

The Croatian Notariat



Zagreb, November 2014

THE DEVELOPMENT OF THE MODERN CIVIL LAW NOTARY PROFESSION IN CROATIA

As a component of the extensive reforms to the legal system implemented in the Republic of Croatia during the 1990s, the Notary Public Act was enacted 1993. It organized civil law notary activity as a separate public service. As opposed to the present-day unified development of the civil law notary profession up to 1941 and to 1944, the historical disunity of the Croatian lands influenced differences in the regulation of civil law notary activity, as well as the significance notary activity had in individual regions in the preceding period.¹ The events spurred by the French Revolution were a major watershed in the development of European (global) civil law notary activity, and thus also the development of modern civil law notary activity, for in 1803 they resulted in the Notarial Law, that "most perfect monument to French legislation".² This law established a new model for notaries in Europe as a merger of modern and traditional, meaning a model adapted to the organization of modern society through the traditional features of notarial activity as an autonomous profession vested with public authority.³ The civil law notary thus became a civil servant and a person of public trust who rendered services based in compliance with law.⁴

I. CIVIL LAW NOTARY ACTIVITY IN ISTRIA AND DALMATIA

Introduction. The development of the modern institution of the civil law notary in the territories of Istria and Dalmatia during the nineteenth and first half of the twentieth century proceeded within the different constitutional frameworks in the states of which these Croatian lands were integral components.

French administration. After abolishing the Venetian Republic in 1797, Napoleon relinquished Venetian Istria and Dalmatia, with Boka Kotorska, to the Habsburg Monarchy under the Treaty of Campo Formio. However, already with the Peace of Pressburg (1805), the brief period of

¹ The most significant institutions of public trust with a long tradition in the territory of present-day Croatia were the administrative adjunct, places of authentication (*loci credibiles*) and the civil law notary. For more see Krešić, M., "Javno bilježništvo na hrvatsko-slavonskom pravnom području 1859.-1941.", *Časopis za suvremenu povijest*, 2010, no. 1, pp. 92-93.

² Pappafave, V., *Bilježnički obraznik sa izjašnjenjima povjestnim, bibliografskim i pravničkim*, Zadar 1896., p. xxx.

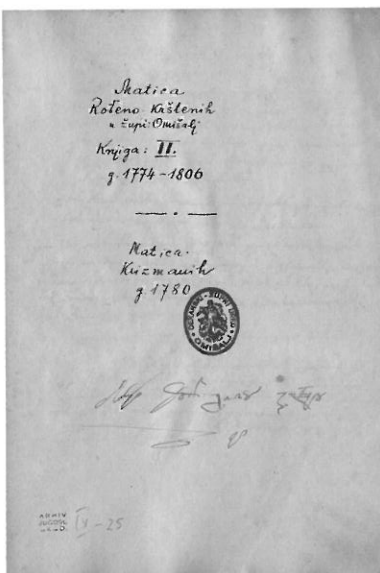
³ Dika, M., "Osvrt na povijesni razvoj europskog latinskoga javnog bilježništva", Crnić, I.; Dika, M., (eds.) *Zakon o javnom bilježništvu*, Zagreb, 1994, p. 38.

⁴ For more see Malavet, P. A., "Counsel for the situation: The Latin Notary, A Historical and Comparative Model", *Hastings International and Comparative Law Review*, 19, no. 3, 1996, pp. 422-423; Neschwara, Ch., *Geschichte des österreichischen Notariats. Band I – vom Spätmittelalter bis zum Erlass der Notariatsordnung 1850.*, Vienna, 1996., pp. 532-536.

Austrian rule over these Croatian lands was replaced with French administration. Venetian Istria and Dalmatia together with Boka Kotorska thus became components of France's Kingdom of Italy, albeit with a somewhat differently organized administration. Istria was headed by a prefect who had his seat in Kopar, while Dalmatia was administered by a consul general with his seat in Zadar.⁵ After another Austro-French war, the Peace of Schönbrunn (1809) stipulated that the Monarchy had to relinquish to France a considerable portion of its territory on which the Illyrian provinces were then organized in 1811, and divided into seven provinces: Carinthia, Carniola, Istria, Dalmatia, Dubrovnik, Civil Croatia and Military Croatia, with its seat in Ljubljana and headed by an administrator general.⁶ In all newly-conquered territories, the French administration attempted to expand the French legal order, including the Notarial Act (*Loi contenant organisation du notariat/Loi 25 ventôse an XI*) of 1803.⁷ The French would leave these Croatian lands already in 1813, and their administration generally left no significant trace, due in part to its brief duration. However, even in the context of scant acceptance of French legislation and the failure to maintain French regulations upon the arrival of Austrian authority, the regulation of the civil law notary institution nonetheless stands out.

Legal framework for the regulation of civil law notary activity. Based on the model of the French law, the Notary Regulations (*Regolamento sul Notariato*, 1806) were compiled for the Kingdom of Italy, which were applied in the territory of Istria.⁸ According to the Regulations, a notary is a public official authorized to draw up documents and contracts which comply with law, and which the parties want to have the character of public documents. A citizen of the Kingdom of Italy, not less than twenty-five years of age who completed his military service, acquired the proper education at one of the royal universities and completed a two-year notary internship, had never been criminally prosecuted, had a reputation as an honest individual and passed the appropriate examination could be appointed a civil law notary. Becoming a notary was a lifetime appointment, and prior to commencing work, a notary had to pay a security deposit to insure against liability for any damages that could be incurred during the performance of official duties, swear an oath and receive a seal with an imprint of the French eagle, the Italian crown, the notary's initials and the initials of his qualification as a notary and the district in which he was to operate. Notaries who had operated in the preceding period were allowed to continue their work provided that they adapted to the provisions of the *Regolamento*. Thus, within two months after the Regulation's entry into force, they were obliged provide evidence of their appointment as notaries from the period of the previous authorities, and on this basis – insofar as there were no objections – they were issued the appropriate license on the continuation of their service. Thereafter the notaries were obliged to pay the security deposit, if they had not already done so earlier, swear the oath and receive the proper seal. Civil law notary service ceased due to legally stipulated reasons, such as, for example, the death of the notary, transfer to another district or suspension. One

The Registry of Births and Baptisms of the Omišalj Parish Church.
The Croatian Academy of Sciences and Arts Archives,
sig. IX_25-001

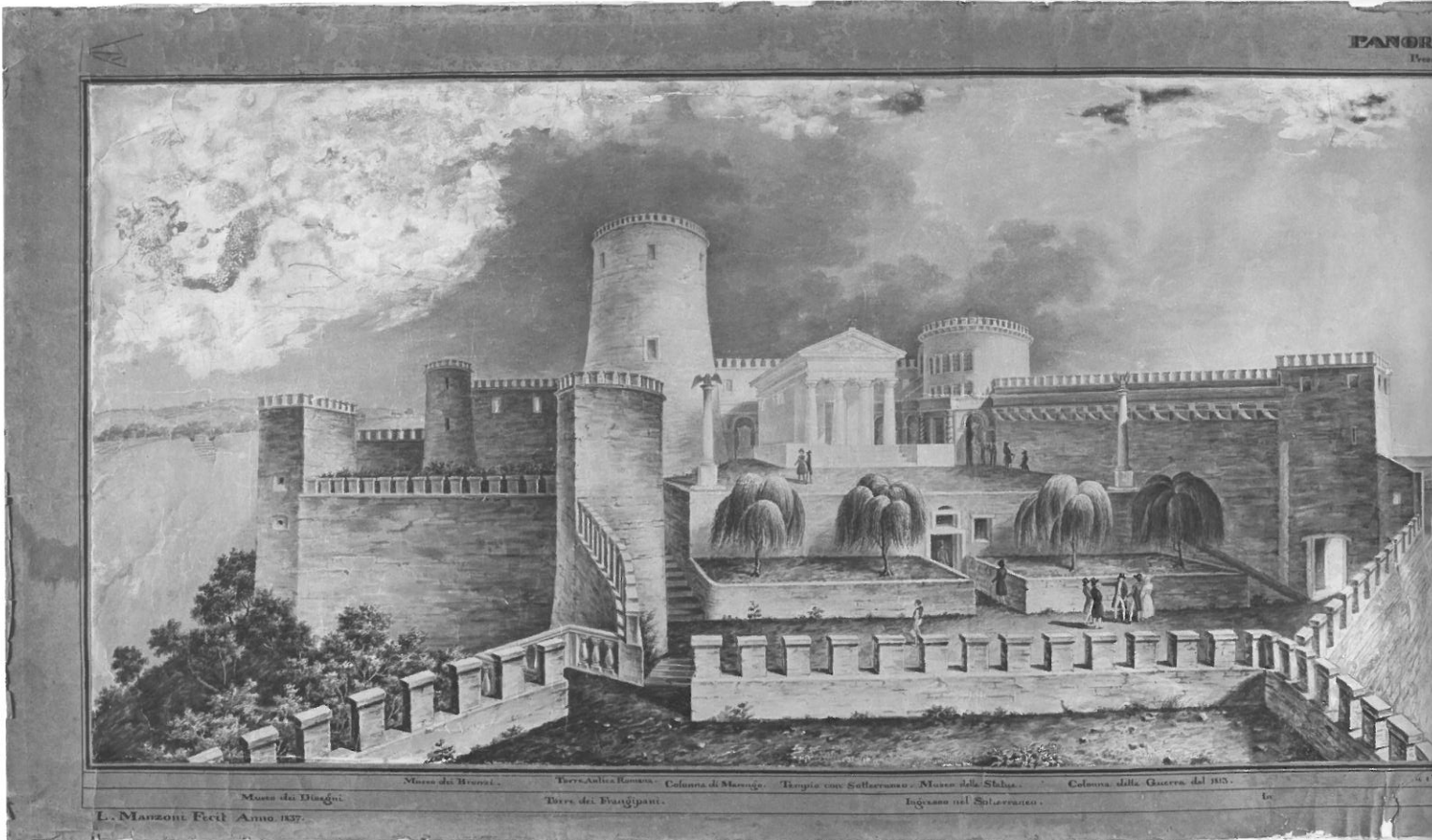


⁵ Milotić, I., "Pravni sustav u Istri u vrijeme franuske uprave (1806. - 1813.)", *L'istria e le Province Illiriche nell'età Napoleonica*, Pirano, 2010, pp. 140-143; Maštrović, V., *Razvoj sudstva u Dalmaciji u XIX. stoljeću*, Zagreb, 1959, pp. 45-47.

⁶ For the content of the provisions of the peace treaty on the cession of these territories and the text of the Basic Decree, i.e., the Order on the Establishment of Illyria, see "Napoléon i Kraljevina Ilirija ili Naredba o ustrojenju Ilirije. Décret sur l'organisation de l'Illyrie", *Historički spomen*, Zagreb, 1850, pp. 7, 9-22; For more on the Illyrian provinces, see Vošnjak, B., *Ustava in uprava Ilirskih dežel (1809 - 1813)*, Ljubljana, 1910.

⁷ For the text of the Notarial Act with later amendments, see: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006070994&dateTexte=20110616> (29 September 2012).

⁸ The Notary Regulations are in the State Archives in the city of Pazin, under the signature HR-DAPA-799/95 in the collection designated HR-DAPA-797 (Collection of posters and other printed matter).



Trsat. View on the City of Rijeka and the Castle of Trsat, 1837

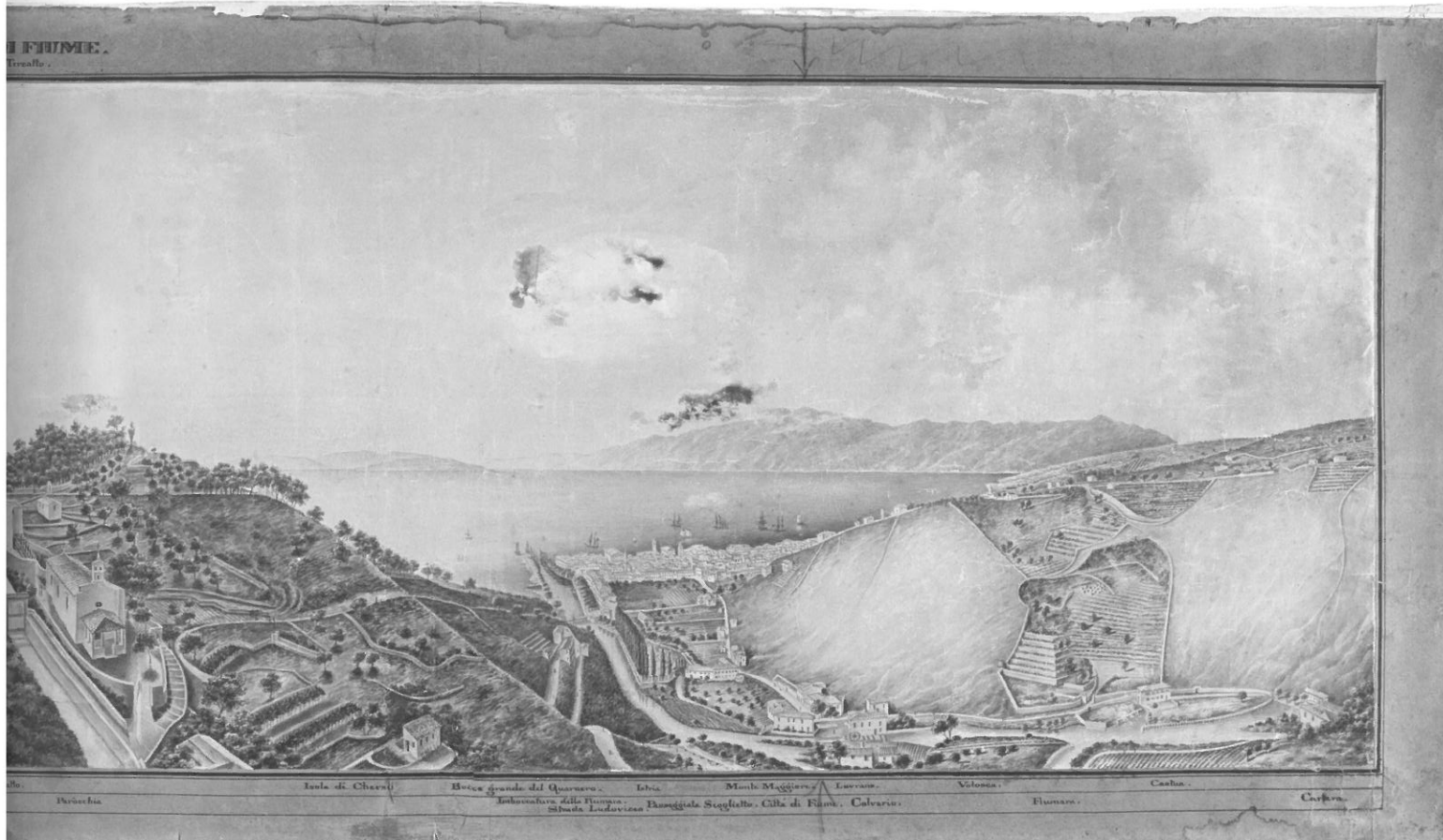
Source: The Graphic Arts Collection of the Croatian State Archives

cluded before a notary were not precisely delineated, rather these depended upon the intent of the parties. The number of notaries for each individual locality was precisely defined, and after the death or cessation of service of any notary, his files were transferred to the notary archives. In Dalmatia there were two primary archives, in Zadar for the Zadar Judicial District with adjunct archives in Cres, Krk, Pag, Skradin and Šibenik, and in Split for the Split Judicial District with adjunct archives in Trogir, Makarska, Hvar, Korčula and Brač. Notary archives were also established in Istria, in Rovinj and Kopar as the primary archives with adjunct archives in the other larger Istrian municipalities. Although the notarial regulations valid in Istria and Dalmatia were modelled after the French law, they contained provisions on the establishment of notary archives, while the French notary law did not mandate their establishment. Oversight of the work of Dalmatian notaries was exercised by the courts of first instance in Zadar and Split, and the Appellate Court in Zadar, while in Istria oversight were supposed to be exercised by the civil law notary chambers.¹⁰

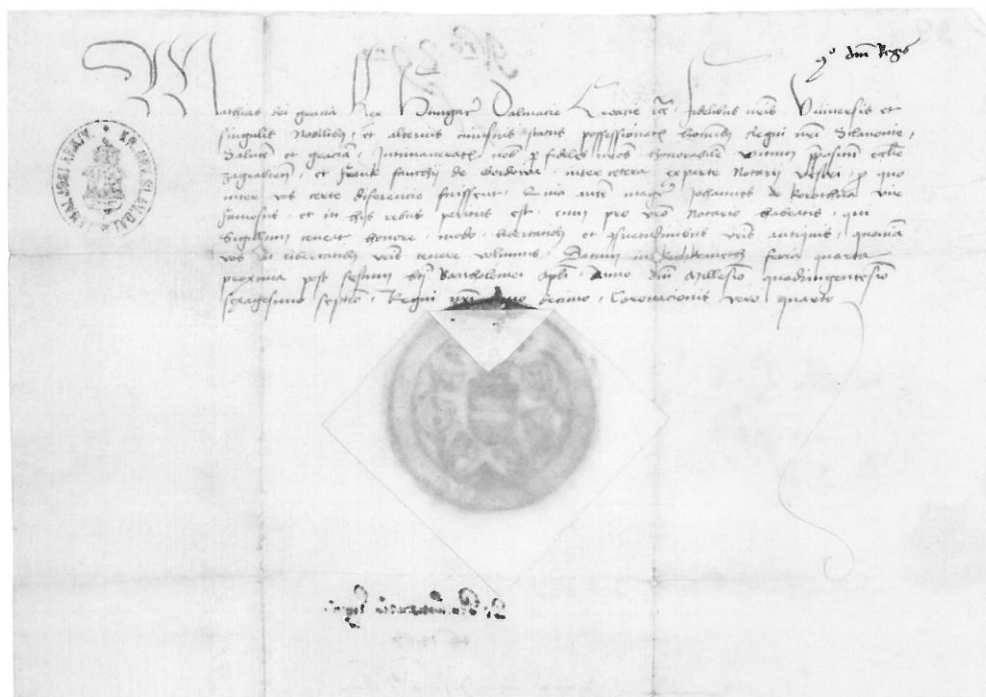
But while civil law notaries in Istria and Dalmatia had a rich tradition lasting for centuries, for the parts of Civil Croatia encompassed by the Illyrian provinces, the expansion of the effective French legislation with the introduction of civil law notaries was a novelty. Based on the French law, civil law notary service was organized in those cantons in whose territory mediation courts were functioning. In some cantons of Civil Croatia, e.g., in the Jaska Canton, civil law notaries were organized, although – as indicated by their files held in the Croatian State Archives – they only operated from 1812 to 1813, when French rule in the Croatian lands ended.¹¹

¹⁰ For more on the Notarial Regulation for Dalmatia, see Bezmalinović, B., "Notarijat u Dandolovoj Dalmaciji," *Zbornik radova Pravnog fakulteta u Splitu*, vol. XXVII, no. 2, 1990, pp. 77-98.

¹¹ See, e.g. Croatian State Archives (hereinafter in footnotes: HDA), sign. 945, fond Bilježnici kantona Jaska.

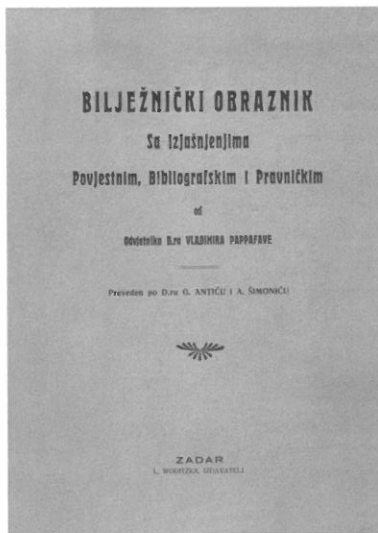


Austrian administration. After the departure of the French, the Croatian lands were (again) gathered under the aegis of Habsburg rule, although administratively separate. Dalmatia, the abolished Dubrovnik Republic and Boka Kotorska became components of the unified province of Dalmatia, Istria County was organized in Istrian territory; and the inland regions of the former Illyrian provinces were returned to the Kingdom of Croatia and Slavonia. The first several years of old/new Austrian rule in Istria and Dalmatia were characterized by the elimination of any remaining French vestiges, particularly when bringing order to public administration and the courts. In this, the Austrian authorities came upon a solidly-organized civil law notary service which had become rather decrepit in the remainder of the Monarchy in the preceding decades. The institution of the civil law notaries was regulated by the Imperial



King Matija Korvin appoints Ivan de Korothna a notary public.

Sig.: HR-HDA-2-1-29



In "Bilježnički obraznik" ("Notarial Journal") author dr. Vladimir Pappafava describes the legal tradition of the notarial profession from the Bible to the Austrian Notary Public Act from 1871.

Notarial Code (*Die Reichsnotariatsordnung*) issued by Emperor Maximilian I in 1512, but with the entry into force of the Civil Procedural Act (*Die Allgemeine Gerichtsordnung*) in 1781, the sole civil law notary acts with the force of public documents were protests of bills of exchange, while in other affairs the participation of civil law notaries became superfluous. The revival of civil law notary activity only emerged in the mid-nineteenth century, although in areas that were encompassed by the territorial framework of the Monarchy after the fall of Napoleon, e.g. in Dalmatia and Lombardy/Venice, civil law notaries retained their previous importance.¹²

Legal framework for the regulation of civil law notary activity. During the brief first period of Austrian administration (1797-1805), notary activity in the territories of Istria and Dalmatia did not change significantly. One of the rare changes pertained, for example, to changes in the official letterheads on notary documents, so that the coat of arms of the Venetian Republic was replaced by the coat of arms of the Habsburg Monarchy, and the chronological designations on the files ceased being computed in the Venetian way.¹³ More significant changes followed in the second period of Austrian administration. Application of the Austrian Provision to restrict the scope of notary activities exclusively to protests of bills of exchange and the further appointment of notaries¹⁴ began in Istria's territory in 1821, which contributed to a decline in the intensity of notarial activities, although, for example, in Poreč the last civil law notary from the Venetian-French period ceased operating in 1820. The civil law notary tasks during this period were assumed by judicial administrative structures, in which the previous (still living) notaries most often worked as functionaries. Similar individual regulations were enacted for the territory of Dalmatia as well, so that it was stipulated that all notary files compiled in compliance with the aforementioned Civil Procedural Act were to be deemed public documents.¹⁵ Much more important was the enactment of the new Provisional Notarial Regulation for Dalmatia in 1827 (*Regolamento provvisorio per i notai della Dalmazia*).¹⁶ Pursuant to the Regulation, the notaries operating up to that point continued with their work with the same jurisdiction. Oversight of their work was entrusted to the county courts (Zadar, Split, Dubrovnik and Kotor) or district courts from their jurisdiction. The regulation also stipulated that the function of the civil law notary was incompatible with the profession of attorney. The validity of this Regulation was continually extended until 1871, when the Austrian Notarial Code was introduced to Dalmatia's territory.

The first modern Austrian notarial legislation, the Notarial Code (*Die Notariatsordnung*),¹⁷ was introduced to Istria in 1850, significantly earlier than in Dalmatia. Minister Schmerling explained its introduction, whereby the notarial profession was revived after the law of 1781, as a necessity "to secure a state institution that will provide citizens with the possibility of obtaining a public document in legal affairs from a person who is appointed and certified by the state."¹⁸ The application of this law was brief, but significant, because in 1851 it was used

¹² Neschwara, *op. cit.* in note 4, pp. 258-264, 543-570.

¹³ For more, see Leideck, *op. cit.* in note 9, p. 128.

¹⁴ Leideck, *op. cit.* in note 9, p. 131.

¹⁵ Pappafava, *op. cit.* in note 2, p. xlvii; cf. Neschwara, *op. cit.* in note 4, pp. 547, 554.

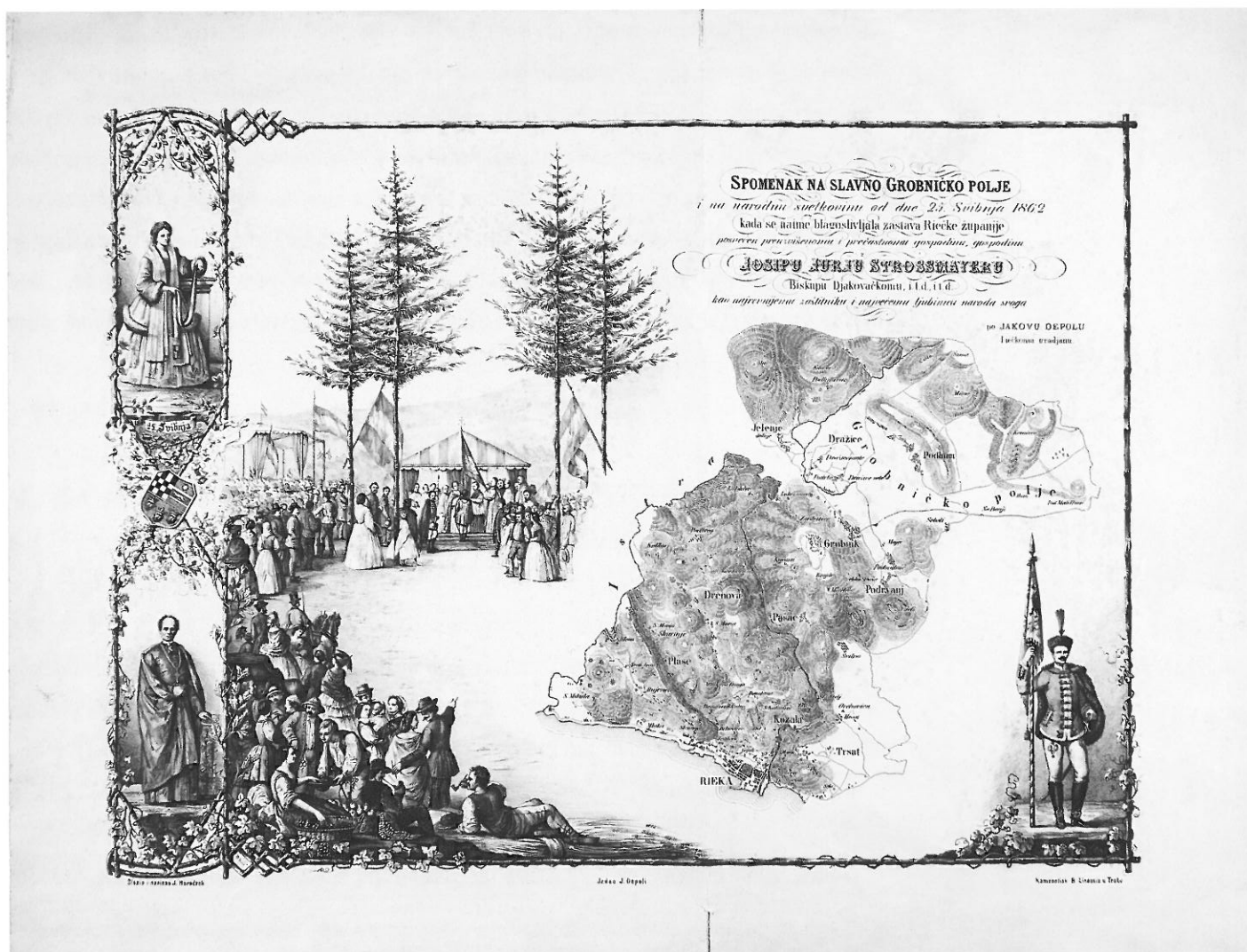
¹⁶ For the text of the Provisional Notarial Regulation, see: *Raccolta delle leggi ed ordinanze dell'anno 1827 per la Dalmazia*, Zadar, 1829, pp. 143-158.

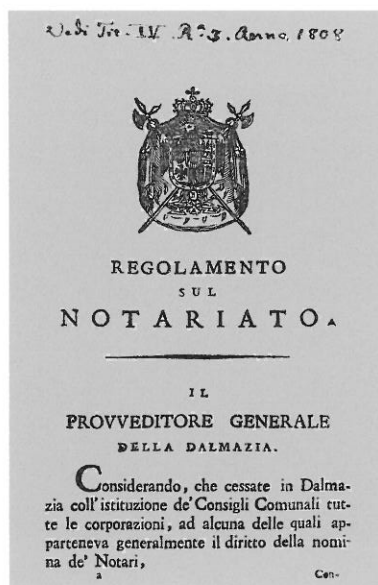
¹⁷ "Cesarski patent od 29. rujna 1850. valjan za Austriju više i niže Ennsa, Salcburg, Štajersku, Korušku, Kranjsku, Goricu, Gradišku i Istriju, grad Tërst i njegov okoliš, Tirol, Voralberg, Česku, Moravsku, gornju i dolnju Šlezku, kojim se oglašuje bilježnički red za ove krunovine", *Sveobći državno-zakonski i vladin list za Carevinu Austrijsku*, komad CXXVIII, br. 366, 1850., str. 1627 - 1667.

¹⁸ Stanoš, I., *Nešto iz povijesti javnog bilježništva*, Mjesečnik, 1926, no. 1, p. 29.

to renew the almost completely defunct notarial activity in Istria's territory, so that notaries were once more authorized to draw up documents, validate signatures, transcripts and translations, testify on the lives of individuals, compose testaments, and store documents. Notaries were appointed by the justice minister pursuant to a vacancy announcement posted by the notarial chamber, but also without a vacancy announcement insofar as the chamber deemed this superfluous and the superior territorial court and attorney general in Trieste agreed with this. A legal adult with Austrian citizenship and all civic rights, who had lived a life without vice, knew the languages used in the district in which he would function as a notary and who successfully passed the notarial or bar examination could be appointed a civil law notary. After appointment, a civil law notary had to make a security deposit and swear an oath, whereafter he received an official seal which bore the Austrian eagle, his name and surname, the name of the settlement and crown land in which he was to function, and then he had to open a civil law notary office within a period not to exceed three months. The function of attorney was as a rule incompatible with the post of civil law notary, although in settlements outside of the seat of the territorial court (Rovinj), an individual could be granted the right to practice law in addition to engaging in notarial activity. However, these notaries were prohibited from representing clients in litigation due to a notarial act which they had drawn up. It was also stressed that these persons had to decide whether they would remain notaries or practice law when it became possible to separate these professions. The law foresaw the operation of notarial archives and notarial chambers before the courts, so that in 1854 the Notarial Archives and the Provisional Notarial Chamber began to function before the newly organized district court in Rovinj. The Rovinj chamber had jurisdiction over

Grobnik. Blessing of the flag of the County of Rijeka, 1862
Source: The Graphic Arts Collection of the Croatian State Archives





The Notarial Rules in Dalmatia, 1807

thirteen civil law notaries with registered seats in Buje, Buzet, Labin, Motovun, Pazin, Pula, Poreč, Rovinj (three civil law notaries), Vodnjan, Cres and Lošinj,¹⁹ while the Novigrad civil law notary functioned under the jurisdiction of the Kopar Notarial Chamber. As an interim body incorporated into the structure of the court, the Chamber operated until 1871 and the enactment of a new law whereunder notaries were guaranteed professional independence. But prior to this, a new Notarial Code entered into force in Istria in 1855, and by all accounts the number of civil law notaries did not change during its effective period. This regulation also left open the possibility of merging civil law notary and attorney functions in settlements in which there was no territorial court seat, but there is no information as to whether any of the civil law notaries operating outside of Rovinj were actually those who also worked as attorneys. Since the regulation enacted in 1855 was exceptionally significant to the Kingdom of Croatia and Slavonia (where it was introduced in 1858), for it established modern notarial activity in this territory for the first time, more will be said of this regulation in that part of the text pertaining to the organization of notarial activity in the territory of Croatia-Slavonia.

The validity of the Notarial Code of 1855 in Istrian territory and the temporary Notarial Regulation of 1827 for Dalmatian territory ceased in 1871 with the enactment of the new Notarial Code.²⁰ This law was a component of the reform measures that set the foundations for the transformation of administration and the judiciary in the Austrian section of the Monarchy, including Istria and Dalmatia, after the abolishment of neo-absolutism (1861), the conclusion of the Austro-Hungarian Compromise and the enactment of the December laws (1867).

Upon entry into force of this new law, the civil law notaries active until then remained at their posts both in Istria and Dalmatia. With regard to the incompatibility of the profession of civil law notary and attorney, it was only with this law that this principle was stipulated without exception. Even so, the introductory law stipulated that notaries who had until then been active attorneys “out in the province (i.e., outside of cities)” could remain so under certain conditions, e.g. if they were entered in the directory of attorneys. Despite this, there is no way of knowing with any certainty whether there were civil law notaries in the territory of Istria and Dalmatia who simultaneously worked as attorneys, but since even before this the effective laws were grounded on the principle of incompatibility of professions, it is my belief that at a specific point in the application of the Austrian notarial codes there were no more of them.

This Notarial Code was already the third statute to regulate civil law notary activity in a relatively brief time. One of the novelties was certainly the introduction of vocational autonomy, which eliminated (simultaneous) oversight of notary activity by first-instance and superior courts and the minister of justice and validation of (hierarchical) oversight by the notarial chambers, the presidents of courts of first instance and appeals, and, ultimately, the minister of justice. Furthermore, a mandatory two-year internship with a notary was introduced, although a person who had, for example, passed the judicial or bar examination, but not the notarial examination as well, could still be appointed a notary. An essential difference between this code and the preceding regulations was that it finally gave notarial acts an enforceable quality. However, enforceability only became effective with the consent

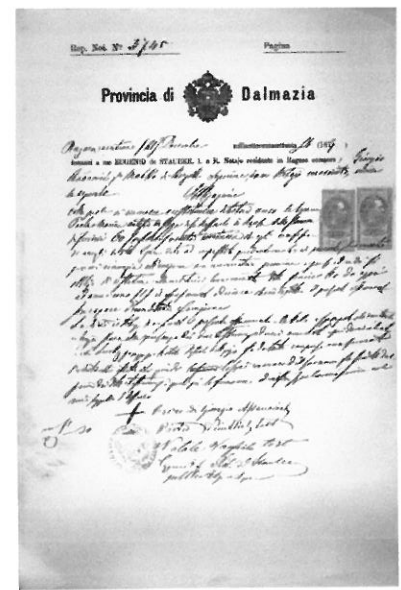
¹⁹ Leideck, M., “HR-DAPA-540 Bilježnici Poreča 1852/1944 [1947]. Sumarni inventar,” *Vjesnik istarskog arhiva*, 2012, volume 19, p. 20.

²⁰ “Zakon od 25. sèrpnja 1871., kojim se uvodi nov zakon o bilježničtvu,” *Đeržavno-zakonski list za kraljevine i zemlje zastupane u vieću cesarevinskom*, vol. XXXII, no. 75, 1871, pp. 161-204.

of the parties to which they were to apply. The enhancement of notarial authority was visible, for example, in the fact that wills compiled before a notary had the same force as wills compiled before a court. Some provisions of the law which introduced this regulation exclusively pertained to Dalmatia due to the specific regulation of notary activity in the preceding period. Thus, for example, the previous security deposit amounts were retained, and the district courts had to turn over the files of deceased notaries or those who ceased working for archival storage in the court of first instance in the area of jurisdiction of an individual notary. However, perhaps the most significant aspect of introducing this regulation was that the valid provisions of the Notarial Code of 1855 and the Order of the Ministry of Justice from May 1860²¹ on notaries as compulsory court commissioners of the courts in cities with courts of first instance and as facultative court commissioners of the court in other settlements remained in force. However, these provisions were not valid in Dalmatia, where notaries could not previously, nor could they for the entire period of validity of the 1871 law, function as court commissioners.

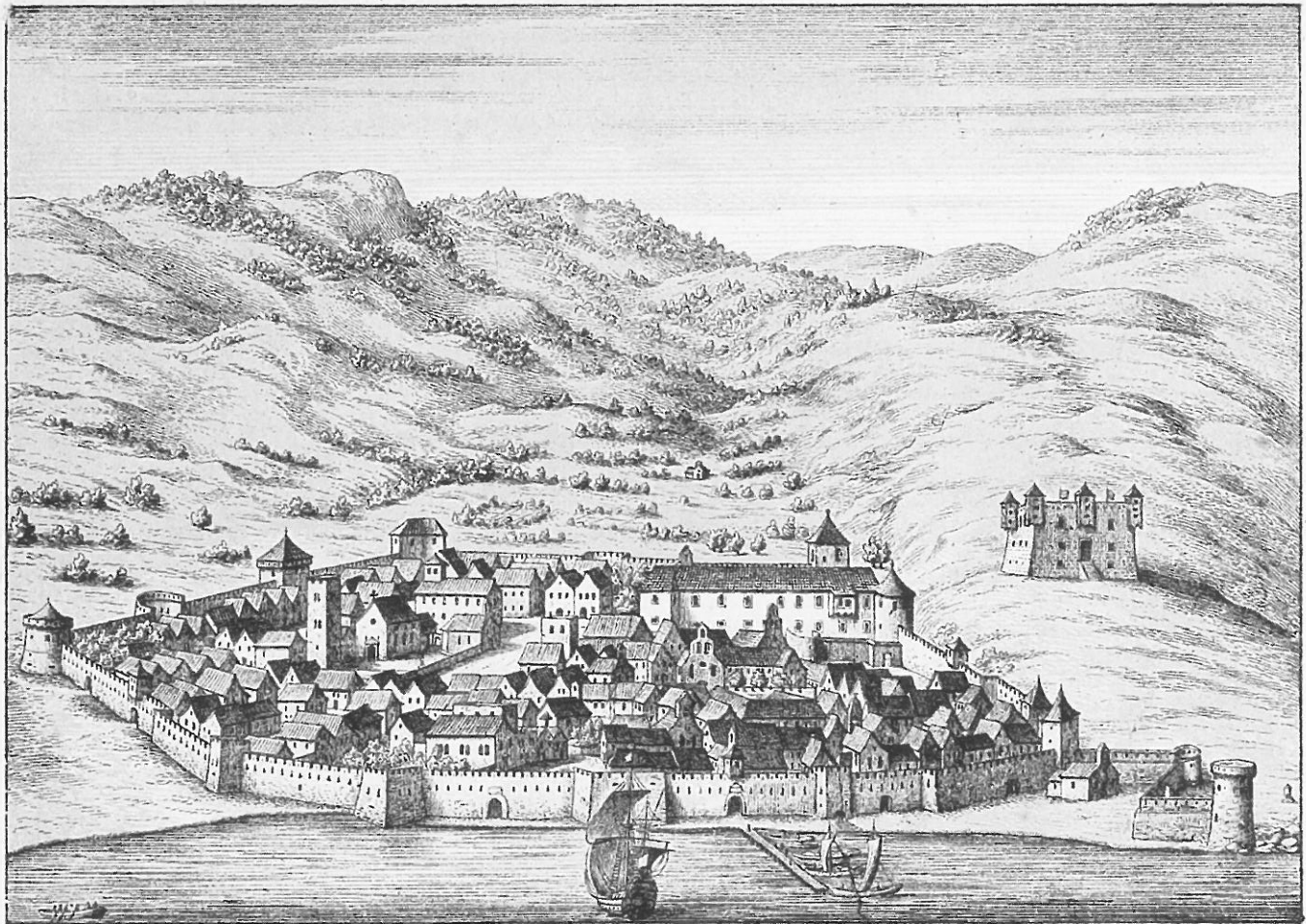
The Rovinj notarial archives and the (provisional) Notarial Chamber established in 1854 continued to function, but linked to the county court, of which the seat was moved to Pula in 1918. The provisions stipulating the independence of the chamber foreseen under the Notarial Code could not be enforced in the case of the Rovinj chamber, which did not exceed a number of 15 functioning notarial districts. The situation was similar in Dalmatia, where the territory of not a single county court – in Zadar, Split, Dubrovnik and Kotar – had more than 15 systemized notarial districts.

Italian administration. The end of the First World War brought great changes to Istria and Dalmatia. Already in April 1915, the Treaty of London was signed between the Entente and the Kingdom of Italy, whereby Italy agreed to forsake the neutrality it proclaimed at the war's onset and cross over to the Allied side in exchange for territorial compensation that included Austro-Hungarian lands in the Eastern Adriatic seaboard. Based on the ceasefire between the Entente and the Austro-Hungarian Empire concluded in November 1918, the Italian army occupied a large portion of Croatian coastal territory, thereby ensuring Italy a very favourable position in the pending peace talks. Since no demarcation treaty was reached at the Paris Peace Conference (1919), new negotiations were launched in Rapallo at which, in November 1920, the Treaty on the Border between the Kingdom of the Serbs, Croats and Slovenes and the Kingdom of Italy was finally signed. Based on this treaty, Trieste, Gradisca, Idrija and the Slovenian Littoral, Istria (except for Kastav and Krk) and the islands of Cres and Lošinj with the nearby small islets, and, in Dalmatia, Zadar and its immediate environs and the islands of Lastovo and Palagruža together with smaller islands and rocky reefs were annexed to Italy. The Free State of Rijeka was also formed, which would be then nonetheless be relinquished to Italy under the Treaty of Rome (1924). These territories annexed by Italy would be joined by even more Croatian lands under the Treaties of Rome concluded in May 1941 with the Independent State of Croatia (hereinafter NDH). After Italy's capitulation in 1943, the authorities of the NDH unilaterally rescinded the Treaties of Rome and issued a decision on the expansion of Croatian administration to encompass the regions that were until then under Italian occupation. However, Germany had simultaneously established the Adriatic littoral operative zone which besides portions of Italian and Slovenian territory, also encom-



A notarial document made by E. Stauber, Dubrovnik, 1867

²¹ "Naredba ministarstva pravosuđa od 7. svibnja 1860. o tom, kako da bilježnici služe i obavljaju poslove kao povjerenici sudbeni, i o broju bilježnika", *Hrvatski zakoni III*, 1900, pp. 325-326.



GRAD SENJ
u staro doba.

Litoĝrafijski Zavod Julijca Höhna u Zagrebu

Senj. A view from the sea, 1858-1896

Source: The Graphic Arts Collection of the Croatian State Archives

passed Istria, Rijeka with Kvarner (except for the island of Rab), Zadar and Lastovo. Germany left the remaining Italian territories on the Croatian Adriatic coast to the Independent State of Croatia, and this situation was generally maintained until the end of the war.²²

Legal framework for the regulation of civil law notary activity. Changes in the constitutional order from 1918, through 1920 to 1924 were reflected in the administrative and judicial organization and legislation in the Istrian and Dalmatian territories under consideration herein, although the institution of civil law notaries retained its Austrian regulatory framework until 1929. Only then did Italian notarial legislation pursuant to the Law of 31 May 1928, no. 1235²³ and the Decree of 6 May 1929, no. 972²⁴ enter into force. The foundation of Italian notarial codes was the Law on Organization of the Notarial Profession and Notarial Archives (1913).²⁵ According to Italian law, a notary was a public official, appointed for life by royal

²² Marjanović, M., *Londonski ugovor iz 1915.*, Zagreb, 1960; Krizman, B., *Vanjska politika jugoslavenske države 1918-1941*, Zagreb, 1975, pp. 147-149; Diklić, M., "Zadar i Rapalski ugovor (uz 90. obljetnicu)," *Radovi Zavoda za povijesne znanosti HAZU u Zadru*, 53, 2011, pp. 223-242; Degan, V. Đ., "Pravni aspekti i političke posljedice Rimskih ugovora od 18. svibnja 1941.," *Zbornik Pravnog fakulteta u Splitu*, vol. 45, no. 2, 2008, pp. 265-278.

²³ "Legge 31. Maggio 1928, n. 1235, Autorizzazione al governo del Re di provvedere alla revisione ed al coordinamento delle disposizioni relative al notariato ed agli archivi notarili ad alla estensione delle norme medesime alle nuove provincie", *Gazzetta ufficiale n. 141 del 18. giugno 1928*.

²⁴ "Regio decreto 6. Maggio 1929, n. 972, Attuazione, nei territori annessi al Regno, della legge 16. Febbraio 1913, n. 89 riguardante l'ordinamento del notariato e degli archivi notarili", *Raccolta ufficiale delle Leggi e decreti del Regno d'Italia, 1929*.

²⁵ "Legge 16. Febbraio 1913, n. 89 sull'ordinamento del notariato e degli archivi notarili", http://www.edizioneuropee.it/data/html/33/zn59_12_001.html (accessed: 1 October 2012).

decree, authorized to draw up documents *inter vivos* and *mortis causa*, granting them public trust, the filing and issuance of certificates, transcriptions and abstracts therefrom. A consequence of the introduction of Italian regulations was the abolishment of notarial chambers, whose jurisdictions were divided among the newly-established notarial archives and notarial advisory boards. Archives of the notarial districts of Pula, Rijeka and Zadar were thus established, which in 1937 were a component of the Regional Notarial Archives with its seat in Venice.²⁶ Not long before the Italian laws became effective, a Decree (1926) and then Law (1927) governing the systemization of notarial districts in the annexed territories were promulgated,²⁷ which regulated the conditions for the work of those notaries who continued to work in compliance with Austrian laws after the signing of the Treaty of Rapallo. These also specified the deadline in which those civil law notaries who had insufficient knowledge of the Italian language or who could not perform notarial duties for any other reason had to be dismissed from the service. In the Pula area, for example, two negative assessments were issued during verification, of which one pertained to advanced age, while the other pertained to the political unsuitability of the civil law notary under scrutiny.²⁸

The final systemization of notarial zones was only defined in 1937 within the framework of the new systemization that was implemented throughout Italy. In the Croatian territories under consideration, the Pula, Rijeka and Zadar notarial districts were established. Ten notarial zones were set up in the territory of the Pula district, consisting of one each in Labin, Cres, Vodnjan, Lošinj, Poreč, Pazin and Rovinj and three in Pula. Motovun and Buje, together with Novigrad previously, became part of the Trieste-Kopar notarial district, each with a single notarial zone. In the Rijeka district, there were six notarial zones: three in Rijeka itself, two in Opatija and one in Ilirska Bistrica. Two notarial zones were foreseen for the Zadar district, i.e., the city of Zadar.²⁹

In the territories obtained in 1941, the Italian authorities retained the effective legislation until – in compliance with a royal decree issued in December 1941 – enforcement of the basic Italian laws was expanded to cover them.³⁰ Since this expansion was only confirmed in April 1943, immediately prior to Italy's capitulation, there is some question as to the extent to which Italian legislation was actively enforced.³¹ A part of these fundamental laws did not consist of notarial provisions, so the assumption is that during Italian rule the previous notarial regulation was in force, with amendments that reflected constitutional changes. According to data from the city of Split, from May to July 1941 civil law notaries operated according to the authorization of the Supreme Command of the Italian armed forces, and then on behalf of King Victor Emmanuele.³² There are even notarial files from the brief period

²⁶ "Regio decreto 27 ottobre 1937 – XV, n. 1876, Riordinamento degli Archivi notarili e del relativo personale", http://augusto.digitpa.gov.it/gazzette/index/download/id/1937268_P1 (accessed: 6 June 2014).

²⁷ "Regio decreto legge 10 Gennaio 1926, n. 14, Sistemazione delle sedi notarili nei territori annessi al Regno", <http://www.infoleges.it/service1/scheda.aspx?id=86556&articolo=257975&service=1&ordinal=&articolofrom=&articoloto> (accessed: 28 May 2014).

²⁸ Grdinić, I., "Sumarno-analitički inventar fonda Bilježnički arhiv u Puli (1645/1954)", *Vjesnik Istarskog arhiva*, volume 14-16, p. 33.

²⁹ "Regio decreto legge 9 dicembre 1937-XVI, n. 2141, Revisione generale della tabella che determina il numero e la residenza dei notari del regno", http://augusto.digitpa.gov.it/gazzette/index/download/id/1937301_SO (accessed: 6 June 2014).

³⁰ "Regio decreto 26 dicembre 1941-XX, n. 1583, Estensione delle leggi fondamentali del Regno ai territori annessi coi Regi decreti, legge 3 maggio 1941-XIX, n. 291, e 18 maggio 1941-XIX, n. 452", *Gazzetta ufficiale del Regno d'Italia*, N 030 del 6 Febbraio 1942.

³¹ See <http://www.ratnakronikasplita.com/kronika/1941> (accessed: 3 October 2012).

³² Jelaska Marjan, Z., "U službi države, na službu građanima: javni bilježnici u gradu Splitu 1918. – 1944.", *Acta Histriae*, vol. 16, no. 4, 2008, pp. 605.

Bakar. The Castle, 1883-1883. It was already mentioned in the Statute of Vinodol from 1288.

Source: The Graphic Arts Collection of the Croatian State Archives



in which Split was part of the Independent State of Croatia,³³ despite the fact that the NDH government abolished civil law notaries in May 1941. It was probably due precisely to the brief duration of this rule, but also the difficulties involved in its organization, that civil law notaries continued to function in the Dalmatian regions, albeit under exceptionally arduous wartime circumstances with reduced intensity until 1944, when the institution of the civil law notary was abolished by decision of the Presidency of the Antifascist Council for the National Liberation of Yugoslavia (AVNOJ).³⁴ Civil law notary activity also went into abeyance in Istria's territory during the war, and the decision to abolish the civil law notary profession was implemented after the Paris Peace Treaties (1947) delineated the border between Italy and Istria was annexed to Croatia.³⁵

³³ Jelaska Marjan, *op. cit.* in note 39, pp. 606.

³⁴ "Odluka o ukidanju javnih bilježnika i javno-bilježničkih komora od 17. studenog 1944.," *Službeni list Demokratske Federativne Jugoslavije*, book I, no. 11, 1945.

³⁵ "Ugovor o miru s Italijom", *Međunarodni ugovori Federativne Narodne Republike Jugoslavije*, vol. 4, 1947; see: "Ukaz o proširenju važnosti Ustava, zakona i drugih propisa FNRJ na područje pripojeno teritoriju FNRJ po Ugovoru o miru s Italijom"; "Ukaz o proširenju važnosti Ustava, zakona i drugih propisa Narodne Republike Hrvatske na područje Istre, gradova Rijeke i Zadra te otoka Lastova", *Narodne novine*, no. 88, 1947.

II. THE CIVIL LAW NOTARY PROFESSION IN CROATIA AND SLAVONIA

Introduction. In contrast to Istria and Dalmatia, which did not have a multi-century tradition of (urban) civil law notaries, notarial tasks in the territory of Croatia and Slavonia were mostly performed by the Roman Catholic cathedral chapters. During the period of neo-absolutism, the Croatian-Slavonian legal system underwent significant changes as a result of modernization processes in the Monarchy. A part of these changes entailed the expansion of enforcement of the Notarial Code of 1855 pursuant to the imperial patent of 1858,³⁶ with application beginning on 1 November 1859.³⁷ This regulation, valid as specified above in the territory of Istria, was expanded in 1886 to encompass the previous territory of the Military Border, which was annexed to Croatia and Slavonia in 1882.³⁸

Notarial districts. In the territory of Croatia-Slavonia, notarial districts were established on several occasions based on special regulations, since the Notarial Code did not stipulate precise criteria for their organization. Thus, at the onset of organization of the Croatian-Slavonian civil law notary profession, only 15 notarial districts were specified, in the territory under jurisdiction of the *Tabula Banalis* (the Ban's Court, the highest court in Croatia) as the territorial court in Zagreb (with seats in Karlovac, Samobor and Sisak, and two notarial districts seated in Zagreb), and the county courts in Varaždin (with seats in Varaždin, Krapina and Čakovec), Osijek (with seats in Osijek, Vukovar, Vinkovci and Požega) and Rijeka (with seats in Bakar and two notarial districts seated in Rijeka).³⁹ Clearer criteria for the establishment of notarial districts were stipulated in an order issued by the Austrian justice ministry in 1860,⁴⁰ pursuant to which the justice minister – in cases of need – decided on the establishment of new notarial districts after conducting inquiries with the territorial court with jurisdiction and the notarial chamber. The importance of the criteria of “need” for the establishment of new notarial districts was also underscored by the Provincial Government of the Kingdom of Croatia and Slavonia which, by its order of 1876, explicitly foresaw the obligation to ascertain the need for increasing the number of civil law notaries.⁴¹ This occurred in the territory of Croatia-Slavonia only after the annexation of the Military Border, an increase in the population and territorial expansion, and the resulting administrative and judicial reorganization.⁴² Existing notarial districts were reorganized, or new notarial districts were organized (1887) in the territory of the county courts in Gospić (with its seat in Senj), Ogulin (with seats in Ogulin, Bakar and Delnice), Zagreb (with seats in Karlovac and Samobor

³⁶ “Cesarski patenat od 7. veljače 1858. kojim se bilježnički red od 21. svibnja 1855. uvodi u Galiciji, velikoj vojvodini Krakovskoj i u Bukovini, zatim u Ugarskoj, Hrvatskoj, Slavoniji, Erdeljskoj i srpskoj Vojvodini s Banatom tamiškim”, *Zemaljsko-vladni list za kraljevine Hrvatsku i Slavoniju* (hereinafter: *ZVL*), 1858, heading I, section V, no. 27.

³⁷ “Naredba ministarstva pravosuđa od 25. lipnja 1859., kojom se obznanjuje dan, kojega će u Hrvatskoj i Slavoniji u kriepest stupiti zakon o bilježničtvu”, *ZVL*, 1859, heading I, section XIV, no. 90.

³⁸ “Zakon od 13. prosinca 1886. kojim se valjanost previšnjeg patenta od 7. veljače 1858. kojim je uveden bilježnički red od 21. svibnja 1855. proteže na cijelo područje kraljevinah Hrvatske i Slavonije”, *Sbornik zakonah i naredabah valjanih za kraljevinu Hrvatsku i Slavoniju* (hereinafter: *SZN*), 1886, section XVII, no. 58.

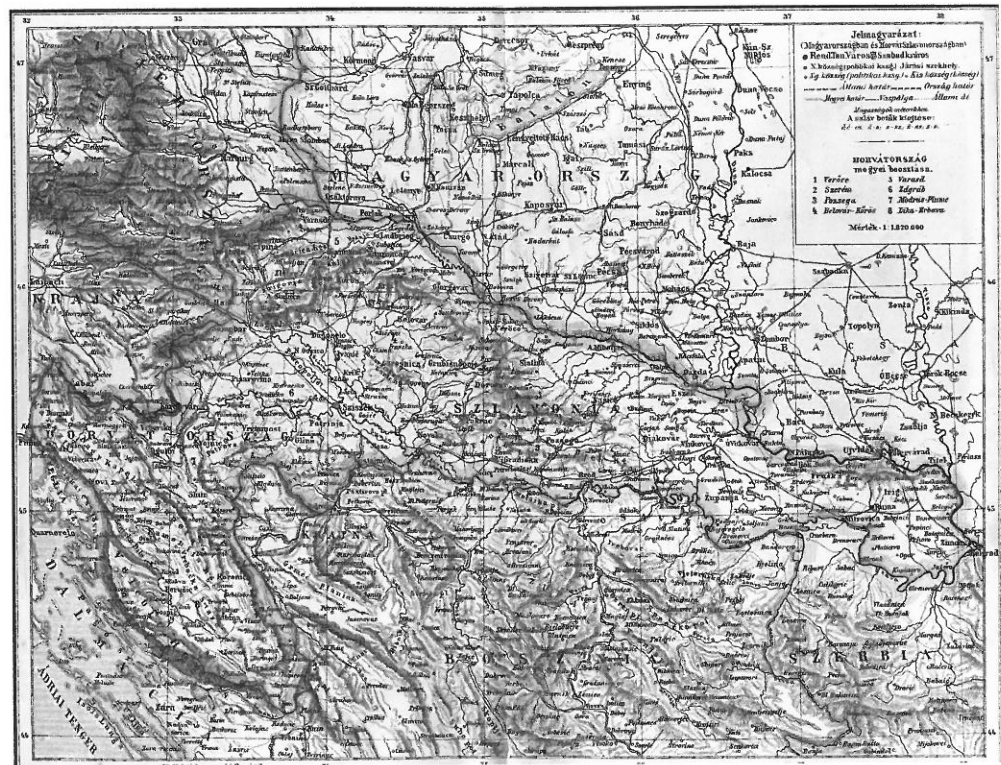
³⁹ “Obznana c.k. banskog stola od 25. veljače 1858. o naredenom broju bilježnika i sudištih im po Hrvatskoj i Slavoniji”, *ZVL*, 1858, chapter II, section II, no. 7.

⁴⁰ “Naredba ministarstva pravosuđa od 7. svibnja 1860. o tom, kako da bilježnici služe i obavljaju poslove kao povjerenici sudbeni, i o broju bilježnika”, *Hrvatski zakoni III*, 1900, 325-326.

⁴¹ “Naredba kr. hrvatsko-slavonsko-dalmatinske zemaljske vlade, odjela za pravosuđe, od 21. ožujka 1876. br. 1102., u predmetu okoliša za uredovnu djelatnost kr. javnih bilježnikah i njihovog upotriebljenja u svojstvu sudbenih povjerenikah”, *Uredovna sbirka naredabah pravosudne struke* (hereinafter: *Pravos. zbir.*), volume III, 1892, no. 283.

⁴² “Naredba kr. hrv.-slav.-dalm. zemaljske vlade, odjela za pravosuđe, od 1. srpnja 1886., br. 9255., kojom se preinačuju odnosno na novo opredjeljuju broj, sjedišta i teritorijalni opseg kr. kotarskih sudovah, ter okoliši kr. sudbenih stolovah u kraljevinah Hrvatskoj i Slavoniji”, *Pravos. zbir.*, volume II, 1888, no. 161; “Naredba kr. hrv.-slav.-dalm. zemaljske vlade, odjela za pravosuđe, od 17. kolovoza 1886., br. 11834., kojom se saobćuje pregled sudbenih oblasti”, *Pravos. zbir.*, volume II, 1888, no. 164.

A map. The Kingdom of Croatia and Slavonia was nominally an autonomous kingdom within the Austro-Hungarian Monarchy. Its formal title was The Triune Kingdom of Croatia, Slavonia and Dalmatia or, less formally, The Triune (1881-1918).



and three notarial districts in Zagreb), Petrinja (with its seat in Sisak), Varaždin (with seats in Varaždin, Krapina and Pregrada), Bjelovar (with seats in Bjelovar, Križevci and Koprivnica), Požega (with seats in Požega, Nova Gradiška and Brod), Osijek (with seats Đakovo, Vukovar, Virovitica, Vinkovci and two notarial districts seated in Osijek) and Srijemska Mitrovica (with seats in Zemun, Srijemski Karlovci, Ilok, Irig and Ruma).⁴³

In the years immediately prior to the collapse of the Monarchy, the number of notarial districts grew considerably. The chronology of their establishment, as well as their territorial distribution, point to the conclusion that despite the non-existence precisely-specified criteria on the appointment of notarial districts, this growth was largely influenced by the population and the development of economic and legal transactions in individual counties. Although growth in the number of notarial districts created the impression of simplicity and ease in decision-making on their establishment, the reality was in fact different. As many as several years could pass between the first initiative, or request, for establishment of a notarial district and its actual establishment.⁴⁴ The request to establish a new notarial district was submitted by the county court (as the notarial chamber) for the area of its jurisdiction. However, the archival files indicate that the request was often filed by district courts and individuals, generally attorneys who nominated themselves to fill that district.⁴⁵ Most new notarial districts were established in the territory of the county courts in Bjelovar, Zagreb and Srijemska Mitrovica, somewhat less in the territory of the county courts in Varaždin, Petrinja, Požega and Osijek, and the least in the territories of the county courts in Gospić and Ogulin. Great changes in the number of civil law notaries ensued after Croatia and Slavonia (as part of the State of Slovenes, Croats and Serbs) joined the Kingdom of Serbs, Croats and Slovenes.

⁴³ "Naredba kr. hrv.-slav.-dalm. zemaljske vlade, odjela za pravosuđe, od 23. prosinca 1887., br. 3794., kojom se opredjeljuju broj i sjedišta kr. javnih bilježnikah ter određuju užji okoliši, u kojih sudovi iste imaju upotriebljavati kao sudbene povjernike", *Pravos. zbir.*, volume II, 1888, no. 236.; "Naredba kr. hrv.-slav.-dalm. zemaljske vlade, odjela za pravosuđe, od 7. srpnja 1888., br. 7829 kojom se preinačuje naredba od 23. prosinca 1887., br. 3794., kojom su opredjeljeni broj i sjedišta kr. javnih bilježnikah", *Pravos. zbir.*, volume III, 1892, no. 269.

⁴⁴ For an example of the process to establish a notarial place, see Krešić, *op. cit.* in note 1, p. 101.

⁴⁵ HDA, Zemaljska vlada, odjel za pravosuđe [Provincial Government, Justice Department] (hereinafter: ZVOP), sign. 81, box 311 (1877-1919), no. 18/1897, 21/1904.

Although the territory of Croatia-Slavonia continued to be largely rural, industry, skilled trades and commerce were considerably more developed there than in the other (eastern) sections of the Kingdom, which fomented an increase in economic and legal transactions, thus necessitating a higher number of civil law notaries. The Notarial Code was still valid in the territory of Croatia-Slavonia, albeit without clear criteria for the designation of notarial districts. This, despite the need for new notarial districts, contributed to the arbitrary conduct of the relevant authorities with regard to their establishment. Until the promulgation of the Constitution of the Kingdom of Serbs, Croats and Slovenes in 1921, decisions on the organization of new notarial districts in the territory of Croatia-Slavonia were made by the bodies of Croatian authority, the Ban and the Provincial Government.⁴⁶ After the Constitution was ratified, jurisdiction was transferred to the justice ministry, which very soon issued decisions which palpably increased the number of notarial districts. Thus, in 1923, five new districts were organized, followed by seventeen in 1924, and as many as twenty-seven new notarial districts in 1925.⁴⁷ During these three years, more notarial districts were established than the total number from 1859 and the introduction of the modern regulated civil law notary profession. When establishing new notarial districts, the justice minister had to take into consideration the opinion of the *Tabula Banalis* and the notarial chamber, and assess their actual need. By all accounts, this was not the case and this conduct by the minister provoked considerable resistance and bitterness among active civil law notaries, who saw this as a blow to their own existence, a way to harass those notaries who were political opponents of the regime, as well as a means to award political sympathizers.⁴⁸ After 1925, no new notarial districts were established, even though in 1928, immediately prior to the enactment of the Yugoslav law governing civil law notaries, the appointment of one civil law notary for the territory of a single district court was stipulated for the territory of Croatia-Slavonia. Only if the population in the territory of a district court grew above 60,000 could another civil law notary be appointed, and then another for an additional 40,000 inhabitants. An exception was foreseen for the seats of county courts in which civil law notaries were appointed for each 30,000 inhabitants.⁴⁹ Several months later, the provisions of this law were rendered null and void, as the Attorneys Act banned the establishment of new notarial districts until the enactment of a law governing civil law notaries.⁵⁰

Jurisdiction of the civil law notary. Civil law notaries were authorized to compile and discharge public documents with reference to legal transactions, declarations and facts based on individual rights, receive documents for safekeeping and care, issue certificates and affidavits, and function as court trustees. Besides the activities under their own jurisdiction and duties as court trustees, civil law notaries could also compile private documents and submissions at the request of clients. In these cases, the civil law notary proceeded as the legal

⁴⁶ New notarial places were established in Osijek (1920), Pisarovina (1920), Zagreb (1920) and Novi (1921); See the orders of the ban and Provincial Government of Croatia, Slavonia and Dalmatia, published in *Zbornik zakona i naredaba valjanih za Hrvatsku i Slavoniju* (hereinafter: ZZN) in the years 1920-1921.

⁴⁷ See the orders of the Justice Minister of the Kingdom of Serbs, Croats and Slovenes on the establishment of notarial places published in ZZN in the years 1923-1925.

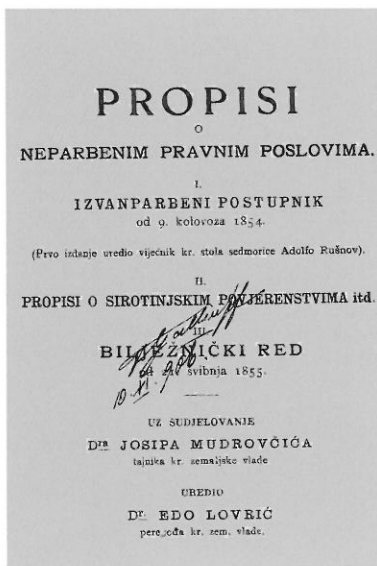
⁴⁸ V. Putnik, D., *Stvaranje novih kr. javnih bilježništava*, Mjesečnik, 1925, pp. 172-177.

⁴⁹ See Article 5, "Zakon o nespojivosti zvanja kralj. javnih beležnika sa zvanjem odvjetnika te o uređenju javnobeležničkih pristojba u ostavinskim predmetima u Hrvatskoj i Slavoniji od 11. juna 1928.," in: *Zbornik zakona, uredbi i naredbi* (hereinafter: ZZUN), 1928, volume X- XI, no. 66.

⁵⁰ See §123 para. 2, "Zakona o advokatima za Kraljevinu Srba, Hrvata i Slovenaca od 17. marta 1929. br. 21560", ZZUN, 1929, volumes V and VI, no. 43.

A notary order from 1855.
The first modern Austrian notary regulation.





The Rules on non-contentious procedures from 1855

proxy of said clients.⁵¹ Civil law notary acts and certified engrossments, if they complied with law, had the force of legal documents.

Official operational territory of the civil law notary. When notarial districts were established, it was also necessary to determine the official territory in which an appointed civil law notary would operate. The official territory was determined in two ways: as the territory of broader jurisdiction which encompassed the territory of the county court for which the notarial district was organized and in which the civil law notary was authorized to perform the tasks from his own jurisdiction and the territory of narrower jurisdiction (so-called narrower environs), i.e., the territory in which the civil law notary functioned as a court commissioner. In this official territory, the civil law notary had his official seat, and outside of this he/she could not have an additional office or branch station. However, he/she could, if necessitated by circumstances and with special permission, hold office days outside of his official seat.

Criteria for the appointment of civil law notaries. The post of a civil law notary was a public service, and civil law notaries were individuals vested with public trust, so that they had to meet certain criteria to be appointed. A notary thus had to be an Austrian citizen, be at least 24 years of age and a Christian, have legal capacity and live a life without vice. The religious criterion was amended in Istria in 1863 and in Croatia and Slavonia in 1873,⁵² while the citizenship requirement was modified after the conclusion of the Austro-Hungarian Compromise (1867), when Hungarian citizenship was recognized in addition to Austrian. Besides recognition of Hungarian citizenship, Croatian-Slavonian civil law notaries also had to regulate their domiciliary status in a Croatian-Slavonian municipality, whereby an individual acquired various rights which ensued from Croatian autonomy, .e.g. suffrage or the right to perform services in autonomous bodies of authority. Domiciliary status was verified by a domicile certificate which – based on an inspection of the archival documents, although not mentioned by the Notarial Code – was submitted as an attachment to the request for appointment to the post of civil law notary. For the sake of comparison, it would be worthwhile to stress that Croatian-Slavonian attorneys had to have Croatian domiciliary status, and since civil law notaries were also attorneys (except in the city of Zagreb), they certainly had to have domiciliary status in Croatia and Slavonia.⁵³ Knowledge of the Croatian language and its consistent application in everyday activities were required for the performance of civil law notary tasks.⁵⁴ There were areas in Croatia and Slavonia where, in addition to Croatian as the official language, another language was also in everyday use. Knowledge of the other language was deemed an advantage for appointment, as indicated by the appointment of a civil law notary for Sušak in which knowledge of Italian was particularly underscored.⁵⁵ Another important condition for appointment of a civil law notary was the successful passage of the notarial examination or bar examination. However, a person with a completed judicial examination and a one-year internship in the notarial profession could

⁵¹ Hofman, J., "O pravnoj naravi bilježničkog poslovanja," *Mjesečnik*, 1890, no. 5, pp. 221-223.

⁵² Leideck, *op. cit.* in note 19, p. 25; Krešić, *op. cit.* in note 1, p. 106.

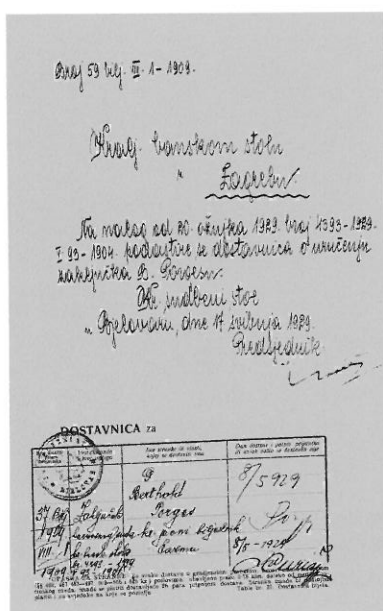
⁵³ Krešić, *op. cit.* in note 1, p. 106.

⁵⁴ See also "§56. Hrvatsko-ugarske nagodbe prema kojemu je hrvatski jezik službeni jezik na području Kraljevine Hrvatske i Slavonije," *SZN*, 1868, section V, no. 14; Cf. "Okružnica predsjedništva kr. banskog stola od 7. svibnja 1907. br. 1870 pr., kojom se predsjedništvo kr. sudbenih stolova i predstojništva kr. kotarskih sudova pozivaju, da pomno bdiju nad tim, da kr. javni bilježnici, kada kao javni urednici izvršuju ured bilježnički, strogo vrše zakonske propise tičuće se uporabe službenog hrvatskog jezika i pisma i rabljenja zakonu odgovarajućeg uredovnog pečata i napisa," *Pravos. zbir.*, volume VIII, 1913, no. 1032.

⁵⁵ HDA, ZVOP, sign. 81, box 312 (1919), no. 102/1919.

also apply for a notarial district. Finally, only a person worthy of public trust could be appointed a civil law notary. What this meant may be discerned from the file on the appointment of Avelin Stahuljak to the post of civil law notary in Klanjec in 1905, in which it states that "...the moral and social conduct of Dr. Avelin Stahuljak, an attorney in Klanjec of the proper social station, indicates that he is a very industrious, ethical attorney, who completes his assumed tasks with great promptitude, takes a great interest in his clients and against whom there are no complaints, so he is indeed worthy and capable of being appointed the royal civil law notary in Klanjec..."⁵⁶ To be worthy of public trust also meant that without special royal permission, a person convicted of a crime, misdemeanour or infraction could not be appointed a civil law notary.⁵⁷ Pursuant to these criteria, civil law notaries were received into the service in the territory of Croatia-Slavonia even after the collapse of the Monarchy, when only the citizenship requirement was altered. Citizenship in the new state was first regulated by electoral legislation enacted in 1920, according to which citizens of the Kingdom of Serbs, Croats and Slovenes in the sense of entitlement to suffrage were all citizens of Serbia and Montenegro up to 1 December 1918, followed by those who had citizenship in Croatia, Slavonia and Dalmatia, residence in Bosnia-Herzegovina or domiciliary status in one of the municipalities or parts thereof in other Yugoslav lands which became a part of the Kingdom. Persons who were Slavs in terms of nationality ("tribe") and language who were permanently settled in the territory of one of the municipalities in the Kingdom by the onset of compilation of electoral rolls were also deemed citizens. Since the question of citizenship was only legally resolved in 1928, up to that time these provisions from the electoral law were the authoritative criteria for ascertaining citizenship, including cases of fulfilment of the citizenship criteria for the needs of appointment as a civil law notary.⁵⁸ For example, in 1925, in a request for the notarial district in Novska, Stjepan Kos stated that he had domiciliary rights in Croatia and Slavonia and attached his domicile certificate as evidence.⁵⁹ However, the Kingdom of Serbs, Croats and Slovenes were more interested in civil law notaries who were ethnic Slovenes, Croats and Serbs, and lived and worked in the former territories that did not become a part of the Kingdom. Thus, in June 1919, a law was enacted whereby the existing qualifications of these civil law notaries were recognized for that legal territory of the Kingdom in which they wanted to continue to work.⁶⁰ They could exercise this right within a period not to exceed six months after the date of conclusion of the peace treaty between the Kingdom and the state in whose territory they were in up to that point.⁶¹ Citizenship was only regulated with the Citizenship Act (1928),⁶² and it remained in force even after the enactment of the Yugoslav notarial law which altered somewhat the conditions for the performance of notarial service.

A notarized delivery note from 1909
Source: The private collection of Z. Jelavić



⁵⁶ From the correspondence of the grand prefect of Varaždin County to the Provincial Government, Justice Department, with regard with the appointment of Avelin Stahuljak, attorney from Klanjec, civil law notary of 22 October 1905, in: HDA, ZVOP, sign. 81, box 311 (1877-1919), no. 15/1897.

⁵⁷ Krešić, *op. cit.* in note 1, p. 107.

⁵⁸ Krešić, *op. cit.* in note 1, pp. 107-108.

⁵⁹ HDA, ZVOP, sign. 81, box 311 (1877-1919), no. 84/1919.

⁶⁰ "Zakon o priznanju kvalifikativnih pogodaba za sticanje advokature i javnog bilježništva od 30. jula 1919.", ZZN, 1920, section I, no. 33.

⁶¹ During 1919/20, the open question of the border of the Kingdom of the Serbs, Croats and Slovenes with neighbouring states was resolved. Peace treaties were thus concluded with Austria, Bulgaria, Hungary, Romania and Italy. For more see Krizman, B., *Pitanje granica Kraljevstva SHS poslije prvog svjetskog rata*, Krizman, B. et. al., *Hrestomatija povijesti hrvatskog prava i države*, Zagreb, 1998, pp. 189-219.

⁶² "Zakon o državljanstvu Kraljevine Srba, Hrvata i Slovenaca", *Službene novine Kraljevine Srba, Hrvata i Slovenaca od 1. novembra 1928.*, no. 254-LXXXIV.

Incompatibility of the civil law notary profession and the simultaneous performance of certain other functions or tasks. When performing his notarial services, a notary was prohibited from engaging in various commercial, brokerage and commission-based jobs, while the performance of paid municipal or certain other services required permission from the Ban and the *Tabula Banalis*. A notary also could not perform another paid public service at the same time. These restrictions nonetheless did not preclude the possibility of activity by a notary outside of the notarial service, particularly not a ban from engaging in political activity. Although the number of civil law notaries, despite its constant growth, was not high, one could not overlook the fact that these were highly-educated individuals who could in various ways contribute to society's political, legal and cultural progress. Whenever notaries assumed functions that they could not perform simultaneously with notarial activity, they automatically lost their notarial post, which was the case with Dr. Pavao Battagliarini, an attorney and civil law notary from Rijeka, who was appointed an assessor in the Royal Court in Budapest.⁶³ However, if a civil law notary was elected to a seat in the Croatian-Slavonian Diet or the Common Hungarian-Croatian Assembly, he did not lose his post automatically; rather he retained his office, although he could not perform notarial activities. In these cases, the county court with jurisdiction had to specify an alternate who would perform the tasks under the notarial jurisdiction for the duration of the notary's term in office.⁶⁴ The active and passive suffrage of civil law notaries was exceptionally important, because civil law notaries were a small group of Croatian-Slavonian citizens with the right to vote, especially in the period prior to 1918. (Direct) suffrage of civil law notaries was first mentioned explicitly in the amendments to the electoral law in 1888, and it was contingent upon age, educational census and domiciliary status in one of the Croatian-Slavonian municipalities.⁶⁵ In the preceding electoral regulations, civil law notaries were not explicitly mentioned, although it may be concluded that they participated in elections. This conclusion ensues from the fact that civil law notaries in all settlements, except Zagreb, were also attorneys, and attorneys were explicitly cited as persons with suffrage. Additionally, civil law notaries certainly belonged to the category of persons who had (active and passive) suffrage as "graduates", i.e. persons who had university degrees. Thus, for example, in the elections to the diet in 1881, Dr. Franjo Arnold, a civil law notary from Zagreb, participated as a non-party candidate, while a candidate for the Party of the Right in 1884 was Dr. Franjo Klaić, an attorney and civil law notary from Samobor.⁶⁶ Passive suffrage was abolished for civil law notaries by the electoral law enacted in 1910, which was justified by the importance of the civil law notary profession as a public service, which could not allow for their extended absence to participate in the work of the Diet.⁶⁷ The passive suffrage of civil law notaries was restored for the elections to the Constitutional Assembly of 1920, when the electoral law stipulated the inclusion of so-called qualified candidates on all election slates. Civil law notaries certainly belonged in the catego-

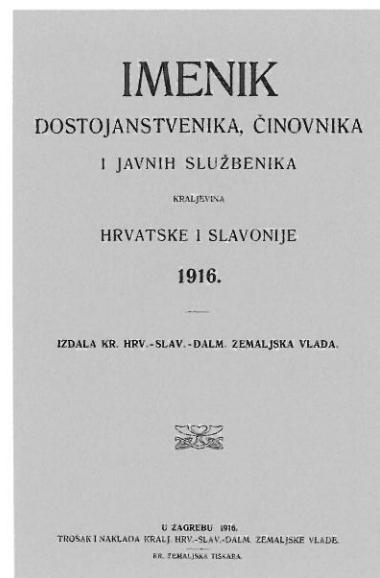
⁶³ State Archives of the City of Zagreb (hereinafter: DAZG), Sudbeni stol u Zagrebu [Judicial Bench in Zagreb], sign. 84, box 2 (1877-1880), no. 16/1872.

⁶⁴ See, for example, "Naredba kr. hrv.-slav.-dalm. Zemaljske vlade, odjela za pravosuđe od 6. prosinca 1889., br. 14403., glede dopusta odvjetnikah i kr. javnih bilježnikah u svrhu sudjelovanja kod razpravah sabora kraljevinah Hrvatske, Slavonije i Dalmacije te zajedničkoga ugarsko-hrvatskoga državnoga sabora", *Pravos. zbir.*, volume III, 1892, no. 332.

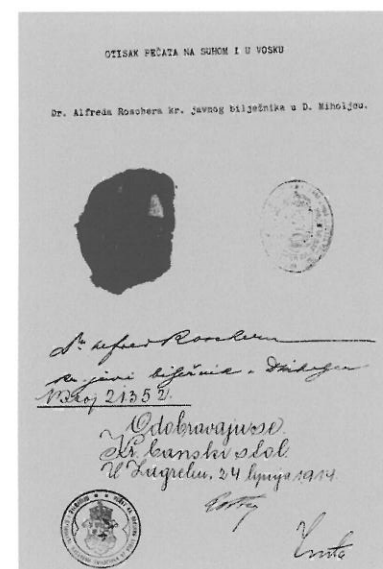
⁶⁵ See "Zakon o preinaci nekih ustanovah zakona od 15. srpnja 1881.ob izbornom redu za sabor kraljevinah Dalmacije, Hrvatske i Slavonije od 29. rujna 1888.", *SZN*, 1888, section XV, no. 65.

⁶⁶ Turkalj, J., *Pravaški pokret 1878.-1887.*, Zagreb, 2009, pp. 157, 275, 318.

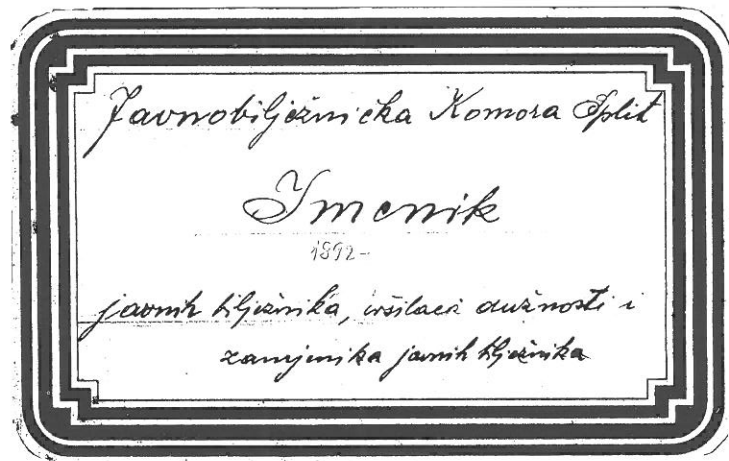
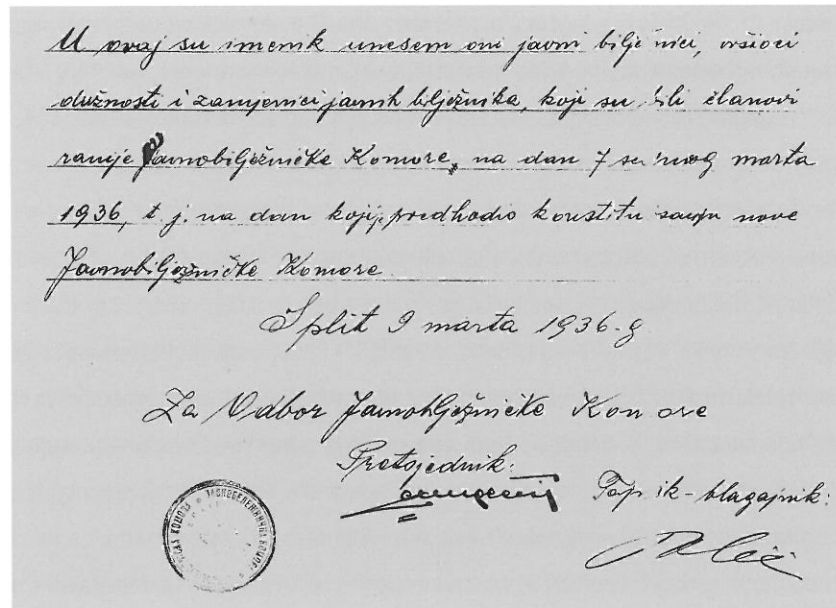
⁶⁷ See "§4. Zakona o izbornom redu za sabor kraljevina Hrvatske, Slavonije i Dalmacije od 28. svibnja 1910.", *SZN*, 1910, section VI, no. 41; cf. Čepulo, D., *Prava građana i moderne institucije – europska i hrvatska pravna tradicija*, Zagreb, 2003, pp. 94-107.



A dry and wax stamp prints of a notary from Donji Miholjac



Directory the Notaries Chamber Split from 1892



ry of the few who could be candidates for seats in the assembly based on this law. The provision on qualified candidates was discarded subsequently, and in the parliamentary elections from 1923 to 1938, when the last parliamentary elections were held, suffrage for civil law notaries was not specifically emphasized.⁶⁸ As opposed to paid public services which precluded simultaneous engagement in notarial activity, the possibility of simultaneous paid work in municipal or some other public service was assessed in each specific case. For example, the notarial service of Dr. Radovan Marjanović, Esq. did not cease when the royal commissioner for the Kingdom of Croatia and Slavonia approved his assumption of the post of municipal chief in Našice in 1912. Although the royal commissioner had to make his decision with the consent of the *Tabula Banalis*, he proceeded contrary to the opinion of the presidency of the *Tabula Banalis*. It may be assumed that the opinion of the *Tabula Banalis*, in which it states that “the notarial district may be not be merged with the service of municipal chief, because a notary is obliged to perform tasks that do not tolerate delay”, for the royal commissioner this was not sufficient justification to reject the request. At the same time, the district court in Našice and the County court in Osijek, as the notarial chamber with jurisdiction, supported the notary Marjanović’s request, not seeing any obstacle to his assumption of the top municipal post.⁶⁹

⁶⁸ Engelsfeld, N., *Biračko pravo u prvom izbornom zakonu Kraljevstva SHS*, op. cit. in note 61, pp. 311-320; cf. “Zakon o izmenama zakona na osnovi koga su izvršeni izbori na dan 28. novembra 1920”, ZZN, 1922, section II, no. 34; “§§7-13. Zakona o izboru narodnih poslanika za Narodnu skupštinu”, Zbornik zakona i uredbi (hereinafter: ZZU), 1931, volume VIII, no. 212.

⁶⁹ HDA, ZOVP, sign. 81, box 311 (1877-1919), no. 17/1904.

Appointment of civil law notaries. The authority to appoint civil law notaries was vested with the Ban and the Justice Department of the Provincial Government of the Kingdom of Croatia, Slavonia and Dalmatia. Notarial districts were filled by means of vacancy announcements that were posted by the relevant chambers. However, the chamber and the court with jurisdiction could file a proposal with the Ban for appointment without implementing the vacancy announcement procedure. The Ban could therefore appoint notaries without a posted vacancy announcement, but also without the proposal of the relevant bodies. Nonetheless, if a vacancy announcement was posted, the requests had to contain proof of fulfilment of the sought-after criteria, wherein the candidates submitted them through the notarial chambers or bar associations or office chiefs of staff if the candidates were attorneys or clerks. The nomination for appointment had to be submitted by the chamber to the county court. However, since the county courts actually functioned as the chamber, this part of the appointment procedure was conducted entirely inside the courts. The county court forwarded the nomination for appointment with its opinion to the *Tabula Banalis*, and the *Tabula Banalis* then turned the documentation over to the Provincial Government's Judiciary Department. The posting of a vacancy announcement to fill notarial districts was not a customary procedure, and generally the districts were filled without the announcement. Dr. Franko Potočnjak, an attorney, civil law notary and politician testified to this in his letter to Croatian-Slavonian Ban Tomislav Tomljenović in November 1919, when he expressed an interest in a notarial district in Zagreb and asked whether it would be filled "without a vacancy announcement, as customary under the former government (Austria-Hungary – *author's note*), or whether a vacancy announcement would be posted".⁷⁰ Such an appointment procedure provoked numerous difficulties during the 1920s, when a high number of new notarial districts were organized that had to be filled in relatively short order. Often it transpired that notaries were appointed without a vacancy procedure and without a nomination from the *Tabula Banalis* and the notarial chamber,⁷¹ and this lack of procedural transparency allowed for the exploitation of the appointment of certain individuals as a means to confer political rewards, which diminished the profession's reputation. Thus, for example, Filip Markotić, an attorney and member of the Croatian Peasant Party (HSS) from Brod, was appointed a civil law notary after the party and its leader Stjepan Radić came to an agreement with the central government in Belgrade in 1925, creating a less tempestuous political atmosphere in the Kingdom of Serbs, Croats and Slovenes. However, pursuant to the changes in the political climate after the introduction of the royal dictatorship in 1929, after he relinquished his district (following enactment of the Yugoslav notarial law), his appointment was obviously not "renewed".⁷² After ratification of the Constitution of the Kingdom of Serbs, Croats and Slovenes, the right to appoint civil law notaries was transferred from the Croatian Ban and the Provincial Government to the royal government's justice minister.⁷³

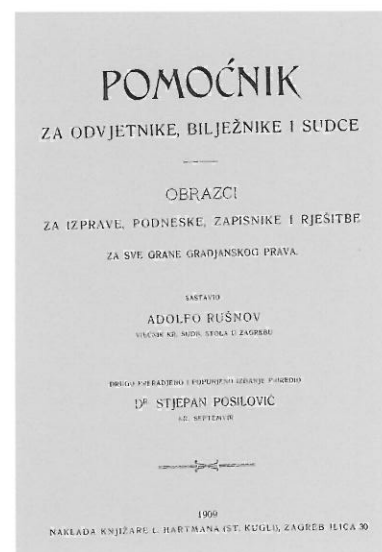
Commencement of civil law notary service. Prior to the commencement of operation, notaries had to fulfil a series of formalities. After the certificate of appointment was delivered to

⁷⁰ HDA, ZOVP, sign. 81, box 312 (1919), no. 122/1919.; Cf. *Hrvatski zakoni III.*, 260.

⁷¹ *Mjesečnik*, 1925, no. 2, 137.

⁷² For more see Leček, S., "Brodski odvjetnik Filip Markotić – „desni“ haesesovac", *Scrinia slavonsica*, 2006, no. 6, pp. 405, 408, 410.

⁷³ Prior to ratification of the Constitution of the Kingdom of Serbs, Croats and Slovenes, the justice minister already had the authority to appoint civil law notaries in the territory of Međimurje, as its constitutional status was unresolved until the conclusion of a peace treaty with Hungary in 1920, and the ratification of that treaty in 1921. See HDA, ZVOP, sign. 81, box 312 (1919), no. 108/1919.



the appointed notary, the county court with jurisdiction and the royal financial directorate in Zagreb, the appointment notice was also delivered to the (daily) press, the editorial board of *Narodne novine* (the Croatian official bulletin) and *Mjesečnik Pravničkog društva* (Law Association Monthly), in which notifications on appointment were published. In a further three month period or within a deadline extended at his justified request, the appointed civil law notary then had to open a civil law notary office and commence working. This also entailed payment of a security deposit, the filing of a request for so-called dry and wet seals and signature with name and surname and swearing an oath. The appointment of a notary and the oath-swearing date had to be made public, particularly to the courts in the territory of operation and the notarial chamber, so that the notary could be registered in the notarial directory.

Given the many years of application of the Notarial Code, the series of constitutional changes which occurred between 1859 and 1941 were reflected precisely in the formalities which notaries had to undergo in order to be admitted to the service and even during the performance of their duties. Officially civil law notaries had to bear the title “imperial-royal civil law notary” so that they could be distinguished from already existing notaries, local and municipal, who performed clerical services. Nonetheless, in the available files, not a single instance was found of the use of this designation, rather only “royal civil law notary” (*kraljevski javni bilježnik*, and also *kr. javni bilježnik*). The notary’s seal had to contain the Austrian state eagle, the name and surname of the civil law notary and the name of the settlement and the crown land in which he was a notary. However, after the conclusion of Croatian-Hungarian Compromise, civil law notaries used the coat of arms of the Kingdoms of Croatia, Slavonia and Dalmatia mounted by the Hungarian crown of St. Stephen, and they took a loyalty oath to Emperor and King Francis Joseph I and his heirs.⁷⁴ The *Tabula Banalis* was obliged to notify the county court with jurisdiction and the notarial chamber of the swearing of the oath and deliver the signature and seal of the new civil law notary.⁷⁵ Major changes took place after the collapse of the Monarchy and the establishment of the State of Slovenes, Croats and Serbs in 1918, when the designation “royal” was removed from the official title of civil law notaries⁷⁶ and the swearing of fealty to the king was eliminated from the oath.⁷⁷ The declaration of loyalty was soon restored, but now to the National Council of the Slovenes, Croats and Serbs.⁷⁸ Already in the next year, in 1919, civil law notaries swore loyalty to King Petar I Karađorđević, and after the introduction of the dictatorship, to the ruling king of the Kingdom of Serbs, Croats and Slovenes.⁷⁹ Due to changes in state frameworks, besides the content of the oath, the appearance and content of the seal was also altered, so that instead of the inscription “Kingdom of Croatia, Slavonia and Dalmatia” with the appro-

⁷⁴ For the text of the civil law notary oath, see: *Hrvatski zakoni III*, 261-262.

⁷⁵ DAZG, Sudbeni stol u Zagrebu, sign. 84, box 4 (1911-1913), no. 17/1912.

⁷⁶ See “§2. Naredbe predsjedništva Narodnog vijeća od 31. listopada 1918. br. 18153 prav., kojom se određuju neke preinake zakona o vlasti sudačkoj, ukida naslov „kraljevski” za sudbene oblasti, pravosudne činovnike, službenike, javne bilježnike i preinačuje obrazac slubene prisega pravosudnih činovnika i službenika, odvjetnika i javnih bilježnika”, *SZN*, 1918, section XV, no. 103.

⁷⁷ See “§3. Naredbe predsjedništva Narodnog vijeća od 31. listopada 1918. br. 18153 prav., kojom se određuju neke preinake zakona o vlasti sudačkoj, ukida naslov „kraljevski” za sudbene oblasti, pravosudne činovnike, službenike, javne bilježnike i preinačuje obrazac slubene prisega pravosudnih činovnika i službenika, odvjetnika i javnih bilježnika”, *SZN*, 1918, section XV, no. 103.

⁷⁸ See “Naredba predsjedništva Narodnog vijeća od 9. studenog 1918. br. 18472 pravos., o preinačenju propisa §3. naredbe od 31. listopada 1918., br. 18152., kojom se određuju neke preinake zakona o vlasti sudačkoj, ukida naslov “kraljevski” za sudbene oblasti, pravosudne činovnike, službenike, javne bilježnike i preinačuje obrazac slubene prisega pravosudnih činovnika i službenika, odvjetnika i javnih bilježnika”, *SZN*, 1918, section XV, no. 110.

⁷⁹ See “§2. Naredbe bana Hrvatske i Slavonije od 5. veljače 1919. br. 2733, o zaprisizanju pravosudnih činovnika i službenika, odvjetnika i kr. javnih bilježnika”, *ZZN*, 1919, section I, no. 11; “Zakon od 27. januara 1929. o izmeni zakletve advokata i javnih beležnika”, no. 640, in: *ZZUN*, 1929, volume III, no. 20.

priate coat of arms, it now featured “Kingdom of Serbs, Croats and Slovenes” with the new state’s coat of arms.⁸⁰

An exceptionally important prerequisite for admittance to the service was the payment of a security deposit. The amount of the security deposit depended on the seat of the civil law notary, so for towns with a minimum population of 30,000, this sum was 5,000 forints, while for towns which were the seats of county courts, the amount was 2,000 forints, and 1,000 forints for all other settlements. These sums changed due to changes in the regulation of monetary transactions and the recomputation of forints into crowns. The security deposit was remitted to the county court in cash, or in the form of securities or promissory notes, and after any disbursement from the security deposit, the notary was obliged to compensate the sum of such disbursement. The security deposit was returned to the civil law notary or his heirs after the notary’s office ceased operating for any reason whatsoever.⁸¹

Cessation of civil law notary service. Civil law notary service ceased due to any legally stipulated reason, on which the Ban or *Tabula Banalis* decided. The reasons for the cessation of civil law notary service were the same as those which the candidate for civil law notary had to satisfy in order to be appointed to the post of civil law notary. Thus, a notary was removed from the service if he performed tasks that were incompatible with civil law notary jurisdiction, if he lost his citizenship or legal capacity or if he was placed under the care of another or became subject to bankruptcy. Furthermore, if a notary failed to pay the new security deposit or supplement the reduced deposit and if he was convicted of any crime, misdemeanour or infraction committed for personal gain or to violate public morals. A notary could also be removed from the service due to any other conviction leading to a prison sentence of a minimum of six months, or as the result of a disciplinary procedure and the establishment of any reason that entailed loss of the notarial post. Service also ceased in cases in which the appointed civil law notary failed to meet all of the criteria for the opening of a civil law notary office within a period of three months or by the extended deadline at his request, and it was deemed that he had forgone his appointment, or he was dismissed. In any case, service ceased with the death of the civil law notary or his retirement.

Vocational organization. Regulations required the establishment of a chamber in the territory of each county court, and the specific county court had to in fact perform the chamber’s function until its establishment. However, the temporary alternate functioning of the county courts as the chamber became permanent due to the legally stipulated manner for the establishment of chambers. Even in this case, as in Dalmatia, it was difficult to expect the formation of a chamber in which the sole member would be the civil law notary from, for example, the county courts in Gospić or Petrinja. The non-establishment of chambers did not prove beneficial for civil law notaries, because the lack of a vocational organization prevented any significant development or strengthening as a profession. Aware of the limitations of such vocational (non-)organization, the *Tabula Banalis* issued a circular to the county courts already in 1878 in which it notified them that over the past roughly twenty years they had not dedicated sufficient care to the development of the civil law notary profession, such that it was deprived of the protection that a notarial chamber would secure for them. It thus instructed them to proceed much more responsibly in their capacity as notarial chambers. One

⁸⁰ “Naredba bana Hrvatske i Slavonije od 14. juna. 1921., br. 12491, o stvari pečata (štambilja) kr. javnih bilježnika”, ZZN, 1921, section II, no. 49.

⁸¹ For more, see Krešić, *op. cit.* in note 1, pp. 119-120.

Croatia and Slavonia. However, after the conclusion of the Croatian-Hungarian Compromise, Rijeka's status was altered by an ambiguous formulation whereby Rijeka became a *corpus separatum* of the Hungarian crown (a clause known somewhat derisively in Croatian historiography as the so-called "Rijeka scrap"). In subsequent negotiations, a "proviso" was accepted (1870) which would remain in force until 1918, whereby Rijeka acquired autonomy and was directly linked to the government in Budapest. The newly-established city authorities had jurisdiction over the territory of the city and district of Rijeka, while the remaining territories of Rijeka County (which, despite the loss of Rijeka, retained its previous designation) remained under the jurisdiction of the Croatian-Slavonian authorities.⁸⁸ A consequence of this constitutional status for Rijeka was the introduction of the Hungarian notarial law in 1875, which remained in force until 1929, when Italian notarial legislation became effective in Rijeka, which was a part of the Kingdom of Italy since 1924.



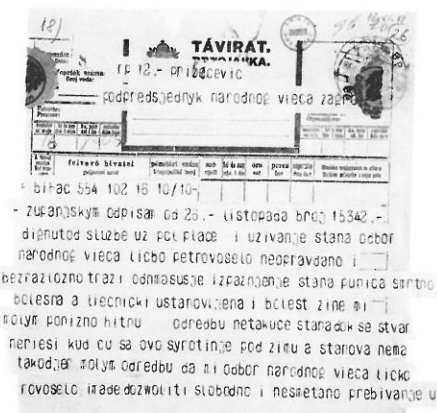
A map of the Kingdom of Yugoslavia (1929) with its division into autonomous provinces (*banovina*)

III. THE CIVIL LAW NOTARY PROFESSION IN THE KINGDOM OF YUGOSLAVIA

Introduction. At the close of the First World War, the State of Slovenes, Croats and Serbs was formed in October 1918, and the unification of the latter with the Kingdoms of Serbia and Montenegro in December of that same year led to the establishment of the Kingdom of Serbs, Croats and Slovenes, later (in 1929) renamed the Kingdom of Yugoslavia. Prior to 1918, the territories that became part of the Kingdom had existed under different constitutional frameworks, with different legal structures and legal underpinnings. Thus, from the legal standpoint, the Kingdom was a particularized state that encompassed six so-called legal territories: Croatia-Slavonia, Dalmatia-Slovenia, Bosnia-Herzegovina, the legal areas of Međimurje, Baranja, Bačka and Banat, and the Serbian and Montenegrin territories. Civil law notary activity was organized only in the territories of the former Monarchy, with the exception of Bosnia-Herzegovina, albeit governed by differing regulations. In Croatia-Slavonia, the Notarial Code of 1855 was in effect; in the territories of Dalmatia and Slovenia, the Notarial Code of 1871 was in force, while in the legal areas of Međimurje, Baranja, Bačka and Banat, the Hungarian law of 1874 was in effect.

Legal framework for the regulation of civil law notaries. The differing legal regulation and the non-existence of civil law notary activity in some parts of the Kingdom prompted the justice ministry to deal with the matter of civil law notaries as soon as the new state was formed. The legal profession had a largely positive stance on the expansion of civil law notary activity to the entire Kingdom.⁸⁹ This matter was a particular topic of discussion at the congress of Yugoslav lawyers held in Ljubljana in 1926 at the initiative of Dalmatian civil law notaries, who were enduring an exceptionally difficult situation.⁹⁰ The participants in the

A committee in Ličko Petrovo Selo requests that Svetozar Pribičević empties his apartment. The notary Vlatković from Bihać requests the permission to use it.
Sig.: HR-HDA-124-3-1-375

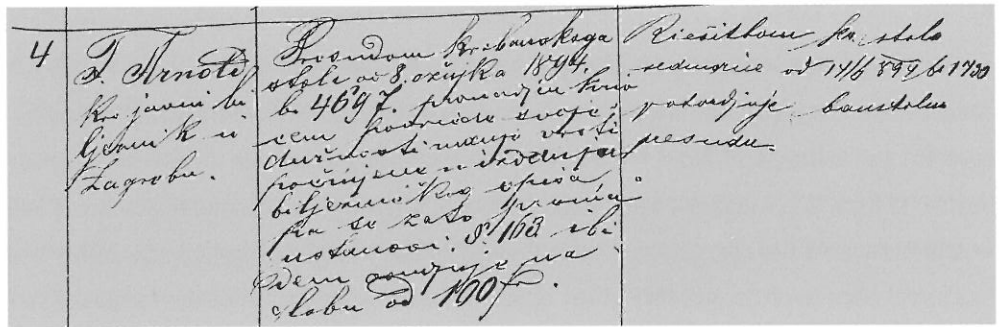


⁸⁸ See "Naredba kralj. ugarskoga ministra predsjednika, kralj. ugar. Ministra pravosudja i Bana kraljevinah Dalmacije, Hrvatske i Slavonije ob ustrojenju kr. riečkoga sudišta i o privremenom uredjenju njegove nadležnosti," *SZN*, year 1871, section XXIV, no. 70

⁸⁹ Krešić, M., "Zakon o javnim bilježnicima Kraljevine Jugoslavije iz 1930.: sudjelovanje javnog bilježnika u ostavinskom postupku – iskustva iz prošlosti," *Zbornik Pravnog fakulteta u Zagrebu*, 63, 2013, vol. 2, pp. 357-358.

⁹⁰ The notarial chamber in Split published a summons to all civil law notaries in the Kingdom of Serbs, Croats and Slovenes in *Mjesečnik* in 1926: "At the law congress, which will be held in Ljubljana on 9 and 11 September this year, the seventh item on the agenda is an examination of the question of civil law notaries. Our profession is beset by various circumstances, and it is threatened, facing extinction. A decade has passed, yet nothing has been done to make this institution, valued throughout the civilized world, come to its true expression to the

From the book of notes on disciplinary procedure.
Source: The private collection of Z. Jelavić



congress made the decision to retain the civil law notary profession and expand it to the entire state, also stressing the need for the enactment of a universal notarial law.⁹¹ Based on these standpoints, the compilation of the draft Yugoslav law was entrusted to Slavoljub Sova, the retired president of the *Tabula Banalis* in Zagreb, who compiled it on the basis of the draft Austrian notarial law of 1911. After a special commission reviewed the draft, a final critical reading was done by Berthold Eisner.⁹² Work on the draft was finalized during the so-called January 6 Dictatorship, and the Notary Public Act entered into force in 1930. Even though the law was enacted with the aim of expanding civil law notary activity to the state's entire territory, it only became effective in the jurisdictional territories of the appellate courts in Zagreb, Split, Ljubljana, Novi Sad and Sarajevo.⁹³ In the territories of the appellate courts in Belgrade and Skopje, and the Grand Court in Podgorica, the law was supposed to enter into force pursuant to a special directive issued by the justice minister. However, such a directive was never issued. Moreover, in 1932, the law was set aside in the jurisdictional territory of the Supreme Court in Sarajevo.⁹⁴ The law foresaw the establishment of a notarial chamber for each appellate court in the Kingdom, so in 1936 such chambers were established in the jurisdictional territories of the appellate courts in Ljubljana, Split and Novi Sad,⁹⁵ while in 1937 a chamber was also established in Zagreb.⁹⁶ Given the establishment of several notarial chambers, the Federation of Notarial Chambers was established in 1937.

Uncertainty surrounding the civil law notary profession. Despite the enactment of the law, the idea of abolishing the notarial profession still prevailed in some circles.⁹⁷ Thus, in 1935, the justice minister, prompted by the pending justice system reforms, stressed that the ques-

benefit of the state and its people. We civil law notaries, to the extent of our capability, are attempting to demonstrate our worth and the value of our profession through our work, but we are being impeded in this by a lack of understanding on the part of those who should come to our aid. We are therefore compelled, and also duty-bound, to invest all of our efforts on behalf of the civil law notary institution, to which we have dedicated our lives, and in which we are closest to our people. In addition to our energetic work, it is imperative that we participate in the aforementioned congress in the greatest possible number, where we shall show our comrades in the state and the entire public that we are worthy of our vocation and that our profession is a vital legal institution; we seek its regulation and expansion to the entire state. The more of us that come together, the more successful our work shall be." *Mjesečnik*, 1926, no. 7, p. 326.

⁹¹ For the text of the Conclusion, see Krešić, *op. cit.* in note 89, p. 359.

⁹² Žilić, F.; Šantek, M., *Zakon o javnim bilježnicima (notarima) sa svim izmjenama i dopunama*, Zagreb, 1934, pp. 11-12.

⁹³ As a result of the court reorganization in the Kingdom, the former district courts of Croatia and Slavonia, Međimurje and Dalmatia were renamed (from *kotarski* to *sreski*, both terms having essentially the same meaning), while retaining their previous territorial jurisdiction; the Croatian-Slavonian county courts and the Dalmatian territorial courts were renamed circuit courts, also retaining their previous territorial jurisdiction, while the *Tabula Banalis* in Zagreb and the High Territorial Court in Split were renamed appellate courts. See §4, §13 and §103, "Zakon o uređenju redovnih sudova za Kraljevinu Srba, Hrvata i Slovenaca od 18. januara 1929.", *Službene novine Kraljevine Srba, Hrvata i Slovenaca* od 25. januara 1929., no. 20-X.

⁹⁴ See article 1, "Zakon od 27. decembra 1932. br. 127534-Z-314 o izmjeni §253. Zakona o javnim beležnicima", *Službene novine Kraljevine Jugoslavije* od 30. decembra 1932., no. 304-CXIV.

⁹⁵ "Uredba o osnivanju javnobeležničkih komora u područjima Apelacionih sudova u Ljubljani, Splitu i Novom Sadu", *Službene novine Kraljevine Jugoslavije* od 25. januara 1936., no. 19-III.

⁹⁶ "Uredba o osnivanju javnobeležničke komore u području Apelacionog suda u Zagrebu", *Službene novine Kraljevine Jugoslavije* od 23. januara 1937., no. 16-IV.

⁹⁷ *Odvjetnik*, 1932., no. 8, p. 17.

An invitation to execute probate proceedings at a notary from Zagreb in 1937



tion of abolishing or retaining the notarial profession naturally imposed itself, particularly if financial burdens were to be removed from the population in that manner.⁹⁸ Such views in turn inspired the publication of a memorial book by the Association of Civil Law Notaries of the Kingdom of Yugoslavia (*Spomenica Udruženja javnih bilježnika Kraljevine Jugoslavije*), wherein the advocates of retaining the civil law notary institution attempted to justify the existence of the notarial service. The *Spomenica* stressed the civilisational value of the civil law notary institution, rejecting the characterization of notarial activity as an exploitative and feudal institution. On the contrary, civil law notary activity was considered an institution which brought order and security to legal affairs, and its abolishment would impose great damages on the Kingdom's legal order. Additionally, it was believed that the abolishment of the civil law notary profession would have a negative impact on the state's international status, since notarial acts had evidentiary force in international legal affairs.⁹⁹ Some professional associations, such as the Chamber of Attorneys in Novi Sad, occasionally undertook very clear steps intended to abolish notarial activity, as opposed to the Bar Association in Zagreb, which expressly opposed its abolishment.¹⁰⁰ These debates did not lead to the abolishment of notarial activity, but opinions on this were conveyed from the Yugoslav level to the newly-established Banate of Croatia. Internal political instability in the Kingdom and the threat of the new world war led to a reorganization of the state with the establishment of the Banate of Croatia (1939) as a separate unit inside the Kingdom, with legislative, administrative and judicial authority. As a part of the territorial reorganization of the Banate's courts, with a view to bringing the new Banate's territory into line with the principle of independence of the Croatian judiciary, a considerably broader reform of the judiciary was considered, which would entail changes in court procedures and the status of judges, and create an entirely new judicial structure in the Banate. The new court organization would have also meant a change in the actual jurisdiction of individual courts. Thus, during deliberations on the reorganization of the judiciary of the Banate of Croatia in 1940, Dr. Franjo Žilić, a departmental chief in the Banate's Government, advocated the expansion of the extra-judicial jurisdiction of the district courts to include probate hearings. He also believed that the district courts should conclude private legal contracts, and, as needed, certify the signatures on these contracts.¹⁰¹ This meant that the civil law notary institution would not be necessary, even though Žilić did not explicitly mention civil law notaries. However, despite this and similar views, the authorities of the Banate of Croatia did not impinge upon the civil law notary institution.

Incompatibility of the civil law notary and attorney professions. The law endorsed the principle of incompatibility of the civil law notary and attorney professions. Since this incompatibility was enshrined by the Austrian laws from 1855 and 1871, and the Hungarian law of 1874, this provision was exceptionally important to Croatian-Slavonian territory in which civil law notaries who were simultaneously attorneys were active, even though this was supposed to be only a temporary state of affairs. A genuine and more serious effort to expand the principle of incompatibility to the entire Croatian-Slavonian territory came with the enactment of the Incompatibility Act of June 1928,¹⁰² which stipulated the impossibility of simul-

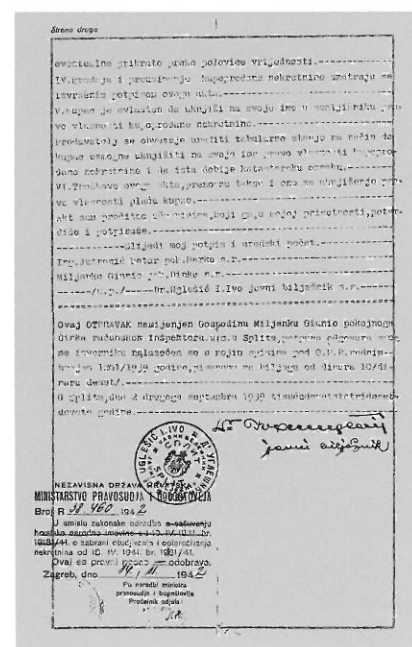
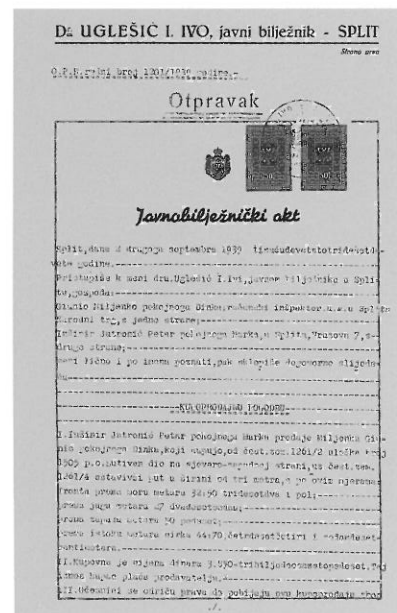
⁹⁸ *Odvjetnik*, 1935., no. 2-4, p. 35.

⁹⁹ *Spomenica Udruženja javnih bilježnika Kraljevine Jugoslavije* (hereinafter: *Spomenica Udruženja*), Split, 1935, pp. 22, 35, 48.

¹⁰⁰ Krešić, *op. cit.* in note 89, pp. 361-362.

¹⁰¹ Žilić, F., "Preuređenje pravosuđa u Banovini Hrvatskoj," *Savremeni*, 1940, no. 5, pp. 134-135.

¹⁰² "Zakon o nespojivosti zvanja kralj. javnih beležnika sa zvanjem odvjetnika te o uređenju javnobeležničkih pristojba u ostavinskim predmetima u Hrvatskoj i Slavoniji od 11. juna 1928.," *ZZUN*, volume X.-XI, no. 66, 1928.



A notarial instrument of sale and purchase from 1939 drawn up by the notary Ivo Uglešić

taneous engagement in both professions. Even before the passage of this law, public concern were raised that its enforcement would cause many difficulties, especially in smaller settlements where the existence of civil law notaries would be threatened if they were deprived of the additional earnings by working as attorneys as well. Thus, a solution which would simultaneously uphold the principle of incompatibility foresaw the expansion of the jurisdiction of civil law notaries. On the other hand, the separation of the professions was very well accepted in larger cities (such as, for example, Osijek), where it was deemed an unfair privilege to allow individuals to engage in both professions.¹⁰³ Based on this Act, civil law notaries/attorneys were obliged to notify the *Tabula Banalis* which service they intended to retain within a period not to exceed thirty days after the law's entry into force. If they failed to declare their stance, it was presumed that they had (implicitly) relinquished civil law notary activity. Before this legal solution became effective in practice, the Notary Public Act was passed, which also adopted the principle of incompatibility, but provoked numerous ambiguities and postponed the solution to this vital question. Upon the this law's entry into force, all civil law notaries had to effectively relinquish their posts, but continue to work until the new civil law notary districts were filled. In case of reappointment, those notaries who also worked as attorneys had to report to the *Tabula Banalis* as to which profession they would retain within a period not to exceed thirty days after receiving notification on their appointment. The complete actualization of the incompatibility principle should have followed with the establishment of notarial districts in compliance with the new law and their filling. Since the deadline for filling notarial districts was extended several times, there continued to be civil law notaries who performed their duties in compliance with previous regulations and who were also simultaneously authorized to work as attorneys until the justice minister explicitly abolished this possibility. The formulation "in compliance with previous regulations" led to differing interpretations and caused conflicts between attorneys, those who were also civil law notaries and those who worked exclusively as attorneys. The source of the conflict was the obvious misunderstanding that the regulations pursuant to which it was possible to simultaneously engage in both professions were the Incompatibility Act of 1928 and the Attorneys Act of 1929. Based on these laws, the possibility of simultaneous engagement in both professions was foreseen only for those attorneys who functioned as civil law notaries as at 1 June 1928. Thus, in all cases in which a civil law notary was appointed after 1 June 1928, it was not possible to engage in both professions simultaneously, regardless of whether or not the appointment was done pursuant to the Notarial Code valid at the time. Also, appointment on the basis of the Yugoslav law, although it may have involved appointment of the same person to an already existing notarial district, did not allow for the simultaneous engagement in activities as an attorney and civil law notary. Thus, the (newly-)appointed civil law notaries, i.e., all of those who were appointed after 1 June 1928, were obliged to relinquish their careers as attorneys within the legally stipulated 30-day period.¹⁰⁴ The misunderstanding between the Bar Association in Zagreb and attorneys/civil law notaries pushed the Table of Seven (the highest court in Croatia) to step in. In its decisions, the court advocated the stance that a civil law notary may continue to work as an attorney if he factually performed both functions as at 1 June 1928, and was appointed on the basis of the Notarial Code. Notarial ap-

¹⁰³ "Nespojivost odvjetničkog i javnobilježničkog zvanja", *Odvjetnik*, 1928, no. 2, pp. 35-36.

¹⁰⁴ For more, see Krešić, M., "(Ne)spojivost javnobilježničkog i odvjetničkog zvanja u hrvatskim zemljama", Uzelac, A.; Garešić, J.; Maganić, A., *Djelotvorna pravna zaštita u pravičnom postupku – Izazovi pravosudnih transformacija na jugu Europe*, Liber amicorum Mihajlo Dika, Zagreb, 2013, pp. 686-689.

pointments after 1 June 1928, as well as appointments based on the Notary Public Act, implied the incompatibility of civil law notary and attorney activities, i.e., the deletion of civil law notaries from the directory of attorneys.¹⁰⁵ The compatibility of professions was not a minor problem, because according to a report issued on 1 July 1937, 121 civil law notaries were active in the jurisdictional territory of the *Tabula Banalis*. Out of this number, 45 of them only worked as civil law notaries, while 76 simultaneously worked as attorneys as well. According to this same report, one of them was deleted from the directory of attorneys, although the decision was not legally binding, while 75 of them were attorneys and civil law notaries even prior to 1 June 1928, so in compliance with prevailing interpretations of the law the incompatibility principle could not be implemented in practice. Disagreements concerning the (in)compatibility of civil law notary and attorney activity continued, and the number of attorneys/civil law notaries declined very slowly, and in 1940 there were still 69 of them.¹⁰⁶ In September of that same year, a directive was issued on the incompatibility of the civil law notary profession with the attorney profession, and the effective resignation of civil law notaries.¹⁰⁷ Based on this directive, civil law notaries who also worked as attorneys lost their notarial career thirty days after the directive's effective date, which denied them the possibility of choosing one of these professions, and they could then only work as attorneys. To be sure, they were free to apply for a notarial district and, insofar as they were appointed, they would then have to give up being attorneys. All other civil law notaries had to place their posts relinquish their posts, although they continued to perform their functions until the notarial districts were filled. Under this same directive, the Ban was given the authority over the subsequent three years to establish new notarial districts, abolish existing ones and regulate their jurisdiction by means of directives. In this manner, the incompatibility of engaging in civil law notary and attorney activities simultaneously was supposed to be actualized after over eighty years. The satisfaction expressed by attorneys, and somewhat less by attorneys/notaries, over the issuance of this directive was also prompted by the consideration that the solution to this question served as an indicator that rumours of the abolishment of the civil law notary profession in the Banate of Croatia were unjustified.¹⁰⁸ It was believed that the civil law notary institution "is necessary, at least in the near future, certainly under the assumption that it will no longer be compromised by being treated as a sinecure and reward exclusively for political party services."¹⁰⁹ Unfortunately, such optimism proved unfounded.

Notarial districts. The criteria for the establishment of notarial districts were more clearly delineated by the Notary Public Act than in the previous legislation. A single notarial district was specified for the territory of each district court, or for a given territory with a higher population, so that a civil law notary was appointed for each thirty thousand inhabitants. For settlements with populations exceeding forty thousand, the number of notaries was determined for each twenty thousand residents after a hearing conducted by the appellate court and notarial chamber with jurisdiction and an accurate count of the population based on statistical data. A higher number of notarial districts was foreseen for the territory of Croa-

¹⁰⁵ "Zaključak Stola sedmorice od 13. svibnja 1937., Rek. 472/1-37", *Odvjetnik*, 1937, no. 6, 146; Cf. "Rješidba Stola sedmorice od 25. srpnja 1935. Rek. 1059/1-1935.", which confirmed the decision of the bar association in Zagreb of 19 June 1935, no. 1454-1935., in: Rucenr, J.; Strohal, P., *Zbirka rješidaba Stola sedmorice*, volume I, 1939, no. 386, pp. 548-549; *Odvjetnik*, 1932, no. 2, pp. 1-2; *Odvjetnik*, 1934, no. 2, pp. 5-7; no. 3, pp. 17-19.

¹⁰⁶ *Odvjetnik*, 1937, no. 7, p. 171; *Odvjetnik*, 1940, no. 8, p. 183.

¹⁰⁷ "Uredba o nespojivosti zvanja javnih bilježnika sa zvanjem odvjetnika i stavljanju javnih bilježnika na raspolaganje", no. 32307-III-1940 of 20 September 1940, ZZU, volume I-XII, 1940, no. 534.

¹⁰⁸ For more on this, see Krešić, M., *op. cit.* in note 1, pp. 123-124.

¹⁰⁹ *Odvjetnik*, 1940, no. 8, p. 183.

N A R E D B A

o određenju užih okoliša za petnaest javnobilježničkih mjesta u sjedištu sreskih sudova I. II. u Zagrebu.

Član 1.

Na temelju propisa stava 4. §-a 221. zakona o javnim bilježnicima od 11. rujna 1930. godine a nakon saslušanja predsjednika apelacionoga suda u Zagrebu i javnobilježničke komore u Zagrebu određujem za petnaest javnobilježničkih mjesta u sjedištu sreskih sudova I. i II. u Zagrebu slijedeće uže okoliše:

U prvi uži okoliš spada:

a) područje na periferiji grada omeđano s istoka gradskom medom, s juga Maksimirskom cestom, sa zapada Domjanićevom preko Petrove ulice, Srebrnjakom, Bijeničkom cestom na Gorice i Goricama do gradske mede;

b) područje u središtu grada omeđano Vlačkom ulicom, Draškovićevom pre-

*** Napomena: Uredba je objavljena u broju 81 Narodnih Novina od 10. travnja 1940. godine.

The Order on Notary Posts from 1940

tia-Slavonia based on this criteria, although this number could never exceed the number of notarial districts that existed prior to the effective date of the new law.¹¹⁰ Therefore, the number and seats of civil law notaries were regulated by the Directive issued by the justice minister in 1931¹¹¹ for the jurisdictions of the appellate courts in Zagreb, Split, Ljubljana and Novi Sad, and for the jurisdiction of the Supreme Court in Sarajevo. However, notarial districts under the jurisdiction of the Sarajevo court were not filled, since the law was subsequently set aside for that territory. Nonetheless, after the establishment of the Banate of Croatia in 1939 and the reorganization of the judiciary, the circuit court in Petrinja was removed from the jurisdiction of the district court in Dvor na Uni and attached to the circuit court in Bihać. A notarial district, Dvor na Uni, under the jurisdiction of the Supreme Court in Sarajevo was thus filled.¹¹²

Under the aforementioned Directive of 1931, the highest number of notarial districts were established in the territory of Croatia-Slavonia, i.e., as many as ten in Zagreb, under the jurisdiction of the *Tabula Banalis* in Zagreb. Bjelovar, Brod, Osijek and Ruma each had three notarial districts, while Vinkovci, Virovitica, Vukovar, Varaždin, Đakovo, Đurđevac, Zemun, Koprivnica, Križevci, Karlovac, Nova Gradiška, Požega, Srijemska Mitrovica and Stara Pazova each had two. One notarial district was established in as many as fifty-five Croatian-Slavonian settlements. Subsequently, in the period from 1933 to 1937, as a result of growth in the population and a higher volume of legal transactions, the number of civil law notaries in Croatia-Slavonia was once more increased, and in this regard their jurisdictional territories were also regulated in greater detail.¹¹³

Four notarial districts were established in Split under the jurisdiction of its Superior Territorial Court, two each were established in Šibenik and Dubrovnik, and one each in Benkovac, Biograd, Budva, Cavtat, Drniš, Hercegnovi, Hvar, Imotski, Kastav, Kistanje, Knin, Korčula,¹¹⁴ Kotor, Krk, Makarska, Metković, Obrovac, Omiš, Pag, Perast, Preko, Rab, Sinj, Skradin, Ston, Supetar, Tijasno, Trogir, Vis, Vrgorac and Vrlika. However, from the available data it follows that in some of the settlements mentioned above, the appointment of civil law notaries nevertheless did not follow, e.g. in Vrgorac, while in some settlements the activity of a civil law notary was not mentioned after, for example, transfer (Skradin) or death (Sinj) of the preceding civil law notary.¹¹⁵ Given the criteria for the establishment of notarial districts, it was not unexpected that the number of civil law notaries in Dalmatian territory, as opposed to the territory of Croatia-Slavonia, did not grow. The reason for this should be sought in the socio-economic circumstances prevailing in Dalmatia, which were the result of Italian occupation of parts of its territory and the resulting lack of administrative integrity, followed by transit isolation, a lack of capital, the still prevalent feudal agrarian relations and the mass emigra-

The Order on Cancelling the Notarial Profession in Croatia from 1941

UKINUTA USTANOVA JAVNOGA BILJEŽNIŠTVA

Prezavrak Dr. Ante Pavelić izdao je ovu naredbu odmah
Na prijedlog Ministra pravosuđa proputom i proglašuje

ZAKONSKU ODREDBU O UKIDANJU JAVNOGA BILJEŽNIŠTVA

1. Javno bilježništvo se ukida, a Zakon o javnim bilježnicima od 11. rujna 1920. godine se svim njegovim izmjenama i dopunama stavlja se izvan snage.

2. Svi javni bilježnici imaju predat sve svoje javnobilježničke spise, registre i pečate radi čuvanja nadležnom kolegijalnom sudu u roku od osam dana nakon stupanja na snagu zakonske odredbe, a što tako radi stavljanja u sudbeni polog i gotovinu stranaka, bprave i predmete od vrijednosti. Nadležni sud će o sudbenom pologu obavijestiti stranke.

3. Provedenje ove Zakonske odredbe povjerava se Ministru pravosuđa.

4. Ova zakonska odredba stupa na snagu danom proglašenja u »Nevodnim Novim« i tim danom se stavlja izvan snage svi propisi, koji su protivni ovoj Zakonskoj odredbi.

Zagreb, 18. travnja 1941.

POGLAVNIK
DRŽAVE HRVATSKE:
Dr. Ante Pavelić v. r.

ZAGREB, 19. travnja. Dokidanje javnog bilježništva posravrši će jednodobno čitava naša država, jer prije istog dana 1920. god. je kod nas kolonizirani redovi, koji se sada obavljali sve javnobilježničke poslove. Tako na primjer za područje Križevci, Osijek i u Novom Marču čije su javni bilježnici svi do godine 1916.

U slučaju prestanka g. dr. Miroslava je samo ota čta osomna razloga su dokidanje javnog bilježništva.

JAVNA BILJEŽNIŠTVA BILA SU SINEKURE MILIJENKA REZIMA. POLORAJI JAVNO BILJEŽNIŠTVO I DIELILI SU SE STANAKOM LJUDIMA KAO NAGRADA, DA BI I DALJE RADILI ZA INTERESE REZIMA.

DRUGI SOCIJALNI RAZLOG TRAJI DA SE NARODI, NAPOCITO BELAŠTIVU, OMOGLU, STO LAKSE I ŽETIVUJE, PROMIETI NASLJEDENU IMOVINU OD RODITELJA NA DJECU, ODPASTI CE POSEBNA NAGRADA, STO SU JE DO SADA UBRALI JAVNI BILJEŽNICI, BJE ČE TAJ POSAO BESPLATNO OBAVLJATI SUDUVA, A NASLJEDENICI CE PLACATI SAMO DRŽAVNU TAKSU ZA PREZNO I PROPISANI BILJEŽOVINU.

¹¹⁰ Cf. art. 1, "Zakon od 22. januara 1931. o izmjeni i dopuni §244. Zakona o javnim bilježnicima", *Službene novine Kraljevine Jugoslavije od 31. januara 1931.*, no. 22-VI.

¹¹¹ "Uredba o utvrđivanju broja i sedišta javnih beležnika od 24. januara 1931. br. 7610", *Službene novine Kraljevine Jugoslavije od 31. januara 1931.*, no. 22-VI.

¹¹² Krešić, M., *op. cit.* in note 1, p. 104.

¹¹³ New and reorganized existing notarial places were established in Zagreb (1933, 1937), Zlatar (1933), Bjelovar (1933, 1937), Pakrac (1933), Osijek (1933, 1934), Vukovar (1934), Jastrebarsko (1935), Križevci (1936) and Županja (1936); See the directives published in: *Službene novine Kraljevine Jugoslavije*, Year 1933 and 1934, and in: ZZU, Years 1936 and 1937.

¹¹⁴ The civil law notary seat from Korčula (for the districts of Korčula, Blato and Orebić) was subsequently transferred to Orebić. "Uredba o izmeni Uredbe o utvrđivanju broja i sedišta javnih beležnika od 13. maja 1931.", *Zbornik Zakona i uredaba kraljevine Jugoslavije*, Year 1931.

¹¹⁵ Jelaska Marijan, Z., "Članovi javnobilježničke komore Split i njihovi pripravnici tridesetih godina XX. stoljeća - I dio", *Časopis za suvremenu povijest*, Year 35, no. 1, p. 100.

tion of the population which began at the end of the nineteenth century, but continued in the interwar period.¹¹⁶

After the establishment of the Banate of Croatia, the regulation of civil law notary activity came under the jurisdiction of the Ban and the Banate Government's judiciary department,¹¹⁷ and a new notarial district was organized in Zagreb in April 1940.¹¹⁸ Already in the next year, it became apparent that this notarial district was the only and last one established, because several days after the establishment of the Independent State of Croatia in April 1941, the civil law notary institution was abolished.

Criteria for appointment of civil law notaries. Civil law notaries had to be Yugoslav citizens with legal capacity, at least 30 years of age and have a degree from one of the Yugoslav law faculties as a full-time student with all proper examinations completed.¹¹⁹ Furthermore, they had to have five-year internship status, of this not less than two years with a civil law notary and one year in a court, while the remaining two years of internship may have been completed with a civil law notary, an attorney, an attorney general or at a court, and pass the bar or judicial examination. In the jurisdictional territory of the appellate courts in Zagreb and Split, the special order on the notarial examination from 1854 was still in effect.¹²⁰ Disabled war veterans who had participated in "the wars for liberation and unification" could be appointed to notarial districts without undergoing the legally-stipulated internship, although completion of their university studies prior to enactment of the law was still required. Besides disabled war veterans, the fulfilment of all required criteria, with the exception of citizenship, age and legal capacity, was not mandatory for, e.g., attorneys who had a minimum of five years of practice in their profession, followed by public prosecutors, circuit court presiding judges, full and associate law professors, and others. Additionally, persons of Serbian, Croatian and Slovenian ethnicity who worked as civil law notaries in the territory of the former Austro-Hungarian Empire and who acquired citizenship in the Kingdom of Yugoslavia in the meantime, could apply for notarial districts without meeting the criteria of internship and passage of the required examinations. The internship period and completed notarial, bar or judicial examination were recognized for civil law notary interns from these territories. Given the significance of the notarial service as a service vested with public trust, a person who was, for example, convicted of perpetrating a crime for personal benefit or dismissed from the civil service due to a disciplinary judgment, or was retired or undergoing bankruptcy proceedings could not be appointed to a notarial post.

Civil law notary appointment procedure. As a rule, the procedure for the appointment of civil law notaries began with a vacancy announcement which had to be published in the official journal, *Službene novine*, of the Kingdom of Yugoslavia, and in the official bulletin of the banate in whose territory of the notarial district was to be filled. The announcement had to

¹¹⁶ Šimončić-Bobetko, Zdenka. "Agrarno pitanje u Dalmaciji između dva rata (1918-1941)", *Povijesni prilozi*, vol. 8, no. 8, 1989, pp. 91-141.

¹¹⁷ See art. 2 and art. 3., "Naredba o djelokrugu odjela za pravosuđe od 3. prosinca 1939., br. 3595/III-39", *Organizaciono zakonodavstvo Banovine Hrvatske*, book I, 1940, 42-45.

¹¹⁸ "Uredba o osnivanju petanestog javnobilježničkog mjesta sa sjedištem u Zagrebu br. 6055/40-III od 8. travnja 1940.", *ZZU*, 1940, volume I-XII, no. 223.

¹¹⁹ Subsequently, art. 2 of the enabling Rules specified that a candidate for a notarial place could also be a persons who completed study at a foreign university if the degree was validated in compliance with the Foreign University and College Degree Validation Act of 6 June 1930; "Zakon o nostrifikovanju (primanju) diploma sa stranih univerziteta i visokih škola od 6. juna 1930.", *Službene novine Kraljevine Jugoslavije* of 11 June 1930, no. 155-LVIII.

¹²⁰ Žilić, Šantek, *op. cit.* in note 92, p. 23.

be posted by the relevant notarial chamber within a period of three weeks after the date on which an order from the Justice Ministry was received. The deadline for applications in response to the announcement could not be less than one month nor longer than two months, wherein each chamber set it within the framework of these legal limits, based on the circumstances and needs of each case. The chamber which posted the announcement also conducted the selection process, and the candidates, whether civil law notaries, attorneys, or notarial or legal interns, submitted their applications through their professional associations, while civil servants submitted their applications through their superior authorities. Integral component of the application were the supplements which proved fulfilment of the sought-after criteria. Civil law notaries who had already worked as notaries had to attach the certificate on their previous appointment. Received applications accompanied by explained nominations for appointment from the chamber were delivered within a period of fifteen days after the conclusion of the announcement process to the appellate court in Zagreb and Split. In the next fifteen days, the appellate court was obliged to submit its report on the announcement procedure and the explained appointment nomination, which also contained the court's assessment of the candidate's moral and professional qualifications, to the Justice Ministry, which then appointed the civil law notary. When filling notarial districts, preference had to be accorded to civil law notaries and civil law notary interns. Although the method for appointing civil law notaries was rather clearly stipulated, it was nonetheless possible to bypass these rules and once more – as in the preceding period – conclude on the basis of available data that civil law notaries either did not know about the posted announcement or their applications were not taken into consideration, so that notarial districts were filled with lawyers outside of civil law notary circles, either attorneys or civil servants. Given that the new law began to be applied to an already extant organization of civil law notary activity and that up to that point the existing notarial districts had been filled, the law stipulated that all existing civil law notaries had to relinquish their posts although until further notice, i.e., until the appointment of new civil law notaries to fill the notarial districts, they had to continue working. The majority of the “old” civil law notaries were nonetheless reappointed because they met all of the specified criteria. The justice minister could therefore refuse to reappoint notaries who relinquished their posts only if their activity outside of the service demonstrated dissatisfaction political circumstances in the country or the existing organization of authority in the Kingdom of Yugoslavia.¹²¹

Jurisdiction of civil law notaries. The jurisdiction of civil law notaries was precisely defined and similarly regulated as in the previous Austrian legislation. Civil law notaries thus performed the duties under their own jurisdiction, the duties of court trustees, and they could compile private documents and submissions at the request of clients, and also proceed as proxies for their clients in these matters. Notarial acts and certified dispatches, if compliant with law, had the force of public documents.

Official area of activity of a civil law notary. The official area of activity of a civil law notary was specified as the territory of the circuit court in which the notary had his seat. The notarial seat was in the seat of the district court, and if several notaries had their seat in the same district court, jurisdiction extended to the entire territory of their seat. When civil law notaries functioned as court commissioners, they had a narrower area of activity (a so-

¹²¹ See art. 1, para. 2, “Zakon o izmeni i dopuni Zakona o javnim beležnicima (notarima) od 30. maja 1931. br. 64506”, *Službene novine Kraljevine Jugoslavije* od 4. juna 1931. no. 123-XXXVI.

called region) in the territory of their seat. For example, the most were organized in Zagreb up to 1940, a total of fifteen notarial districts, and upon the establishment of each new district the region of each civil law notary was determined by specifying the city streets that bordered it.¹²²

Commencement of notarial service. Prior to the commencement of work, a civil law notary had to pay a security deposit, receive approval for an official seal and signature and swear an oath. The amount of the security deposit depended on the seat of the civil law notary, so the amount for an appellate court seat was 50,000 dinars, 25,000 dinars for a circuit court seat, and 10,000 dinars for all other districts. The deposit was paid in with the circuit court in cash, securities or promissory notes, and after each paid-in security deposit, the reduced amount had to be compensated. The security deposit was returned to the civil law notary or his heirs after the civil law notary office ceased operating for any reason whatsoever.¹²³ After payment of the security deposit, the civil law notary had to obtain approval for a (dry and wet) seal and (written) signature from the circuit court. The seal was round and it had to have on it the state coat of arms and signature with the name and surname and the professional designation "civil law notary" and the seat, written in both the Cyrillic and Latin script. Finally, to commence work, the notary had to swear an oath before the presiding judge of the circuit court. By this oath, the notary swore loyalty to the reigning king of the Kingdom of Yugoslavia.

Cessation of notarial service. Notarial service could only end on grounds stipulated by law, e.g., as a result of resignation or registration in the directory of attorneys. The assumption of a paid public function could also be a reason for the cessation of notarial service, so that Ivan Farolfi left the service when he became the mayor of Vis, while Jovan Ivčević, a civil law notary in Knin, was removed from the service because in 1935 the Circuit Court in Šibenik issued a binding judgment against him in a criminal trial, after which his name was expunged from the notarial directory.¹²⁴ Among these reasons, notable are the cases in which a civil law notary was declared incapable of performing service due to physical or mental incapacity, as well as cases in which there were grounds to initiate bankruptcy proceedings even though the court did not do so because the notary's assets were insufficient. A novelty was the possibility of civil law notaries being dismissed from the service due to expressions of opposition to the existing state structure or demands for changes in the state order. This reason for cessation of service was exceptionally important if one bears in mind that the law was enacted, entered into force and began to be enforced during the period of the so-called January 6 Dictatorship. But even after the return of constitutional rule in 1931, the Kingdom retained the features of centralism and unitarism and concealed absolutism. The decision on the cessation of notarial service was made, depending upon the grounds, by the justice minister, the notarial chamber or the appellate court with jurisdiction, or the *Tabula Banalis* in Zagreb or the High Territorial Court in Split.

Abolishment of the civil law notary profession. The constant debate over maintaining or eliminating the civil law notary institution, present since the Kingdom's establishment, were finally resolved at the beginning of the Second World War. Civil law notary activity did not

¹²² "Naredba o određenju užih okoliša za petanest javnobilježničkih mjesta u sjedištu sreskih sudova I. i II. u Zagrebu", ZZU, 1940, volume I-XII, no. 230.

¹²³ For more, see Krešić, *op. cit.* in note 1, pp. 119-120.

¹²⁴ Jelaska Marijan, Z., "Članovi javnobilježničke komore Split i njihovi pripravnici tridesetih godina XX. stoljeća - II dio", *Časopis za suvremenu povijest*, Year 35, no. 2, pp. 599-600.

persist in a part of Croatian territory, because the Independent State of Croatia abolished it in 1941.¹²⁵ Two reasons were specified as crucial to this move: the fact that the notary profession in the Yugoslav period was “a sinecure for the regime’s favourites that was conferred as a reward”, and the effort to avoid or reduce costs in testate procedures which the courts should have conducted free of charge.¹²⁶ Since many notaries lost their careers as a result of this abolishment, as well as their livelihood as they did not meet the criteria to work as attorneys, the authorities issued a decision whereby civil law notaries were allowed registration in the directory of attorneys without the required internship and without completing the bar examination if they met the other criteria and if they sought such registration within a certain period.¹²⁷ Besides the authorities of the Independent State of Croatia, the communist authorities also exhibited an aversion to the civil law notary institution. In September 1944, the Judiciary Department of the Territorial Anti-fascist Council for the People’s Liberation of Croatia (the provisional government, known by its Croatian acronym ZAVNOH) stressed that “civil law notaries must be abolished, because they are superfluous... it has been shown that (the civil law notary institution) is objectionable, retrograde and harmful”.¹²⁸ In November 1944, the Presidency of the Anti-fascist Council for the People’s Liberation of Yugoslavia (AVNOJ) then made the decision to abolish civil law notaries and the notarial chambers, while all tasks performed by notaries were transferred to the people’s courts.¹²⁹ When this law entered into force, the civil law notary institution was eliminated in the entire territory of Yugoslavia.

IV. THE CIVIL LAW NOTARY PROFESSION IN THE REPUBLIC OF CROATIA

Introduction. After Croatia became independent in 1991, extensive reforms of the judicial system were instituted with the intention of building a new legal order adapted to contemporary needs and aligned with continental European legal orders and the corresponding civilisational-cultural sphere. The creation of a new order proceeded by retaining, or rather assuming, the existing legal system and implementing changes gradually, while introducing certain new legal solutions and institutions. A part of this extensive task was certainly the introduction of the civil law notary institution, although this was actually the restoration of an institution which, as highlighted above, had an exceptionally rich tradition in Croatian territory.

Regulation of civil law notary activity. The half-century interruption in the activity of civil law notaries was an extremely long period and the process of renewal was a major undertaking in the legal system, which implied exceptional organizational and human efforts. The responsible authority for these tasks was the Justice Ministry of the Republic of Croatia and the minister at the time, Ivica Crnić. In recognition of all of his efforts invested in the restoration

¹²⁵ “Zakonska odredba o ukidanju javnih bilježnika od 18. travnja 1941.,” *Zakoni, naredbe i odredbe (sudske struke), proglašeno od 11. travnja do 3. rujna 1941.*, Book I, (hereinafter: ZNO), no. 12.

¹²⁶ From the explanation issued by the Justice Minister in the Government of the Independent State of Croatia, Mirko Puk. Jelavić, Z., “Kratka povijest notarijata u Hrvatskoj za razdoblje 1512-1941.,” *Javni bilježnik*, 2007, no. 26 p. 49.

¹²⁷ “Zakonska odredba o upisivanju bivših javnih bilježnika u imenik odvjetnika”, ZNO, no. 133.

¹²⁸ “Dopis Odjela za pravosuđe ZAVNOH-a upućen Komisiji za novooslobođene krajeve pri Predsjedništvu ZAVNOH-a s listom spornih problema iz oblasti pravosuđa koje bi trebalo riješiti prije konačnog oslobođenja zemlje, br. 1366/44 od 15. rujna 1944.,” ZAVNOH, *Zbornik dokumenata 1944 (od 10. svibnja do 31. prosinca)*, Zagreb, 1975, no. 101, pp. 325-327.

¹²⁹ “Odluka o ukidanju javnih bilježnika i javno-bilježničkih komora od 17. studenog 1944.,” *Službeni list Demokratske Federativne Jugoslavije*, 1945, Book I, no. 11.

of civil law notary activity, Crnić was appointed the honorary president of the Croatian Chamber of Civil Law Notaries.¹³⁰ The legal platform for the introduction of civil law notary activity was the Notary Public Act,¹³¹ which was drafted by a distinguished professor at the University of Zagreb Faculty of Law, Mihajlo Dika, Ph.D. It is noteworthy that during the re-establishment of the civil law notary institution, legislators made use of Austrian regulations, which thereby became the model for the creation of the new legal framework for the functioning of Croatian civil law notaries. The law was enacted by the Croatian Parliament at its session held in July 1993, and it entered into force in September of that same year. Implementation of the law was postponed from the planned 31 March 1994 to 1 October 1994. During this period, a series of enabling regulations were passed, such as the Civil Law Notary Standing Orders, the Rules on Civil Law Notary Offices and the Rules on Interim Notarial Charges, which ensured the quality of implementation of the notarial law.

Upon the reintroduction of this institution in Croatia, the so-called pure Latin type of notarial activity was adopted, which implies the separation between notarial activity and the practice of law.¹³² The law thus explicitly stipulates that a civil law notary may not be an attorney at the same time. The point of distinguishing between the two professions lies in the fact that a civil law notary is an autonomous and independent exponent of the notarial service which he/she renders as a person vested with public trust and an unbiased trustee of his/her clients. At the same time, an attorney, also rendering autonomous and independent services, above all serves as the advocate of his/her clients, whose legal protection he/she must take into account when rendering legal assistance. Besides proceeding as an autonomous and independent provider of a public service and an unbiased trustee of his/her clients, a civil law notary also has a law degree, with completed bar and notarial examinations and the necessary experience, and is in general a person vested with public trust. A civil law notary is entitled to remuneration for his/her work and compensation of costs incurred in the performance of the tasks from his/her jurisdiction in compliance with notarial charges and special rules depending on the type of tasks (wills, distraint, etc.) he/she renders. Civil law notaries also work with notarial assessors, advisors and interns.

Over the past twenty years, the law has been subject to few amendments, and it was last amended to align Croatian legislation with the legislation of the European Union (2009). However, the enactment of other regulations and amendments thereto had greater significance to the activities of civil law notaries. Thus, the Executions Act (1996) and the Inheritance Act (2003) enabled the expansion of the authority of civil law notaries as guaranteed by the Notary Public Act, so that, for example, since 2003 civil law notaries have functioned as trustees of the courts in testate proceedings. Among other things, this contributed significantly to the disburdening of the courts, and complied with the recommendations of the European Union on the relinquishment of undisputed cases to other qualified exponents of the judiciary, which civil law notaries certainly are.

In the aforementioned one-year period prior to the commencement of application of the law, courses were held in which candidates were prepared to take the notarial examination, the examinations were held, the selection process was conducted, and then on 17 November 1994

¹³⁰ Krajcar, D., "Hrvatsko javno bilježništvo (notarijat) na međunarodnoj sceni", *Javni bilježnik*, 2009, no. 31, p. 11.

¹³¹ "Zakon o javnom bilježništvu", *Narodne novine*, no. 78/93, 29/94, 16/07, 75/09.

¹³² On the reservations among legislators during regulation of the civil law notary institution, see Dika, *op.cit.* in note 3, pp. 91-92.

the first 153 civil law notaries were appointed. On the following day, 18 November, 139 of them swore the oath, and in remembrance of these days, the Board of Directors of the Croatian Chamber of Civil Law Notaries made the decision to mark Civil Law Notary Day in November. Most of these initially appointed notaries opened their own offices and commenced working on 2 January 1995.

After the commencement of operations of the first civil law notaries, the founding assembly of the Croatian Chamber of Civil Law Notaries was held in February 1995. The Chamber has its head office in Zagreb, consisting of the general assembly, the board of directors, the oversight board, the ethics commission, the international cooperation commission, the Croatian Notarial Academy, the disciplinary tribunal and the president of the Croatian Chamber of Civil Law Notaries. The presidents of the Chamber over the past twenty years have been: Ante Ilić (1995-2007) and Ivan Maleković (2007-2013), and Lucija Popov (since 2013).

In February 1995, the Chamber's general assembly adopted the first By-laws, and the most recent By-laws were adopted in May 2014. The By-laws govern the structure, jurisdiction, composition, election methods, rights and duties of the bodies of the Croatian Chamber of Civil Law Notaries, the modes of association of civil law notaries in the areas of one or more local governments, joint civil law notary offices, the rights and duties of civil law notaries, acting civil law notaries and deputy civil law notaries and civil law notary assessors, advisors and interns vis-a-vis the Chamber, the bodies for initiating and conducting disciplinary procedures, the establishment of the Croatian Notarial Academy and Endowment, and other matters vital to civil law notary activity not regulated by the Notary Public Act.

In July 1995, the Chamber adopted the Notarial Code of Ethics, replaced in 2011 by a Code which ratified the principles and rules of conduct for civil law notaries in the performance of services and outside of this in the manner dictated by the dignity and standing of the notarial service. The fundamental principle of notarial ethics is the rendering of notarial services conscientiously, scrupulously and impartially, in compliance with the Constitution of the Republic of Croatia. In this, a civil law notary is obliged to diligently fulfil his/her duties which ensue from notarial service, safeguard the reputation of the civil law notary profession when rendering services but also in private life. Thus, through their conduct, civil law notaries must serve as examples of benevolence, respect for human rights and human dignity, and proceed impartially and without prejudice or favouritism for persons of any race, skin colour, faith, nationality, age, marital status, sexual orientation, social status or wealth, political preference and any other diversity of his/her clients.

Besides the national level within the framework of the Chamber, Croatian civil law notaries also gather at the county level within the framework of notarial corps, or at the level of several counties within the framework of joint notarial corps, while notarial advisors, assessors, and interns gather in the Association of Notarial Assessors, Advisors and Interns under the aegis of the Chamber.

As a vocational service of the Chamber, the Croatian Notarial Academy was established in 2008 with the tasks of caring for the education of all of its members, particularly by monitoring the development of individual branches of law vital to civil law notaries at the national and European levels. The bulletin *Javni bilježnik* is also vital to the education and information of civil law notaries; various decision, acts and notifications issued by the Chamber's bodies are

published therein, as well as vocational and scholarly works from the notarial field. It has been published regularly since 1997.

International cooperation. Since the renewal of their work, Croatian civil law notaries and their Chamber have engaged in notable international activities. Thus, in May 1997 the Croatian Chamber of Civil Law Notaries became a member of the International Union of Notaries (UINL), whose International Notarial Commission (CCNI) has supported the introduction of civil law notary activity in Croatia within the framework of its own mission. Since becoming a member of the International Union of Notaries, the Croatian Chamber has actively participated in the work of its European Affairs Commission (CAE).¹³³ In 1998 the Chamber participated in the establishment of the Cooperation of Central European Civil Law Notaries (CCEN), the so-called Hexagonal, together with the notarial chambers of Austria, Hungary, the Czech Republic, Slovakia and Slovenia, which was organizationally and operationally a very significant move by Croatian notaries at the European level. However, a broader association of European notaries is the Council of the Notariats of the European Union (CNUE), which gathers notaries of the European Union member states. After the Republic of Croatia officially became a candidate for EU membership (2004), Croatian civil law notaries obtained observer status in the Council, and then full members after Croatia was admitted to the EU in 2013. Long before Croatia became a member of the CNUE, Croatian notaries were allowed to become a part of the European Notarial Network (ENN) since its emergence in 2007.¹³⁴ The objectives of the ENN are to link members of the Council of Notariats and offer mutual assistance and information in all of those cases which entail an international element. Since 2009, the Croatian civil law notary profession has had observer status in the European Network of Registers of Wills Association (ENRWA).¹³⁵ Additionally, the Croatian Chamber has also participated in the work of the Institute for European Notarial Research and Study (*Institut de Recherches et d'Études notariales Européen*, I.R.E.N.E.).¹³⁶

Twenty years ago, at the beginning of this notarial story, Dika predicted that the future of the Croatian notarial profession will depend on whether it manages to achieve the high professionalism of civil law notaries, their professional accountability and integrity, the necessary oversight of the work of civil law notaries and general confidence in the service.¹³⁷ Today, twenty years later, the 318 civil law notaries, 253 assessors, 94 advisors and 120 interns testify to the fact that the trust and effort invested in them have indeed returned dividends. The foundations of modern notarial activity set in the nineteenth and early twentieth centuries certainly contributed thereto.

¹³³ <http://www.uinl.org/1/home-page>. (11 June 2014).

¹³⁴ <http://www.enn-rne-online.eu/homepage/> (11 June 2014).

¹³⁵ <http://www.arert.eu/?lang=en> (11 June 2014).

¹³⁶ <http://www.irene-eu.org/> (11 June 2014).

¹³⁷ Dika, *op. cit.* in note. 3, p. 40.