

INTERNATIONAL UNION OF LATIN NOTARIES

XXIII INTERNATIONAL CONGRESS OF LATIN NOTARIES

Athens (Greece), October 2001

THEME III

“THE CIRCULATION OF NOTARIAL ACTS AND THEIR EFFECT IN LAW”

International Co-ordinator: Mr. Carlos de Pablo (Mexico)

CONCLUSIONS

The Representatives of the Countries belonging to the International Union of Latin Notaries, convened from 30 September to 5 October 2001 within the framework of the XXIII International Congress of Latin Notaries” held in the city of Athens, Greece, and all the members of commission number III “The Circulation of Notarial Acts and their Effect in Law” have pointed out the following:

The pluralism and scientific value of the papers submitted by the Notaries of various countries;

The importance of the dialogue between different positions and the scientific debate on the theme.

The secretariat of the Commission has considered the papers submitted by the following:

Reinhold Geimer, Germany

Julieta Gallino (co-ordinator), María T. Acquarone and Mariana C. Massone (co-workers), Argentina

Arno Georg Sauberer (co-ordinator), Austria

Segismundo Álvarez Royo-Villanova, Spain

Me. Decorps, France

Marianna Papakiriakou-Charalampidou (co-ordinator), Nikolaos Karamanos and Christina Fardi (co-workers), Greece

Nery Roberto Muñoz, Guatemala

J.T. Anema and A.A. Tomlow (co-ordinator: M.R.Meijer), The Netherlands

Patricia Danko, Hungary

Yoshimitsu Miyamoto, Japan

Inga Mucina, Latvia

Pierre Pippon, Québec

Cesare Licini, Paolo Pasqualis, and Franco Salerno Cardillo, Italy

José Antonio Márquez González, Mexico

Rosa Elena Di Martino, Paraguay

Violeta Tomala, Poland

Erick Mrzena (presented by Foukal, Martín), Czech Republic

Laurent M. J. Besso, Switzerland

Faysal Icin, M. Bozkurt and Tomris Kantek, Turkey

Martha Szeinblum, Uruguay, as co-worker and co-author.

The notariat of Morocco also submitted papers.

It is important to mention the significant similarities between the various papers and the exchange of opinions within the Commission regarding the following:

the need to standardise legislative criteria concerning the prompt circulation of notarial deeds;

The need to optimise their probative force in national legal business;

The need to equally optimise their probative force in international legal business, and

Lastly, the need to recall that the circulation of notarial acts and their probative force occur within the framework of the current globalisation of regional economies, the massive trading of goods and services, the growing movement of people and increasing communications via computers at all levels.

Having made a summary and recapitulation previously, the Commission suggests to this Plenary General Meeting to adopt the following final unitary proposal, with the amendments deemed appropriate:

Conclusions for theme three:

Preliminary Remarks: The notarial act, which contains a free expression of will, as it is drawn up by a Latin-type notary, is necessarily evidence of the knowledge,

qualification and ability of the parties concerned, their legitimation, the formation, manifestation and giving of consent and the verification of legality. It is deposited so that it may be reproduced at any time; its authenticity be acknowledged; its free circulation allowed; and the same effects recognised in the State of origin be recognised in every other State – probative force and enforceability, from the standpoint of proceedings, and effects leading to the creation of substantial rights.

Similarly, if the notarial act can be enforced in the Country of origin, it should also be enforced in any other State, like a judgement of the Country of origin.

1. To favour the free circulation of notarial deeds, notariats should seek to obtain corresponding recognition from respective States. This would allow Latin-type notaries, as jurists, to recognise that a document drawn up abroad fulfils the requirements of authenticity and formal equivalence, thereby reducing the burdens of justice and general government. It is incumbent on notaries to determine whether such a document is compatible with domestic law, if necessary. This has to be acknowledged in the filing records or the corresponding deed, in compliance with the applicable notarial law.

2. The use of the most advanced means should be fostered to avoid forgery of original documents and their copies. These include the use of paper that offers security guarantees, indelible ink, holograms and any other technological means.

3. It is hoped that notariats obtain from respective States accession to international conventions, to favour the certification and circulation of documents.

4. To favour the circulation of the document and communication among Notaries and to avoid forgeries, each notariat should create a database that may be consulted by other notaries and Latin notariats, having the following minimum contents:

- The names of notaries, how to contact them, territorial competence, date of appointment and end of the term of office, if applicable (including maybe information on languages spoken, etc.),

- Certification requirements for each State and conventions ratified on this subject,

- Security measures adopted by notaries when drawing up deeds (seals, headed paper, etc.) to avoid forgery.

5. To this same end, notariats should seek to identify any technological means that favours fast and safe communication among notaries of different countries and access to databases.

6. When a document has to produce effects in another country, co-operation should be sought between the notary who draws up the deed and the notary of the country of destination, both during the drawing up of the deed and other additional formalities, to ensure the validity of the act and the efficiency of the notarial service.
