**Overview of Notarial Law Reforms in Post-Independence Estonia**

The development of notarial law in Estonia after regaining independence can be divided into three stages: the first stage began by creating private notariat and lasted until 2001, the second stage started after the Notarisation Act was passed in 2002 and ended in 2008, the beginning of the third stage is marked with a number of amendments made to the Notaries Act in 2009, which involved significant changes in the activities of notaries.

After independence was restored in 1991 and the Constitution was adopted in 1992, Estonia started creating its new legal system based on the European continental legal system. A reform of the notariat formed a part of it whereas the Notaries Act that entered into force on 1 November 1993 laid down a basis for the contemporary notariat. Only a month later, the Law of Property Act and the Land Register Act entered into force and the creation of a nowadays land register started wherein the notarial attestation has a central role for ensuring public reliability of land register entries.

Between 1994 and 2001, a great number of new laws were passed and the competence of notaries also developed.

At the beginning of the period, the notaries had an essential role in the implementation of the ownership reform, especially in the attestation of apartment privatisation contracts in the course of the housing reform which constituted a part of the ownership reform.

When the Succession Act entered into force in 1997, it tentatively prescribed a transitional period of a couple of years for transferring succession proceedings to the competence of courts but it was soon understood that there did not exist a real need and an opportunity for such a change and so succession matters have been in the full competence of notaries in Estonia since then.

In 1995, when the Commercial Code was adopted, the legislator envisaged the notary’s role primarily as the person who certifies Memorandums of Association of public and private limited companies as well as merger and division agreements of companies and authenticates petitions to the Commercial Register. In the beginning, transfer contracts of private limited company shares were entered into in unattested written form but as the requirement of a written form did not bar abuse, numerous takeovers of companies occurred at that time. This, in its turn was one of the main reasons why in 1998 it was established that private limited company share transfers had to be notarised.

In 1995, notarial law was supplemented with the Notaries Disciplinary Action Act and the passing of the Notary Fees Act in 1996 was of enormous importance as well. Until the Parliament passed the aforementioned law, the charging of notary fees had been regulated by a regulation of the Minister of Justice. After the Notary Fees Act was passed, the fees for notarial acts are imposed on the basis of law and this makes them equal to public duties.

The second phase in the development of notarial law commenced in 2002 when the Notarisation Act entered into force. Until then, Estonia did not have a law that clearly laid down the principles of notarial attestation, incl. the definition of a notarial deed. The activities of notaries were just based on the procedure established by the Minister of Justice for performing notarial acts. Several principles had been developed on the basis of practice and theoretical knowledge of general character but requirements for performing notarial acts laid down by law were missing. On the one hand, it meant that the notaries themselves lacked a clear basis for doing their work, on the other hand, it was not clear what kind of requirements from outside could be set for performance of specific acts by notaries.

By the time referred to, it was obvious that fast developments both in the society and in the economy required further development of the principles of civil code, which in its turn resulted in the passing of the new General Part of the Civil Code Act. Whereas a significant part of civil law transactions – real estate transactions, a great number of acts relating to companies, settlement of succession matters, entry into marital property contracts, etc. – requires notarisation according to Estonian law it was obvious that the legal basis of notarial acts need to be clearly regulated and the requirements established for holding the office should also be supported by law.

In 2002, the Notarisation Act was adopted and the Notaries Act was amended, including the definition of a notary was specified. The law that entered into force expressly provides that a notary is a holder of office in public law, hence, the state has clearly positioned notaries, first and foremost, as persons exercising public authority not as contractual legal advisers. From the moment of passing the Notarisation Act, the sub-types of notarial acts have been defined on the level of law: an act of notarial attestation, as a result of which a publicly trustworthy document is being drawn up, and notarial authentication where the signature of a person or other simple facts are authenticated on a private document. The Notarisation Act laid down rules for performing notarial acts and for formalisation of notarial deeds, this contributing a lot to ensuring legal certainty through notarial acts.

At the same time, the private law reform was under way and a new present-day Law of Obligations Act, i.e. the law that in essence governs contract law and non-contractual relations, was passed. The simultaneous enforcement of the mentioned acts and of the amendments to the Notarisation Act and the Notaries Act established a basis for the unity of form and content in the application of civil law. Concurrently with creating an updated regulation of contractual and non-contractual relations the requirements concerning the format of notarial deeds were also given a contemporary and distinct basis. One of the important changes involved in the passing of the Notarisation Act was that more emphasis was placed on the role of notaries as persons who explain and advise. The development of notary’s profession had reached a phase where a notary was not just a person who formalises and writes down contracts but a person who actively explains and counsels and the role of a notary as a person who shapes civil law relations becomes more and more important. The notary’s obligation to give explanations to parties and indicate those explanations in the notarial deed was laid down on the level of legislation.

In the mentioned period, the role of notaries as persons who first apply law, increased. As the whole contract law was transferred to the new regulation, it was necessary to ensure that the parties to civil transactions are advised on and that the new law is explained. Consequently, it was extremely important to ensure the competence of notaries in the new law. An extensive training programme was provided to ensure a good knowledge of the new law and it ended with an evaluation of the knowledge of all practicing notaries in the new private law.

The workload of notaries in performing notarial attestations also increased and this, along with a growth in the number of civil law transactions, greatly due to a rise in the economy and the real estate boom, caused an urgent need for new notaries. In the given period, a great number of notary candidates, significantly more than before, commenced their service, unfortunately, lots of them have not managed to start their practice until today owing to the declining economy and a sharp decrease in the volume of notary’s work.

In this period, there were less such changes that directly expanded the competence of notaries, if compared with the previous and the next periods.

However, a fundamental change for the notariat was introduced in this period – the use of electronic solutions in professional activities of notaries, i.e. in 2007 all professional activities of notaries, including the drafting of documents, forwarding and verification of data, were transferred to the fully electronic on-line e-Notary information system. The e-Notary information system provides a direct link to state property registers such as the Land Register and the Commercial Register, the State Register of Construction Works, the Traffic Register of the Road Administration, the State Land Cadastre, the Marital Property Register and also the Population Register. A link of this type makes it possible to check on-line the data entered in those registers and also send data about legal changes to the registers. One can hardly overestimate the significance of the e-Notary information system upon ensuring the legal certainty of civil law transactions by notaries because both the verification and forwarding of data takes place on-line, which minimizes opportunities for abuse and guarantees correctness of the data on which a notarial deed is based.

The most recent reform concerning notarial law was in Estonia in 2009. On the one hand, the reform was necessary due to the effects of the dropping economy. The number of civil law transactions and the related need for notarial acts had decreased approximately 2.5 times. On the one hand, the notaries were facing a problem of insufficient volume of work and how to manage their offices, but on the other hand, due to the diminished workload, a great number of persons with legal knowledge and experience, both former notaries and employees of their offices, became redundant. It was then and is also now possible and reasonable to make use of the mentioned situation for guaranteeing better and more accessible legal services for the society.

At the same time the private law reform continued in Estonia and in the final phase thereof the new Succession Act entered into force in 2009 and the new Family Law Act in 2010. In the implementation of those laws the role of notaries is essential. While the proceeding of succession matters had been in the competence of notaries already before and thus the competence of notaries was not enlarged to a great extent, now the notaries were given a fully new competence after entry into force of the Family Law Act – they are entitled to authenticate contraction of marriages and divorces and to make relevant entries in the register.

In some senses, the 2009 reform was epoch-making. The reform was largely directed to expanding the competence of notaries and to better using the potential of notaries as legal experts. A certain liberalization of the profession of a notary concurrently took place and in addition to new notarial acts, the notaries were granted an opportunity to compete, to a certain extent, in the free legal services market. Regardless of the fact that the position of a person exercising public authority is still prevailing in the nature of the notary profession, limited opportunities have been created for notaries to operate in the free legal services market as well.

Until the 2009 amendments to the Notaries Act, a notary performed only such acts which were obligatory for notaries and for a fee prescribed by law, but since 2009, the professional activities of notaries can be divided into two: obligatory notarial acts and notarial services. The main difference between them is that a notary is not obliged to provide notarial services but the notary can do it by agreement with a client and for a charge agreed upon. These are legal services with respect to which a notary does not have an exclusive competence, hence, notaries compete with lawyers and other legal advisers in the provision of such services.

The aforementioned notarial services are: legal counselling not related to notarial attestation, including advising in the field of taxation and foreign law; conducting conciliation procedures; acting as an arbitrator; conducting of auctions, voting, ballots, drawing of lots and attestation of the results; certification of statements given under oath; forwarding of notices in the notarial procedure and depositing of money or securities not related to notarial attestation.

Moreover, in 2009, the competence of notaries was supplemented with several statutory notarial acts of which the most important are the issue of certificates (Apostilles) for public documents and the granting of the competence of a vital statistics official to notaries. Since 2010, Apostilles are issued only by notaries in Estonia.

The two last competences mentioned above prove that a notary belongs to public authorities. The same changes may be pointed out as the most successful changes of the last reform. By transferring the issuing of Apostilles to the competence of notaries the mentioned service became significantly more accessible for members of the public. Unlike the period before the change where a person, for getting an Apostille, had to contact ministries which are mostly located in Tallinn, the capital, people can get the service in every county centre now. Moreover, this has created an opportunity to save up state budget funds because the activity is financed and organised by notaries on account of the funds they receive from their professional activities.

The granting of the competence related to vital statistics to notaries can be considered successful as well. Regardless of the fact that the percentage (5.4% of the total number) of marriages and divorces authenticated by notaries is not very high, the popularity of the mentioned act is growing. We see potential in the growth of the number of divorce authentications because if the divorce is formalised in a notary’s office it is possible to simultaneously and conveniently arrange proprietary relations as well and this may, in the end, reduce proprietary disputes and hindrances for civil law transactions in the future. The Chamber of Notaries has proposed that the exclusive competence to authenticate divorces should be given to notaries if there is no dispute between the parties. In such case competent counselling in the proprietary relations arranging matters would be guaranteed for all those applying for a divorce to be granted. At present, vital statistics officials also authenticate divorces.

Unlike the new notarial acts which have been implemented quite successfully, the provision of notarial services that were added to the competence of notaries in 2009, has been remarkably less successful. From 2009 until today, the Conciliation and Arbitration Court of the Chamber of Notaries has adjudicated on two matters only. There are only a few cases where the conciliation procedure has been conducted on the basis of an Act regulating conciliation procedure. The service of legal counselling has been implemented to some extent better, it largely comprises drawing up of different documents, such as petitions to court in proceedings on petition, draft resolutions and minutes of various governing bodies of legal persons, etc. Such services as the certification of the correctness of translation and the depositing of money and securities not related to notarial acts, have been provided but still not to a remarkable extent.

There are a number of reasons why the implementation of notarial services has been modest. First, the fact that notaries are not used to act in the conditions of free competition, plays a certain role. Until 2009, the notaries were barred from acting in the free legal services market, including from using negotiated prices, therefore they lack relevant experience and tradition. A more significant reason, however, is that a number of notarial services require further development and possible supplementary regulations for their successful application. For instance, the purpose of a conciliation procedure is to simplify and expedite the settlement of such disputes the nature of which lies not so much in legal issues than in a disagreement and conflict between the parties. The described way of settling disputes might reduce the workload of courts and thus might save the resources of the state. However, in order to reach the persons who need the conciliation procedure opportunity, further dissemination of information by the state is clearly needed, and maybe a kind of additional regulation as well. The Chamber of Notaries has proposed to consider the imposing of an obligatory pre-trial conciliation procedure in certain matters, in disputes arising quite frequently from such conflict situations as termination of common ownership, division of joint property, etc.

The reforms of notarial law carried out in the post-independence Estonia are different in their nature. The first stage of the reform formed a basis for re-creating private notariat and laid down the basic values of the notariat. Still, it was the first stage and obviously the system had to be developed further.

As concerns the reform of 2002, we can state that those changes, on the whole, have survived well. The notarial attestation procedure was provided with a distinct basis and the position of notaries as advisers and active formers of civil law relationships, including as persons who ensure the realization of contracts, was developed and strengthened. It was in this stage that a major breakthrough happened in the use of electronic solutions and the notaries started using the e-Notary information system.

A longer time perspective may be necessary for assessing the changes made in 2009. It is important that the state has accepted the idea that by better and more widely making use of the potential of notaries and their offices it is possible to settle issues of the society in a better and wider manner. Furthermore, the provision of services through notaries allows economizing on public resources. However, it has turned out that any widening of competence will produce real results only if it is thought over and carried out systematically and if an actual need for supplementary activities exists. For example, the Chamber of Notaries has proposed that the notaries might take over the making of entries in some national registers provided that the entry is connected with a notarial act and is sufficiently unambiguous so that double-checking would not be needed for ensuring legal certainty. An example to be mentioned is the making of entries in the Marital Property Register.

The notariat has a firm and traditional place in the legal system of Estonia. The basic values of the notariat – impartiality and trustworthiness with respect to all parties to the transaction – coincide with the chief expectations set up to notaries by the society. But the survival of the profession also presupposes adaptability and an ability to improve, hence, readiness to further develop the profession by both better implementing technical solutions and substantially updating it in essence. Therefore, the most important is to balance changes and adaptability with preserving the essential and crucial.