have the same content, since in both cases the independence of the administration of justice lies in the background.

<sup>38</sup> We can see that the choice of notary is a matter for the parties alone.

<sup>39</sup> Deckers, Eric: *A közjegyzői hivatás deontológiája, és szerkezete*. Magyar Országos Közjegyzői Kamara, Budapest, 2000, 21.

<sup>40</sup> „*Der Notar ist unabhängig in der Führung seines Amtes.*” Bamberger et al.: *op. cit.*, 59.

<sup>41</sup> Deckers: *op. cit.*, 55.

In Hungarian legislation the Act on Notaries sets out that “the notary is only subject to law during their proceeding, and cannot be instructed.”<sup>42</sup>

According to our point of view we differentiate between the organisational and civil procedure aspect of the principle of independence. By organisational independence we mean that notaries do not act as a part of the hierarchy of the State. This does not mean that there is no professional control over the notaries: the notary’s activity is supervised by the president of the competent regional court, while the decision of the notary may be under control by the appeal mechanism of the competent regional court.

The “guarantee” of independence in civil procedure is the possibility to decline to proceed which enables – and at the same time obliges – the notary to refuse assistance if a legal act contravenes the law, or aims at its evasion, or if the illicit or unfair purpose of such a legal act is discernible by the notary.<sup>43</sup>

We must also examine different aspects of independence. Personal independence assures the notary’s lifelong appointment (until the age of retirement), irremovability and the impossibility of being recalled. A further guarantee of independence is practising as a liberal professional.<sup>44</sup>

### 2.3. *The principle of impartiality*

Notarial impartiality differs from judicial impartiality; we can also say that notarial impartiality is special as compared to judicial impartiality. This is due to the fact that the judge is completely impartial. In a civil action the judge is not allowed to give advice to either party.<sup>45</sup> However, the notary’s briefing duty in certain proceedings extends beyond the briefing duty of the judge. In relation to this, in notarial practice we may mention the case where the notary provides information on succession law when drafting a public will.<sup>46</sup> We can also highlight the registration of the declaration of cohabitation. In this case the Non-contentious Notarial Proceedings Act imposes a comprehensive briefing duty on the notary, which means providing information on family law, property law and succession law involving substantial law.<sup>47</sup>

The principle of impartiality can be found among the principles of the UINL, which states that notaries must be “trusted third parties” in the relationship of the parties.<sup>48</sup> The issue of the right of representation related to the principle of impartiality gains special significance. If we compare the legal status of the notary with that of the

<sup>42</sup> Section 2(1) of Notaries Act.

<sup>43</sup> In the practice of Hungarian notaries there are not too many decisions declining to proceed. Usually refusal to proceed is seen during the drafting of wills, when the person aiming to make a will is in a state which does not permit them to explain their last will as a result of the lack of apprehension.

<sup>44</sup> For more details see: Cordier, Michel: A közjegyzőség intézménye. *Közjegyzők Közlönye*, 2000/4, 4.

<sup>45</sup> Not including the judge’s briefing duty.

<sup>46</sup> The detailed information about the order of succession, disinheritance and the rules of the forced share can be mentioned as examples.

<sup>47</sup> Section 36/F(2) of Act on Particular Non-contentious Notarial Proceedings.

<sup>48</sup> Section 5.3 of the Recommendation accepted by the UINL in 2013 in Peru.

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judge, considering the right of representation raises questions, as they seem incompatible.

In this regard we can state that according to the main rule, a Hungarian notary must not legally represent a client, as the law prohibits it.<sup>49</sup> This regulation can be traced back to the principle of impartiality, since representation assumes an underlying assignment, which may offend impartiality, and can be characterised by a legal status similar to that of a lawyer, or in other words, partiality.

Examining notarial non-contentious proceedings, we can state that in a proceeding of drafting a notarial deed the Act on Notaries formulates certain exceptions regarding the exercise of the right of representation. If the court's or another authority's procedure is necessary for a legal statement drawn up in a notarial deed to take effect issued during a proceeding of drafting a notarial deed, in this scope the notary addresses the competent authority *ex officio* to act in the proceeding, such as the land registry, the court of registration or the guardian authority.<sup>50</sup> In such a case the Act on Notaries states that in a proceeding initiated upon the request of the notary, the notary has the same legal status as a representative of a party or parties of a public deed.

As a conclusion, we can state that in Hungarian civil procedure representation by a notary is justified only in the proceeding of drafting a notarial deed and company-related proceedings, in other proceedings the right of representation of the notary is conceptually excluded. In cases of order for payment procedures and succession proceedings impartiality must appear at the conceptual level as the requirement of notarial proceedings.

Even though representation is to be avoided in connection with the proceedings of Hungarian notaries, several international examples show that notaries can act as representatives. In France, in certain cases notaries are allowed to represent a party in a criminal court. The restrictive features of the Hungarian regulation does not originate only in the principle of impartiality, but the features of public authority of notaries also explain it.

#### *2.4. The principle of public authenticity*

Even though there is no need to prioritize among the fundamental principles,<sup>51</sup> the first principle of prime significance under the Act on Notaries is the principle of public authenticity.

We can interpret it as a kind of framework principle, or guiding principle. In our view its significance is similar to the principle of concentration of proceedings in the Code of Civil Procedure, namely that it has to permeate every notarial proceeding, and it has to appear in the detailed rules of procedures and the notarial attitude too.

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<sup>49</sup> Section 175(2) of Act on Notaries.

<sup>50</sup> From this aspect the Act on Notaries is subversive, as in a non-contentious proceeding (notarial proceeding) an authority (the notary) requests another authority. However, it is not unprecedented, as the civil court addresses the competent land registry with a request to register the submission of a lawsuit in the land register.

<sup>51</sup> See the above cited decision of the European Court of Justice regarding the hierarchy of principles.

The principle of public authenticity may be treated as the organising principle of notarial proceedings. The Hungarian lawmakers intended it to have an outstanding role in the Act on Notaries, as it can be seen in the placement of the principle in the law.<sup>52</sup>

The issue of public authenticity may be traced back to the fact that there is a social need for trusted persons, and Hungarian notaries comply with this need.<sup>53</sup>

Without this principle Hungarian notaries would not belong to the category of Latin-type notaries, as public authenticity is the most important organising principle of the legal status of Latin-type notaries.<sup>54</sup> Without public authenticity notarial order for payment, succession proceedings, or proceedings by which the notary issues deeds would be unimaginable, since such authenticity grants public authorisation to proceed in these cases.

Public authenticity is also rooted in the empowerment granted by the State. This principle creates the opportunity for the notary to conduct proceedings on behalf of the State, based on public authority. Consequently, public authenticity is a fundamental requirement of notarial non-contentious proceedings as well.

Another important feature of public authenticity is that the notary's proceedings may be described as generally authentic. Public authenticity is not absolute, as it may cease, in case the notary does not comply with the strict procedural regulations, which are determined for the given proceeding.<sup>55</sup>

It is worth examining the conceptual elements of public authenticity through the views of legal literature. In the definition formed by *Daisy Kiss* public authenticity is an underlying statutory presumption that any act of the notary while pursuing their profession as well as its contents are real, authentic and lawful by the force of law and in the scope determined by law.<sup>56</sup>

We can state that the principle of public authenticity affects and pervades all notarial proceedings. Whether it be the drafting of a deed or a record drawn up during other non-contentious proceedings, it must be accepted with the content issued by the notary, until proven to the contrary.

*Kristóf Szécsényi-Nagy* shares the above-mentioned view. He also highlights that public authenticity means the existence of the presumption of veracity. It is also an interesting connection that he considers public authenticity as a means to an end, that is to prevent legal disputes.<sup>57</sup>

<sup>52</sup> Section 1(1) of Act on Notaries.

<sup>53</sup> See more details in Imregh Géza: *A közjegyzői eljárás*. Novotni, Miskolc, 2003, 28–31. The trusted person may be traced back to the *tabellios*, literate persons in Roman law who issued documents for payment. In the Justinian era the instruments drafted by *tabellios* were treated as professional and authentic.

<sup>54</sup> We have to remark that in the absence of public authenticity, Hungarian notaries would find themselves in the common law category of a notary public, which can be characterised by the lack of public instruments.

<sup>55</sup> As an example we can mention the notarial deed drafted by violating formalities during the drafting procedure, which is not regarded as authentic, losing its public deed nature, and can be treated merely as a form of private document. Proceedings resulting in a decision (decree), in case the decision violates a law, may be declared ineffective on appeal.

<sup>56</sup> Kiss, Daisy: *Per vagy nem per? Kérdések és válaszok a polgári nemperes eljárások témaköréből*. HVG–ORAC, 2008, 579.

<sup>57</sup> Éless, Tamás–Juhász, Edit–Juhász, Imre–Kapa, Mátyás–Papp, Zsuzsanna–Somlai, Zsuzsanna–Szécsényi-Nagy, Kristóf–Timár, Kinga–Tóth, Ádám–Török, Judit–Varga, István: *A polgári nemperes eljárások joga*. ELTE Eötvös Kiadó, Budapest, 2013, 698.



After a thorough examination of international examples, it can be seen that in certain legal systems public authenticity is not a precondition of the notary's activity. Public authenticity is primarily the privilege of notaries in the Latin-type continental legal systems, which we can trace back to the probative value of the public instrument. Hence the principle of public authenticity is not specifically relevant in the Anglo-Saxon system, particularly in Great Britain, the United States of America or in Australia.<sup>58</sup>

### 2.5. The principle of the requirement of appointment

*Tamás Parti* sees the principle of the requirement of appointment as the government's privilege to control the notaries' official activity as an authority, based on the limitation of notarial seats by the State.<sup>59</sup>

At the same time, it can also be stated that by the appointment the notary is vested with some power of the State. According to the principle of the requirement of appointment there is a *numerus clausus* of notaries. Notarial appointment is not established by entering the notary in the chamber register, as is the case for the legal status of lawyers. We can state that the appointment system is closely similar to the one of judges with one difference, namely that judges are appointed by the President of the Republic, while notaries are appointed by the minister of justice.<sup>60</sup>

### 2.6. The principle of regulated tariffs

The notary operates for the fees determined by the State, which cannot be decreased and cannot be exceeded either, in order to have the notarial services available to everyone under the same conditions. The principle of regulated tariffs is based on mandatory tariffs.<sup>61</sup>

The concept of mandatory tariffs is inseparable from the duties of being an authority, as the system of unfixed notarial fees would have certain disadvantages. On the one hand they carry the chance that the notary refuses to issue unprofitable deeds and to act in these proceedings. On the other hand, as *Michel Cordier* puts it, such a system would tempt notaries to manifest unacceptable pretensions. And thirdly, it would make the "weaker party" vulnerable in the competition.

<sup>58</sup> The concept of public instruments is limited to governmental documents applied for the management of the government in countries which were based on English law, conceptually the deeds issued by notaries do not belong here.

<sup>59</sup> Parti Tamás: *Ars poetica Notarialis*. In: Varga, István (ed.): *Codificatio Processualis Civilis: studia in honorem Németh János II*. ELTE Eötvös Kiadó, Budapest, 2013, 312.

<sup>60</sup> The notary is appointed by the Ministry of Justice in Germany as well. See Fisher, Howard D.: *The German legal system and legal language*. Clarus Press, 2013, 536.

<sup>61</sup> It must be noted here that regulated fixed prices are not only a characteristic of Hungary, German law which can be considered as a model is also based on this. See „*Was der Notar in Ausübung dieses Amtes erledigt, darf er nur berechnen, wenn das Gesetz dafür eine Vergütung vorsieht. Er muss es aber auch.*” Bamberger et al.: *op. cit.*, 821.

With a view to international notarial systems, it can be stated that the principle of regulated tariffs is not generally applied. In Western European countries market services are attached to notarial proceedings such as real estate services.

Literature also contains statements that the elimination of fixed fees may lead to distortions in the Latin-type system of notaries and a decrease in efficiency.<sup>62</sup> The Dutch example could be mentioned here where the system of fixed fees was eliminated in the early 2000s and as a result the number of proceedings by notaries working outside the big cities disproportionately decreased as opposed to those in bigger cities. In the Dutch experiment the new Dutch Act on Notaries abolished fixed fees, introducing it gradually in three years' time from 1 October 1999. It must also be noted that fixed fees were preserved for contracts involving family law, such as wills, or marriage contracts.<sup>63</sup>

In our view the principle of fixed fees shows how closely connected and organic the system of the notarial principles is, since it correlates with the principles of independence and impartiality. The financial guarantee of independence is the system of fixed fees.

Regarding notarial proceedings, the applicant does not have to pay a duty to the State, as in the case of a non-contentious proceeding at court, but a notarial fee. It is an important fact regarding the notarial fee that the constituents of such a fee are not at the notary's discretion, with the procedural fee for the notary's services being "non-negotiable."<sup>64</sup>

With regard to the system of mandatory tariffs it must be stated that the costs of notarial proceedings do not burden the central budget, they are borne by the parties.<sup>65</sup>

With regard to the fixed fees we must mention *Ádám Tóth's* view, in which he states that the fee paid for the notary cannot be regarded as the price for the service, as it is basically not a price, since it was not calculated as a result of an agreement, but it is determined by law. Only fees regulated by law and identical for all notaries are compatible with the institution of Hungarian notaries due to the fact that they exercise public authority in an official capacity.<sup>66</sup>

We must not forget about the latest amendments to the regulation of notarial tariffs. The detailed rules of notarial fees are determined in Decree 22/2018 (VIII. 23.) of the Ministry of Justice (hereinafter: the new Tariffs Decree). The new Tariffs Decree came into effect on 1 July 2019.

<sup>62</sup> Deckers: *op. cit.*, 46. and the footnotes in Luijten, E. A. A.: De nieuwe notariswet in Nederland; een opzienbarend stuk. *Tijdschrift voor Privaatrecht* (1998) 1352; Éless et al.: *op. cit.*, 722.

<sup>63</sup> See further details about Dutch notaries' law and the reform of fees in Steiner, Erika: Az új holland közjegyzői törvény. *Közjegyzők Közlönye*, 2002/1, 9–11.

<sup>64</sup> The Tariffs Decree does not contain the complete list of the fees of notarial proceedings, since the fees of each notarial procedure is fixed by a separate law. The fee for the order for payment is determined in Sections 42–46 of the Act on Order for Payment, while the fee for ordering enforcement is determined in Section 31/E(3)–(5) in the Act on Judicial Enforcement.

<sup>65</sup> This view is shared by Parti: *op. cit.*, 313.

<sup>66</sup> Éless et al.: *op. cit.*, 723.

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The new Tariffs Decree for notaries introduces renewed rules for tariffs. As the reason for amending the tariffs decree previously in effect for decades, we can point out the aim to eliminate the discrepancies of the former tariff decree and the differing practices.

With regard to the new Tariffs Decree it can be stated that the principle of regulated fees has been enhanced as the notaries' discretionary power has been abolished, and the notary is under an obligation to charge all fees. The reason behind this is that the norms of the new regulation are mandatory, any derogation therefrom is excluded. As a result of the changes in the new Tariffs Decree, the lawmaker introduces the legal concept of the directly enforceable bill of costs.<sup>67</sup>

Our view is that with these changes the lawmakers clarified that all notarial proceedings are non-contentious proceedings of an official capacity. In connection with the non-contentious proceeding of drafting a notarial deed it is worth highlighting the requirement of unified procedural fees.

### *2.7. The principle of the briefing duty and the prohibition of legal consultancy*

An important feature of notarial procedures is that in many cases the notary is obliged to inform the client not only on procedural law but also on substantive law. This obligation varies depending on the proceedings. The notary must inform the client thoroughly on procedure law and substantive law in a proceeding for the drafting of a notarial deed (e. g. about taxes and duties), but not in a succession proceeding.

We can find a viewpoint from the last decade which highlights the provision of legal advice as a duty falling within the competence of notaries.<sup>68</sup> However, this source mentions that this kind of duty is not the same as the consultancy rendered by lawyers, since the notary's activity is limited: the notary is obliged to give information only in connection with the proceedings in his competence and assuring equal opportunities for the parties, namely that the notary is obliged to give information equally to all the parties involved.

The text of the Act on Notaries in force does not use the term "legal advice" any more, it applies the term "briefing duty" instead, which is normally used in the Code of Civil Procedure pertaining to judges. This distinction between the terms is conspicuous. This modification signals a change in the legal assessment of the notarial procedure and its non-contentious feature, as it places emphasis on the briefing duty as it is present in (non-contentious) court proceedings instead of the lawyers' "legal advice".

As for legal advice the Dutch model is worth mentioning, bearing in mind that it stands on the double ground of legal advice and briefing duty.<sup>69</sup>

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<sup>67</sup> Sections 22–24 of Tariffs Decree.

<sup>68</sup> See further details in Gáspárdy, László (ed.): *A polgári nemperes eljárások*. Novotni, Miskolc, 2001, 396.

<sup>69</sup> Deckers: *op. cit.*, 32–33.

## 2.8. The principle of being restricted to the notarial seat

In the sense of the principle of being restricted to the notarial seat as a *sui generis* principle the performance of the duties of notaries is limited to their seat, beyond which they may act only if the nature or urgency of the case requires it.<sup>70</sup> The seat “covers the territory where the notary is obliged and entitled to proceed designated according to municipalities as regulated by the law.”<sup>71</sup>

The principle of being restricted to the notarial seat confines notaries to their territorial jurisdiction, but also provides a guarantee to citizens seeking legal services to have access to notarial services as close as possible.

Section 5(1) of the Non-contentious Proceedings Act declares that “The civil law notary may only carry out those procedural acts directly, which fall within his territorial jurisdiction.” Similarly to courts, the notary may act outside his territorial jurisdiction only upon request. The lawmaker declares those procedural acts of a notary invalid which have been carried out within the territorial jurisdiction of another notary.<sup>72</sup>

## 2.9. The principle of the free choice of notary

The examination of the right to choose a notary freely is to be carried out in the light of the system of rules concerning territorial jurisdiction in civil procedure. In a civil lawsuit jurisdiction means a horizontal allocation of cases among courts at similar levels. According to *László Pribula* when establishing rules of jurisdiction the aim should be that the court which is capable of carrying out its task the most expediently and simply should be enabled to decide the case, however, the needs of the parties seeking justice must also be considered so that they could turn to the court closest to their place of residence.<sup>73</sup>

In certain non-contentious proceedings belonging to the notary’s competence, rules of jurisdiction vary greatly. It is the Act pertaining to the given non-contentious proceeding which determines which notary is competent in the given legal act, consequently it is worth outlining the rules concerning notarial proceedings.

The right to turn to a notary is greatly limited geographically by the rules of jurisdiction determined by statute. In our view the rules establishing jurisdiction limit the right to choose a notary in several notarial proceedings. Additionally, the principle of the free choice of notary may be regarded as a normative regulation.

According to the effective regulation, it is the proceeding of drafting a notarial deed, which offers the widest range of choices for the parties: any notary in Hungary is entitled to carry out the procedure, as the party chooses. It may be justified by the confidential nature, flexibility and the security of the transaction.<sup>74</sup>

<sup>70</sup> Section 30 of Act on Notaries.

<sup>71</sup> Kadlót, Erzsébet: *A közjegyzői szervezet és ügyvitel*. PTE ÁJK, Pécs, 2002, 13.

<sup>72</sup> Section 5(3) of Non-contentious Proceedings Act.

<sup>73</sup> See further details in Pribula, László: *A bizonyítás általános szabályai*. In: Osztovits, András–Pribula, László–Szabó, Imre–Udvary, Sándor–Wopera, Zsuzsa: *Polgári eljárásjog I.* HVG–ORAC, Budapest, 2013, 338–380.

<sup>74</sup> It is not realistic for the client to turn to the notary having jurisdiction over the client’s domicile for the certification of a photocopy, but rather to the nearest one.

The Act on Order for Payment explains that in an order for payment procedure all the notaries have jurisdiction over the whole country, assuring that cases are allocated in the most flexible and efficient manner regardless of any regional disproportionality. This rule promotes the further acceleration of the procedures.

It can be stated that in Hungarian succession proceedings the right to choose a notary does not prevail, as the parties interested in succession cannot decide which notary should grant the estate of the deceased. The lawmakers determined a strict ranking regarding establishing the jurisdiction of the notary in succession proceedings.

After reviewing the regulations presently in effect, it may be seen that it is the succession proceedings in which the most complex rules of jurisdiction prevail among notarial proceedings.<sup>75</sup>

As for further auxiliary rules, we find a rule of exclusive jurisdiction for the additional succession proceeding where the notary acting in the initial procedure is deemed as competent.<sup>76</sup> This regulation has an expedient reason, as the documents of such succession proceedings can be found in the archives of the notary acting in the initial procedure, and in the case of a repeated succession proceeding the regulation follows the rules of retrials in civil action as regulated in the Code of Civil Procedure.<sup>77</sup>

It can also be stated that in case multiple reasons of jurisdiction exist at the same time in a succession proceedings, the law does not give freedom of choice to the parties interested in succession to select a notary. In such cases the town clerk of the local government or the Chamber of Civil law Notaries is entitled to appoint the acting notary.

In an international outlook it can be seen that in Romania the lawmakers decided on such a regulatory model which allows the heirs to choose which notary grants the estate with certain limitations. Limitations mean geographical – and hence jurisdiction – limits, since it is allowed to select only from notaries acting in the municipality of the last domicile of the deceased.

In France and the Benelux countries the heirs also have the right to choose a notary, which may be justified by the absence of a succession procedure.

In Russia there is also free choice of notary, only the principle of priority prevails, which means that if the heirs have already initiated a proceeding involving the deceased, with such a proceeding being marked with a “bar code” so that no other notary may act in the same case of the deceased.<sup>78</sup>

<sup>75</sup> According to the effective Hungarian regulation under section 4(1) of the Act on Succession Proceedings, the notary has jurisdiction to conduct the succession proceedings is to be conducted by the notary having territorial jurisdiction according to a) the last domicile in Hungary of the deceased; b) in the absence of a place under point a), the last place of residence in Hungary of the deceased; c) in the absence of a place under points a) and b), the place of death of the deceased in Hungary; d) in the absence of a place specified in points a) to c), the location of the estate; e) in the absence of a place specified in points a) to d), the designation made by the Hungarian Chamber of Civil Law Notaries upon the request submitted to it by a party interested in succession.

<sup>76</sup> Section 4(5) of Succession Proceedings Law.

<sup>77</sup> Section 397(1) of Code of Civil Procedure.

<sup>78</sup> Kádár, Györgyi: Történelmi találkozás az orosz közjegyzőkkel. I. Szentpétervár. *Notarius Hungaricus*, 2016/6, 45.

### 3. Conclusion

As a conclusion we might say that the system of principles of Hungarian notaries has implemented the fundamental principles of the UINL. Independence, impartiality, the system of fixed fees and public authenticity are principles which prevail in the Hungarian notarial model. It may be noted that the contents of certain principles pertaining to Hungarian notaries derive from German law in numerous cases.<sup>79</sup>

However, it must be stated that these principles do not only have theoretical but also practical significance. In certain proceedings they may serve as a ground for reference, guidelines or stopgaps if the law does not set out specific provisions in the matter.

As for the future of notaries, we think that the principles established by the UINL will prevail in the 21<sup>st</sup> century as well, however, they are going to be completed with the principles required by the digital era.

The establishment of principles is not autotelic as they may be of assistance in specific cases. I think certain principles will always be necessary, especially when notaries have to face challenges like the digital estate or the electronic last will.

However, it is still unclear as to what these principles are going to be in the next decade.

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<sup>79</sup> „In der Amtsausübung ist der Notar unparteiischer und unabhängiger Betreuer der Beteiligten.“ Weber, Klaus (ed.): *Creifelds Rechtswörterbuch*. Beck, München, 2017, 948.