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The Judiciary's point of view on the redistribution of competences between judges  
and notaries  
in business and economy matters

Dear Mr. President,  
Dear Mrs. President,  
Dear notaries,  
Dear Ladies and Gentleman,

It is a great honor and pleasure for me to address this distinguished congress of notaries.

In the country where I come from, the notary public was formed within the then Habsburg Monarchy in 1848. We knew such a role of the notary as a person of public trust with certain public powers in the territory of the present Republic of Slovenia until the end of the First World War. After the First World War, the work of notaries continued with minor changes in the Kingdom of Yugoslavia. After the Second World War, however, this tradition was interrupted, the notary public was abolished, and its tasks were transferred either to the courts, to lawyers, or to administrative bodies. The notary public was re-established in the Republic of Slovenia in 1995 as part of a major judicial reform, after the Republic of Slovenia became an independent and sovereign state in 1991. In light of such experience, I present my thoughts on the transfer of certain powers from the courts to notaries, especially in the context of the business and economy matters.

Notaries contribute greatly to better legal security through their work in drafting a wide variety of contracts and agreements. Within the framework of the contracts they draw up, they also warn the parties (natural or legal persons, companies) of the legal consequences of the concluded contracts and of possible disputes that may arise from this. If it is completely self-evident that when someone's car breaks down, they will take it to a mechanic for repairs, such self-evidentness is unfortunately not the case when it comes to resolving legal issues, including drafting contracts. It is believed that we are all capable of concluding contracts on our own, even as entrepreneurs.

Notaries have numerous powers in the field of commercial law. The first is certainly that economic entities can also conclude contracts in the form of a notarial deed/protocol in which they usually also stipulate that it is directly enforceable. This saves them a lot of time and avoids lengthy and expensive legal proceedings, with the outcome of the lawsuit being uncertain. However, if they have a directly enforceable notarial deed/protocol, they can immediately propose enforcement on this basis, which significantly contributes to the speed of enforcing their claims. On the other hand, such a regulation means a significant relief for the judicial system, since lawsuits to the court do not occur in this way at all.

Their role in the field of corporate law is important, namely, the notary must be present at the general meetings of joint-stock companies, where the minutes are written. In this way, as a neutral person of public trust, he/she is of essential assistance and greatly facilitates the evidence in the event of a dispute, because in this way the court believes what is written in the minutes and these facts do not have to be separately investigated by questioning the participants of this general meeting. The minutes drawn up by a notary are a public document for which what is written in it is considered to be accurate, but it is also permissible to prove the opposite. The presence of a notary at general meetings is also provided for in the case of limited liability companies, as well as other

legal entities, but it is not mandatory there. Notaries play an important role in the procedures for protesting bills of exchange and checks, they are also authorized representatives of legal entities and submit proposals for changes to entries in the Company and the Land Register.

If the founders of a business partnership are spouses, a special form is required to draw up the partnership agreement, namely a notarial deed. Notaries are responsible for the safekeeping/deposit of documents, wills, money and securities and certify the signatures of the parties on documents.

Entrepreneurs operate in the market with the aim of generating income and profit, which is why they often tread on the edge of legality. For their profitable activity, they need a stable business environment with a stimulating tax policy and also a legal environment that is as predictable as possible, i.e. stable legislation and standard court practice.

Every investor who wants to establish a company abroad or invest in the development of a new product wants to know what his/her obligations are as the owner of a company abroad, e.g. paying taxes and also how long it will take to get his/her investment back if he/she no longer wants to participate as the owner of the company or the investment he/she will make in the development of a product is no longer interested in this particular deal, how long the litigation process in court will last, how long the forced enforcement process will last if the debtor does not want to enforce the judgment and of course how much the costs will be incurred. Therefore, it is very important to get the right information and to conclude contracts in such a way that the procedure for returning the invested funds is as fast as possible and carried out with as little cost as possible. Of course, it is very important that registers and records such as the Land Register, Company Register, Register of Pledges, Register of Wills, Register of Securities and others are kept accurately, consistently and promptly.

Notaries contribute significantly to the investor's better legal security, as only with a properly concluded contract can the investor significantly gain time and therefore have lower costs if the transaction does not take place. The role of a notary in real estate transactions, including between economic entities, is also very important in commercial matters, as in the case of real estate transactions, they often represent just another legal form for a natural person who transfers ownership or other rights to real estate.

In general, accuracy, data verification, and the possibility of an authorization relationship can greatly contribute to the protection of legal entities in various legal proceedings.

Despite all this, notaries perform their work as private individuals. They do not receive payment from the state, but rather earn their income on the market, although a notary fee applies to notarial services.

Despite the fact that a notary must perform his work honestly, conscientiously and in accordance with the regulations and is liable to the client for damage caused by a breach of his duties and powers, the notary's impartiality will never reach the same extent as that of a judge. Therefore, there is still a certain reservation that a notary will truly act completely impartially and not perhaps in the interest of the person (legal or natural) who will pay for the service. In addition, the services provided by a notary (and previously by the court) are usually many times more expensive than when they were still provided by the court. This was clearly evident during the last change in jurisdiction in the Republic of Slovenia, when notaries were given the authority to decide on divorces of spouses on the basis of an agreement, who do not have minor children together in 2019.

Since notaries perform their public service as a liberal - private profession, it is understandable that they want as much jurisdiction as possible and thus transfer as many cases as possible from the

courts to notaries, because this would mean higher earnings for them, which is a completely legitimate goal, but is not necessarily always in the interest of the users of notary services.

In their desire to earn more, unlike in the courts, they do not pay enough attention to their jurisdiction (cross-border cases), which is built into judges as the first test of every case.

It is important that legal tasks are performed professionally and with high quality, and it is not possible to claim in advance that notaries will perform matters that may still be handled by courts in some places faster, better and less expensive.

What is important from the perspective of natural and legal persons (companies and private individuals) is primarily that they have a predictable environment in which to carry out their economic activity and that in the event of non-performance of the transaction or non-payment for the work performed, they receive their investment (monetary or in kind) back as quickly as possible and with the least possible cost. On the other hand, accessibility (the same as accessibility to the court) to a notary who performs his/her public service and powers is also important, and that the operations of notary are professional and impartial.

In general, all non-contentious matters, which may still be resolved in courts in some countries, could be resolved by notaries, but the specifics of each country the tradition and its legal system must be taken into account, and general recommendation to transfer all non-contentious matters to notaries cannot be professionally defended.

Regardless of the expectations of notaries as executors of public powers and at the same time a liberal profession, the obligations of states to transfer jurisdiction in all non-contentious areas of procedures to notaries, and, on the other hand, concerns on the part of the courts, the task of both notaries and judges, is to organise joint trainings and conferences where we will openly discuss interesting legal issues, to strive, through our professional associations and organisations nationally and internationally to prepare quality legislative proposals that will, on the one hand, mean a safe and predictable environment for both individuals and the economy, and that we carry out our mission in a highly professional, highly ethical and impartial manner.

Thank you for your attention.