NOTARYAL DEED: HISTORY OF MOLDOVAN LEGISLATIVE UNCERTAINTY

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Abstract: *This paperwork aims to investigate the notarial deed, especially its legal nature, and the development of the legal expression "notarial deed" in the legislation of the Republic of Moldova. Although the authentic form is used to ensure the civil circuit, the permanent changes in the legislation in the field of notarial procedure do not correspond to this objective, thus violating the principle of security of legal relations, and the attempts to improve it do not cease. On March 31st, 2022 the Parliament of the Republic of Moldova adopted amendments to the Law no. 246/2018 in the second reading. Thus, inter alia, for the fourth time, the essence and content of the "notarial deed" has undergone adjustments. In the content of this research, you will find all the approaches of the notarial deed that have been used in the legislation of the Republic of Moldova, both in terms of history and in terms of comparative aspects with the legislation of other states. As a result of this research, you will inevitably come to the conclusion that the last edition adopted by the legislative authority may lead to the finding of the nullity of several notarial deeds to be prepared, on purely formal grounds, which are due to the imperfection of the proposed edition. Experiments at the law level without a thorough analysis in the field create premises for a new Regulation, which must solve the problems created and remove the negative effects of the previous edition. Finally, the author proposes a new legal framework, which can achieve this objective and would provide clarity either for the state and the exponent of its power – the notary, or for the persons, who turn to the notary to obtain qualified notary assistance. The proposed edition is based on the level of the legal culture currently existing in civil society and at the same time ensures a clarity of the legal terminology used in the field of notarial procedure.*
Keywords: *notarial deed, notarial activity, notarial form, endorsement, notarial certificate, notarial document, legal act*

The legislation in force of the Republic of Moldova does not contain a lucid definition of the expression "notarial act". A historical look at the period of independence indicates that this "vice" of national legislation has already become a tradition. In this respect, although the notary Act of 1997 (reference 1) ses that expression, it does not provide a clear definition, which would describe the content of the notarial deed. Only in Article 2 paragraph (3) of this law [1] are elucidated some of its legal effects. The next law, which replaced the Law regarding notaries from 1997, was the Law regarding notaries from 2002 (reference 2). This legislative act also used the expression examined in the absence of a clear definition. At the same time, in Article 3 paragraph (2) of this law we find a wider list of the legal effects of the notarial deed. Even though the Law regarding notaries from 2002 was largely repealed, the Law on Notarial Procedure (reference 3) instead of clearly enjoying it, has brought more uncertainty, given that besides the notion of "notarial deed" it also introduced into circulation the expression "notarial action". Of course, in Article 5 paragraph (8) of this law [2] is preserved the tradition of explaining the meaning of the "notarial deed" by the legal effects it produces, but a definition is long awaited and did not appear so far.

The implementation of the Law on notarial procedure has generated a multitude of

interpretations, which resulted in a diversified notarial practice. Probably in order to unify the notarial practice, the Law on notarial procedure was amended and supplemented by Law no. 78/2022 (reference 4). However, in the opinion of the author, this amendment can create even more serious problems than the previous edition. It would be incorrect to say that the Moldovan legislator is the only one who has omitted the introduction of the notion of "notarial deed" in the legislative framework. In Romania, the Law of public notaries and notarial activity, no. 36/1995 (reference 5) also does not contain the necessary definition, and Article 7 of this legislative act [3] provides for its legal effects, similar to the legal framework in the Republic of Moldova. A more detailed study of the legislation of other States in this field is presented in Mr. Schin George Cristian's PhD thesis (Schin, 2021).

We will start to identify the definition with the fundamental principles of the Latin notary system (Adopted by the Bureau of the Commission for International notarial Cooperation on 18 January 1986 and by the Permanent Council of the Hague on 13, 14 and 15 March 1986). It should be noted that, implicitly, by the Constitutional Court of the Republic of Moldova Decision no. 23/2001 (reference 7) these principles were recognized as sources of law in the Republic of Moldova. According to Article 5 of these principles, *notarial documents are those that the notary draws up, authenticates and keeps in his archive, ranking them in chronological order*.

REGULATION (EC) No 805/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 April 2004 creating a European Enforcement Order for uncontested claims (reference 8) it gives the definition of "authentic instrument", which means: *(a) a document which has been formally drawn up or registered as an authentic instrument, and the authenticity of which: (i) relates to the signature and the content of the instrument; and (ii) has been established by a public authority or other authority empowered for that purpose by the Member State in which it originates; or (b) an arrangement relating to maintenance obligations concluded with administrative authorities or authenticated by them*.

Legal literature contains multiple definitions of notarial deed. Without claiming to have a detailed study of these [4], we will report some definitions, which we do not find in the nominated study. In his PhD thesis, Mr. Schin George Cristian proposes the following definitions of the notarial deed: *Lato sensu*, the notarial deed is a species of the civil legal act, which manifests itself as an authentic act, drawn up by the notary or other authority empowered with notarial attributions, reflects a legal fact, implies legal consequences and has a special probative power. *Stricto sensu*, we define the notarial act as the decision issued by the public notary or other persons authorized by law with notarial attributions, drafted according to special procedures, composed of stages, whose sequence is based on the provisions of the law, oriented toward the appearance, modification or termination of the subjective rights and obligations of the person (Schin, 2021, p. 97).

Russian authors Volodin A. and Garin I. propose the following definition of the notarial deed: The notarial deed is a document containing the necessary requisites, drawn up by the notary on paper or in electronic form in the process of conducting the notarial procedure in the cases provided by federal law (Volodin, Garin, 2011, p. 50). According to other Russian authors, Maghizov R. and Minsabirova T., the notarial deed represents the result of the notarial activity, which has an objective form of expression, corresponds to the requirements of the legislation of the Russian Federation, the international norms recognized in the Russian Federation and the international treaties to which the Russian

Federation is a part, notarial traditions, it is drawn up by a special subject - a notary who has a special legal status; it is a legal fact that authenticates the rights, an enforceable title, a document, a proof, including confirmation of the existence of the established circumstance, which does not need to be proven, which is presumed to be true (Maghizov, Minsabirova, 2019, p. 43).

At the same time, no attempt to distinguish between the notarial deed and the notarial document has been identified in the legal literature, considering them as synonyms. Unlike the notarial act, the notarial action enjoys greater attention. Thus, the notarial action obtained a legal definition in Article 5 paragraph (9) of the Law on notarial procedure (reference 3) [5]. In his PhD thesis, Mr. Schin George Cristian provides the following definition: The notarial action is a public service intended to ensure the protection of the legal rights and interests of the subject of law, and consists of a system of acts, committed by the person carrying out the notarial activity, under the conditions of the legislation in force, as a result of which a document (or fact) is assigned special legal force. (Schin, 2021, p. 78). At the same time, we note that Russian authors Volodin A. and Garin I. propose the following definition: Notarial action means a public legal-state act, which is defined by law as a "notarial action", performed in accordance with the special procedure, regulated by law, on behalf of the Russian Federation by a notary or the person in charge, in the field of non-litigious jurisdiction, with the application of the rules of the corresponding branch of law (Volodin, Garin, 2011, p. 23).

Of course, the public-private nature of notarial activity is unanimously recognized in the legal doctrine. At the same time, notarial deeds, according to its legal nature, are acts of application of the law, on the one hand, as well as acts of guarantee of the right, on the other hand. The guarantee of the right is manifested by the fact that the basic role of the notary is to avoid the occurrence of the dispute (it is part of the non-litigious procedure), so that the notarial deed guarantees the rights and legitimate interests of the persons who are involved with this notarial deed.

The public-private character constituted premises for the different approach of the legal nature of the notarial deed. In the legal literature we observe several directions: a) the notarial deed has the legal nature of administrative law; b) the notarial deed is a civil legal act (of private law); c) the notarial deed has a mixed legal nature (of public-private law); and d) the notarial deed is *sui-generis*. However, an attempt was made to categorize different types of notarial deeds, by their legal nature, in order to be in line with all these theories [6]. In this context, we can see the non-consistency of the position of Mr Schin George Cristian who, on the one hand, defines the notarial deed as a species of a civil legal act and, on the other hand, recognizes the mixed legal nature (public-private law) of the notarial deed (Schin, 2021, p. 97).

The lack of clarity at theory and legislative level resulted not only in a different notarial practice, but also in a different judicial practice. Thus, the problem arose in the correct legal qualification of the judicial procedure for contesting the conclusion of the notary of refusal in the drafting of the notarial deed and in the fulfillment of the notarial action: some judges applying the provisions of the Administrative Code of the Republic of Moldova (reference 12) (reference 13), and other judges applying the provisions of the Code of Civil procedure of the Republic of Moldova (reference 14). We hope that this uncertainty has been partially solved by Law no. 78/2022, as Article 63 paragraph (2) of the Law on the organization of the activity of notaries, no. 69/2016 has been amended

(reference 15) [7]. However, the procedure for contesting other acts and actions of the notary which, according to paragraph (1) of the same Article, are to be examined in the ordinary courts according to the competence established by law. Even the conclusion of the refusal issued by the notary is itself a notarial action.

It should be pointed out that, in addition to the conclusion of the refusal, the notary also issues the conclusion of other notarial actions (e.g., the conclusion of the postponement, the conclusion of the suspension, the conclusion of the rectification, the conclusion of the reconstruction of the notarial deed, the conclusion of the rejection of the application for dissolution of marriage, the conclusion regarding the ordering of the expertise), as well as in a notarial procedure (e.g., conclusion of dissolution of marriageby agreement of the spouses, conclusion of the investment with executory formula, conclusion of appointment of the custodian of the estate). This raises questions about the legal nature of the notarial deed. Even if contesting of the notarial deed is not a determining criterion in determining the legal nature of the notarial deed, however, it remains unsubstantiated that contesting a notarial deed with an element of extraneity is to be carried out in accordance with the special procedure (reference 16, art. 461 alin. (2), lit. g)). Some people may consider it discrimination. The author considers that the *status quo* of the procedure for contesting the notarial deed is to be restored, and the cases will be examined in the order of the special procedure. The argument is a very simple one - the notary authenticates the rights and certifies the legal facts. Regardless of the notary's competence, the result of its realization is the finding or refusal to establish a certain legal fact or a certain right. The actions of the notary are always impartial and independent, without any interest on the part of the notary (although, in the literature, especially the criminal one, the interest of the notary to obtain the fee for the notary's assistance is sufficient in order to be held criminally liable), for this reason, and the justification of this interest before the court in the procedure for contesting the notarial deed or the refusal to draw up the notarial act has no legal support. Special attention is also needed to the issue of the prosecution of evidence by the court. Thus, in examining the contestation of a notarial deed or a notarial refusal, the court is not limited to the statements made before the notary and the evidence presented to the notary, in particular their form, but allows the applicant to present other evidence, including witness hearings, expert conclusions, etc. Sometimes, the court annuls the conclusion of the notary's refusal by motivating its own judgment on the basis of these additional evidence and not only those previously offered by the notary. The author supports the purpose of the law to defend the legitimate interests of persons by judicial means, but the administrative litigation procedure also has an unpleasant result for the notary - the payment of the damage caused by a canceled refusal. Therefore, although the actions of the notary were and are absolutely legal and well founded, and the annulment of the refusal due to other evidence that the notary did not handle, the court remains to be obliged to charge the notary with the costs of the trial and, where appropriate, the compensation of the property damage caused, and sometimes the moral one, which does not correspond to the principle of equity.

It is indisputable that a notarial deed is a legal act. The classical classification of legal acts distinguishes between private legal acts (where the consent of the exposed person is free) and public legal acts (where the exposed person is bound to a certain consent). Thus, the private legal act is a civil legal act, and in the category of public legal acts can be reported: Acts of the judicial power, acts of the executive power (administrative acts), etc.

By the way, scientists who consider the notarial deed of *sui-generis*, as a rule, report the notarial deed specifically to the category of public legal acts. Analyzing the notarial action in terms of the existence of free consent, we note that the notary does not have this freedom, being obliged by the competence assigned by the law to draw up the notarial deed, arguing any contrary decision in concluding the refusal.

At the same time, one of the basic principles governing the notarial procedure is the non-litigious nature of the notarial procedure. (reference 3, art. 2 letter f)). This principle emphasizes that, *inter alia*, the role of the notary consists in attributing a legal force of public authority to private or public acts, but only in the situation where the realization of this competence does not lead to the occurrence of a dispute or is not contrary to the will of the persons required by law. The scope of intervention of notarial activity exceeds the limits of the Regulation of private law. It is incorrect to qualify the procedure for legalizing a copy or legalizing a signature as procedures governed solely by private law. A notarial deed can also produce legal effects in other branches of law: Constitutional law (when the signature is legalized on the citizens' acquisition request, etc.), administrative law (when the signature is legalized on the agreement when the local council decision on the assignment of land in private property is annulled), etc.

Of course, the classification of legal facts is not found in the legal space. Discussions on this subject do not cease, origins have still been identified in Roman private law. The permanent development of society creates premises for adjusting these classifications based on the current situation. In this connection, the opinion of highlighting corporate acts in separate legal acts is recently supported (or, the civil legal act requires the consent of the exposed person, and in the case of corporate legal acts the unanimous will is not claimed in all cases, but the will of the simple or qualified majority is sufficient, which indicates that some shareholders, shareholders, etc. may be against this act, but the act will produce legal effects). It will be attemped to argue that even the classification offered to legal acts will be broadened, and a third group will be created (besides private legal acts (civil and corporate) and public ones), which will include the notarial deed. *Prima facie*, the notary's will/decision to perform the notarial action is required. However, this opinion, although largely argued, is not entirely true. However, even if it has a different position than that stated by the applicant for notary assistance and does not wish to draw up the notarial deed (for moral reasons or assuming that it is an abuse of right or simulation), but it has no basis for refusal – the notarial deed is to be drawn up. In other words, there may be notarial deeds drawn up by the notary, but without the notary's desire, although in all cases the will of the state, the exponent of which is the notary and not the will of the notary individually shall be respected. At the same time, the will of the applicant is not necessary in all cases. Naturally, for the authentication procedure, the will of the contracting parties or other persons provided for by law is required (e.g., in the case of the disposal of a mortgaged immovable property by the mortgage lender in the exercise of the mortgage right, the owner - the mortgage debtor, as a rule, is against this contract, for which reason the legislator does not even claim this consent), and in the case of other notarial procedures (certification of facts in cases provided by law, etc.), consent does not even constitute a condition for the fulfillment of the requested notarial action. As a result, we observe the specificity of the notarial deed by the fact that in order to have a legal force of public authority, the will of both the applicant for notary assistance and the state is required, while in the case of private legal acts - the will of a private person is sufficient, which does not require confirmation

from a public authority, as well as in the case of public legal acts - there is enough will of a public authority, which is not dependent on the will of the private person it is aimed at.

The complex nature of the notarial deed, which contains elements of public law and sometimes elements of private law, has created difficulties in regulating the notarial procedure. From the start, we notice that the Law on notarial procedure does not have at its foundation a clear, well-determined concept, which would distinguish between: Notarial activity, notarial procedure, notarial process, notarial deed and notarial action. The identification of all these notions exceeds the purpose pursued by the author, therefore we will stop at only some important aspects for the legal qualification of the notarial deed. According to Article 4 of the nominated law (reference 3), the notarial activity is composed of: a) the preparation of notarial deeds; b) the fulfillment of notarial actions; c) the fulfillment of notarial procedures; and d) offering notarial consultations. These forms of notarial activity may be supplemented by e) preparation of legal consultations in notarial matters as specialists (Art. 11 paragraph (2) of the examined law (reference 3)), although this form may constitute a variety of the general form of offering notarial consultations.

Although the forms of notarial activity are easily separated from the targeted norm, art. 11 paragraph (1) of the Law on notarial procedure, although it contains reference to notarial deeds and actions, in fact it also contains notarial procedures. The author supports the position of scholars, who consider the notarial procedure by its content to be a broader one than a notarial action. In other words, the notarial action is only part of the notarial procedure (see, for example, Volodin, Garin, 2011, p. 45-46). It should be noted that, according to the opinion of these scholars, the notarial deed drawn up is the result of the notary action carried out! In other words, in a notarial procedure the notary performs various notarial actions. These actions may result in a notarial deed drawn up or may result in a refusal conclusion in the preparation of a notarial deed. Moreover, a notarial procedure may contain several actions and notarial deeds. For example, in the framework of the procedure for organizing and conducting tenders (reference 3, art. 39) various notarial deeds can be drawn up: drawing up the tender minutes, issuing certificates on ascertaining the procedural stage of the auction and its results, authentication of the sale-purchase contract, etc.; in the procedure of dissolution of the marriage by agreement of the spouses (reference 3, art.art. 41-42) in the same way, various notarial deeds can be drawn up: legalization of the copy of the marriage certificate, authentication of the application for dissolution of the marriage of the spouses, issuance of the extension of the deadline for withdrawal of the application for dissolution of the marriage of the spouses, issuance of the conclusion of dissolution of the marriage of the spouses, as the case may be, authentication of the agreement on the payment of maintenance and the establishment of the residence of minor children, as the case may be, authentication of the contract for the division of property shared by the spouses, etc.

Beyond the criticisms related to the legislative technique [8], at first sight we notice the confusion of the legal terms. Thus, in Article 5 paragraph (3) of the examined Law, it is stipulated that *the notarial deed is drawn up in the form of authentication, legalization and certification.* From this norm we deduce, for example, that authentication is a form of elaboration of the notarial deed. However, in art. 31 paragraph (4) of the given law, the expression *"... in the process of authentication of the legal act ..."* is used, and in paragraph 5 of the same article it is already stipulated that *"In the procedure of authentication of contracts ..."*. The same confirmation of the existence of an authentication procedure is

found in Article 45 paragraph (5) of this Law: *"...the authentication procedure"*. From all this it is clear that authentication is one of the varieties of notarial procedure and not of notarial deeds, even if Article 5 paragraph (3) of the Law on notarial procedure reports otherwise. In this context we could also report that there are notarial deeds that are performed in other procedures, than those of authentication, legalization and certification. For example, the protest acts of the bill of exchange, the protest acts of the checks, the protest act of the sea, the deed of revocation with the executory formula, etc.

Even if in the legislation of several States the correlation between the notarial deed and the notarial action corresponds to the one supported by the author [9], the definition of notarial action used in the Law on notarial procedure does not allow us to confirm this fact. According to Article 5 paragraph (9) of the Law in question, the notarial action is necessary for the preparation and execution of a notarial deed or for the fulfillment of a notarial procedure, and according to the content, the notarial action represents a whole (and not a single act or a particular act) acts and acts issued by the notary. The wording is very ambiguous and unsuccessful, which we observe at the same time with the application of this rule. For example, in the procedure of dissolution of the marriage by agreement of the spouses, the notary draws up several notarial deeds. However, if it is necessary to apply the provisions of the quoted norm, it follows that these notarial deeds are suddenly transformed into notarial actions? The second sentence of this paragraph relates that *the provisions of this Law on the notarial deed are also applicable to notarial actions, insofar as the law does not provide otherwise*. At first glance, this statement tries to give us an affirmative answer to this question, although rather it tries to support another concept of differentiation of the notarial deed and the notarial action - based on the object: the notarial deed is the subject of the authentication procedure (it is an authentic instrument or, in other words, in authentic form), and the notarial deed is the subject of other notarial procedures.

The attempt to find a solution by interpreting in the system the provisions of the Law on notarial procedure has failed, because the law in question does not relate the specifics of the notarial action in a notarial procedure or a notarial deed, the given expression being used only in general formulations (it can be refused, postponed, suspended, etc.).

Following the purpose of positive interpretation, we consider that within the legislation of the Republic of Moldova the notion of notarial action is to be seen in the dynamic sense of notarial activity, while the notarial deed must be examined in the static sense of notarial activity, fixing the results of notarial actions, as a positive result (which satisfies the requirement of the applicant for notarial assistance) of the actions of the notary.

Continuing the examination of the notarial deed as a document, we note that it can be drawn up both on paper and in electronic form (as an electronic document). The recognition of the equal legal force of the notarial deed displayed in an electronic document and the paper one is beneficial and supports the use in notarial activity of information technology tools. At the same time, the form of the notarial deed may be different depending on the type of notarial deed: as a result of the authentication procedure, the notarial deed takes the form of an endorsement (also called the notarial endorsement, the notarial deed endorsement, the authentication endorsement, etc.); as a result of the succession proceeding, of certifying the facts provided by law, of receiving in the deposit of financial means, documents and financial instruments, of receiving the documents in storage and in other cases provided by law, the notary certificate is issued; as a result of the protest of the bills of exchange, the act of protest of the bills of exchange is drawn up

according to the model provided by the special legislation. Naturally, these forms of the notarial deed provided by Art. 5 and Art. 24 of the Law on notarial procedure do not constitute an exhaustive list, being supplemented by the special rules of this law (e.g., it can be set out in the form of a conclusion or minutes). So, we notice that the notarial endorsement, the notarial certificate, etc. represent different forms in which the notarial deed is exposed. However, even in Article 5 paragraph (6) of the Law under consideration [10] we identify a mismatch: if the endorsement is a form of the notarial deed, then why does the legislator use the conjunction "and" between the notarial deed and the endorsement? The grammatical interpretation leads us to the conclusion that the notarial deed and the endorsement are notions with proper meanings between them.

Studying the Law on notarial procedure, we also observe provisions from which it follows that notarial endorsement is a component part of the notarial deed. Thus, the duplicate notarial deed reproduces the content, including the notarial endorsement (reference 3, art. 26 paragraph (2)), corrections and additions to be specified in the text of the notarial deed and at the end of the authentication endorsement (reference 3, art. 28 paragraph (3)). Probably, in order to be in agreement with these provisions, by Law no. 78/2022 (reference 4), art. 5 paragraph (4) from the Law on notarial procedure was exposed in another editorial: *The notarial deed, besides the text that sets out the content of the legal act, includes the notarial endorsement, without which the notarial deed is null.*

This provision can be criticized from a simple fact that, as we established below, the notarial deed is a document drawn up as a result of any notarial procedure, both authentication and certification, legalization, etc. As a result, the form of the notarial deed constitutes not only the notarial endorsement, but also the notarial certificate, the protest act, the conclusion, etc. Following these assumptions, we note that the notarial deed may not contain the notarial endorsement. This conclusion also follows from the provisions of the order of the Minister of Justice of the Republic of Moldova no. 59/2019 (reference 17), which in the approved models of the notarial certificate does not contain the notarial endorsement, from the provisions of the order of the Minister of Justice of the Republic of Moldova no. 126/2019 (reference 18), which in the approved model of the ithe conclusion of the investment with executory formula does not contain the notarial endorsement, as well as in other normative acts.

Earlier, the primary edition was criticized, because not every notarial deed contains the presentation of the content of the legal act, but only the one drawn up in the authentication procedure.

The legal norm in question nullifies any notarial deed, which does not include the notarial endorsement. The positive interpretation of these amendments draws the conclusion that, implicitly, the Moldovan legislator changed the concept of the notarial deed and the notarial action, so that the notarial deed obtained the meaning of the result only of the authentication procedure, because only within the notarial authentication procedure the drafted document contains the exposure of a legal act, which is confirmed by the application of a notarial endorsement, applied by the notary. In other procedures, the notarial deed does not contain the exposure of a legal act (with some exceptions, but these exceptions do not constitute the rule that emphasizes this type of notarial procedure), as well as does not always result in the application of the notarial endorsement (even if the notarial endorsement will not be the authentication one, legalization or certification).

Of course, this approach does not explain the existing inconsistencies and elucidated

infra, but it removes from the nullity the notarial deeds, which do not comply with the provisions of Article 5 paragraph (4) of the Law on notarial procedure in the current edition, in the hope that in a short period the normative framework will be adjusted accordingly, possibly, and taking into account the draft that will be proposed next. Another solution - the interpretation of denying the existence of this legal rule (because it does not correspond to the content of the whole law) seems too harsh and does not correspond to the will of the legislator.

In the notarial procedure, the notary carries out actions of different legal nature and importance. Some actions are part of the notarial procedure, being necessary for the preparation of a notarial deed (e.g., verification of the applicant's exercise capacity, establishing the applicant's identity, registration in the notarial register), the second group of actions is also part of the notarial procedure, but is auxiliary (e.g., requesting information from other persons, extracting data from public registers and other sources), the fulfillment of which supports the final purpose of drafting the notarial deed, as well as the third group of actions, although it is part of the notarial procedure, but exceeds the intended purpose (e.g., presentation of information about the notarial deed performed to other public authorities, archiving of notarial documents, etc.). For the purpose of delimitation of notarial actions resulting in different legal effect, there is a need to separate the notarial document and the notarial deed, underscoring that the notarial document is a broader notion, which includes any act drawn up by the notary, including the notarial deed. Thus, the notarial action results in the preparation of a notarial deed or is directed directly for this result, even if for various reasons it did not reach this result (the conclusion of refusal was issued), and the other factual actions are part of the respective notarial procedure, directly or indirectly, for the preparation of a notarial deed.

Regarding the content of a notarial deed or, in a broad sense, of a notarial document, it includes both the form of direct expression of the notarial deed (e.g., notarial endorsement) and another text, which is attached to the notarial deed, if any. Thus, the private will is united with the will of the state in a single document. We will specify that, traditionally in the Republic of Moldova the notarial endorsement is added to the private deed and not vice versa (as, for example, in the State of Israel) or is incorporated in the "notary's endorsement" (as, for example, in Spain). The eddition of law *ferenda* described below is not the final result of the author's research, but represents only a transition stage to a coherent legal framework in the field of the notary process.

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15) Law of the Republic of Moldova on the organization of the activity of notaries, no. 69 from 14.04.2016, published in the *Monitorul Oficial of the Republic of Moldova*. 2016, no. 277-287, art. 588.
16) Code of Civil Procedure of the Republic of Moldova, no. 225-XV of 30.05.2003, published in the *Monitorul Oficial of the Republic of Moldova*. 2018, no. 285-294, art. 436 (republished).
17) Order of the Minister of Justice of the Republic of Moldova on the approval of the models of notarial endorsements and notarial certificates, no. 59 of 27.02.2019, published in the *Monitorul Oficial of the Republic of Moldova*. 2019, no. 76-85, art. 410a.
18) Order of the Minister of Justice of the Republic of Moldova on the approval of the model of the investment conclusion with executory formula, no. 126 of 18.05.2019, published in the *Monitorul Oficial of the Republic of Moldova*. 2019, no. 185-191, art. 937.

The proposed edition for amending and supplementing the Law on notarial procedure

Article _. The notion of notarial procedure

(1) Notarial procedure is the activity of notaries with external effect, aimed at providing notarial consultations, examining the circumstances, preparing and drawing up the notarial deed or another notarial document, carried out in accordance with the provisions of this law and other laws.

(2) Providing notary assistance by drawing up a notarial deed or another notarial document, offering a notarial consultation are component parts of the notarial procedure.

(3) Depending on the notification of the applicant for notary assistance and the legal requirements, the notary may carry out the notarial procedure in the form of certification, legalization, authentication or otherwise regulated by this law or other laws.

(4) The notarial procedure is considered to have started from the moment of notification by the applicant for notary assistance or, only in the cases expressly provided by law, from the moment of the notary's self-notice.

(5) The notification of the notary assistance in the absence of a reservation made in writing by the applicant is also an expression of the applicant's consent to the processing of personal data and of those

necessary in the requested notary procedure. Consent shall also remain valid if notarial assistance has not been granted or has been refused.

Articolul _. Notarial activity

(1) Notarial activity represents the totality of notarial deed, de facto actions, as well as notarial actions performed by the notary as representative of the public power, on behalf of the Republic of Moldova, through which the law enforcement is organized and the law is directly applied.

(2) Notarial activity on the territory of the Republic of Moldova is carried out exclusively by notaries invested with powers of the Ministry of Justice.

(3) The Notarial Chamber develops and approves the quality standards of notary assistance.

Articolul _. Notarial document

(1) The notarial document is the document that records any action prior to the preparation of the notarial deed in order to establish, verify and ascertain the legal facts necessary for the provision of the notarial assistance, as well as the result of any notarial action that can be exposed in the form of: Notarial endorsement, notarial certificate, notary's conclusion, protest act, minutes etc.

(2) To the extent that it does not conflict with the nature of the notarial document and the special actions in its preparation, the legal rules governing the preparation of the notarial deed shall apply to any notarial document.

(3) The notarial document shall contain:

a) office of notary;

b) the date the notarial document was drawn up;

c) name of notary;

d) the place where the notarial document was drawn up, in the case of drawing up outside the office of the notary, specifying the circumstances justifying the drawing up of the document in that place;

e) a brief description of the actions taken by the notary to establish the facts required by law for this type of notarial procedure and their outcome, if they influenced the decision taken by the notary in this notarial procedure, as well as the result of these actions;

f) signature of notary;

g) notary's stamp.

(4) The notarial document may be drawn up in paper form or in electronic document form, having the same legal force.

(5) The facts ascertained by the notary and reflected in the notary document expressly are presumed to be established with certainty and must not be proved by the person in whose favor it is presumed.

(6) In case of drawing up the notarial documents on special forms of strict evidence, they are registered at the Notary Chamber. The form and content of the special forms on which the notarial documents are drawn up are approved by the Council of the Notarial Chamber.

(7) The Ministry of Justice elaborates and approves the requirements for the content of each type of notarial document, after consulting the Notarial Chamber.

(8) The Notarial Chamber develops and approves the models of the notarial documents, in accordance with the legal requirements and quality standards of the notarial assistance.

(9) The acts of protest of the bills of exchange shall be drawn up according to the model presented in Annexs no.3 and 4 to the bill of exchange Law no.1527/1993.

Articolul _. The notarial deed

(1) Notarial deed is the document, drawn up by the notary in full, drafted by the notary or presented by the applicant, which reflects the circumstances established by the notary in the course of the notary action fulfilled, guarantees the compliance of this document with the legal requirements and assigns to it a legal force equal to the acts of public authority.

(2) If the notarial document requires the signature of the applicant for notary assistance and, where applicable, of other participants in the notarial procedure, the document drawn up shall be accompanied by the notarial endorsement. In the given case, the notarial act also includes the direct text of the document, on which the notarial endorsement applies.

(3) If the notarial document does not require the signature of the applicant for notary assistance, the notarial act shall take the form of the notarial certificate or, in the cases provided by law, the conclusion of

the notary. Within the succession proceeding, certification of the facts provided by law, receipt in deposit of financial means, documents and financial instruments and in other cases provided by law, the respective certificate shall be issued.

(4) The notary draws up the minutes if the result of the notarial action is not clear at the beginning of the preparation of this notarial document. The notary draws up the minutes if the result of the notarial action is not clear at the beginning of the preparation of this notarial document.

(5) In addition to the content provided for any notarial document, the notarial certificate shall contain, as the case may be:

a) name or name of the holder;

b) the facts established by the notary, other mentions or findings resulting from the notarial procedure or which the notary considers necessary.

(6) The notarial deed, bearing the stamp and handwritten signature of the notary or the electronic signature of the notary, is of public authority, is legally presumed, truthful and has evidentiary force and, where applicable, enforceability provided by law.

Articolul _. Notarial action

(1) Notarial action is a fact or a system of facts undertaken by a notary, in accordance with the special procedure provided by law, aimed at establishing, verifying or ascertaining the facts and circumstances necessary for the preparation of the notarial document.

(2) The provisions of this Law on the notarial deed are also applicable to notarial actions, insofar as the law does not provide otherwise or does not correspond to the nature of the notarial action.

Articles 4, 5 and 24 are repealed.

NOTES:

[1] The deed performed by the notary, bearing his signature and seal, is of public authority and has the probative force provided by law.

[2] The notarial deed bearing the stamp and signature of the notary is of public authority, is presumed to be legal, truthful and has probative force and, as the case may be, executory force provided by law.

[3] The deed performed by the public notary, bearing its seal and signature, is of public authority and has the probative force and, as the case may be, the executory force provided by law.

[4] Such a study can be found in Mr. Schin George Cristian's PhD thesis (Schin, 2021, p. 57-62).

[5] The notarial action is a set of acts undertaken and acts issued by the notary, aimed at establishing the facts and circumstances necessary for the preparation and execution of the notarial deed or the fulfillment of the notarial procedure. The provisions of this law on the notarial act are also applicable to notarial actions, insofar as the law does not provide otherwise.

[6] See PhD thesis (Schin, 2021, p. 79-90).

[7] The new edition: *The notary's refusal to perform the notarial deed or action can be challenged according to the Administrative Code.*

[8] The Law on the notarial procedure has as object not only the notarial procedure, but also the notarial activity, which is a broader notion, as well as notarial deeds and actions, which are examined separately by the notarial procedure. At the same time, the law does not contain the definition of "notarial procedure", which creates the impression that the title of the legislative act does not correspond to its content (the content exceeds the title).

[9] For example, another approach exists in Germany, where a notarial deed is the authentic instrument, in other words the act drawn up as a result of the notarial authentication procedure, and the result of the other procedures is called a notarial action.

[10] The notarial deed and the notarial endorsement are drawn up on paper or in the form of an electronic document, having the same legal force.