



Unión Internacional del Notariado
Union Internationale du Notariat
International Union of Notaries



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29th International Congress of Notaries Jakarta, Indonesia – 27-30 November 2019

Theme I: Validity of the Notariat's Principles in the 21st Century

CONCLUSIONS

The principles of the notariat will remain relevant in the 21st century. These principles will continue to adapt to the changing needs of society. They will therefore remain the foundation for the future utility of the notariat. Notaries have frequently played a pioneering role in supporting and fostering new and innovative developments, for instance in the area of modern information technologies, thereby ensuring the future viability of their profession.

1) As holders of a public office, notaries perform public tasks assigned to them by the State. They form part of the judicial system and aid the administration of justice by means of comprehensive fact-finding, preliminary examination of the law and the drafting of appropriate contractual solutions, thus leading to the avoidance of litigation.

- a. Notaries are a public “one-stop-shop”. Their activity bundles numerous procedural steps and they identify the information necessary for a legal transaction. They thereby assist the parties, for instance in the case of real estate transactions or company formations, by undertaking the necessary procedural steps and concluding the transaction on the citizens’ behalf almost in its entirety.
- b. By carrying out a comprehensive and conclusive check of the legality of the documents submitted by them to public registers, such as the land or business registers, notaries as “judges administering preventive justice” perform a filtering function for the benefit of those registers.
- c. Through their enhanced evidentiary value and their immediate enforcement or enforceability, notarial instruments create legal certainty. Legal certainty is the basis for investment and therefore fosters economic growth.
- d. In the exercise of their professional duties, notaries play an important role in the fight against money laundering, terrorism financing and other economic crimes.
- e. In their role as public officers, notaries relieve the burden of the State when it comes to assessing and collecting taxes and duties.

The 29th International Congress of Notaries therefore recommends:

The following functions of the notaries should be further developed globally and introduced where they are lacking:

- **bundling of procedural steps,**
- **creation of the conditions for accurate and reliable registers endowed with public faith,**
- **relieving pressure on the courts through reduction of litigation and assisting other public authorities such as financial authorities and registers as well as law enforcement authorities,**
- **creation of legal certainty by means of the enhanced evidentiary value and enforceability of notarial instruments.**

2) The quality of notarial services as well as the ambit of notarial activities are ensured through legal provisions governing access to the profession, the exercise of the profession and the authentication procedure.

- a. Since notaries play an integral role in the preventive administration of justice – including through the exercise of voluntary jurisdiction - and perform public functions, professional regulations must be a matter of public law.
- b. In order to exercise quasi-judicial functions, for example by acting as a filter for public registers and ensure legal certainty for parties, an authentication procedure regulated by law is required.
- c. In order to ensure
 - independence,
 - impartiality,
 - access to justice for citizens,
 - legal advice at the highest level and - a standardized procedure,the following preconditions need to be in place:
 - an appointment and selection procedure satisfying public law provisions,
 - a State disciplinary supervision,
 - a legally standardised fee scheme,
 - a limitation of the number of notarial posts and
 - an authentication requirement.
- d. Notaries must be drafters of contracts and advisers: ascertaining the true will of the parties involved and actively drafting contracts as well as safeguarding the rights of consumers must be a standardized obligation for notaries.

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The 29th International Congress of Notaries therefore recommends:

The following matters must be regulated by public law:

- access to the profession
- the exercise of the notarial profession and
- the authentication procedure.

In order to ensure contractual autonomy, exploring the true will of the parties involved should be a key element of the authentication procedure.

3) Notaries face up to the challenges presented by new technologies.

- a. The implementation and use of new technologies serve the
 - improvement
 - consolidation and
 - further development
of legal services provided by notaries.
- b. Notaries are open to new technologies. In this context, the highest security standards must be met.
- c. Notarial chambers must play a pioneering role and initiate, promote and, if possible, implement by themselves innovative projects such as centralized archives of authentic instruments or registers.

The 29th International Congress of Notaries therefore recommends:

Notaries should be open to modern information technologies. They should use the advantages that these technologies offer for the better provision of legal services. This should always be done in full compliance with the highest security standards.

4) Globalisation leads to more frequent points of contact with other legal systems and international organisations oriented towards common law.

- a. On account of the considerable differences in substantive law, the integration of elements of common law can lead to inconsistencies and frictions in the civil law in States where these elements are introduced.
- b. In the common law there are no provisions on the protection of consumer rights comparable to the civil law when contracts are formed. Consumers depend therefore on remedies in damages and tort law. Such claims must be enforced before the courts. The risk is borne by the parties.
- c. In continental European law and under the procedure of preventive administration of justice, parties are protected *a priori*. Loss is eliminated thanks

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to contractual solutions drafted in accordance with the law and guaranteed by the notary.

- d. In common law jurisdictions, registers (land and commercial registers) provide information without any guarantee of accuracy. No one is liable in the event of wrongful registration, since anyone may submit applications for registration. In countries where the continental European legal tradition prevails, notaries ensure – if they have been entrusted with this competency – the correctness of public registers, thus enabling universal reliance.
- e. National legislation should allow notaries to draw up deeds not only in the national language but in any language in which they are proficient.

The 29th International Congress of Notaries therefore recommends:

Notaries and notarial chambers should familiarise international organisations with the Latin notarial system and the importance of preventive administration of justice. In this context, it should be emphasised that

- **mixed systems in substantive law should be avoided owing to the inconsistencies and frictions which necessarily arise, and**
- **in order to create and maintain reliable public registers, the preparation of instruments giving rise to register entries should be exclusively handled by notaries.**

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