

**DOCTORAL SCHOOL OF LEGAL, POLITICAL AND SOCIOLOGICAL
SCIENCES WITHIN THE NATIONAL CONSORTIUM ADMINISTERED
BY THE STATE UNIVERSITY OF MOLDOVA**

A manuscript-style thesis
FDC (C.Z.U): 347.961(478+498)(043.2)=111

SCHIN George Cristian

**THE LEGAL REGIME OF THE NOTARIAL DEED IN
THE LEGISLATION OF THE REPUBLIC
OF MOLDOVA AND ROMANIA**

Specialty 553.01 – CIVIL LAW

ABSTRACT
of the doctoral thesis in law

Chisinau, 2021

The thesis was drawn up within the Doctoral School of Legal, Political and Sociological Sciences within the National Consortium administered by the State University of Moldova.

Members of the Doctoral Commission:

MIHALACHE Iurie, Ph.D. in law, associate professor - President

FRUNZA Iurie, Doctor in law, associate professor - official referent

BAIESU Aurel, Ph.D. in law in law, university professor, - official referent

PRISAC Alexandru, Doctor in law, associate professor - official referent

CHIRTOACA Leonid, Doctor in law, associate professor – scientific supervisor (member)

The sustenance of the doctoral dissertation will take place on **June 11th, 2021** at **01.00 p.m.**, during the meeting of the Committee for public defense of the doctoral thesis within the Doctoral School of Legal, Political and Sociological Sciences within the National Consortium administered by the State University of Moldova.

Address: Republic of Moldova, Chisinau municipality, 3/2, Academiei Street, hall 18, block A of the student campus.

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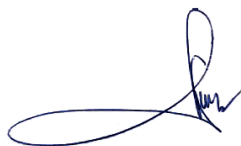
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The abstract was sent on 8th May, 2021.

Author,



Schin George Cristian

Scientific supervisor,

Chirtoaca Leonid
Doctor in Law,
associate professor

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CONCEPTUAL REFERENCES OF THE THESIS

The timeliness of the problem addressed. The legal regime of the notarial deed in the legislation of the Republic of Moldova and Romania is a relatively new topic, particularly current, complex and extremely tempting for conducting scientific research. This subject is distinguished by the controversies it generates, but also by the diversity of practical solutions that can be identified.

The Constitution of the Republic of Moldova [1], in Article 1 paragraph (3) expressly stipulates that *the Republic of Moldova is a democratic and governed by the rule of law State, in which human dignity, his/her rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values and shall be guaranteed*. We find similar provisions in Article 1 paragraph (3) of the Romanian Constitution [2]. Thus, this states, the Republic of Moldova and Romania guarantee human rights through various institutions and bodies, and the notary is one of the institutions that contributes to guaranteeing human rights, streamlining the economic and civil circuit, and forming civil society.

Statistical information shows that in recent years, notarial acts and actions are more numerous and the most common are attributed to: notarial succession procedure, drafting documents with legal content, legalization of signatures on the document and certification of facts in cases provided by law. At the same time, the number of public notaries in the Republic of Moldova and Romania is constantly growing. By way of comparison, we bring the example that on April 5, 2020, there were 312 licensed notaries in the Republic of Moldova [3] and in Romania, their number was 2652 [4].

The topic dedicated to notarial deeds was addressed relatively little in the local specialized doctrine. The scientific treatment of this topic is always a current problem, with great theoretical and practical interest, especially due to the many cases of application of the legal rules governing it. By choosing this controversial topic, with reference to which in Moldovan law and in Romanian law there are not enough bibliographic materials, we will contribute to the formation of legal doctrine in this field of research.

The institution of the notarial deed remains topical because in the practical activity there are many difficult situations that require an answer. In order to solve these issues, we will examine the issues subject to research from a scientific-practical perspective, in terms of legislation, specialized legal literature and judicial practice.

The importance of the research topic can be explained by the increased tendencies to legislate social relations in the sphere of regulation of notarial deeds. Approaching the regime of notarial deeds in the legislation of the Republic of Moldova and Romania shows an essential legal importance, because in notarial practice often problems arise regarding the correct choice of the rule to be applied to the preparation of notarial deeds.

The purpose of the PhD thesis consists in a detailed and complex analysis of the legal regime of the notarial deed, according to the legislation, doctrinal opinions, judicial practice in the Republic of Moldova and Romania, focusing on the general conditions of validity of the civil legal act; definition and characteristic features of the notarial deed; the authentic form of the notarial deed; the delimitation of the notarial deed from other related legal acts; the structure and legal force of the notarial deed; the procedure of notarial deeds and the innovative norms in this field.

Research objectives. Achievement of the proposed goal is possible with the help of objectives, such as: forming a core of ideas and recommendation mechanisms to ensure a certain interpretive and decisional homogeneity in the application of the rules on the legal regime of notarial deeds in the legislation of the Republic of Moldova and Romania; characterization of the legal sources of regulation and more important aspects of the evolution of the legislation on notarial legal acts; studying the functions and conditions related to the authentic form of notarial deeds; outlining the legal nature of notarial deeds; analysis of the grounds for classification of notarial legal acts; characterization of the main categories of notarial deeds; research of the legal regime of electronic notarial deeds; studying the probative force and the enforceable force of notarial deeds; analysis of the general rules for drawing up notarial deeds; examination of the particularities of drawing up certain categories of notarial deeds; elaboration of conclusions and formulation of proposals for improving the legal framework regarding the regulation of the institution of the notarial deed in the Republic of Moldova and Romania.

Research hypothesis. In the doctoral thesis, questions were submitted regarding the premises that contribute to the formation and consolidation of the legal regime of notarial deeds. In the context of the research were studied the concept, structure, legal nature, scientific features and particularities of notarial deeds in the legislation of the Republic of Moldova and Romania. This will allow theorists and practitioners to elucidate the individualization of notarial deeds, the role and value of their application in the civil circuit, with the possibility of amending the legislation.

Synthesis of the research methodology and justification of the chosen research methods. The methodological support of scientific research is comprised of a set of theories and concepts specific to the field of private law research, materialized as finality in the content of the doctoral thesis through the following methods of analysis: a) *logical* (deductive, inductive, specification, etc.), consisting in the use of legalities, categories and logical reasoning with reference to the analysis of doctrinal opinions held by various authors and the synthesis of regulations concerning the legal regime of the notarial deed in the legislation of the Republic of Moldova and Romania; b) *systemic*, manifested by researching the legal norms that regulate the notarial deed

and which are incorporated in various normative acts; c) *historical*, used for researching the manner in which the legislation on notarial deeds was formed; d) *synthetic*, consisting in the general expression of the particularities of drafting notarial deeds in the Republic of Moldova and Romania, in order to improve the legislation in the field.

The theoretical-scientific support of the thesis for obtaining the doctoral degree consists of the works of scientists specializing in civil law: the *French* - *E.Leroy, S.Torricelli-Chrifi, D.Salas, G.Pillet, J.-L.Dalmasso, W.Belkecir*, Belgians - *J.-L.Van Boxstael, C.De Wulf, J.Bael and S.Devos*, English - *R.Mulgrew, D.Abels, K.Burns, R.Diosio-Villa*, Russians - *T.Aleosina, A.Greadov, D.Sidorenko, Z.K.Boraev, V.V.Viktoria, S.A.Rogaciov, A.N.Glibina, E.V.Fedorova* etc.

The researches of doctrinaires from the Republic of Moldova are of major importance *V.Pistriuga, E.Mocanu, M.Savga, A.Blosenco, D.Bernevec, M.Amihalachioaie-Turcan, E.Cojocari, Gh.Chibac, E.Constantinescu, M.Piatac, A.Cara-Rusnac, Iu.Banarescu* and *V.Cebotari*, who analyzed important aspects of the institution of the notarial deed, while *L.Chirtoaca, S.Baies, A.Blosenco, D.Cimil* and *A.Prisac*, have elaborated scientific articles on the research field of the institution of the civil legal act.

Regarding the degree of investigation of the problem of the legal regime of the notarial deed in the perimeter of the Romanian doctrine, we note, in particular, the writings of the authors *I.-F.Popa, A.A.Moise, I.Les, R.Iosof, Gh.Dobrican, S.Neculescu, A.Porof, E.-C.Verdes, A.Fanu-Moca, O.Puie, D.Ciuncan, E.Toma (Cristudor), C.Macovei, M.Mircea, D.Negrila* and *G.Popescu*.

The normative basis of the research is the legislation of the Republic of Moldova, represented by: the Constitution of the R.M., the Civil Code of the R.M., the Code of Civil Procedure of the R.M. and more; special legislative acts, such as: the Law of the R.M. regarding the notarial procedure no. 246/2018 and the Law of the R.M. regarding the organization of the notaries' activity no. 69/2016. In addition, the normative acts from Romania were researched, especially the Law on public notaries and notarial activity no. 36/1995 and the Law on the legal regime of electronic notarial activity no. 589/2004. In this connection, a comparative study was carried out between the legislation of the Republic of Moldova and the legislation of Romania on the one hand, and the normative acts from France, Germany, the Russian Federation and the Republic of Belarus on the other hand.

The practical landmarks of the thesis are based on the jurisprudence of the Republic of Moldova and Romania, and in this context, we studied legal documents from the notarial archive, as well as files examined by the courts during the years 2010-2020.

The scientific novelty of the obtained results. The innovative element is the support of any scientific research, being the indispensable component of the present scientific approach. In the specialized literature of the Republic of Moldova and

Romania, the issue of the legal regime of notarial deeds has been little researched, so that the doctoral thesis is an action of scientific prospecting of the legislation in force in this field.

The main results presented for defense and which attest the innovative nature of the thesis are:

- an in-depth research was carried out of the legal and doctrinal definitions, of the principles applicable in the matter of notarial deeds;

- it was performed a comparative analysis of the provisions of the Law of the R.M. no.246 / 2018 regarding the notarial procedure; of the Law of the R.M. no.69 / 2016 on the organization of the activity of notaries; of the Civil Code of the Republic of Moldova and of the Law on public notaries and notarial activity no.36 / 1995 in Romania, accompanied by conclusions and proposals, in view of improving legislation and harmonizing it with international regulations;

- the specific features of the notarial deeds were examined;

- the structural elements of the notarial deeds were analyzed;

- the problems that arise in connection with the elaboration of notarial deeds were investigated;

- following the investigations, the existing deficiencies in the legal framework regulating notarial deeds in the legislation of the Republic of Moldova and Romania were highlighted and, at the same time, recommendations were made by *Lex ferenda* in order to bring the legislation of both states in accordance with international law.

Identification of the research problems. Evaluating the normative acts that regulate the social relations included in the topic of the research, we established that their provisions are diverse, which means that their protective role varies from state to state. Both in the Republic of Moldova and in Romania, the institution of the notarial deed has a normative regulatory framework that is in a permanent improvement.

Analyzing the scientific publications that refer to notarial deeds, we found that some topics in this paper, such as: the structure of the notarial deed, the probative force and enforceability of notarial deeds, the peculiarities of drafting certain categories of notarial deeds, until today have been approached tangentially in the legal doctrine of the Republic of Moldova and Romania. The insufficiency of the literature on this field of research is felt theoretically and practically. Consequently, there are frequent situations in which the courts erroneously resolve some aspects of contesting notarial deeds and actions.

The important scientific problem solved. The scientific results obtained in this paper have made it possible to solve an important scientific problem, which contributes to the considerable development of the theory of civil legal act and the legal regime of

the notarial act through the legislation of Moldova and Romania, resulting in outlining the legal nature of notarial acts, their classification, the probative and executory force of notarial deeds, as well as the *elucidation* of difficulties in applying the relevant legislation, which had the *effect of formulation* of a scientific basis for the institution of the notarial deed, as well as *drafting* of the *Lex ferenda* proposals, in order to *improve* the legal and correct *application* of the law in both states.

The theoretical significance of research. The doctoral thesis is a monographic investigation with a theoretical and applied character in whose pages the complex examination of the legal regime of the notarial deed was performed, according to the legislation of the Republic of Moldova and Romania. At the same time, taking into account that the paper is elaborated in the specialty 553.01 - civil law, the institution of the notarial deed was analyzed from the perspective of the norms of private law.

The applicative value of the paper. In addition to the theoretical-scientific dimension of the issue in the sphere of regulation of notarial deeds, the subjects of these legal relations face major difficulties related to the application of the normative framework in force. Thus, the solutions with applicative value proposed in the content of the doctoral thesis aim at improving the national legislation.

The PhD student applied the conclusions and proposals formulated in the doctoral thesis in his activity as a notary public, as well as in the scientific-didactic activity as associate professor at the Faculty of Legal, Social and Political Sciences of the University "Dunarea de Jos" (Galati, Romania).

Approval and implementation of research results. The results of the scientific research, the conclusions and the recommendations advanced during the study were reflected in the proposals of the *Lex ferenda* submitted to the line ministries regarding the modification of the provisions of the Law of the R.M. regarding the notarial procedure no. 246/2018. A considerable volume of the thesis content for obtaining the doctoral degree was reflected in the scientific articles published in specialized scientific journals from the Republic of Moldova and Romania, in Romanian and English languages, some of these journals being indexed in international databases (Scopus, HeinOnline, EBSCO Host, CEEOL and Science Direct). Various aspects of the research, accompanied by conclusions and practical proposals, were presented and discussed at international scientific-practical conferences held in the Republic of Moldova and in Romania.

Other important aspects of the thesis were reflected in 7 scientific publications: 3 articles published in specialized scientific journals in Romania, 1 article published in journals from the National Register of specialized journals and 3 papers presented at international scientific forums.

Summary of thesis compartments

The paper consists of annotations in Romanian, English, and Russian, an introduction, four chapters divided into subchapters, general conclusions and recommendations, bibliographic references consisting of 297 titles, 1 appendix, the statement of responsibility and the author's CV.

THESIS CONTENT

The **introduction** of the thesis represents the substantiation and justification of the chosen topic for research, including the timeliness and importance of the research topic, the purpose and objectives of the research, the research hypothesis, the scientific novelty and the results obtained, the synthesis of the research methodology, the theoretical importance, the application value and the summary of the thesis compartments.

In the first chapter, called "*Analysis of the scientific situation in the field of research of the institution of the notarial deed*", are exposed the opinions of researchers who have analyzed the issue of the notarial deed. This section highlights scientific issues and proposes ways to solve them. The methodological aspects of the research were presented, starting with the doctrinal and legal definition of the notions legal act, notarial deed, document and authentic deed. A synthesis of scientific materials related to the notarial deed published in the Republic of Moldova was performed, as well as the research of scientific works on the subject published in Romania, but also in other states. It was formulated the research problem and the main directions in order to solve it.

In Section *1.1. Synthesis of scientific materials related to the notarial deed published in the Republic of Moldova* it was mentioned that in the Republic of Moldova there are relatively few scientific sources to be dedicated to notarial deeds. One reason would be that during the USSR period, but also after the proclamation of the independence of the Republic of Moldova, there was no adequate legislation.

The author E. Mocanu, in the study entitled *Commentary on the Law on Notaries no. 1153-XV of 11.04.1997* [7], carried out a systematization of normative acts in the field of regulation of notarial activity, interpreted the provisions of the Law on notary in the light of Moldovan legislation in force on the date of publication of the Commentary (1998).

In the scientific article entitled *General rules for fulfilling notarial deeds* [8], M. Savga analyzed the manner of drawing up notarial deeds. The author offered a definition specific to the syntagma notarial deed, with the description of the main characteristic features of the notion. She paid an increased attention to the notarial certificate. The cases in which the notary public is obliged to refuse to perform the notarial deed have been subject to scientific investigation.

V. Pistriuga carried out an extensive research of the regime of notarial deeds. In the scientific article, *The notarial form of the legal act. Notarial deed. The notarial certificate* [9], the researcher highlighted the diversity of meanings that the expression “notarial deed” has in the Moldovan legislation, establishing that this fact contravenes the rules on legislative technique. He also analyzed the correlation between the notarial procedure and the nullity of civil legal acts, in the material entitled *Notarial procedure against the relative nullity of civil legal acts* [10]. There, the author highlighted the shortcomings in Moldovan law regarding the form of notarial deeds and made recommendations to amend civil law.

D. Bernevec carried out the continuation of scientific investigations on the procedure for drawing up notarial deeds, in the article entitled *Notarial Deed in electronic form* [11]. The author performed a comparative analysis of the legal regime of electronic notarial deeds according to the legislation of the Republic of Moldova and Romania.

In the light of approaching the specialized scientific literature in the Republic of Moldova, it is necessary to mention the doctoral thesis entitled *Organization of the notary institution in the legal system of the Republic of Moldova and its development perspectives* [12], supported by A. Carara-Rusnac. In another scientific article - *Defending the rights and interests of citizens inside and outside the territory of the country by other persons authorized by law to draw up notarial deeds* [13], A.Cara-Rusnac and P.Tabara conducted a scientific research on the persons empowered by law with the right to draw up notarial deeds - state registrars, employees of consular offices and diplomatic missions.

The interest in the field of research of the legal regime of notarial deeds presents various collections of notarial deeds, as well as guidelines on the rules for drafting notarial deeds, published at different stages of evolution of national legislation: *Citizen's guide: comprehensive formulation of all kinds of petitions , notarial deeds, minutes and summonses* [14]; *Instruction on how to perform notarial acts by the state notary offices of the MSSR*, approved by the Order of the Ministry of Justice of the MSSR. on 24.04.1975 [15], *Instruction on the manner of fulfillment of notarial deeds by the executive committees of the town, village, town soviets of the deputies of the laborers from the MSSR*, approved by the Order of the Ministry of Justice of the MSSR no.27 on 05.09.1975 [16]; *The forms of the registers for the registration of notarial deeds, notarial certificates and authentication inscriptions on the conventions and on the documents that are legalized* [17], published by the Union of Notaries from MSSR.

Section **1.2. The research of scientific works in the field published in Romania and in other states** includes the analysis of the most relevant scientific publications on the subject of notarial deed in Romania, France, Germany, Belgium, Russian Federation and Republic of Belarus. It was mentioned that an important role in researching

the correlation between civil and notarial procedures was brought by the university professor I. Les. The author emphasized that the vocation of the civil procedural right to constitute a common law in procedural matters is indisputable, and in notarial matters, the frequent interferences between the non-contentious and the judicial procedure represent the basis of such an interdependence.

The application of the norms of the criminal legislation in the notarial law relations was researched by the same author, Gh. Dobrican, in the scientific article entitled *Wrong criminal qualification of some facts imputed to public notaries* [19]. The researcher concluded that the criminal liability of public notaries in Romania is a personal liability and notaries will not be held criminally liable for statements given by the parties, if it is found that these statements are false, inaccurate and incomplete.

O. Radulescu researched the issue of errors in notarial deeds in the scientific article entitled *Aspects of intellectual forgery in notarial deeds* [20]. The author concludes that the notary may be misled, in particular, as to the identity of the parties. The given example stated that in notarial practice, it can be encountered situations in which some people, abusing the trust of the real owner or even without his knowledge, come before the notary and request the authentication of notarial deeds, presenting themselves under a false identity.

An important scientific contribution for the research field of notarial deeds is made by C.-N. Barbbieru and C. Macovei in the work *Notarial activity. From theory to practice* [21]. The authors approached the regime of notarial deeds in an exhaustive manner, without giving more importance to a notarial deed or a separate procedure. It is interesting that in the content of the paper was analyzed both the legislation that guides public notaries and the results of their work, mentioning examples of notarial deeds, activities, tasks and notarial obligations.

Section **1.3. Normative reflections on the institution of the notarial deed in the Republic of Moldova and Romania** deal with the issue of the sources of notarial legislation. The basic normative act that regulates the notarial activity in the Republic of Moldova is the Law on the notarial procedure no. 246/2018 [36]. Until the adoption of this law, the provisions of the Law on Notaries no. 1453/2002 [37] (repealed) were applied on the territory of the Republic of Moldova. Structurally, the Law of the R.M. no. 1453/2002 was composed of 12 chapters, mainly devoted to the field of regulation of notarial deeds.

The second normative act in the hierarchy of legal sources regulating the institution of the notarial deed in the Republic of Moldova is the Law on the organization of the activity of notaries no. 69/2016 [38]. The law ensures the normative framework for regulating the activity of notaries, establishes the status of the notary and the trainee notary, the ways of organizing and self-administration of notaries, as well as the ways

of controlling their activity. At the same time, in Article 1 of the Law of the R.M. no. 69/2016 is mentioned that separate laws regulate the procedure for fulfilling notarial acts and the methodology for calculating notarial payments.

The relevance in the regulation of notarial legal acts in the Republic of Moldova is manifested in the Civil Code [39], which includes numerous provisions indicating compliance with the authentic form of notarial deeds, as well as the Code of Civil Procedure [40], which includes procedural rules applicable to the settlement of civil proceedings initiated as a result of contesting notarial deeds.

In Romania, the notarial activity is regulated mainly by two legislative acts: the Law on public notaries and notarial activity no. 36/1995 [41] and the Law on the legal regime of electronic notarial activity no. 589/2004 [42]. A special significance in determining the legal status of notarial documents from Romania's Civil Code [43], there are provisions that indicates compliance with requisite for drawing up notarial acts, and Code of Civil Procedure [44] that provides solutions Procedure in litigations regarding the contestation of legal acts drawn up by notaries public. Law no. 589/2004 on the legal regime of electronic notarial activity regulates notarial deeds in electronic form.

Chapter II, entitled "**Notarial deed: notion, characteristic features, study of comparative law**" consists of two paragraphs devoted to the authentic notarial form and the characteristic features of the notarial deed. In this context, various aspects of the notarial deed were researched, such as: the notion and functions of the authentic notarial form, the conditions of the authentic notarial form, the delimitation of the notarial deed from other related documents, the outlining of the legal nature of notarial deeds.

In paragraph **2.1. General information on the conditions of validity of the legal act** it is mentioned that in order to be valid, any legal act must meet a number of substantive and formal conditions.

In the Civil Code of the R.M., the validity requirements of the legal act are provided in a separate compartment, called "Conditions of validity of the legal act" (Title III, Chapter II, articles 312-326). After examining the text of the law, we deduce that the legislator of the Republic of Moldova regulated the conditions of validity for legal acts without respecting the order of their exposure. For example, in Title III, Chapter II "Conditions of validity of the legal act" of the Civil Code of the R.M. there are regulations regarding the consent, object and form of the legal act, but there are no normative provisions regarding the capacity of the parties to conclude the legal act. The civil capacity of the parties to conclude legal acts is inserted in a separate chapter of the Civil Code of the R.M. - Chapter I "Natural person", Title II "Persons", articles 24-33. *We conclude that in the Civil Code of the R.M. the legislator should first explain the conditions of validity of the legal act, and then to proceed to their detailed regulation.*

In contrast to civil legislation of the Republic of Moldova, the Romanian Civil Code, in art.1179, lists the conditions of validity of the agreement, both the substantive ones - capacity, consent, object and cause, as well as the formal ones. It is interesting to note that the rule from art.102 of Law no.71 / 2011 for the implementation of Law no.287 / 2009 on the Civil Code of Romania establishes a transitional rule that, in everything regarding the conclusion, interpretation, effects, execution and termination of agreements, the rules in force on the date on which the agreement was concluded will be applied. This article from the current Romanian Civil Code was taken over almost entirely from art.948 of the old Civil Code (1864) (repealed).

In Section **2.2. *The definition and particularities of the notarial deed*** are analyzed the notions “civil legal act” and “notarial deed”, by referring to the definitions that have been outlined in the specialized doctrine. In particular, we stopped at the delimitation of the term “notarial deed” in relation to the notions “legal deed”, “authentic deed” and “legal fact”, after which we analyzed the legal nature and the particularities of the notarial deed.

In Section **2.3. *Outlining the legal nature of notarial deeds***, we indicated that the presence of the notarial deed in the legal realities forms at the participants of legal relationships the conviction that the legal facts confirmed by the deed are true. In order to outline the legal nature of notarial deeds, we found it appropriate to mention that in the current regulations in the Republic of Moldova and Romania, the notary office appears as a private law institution.

Chapter III, called “**The structure of the notarial deed and its legal force in accordance with the legislation of the Republic of Moldova and Romania**”, represents the central compartment of the thesis.

In Section **3.1. *The research of the structural elements of the notarial deed*** was analyzed the structural elements of the notarial deed. It was mentioned that there is an interdependence between the form and the content of the notarial deed: the structure cannot be conceived outside the system, and the system is based on structural elements. In legal terms, the structural elements of a notarial deed are called a *notarial certificate*. Each type of notarial deed is drawn up according to a notarized endorsement model (notarial certificate). The models of notarial certificates are elaborated and approved by the Ministry of Justice of the R.M., after consulting the Notary Chamber.

In Section **3.2. *The legal regime of electronic notarial deeds*** is highlighted that the field of electronic legal documents seems to be expanding with each passing day due to the means of electronic communication that are increasingly applied in notarial activity. Information technologies represent a new environment for notarial deeds in

the Republic of Moldova. It was highlighted that an important role in ensuring the implementation of electronic agreements belongs to the Public Institution "Information Technology and Cyber Security Service". This institution ensures the digitization of the circulation of documents and the implementation of the mechanism for using the digital signature, including in the notarial activity in the Republic of Moldova.

In Romania, the Law on the legal regime of electronic notarial activity no. 589/2004 is applied. Although the nominated law has been in force since 2005, until the moment few public notaries have applied for authorization to perform notarial deeds in electronic form. The problem is the imperfect mechanism for identifying the consent of the beneficiary at the time of authentication of the legal act.

In Section 3.3. *The probative and executory force of notarial deeds* it was indicated that due to the increased number of legal deeds drawn up in notarial form, the research of the probative power of notarial deeds shows a growing interest.

Because of the comparative research of the legislation from the Republic of Moldova and Romania regarding the executory formula in the mortgage contracts, we found the presence of some differences of approach. Thus, in Romania, as in the Republic of Moldova, the enforcement is done based on an enforceable title and only if the claim is certain (results from enforceable title), liquid (its object is determined) and chargeable (is due). The essential difference is that in the Romanian legislation, the document authenticated by the notary public, if it meets the legal requirements, constitutes an enforceable title, without the need to invest with an enforceable formula.

Chapter IV, entitled "The procedure of notarial deeds and innovative rules in this field in terms of comparative law", requires a special scientific interest. To understand how to apply the subject of notarial deeds, in Section 4.1. *The analysis of the general rules for drawing up notarial deeds* was investigated the rules regarding the elaboration of notarial deeds. The elaboration of notarial deeds is done in compliance with some rules stipulated in Chapter II of the Law of the R.M. no.246 / 2018, such as: establishing the identity of the participants in the procedure for drawing up the notarial deed (art.12), establishing the capacity to exercise and discernment (art.13), verifying the legal capacity of the legal person (art.14), observing requirements regarding the place and term of fulfillment of notarial deeds (articles 6-7), requirements for drafting, signing and registration of notarial deeds (articles 15-29). In Romania, the drafting of documents with legal content is provided in articles 12 paragraph (1) letters (a) and 79 paragraph (1) of Law no. 36/1995.

In Section 4.2. *Peculiarities of drawing up certain categories of notarial deeds*, we move on to a broad approach regarding the common rules for fulfilling notarial deeds, then the particularities of drawing up certain categories of notarial deeds are highlighted.

A special role belongs to the controversies in the theory and practice of notarial law regarding the contestation of notarial acts and actions, reason for which, a separate paragraph was devoted to this topic at the end of the paper. It was highlighted that in Romania, art. 12 of the Law on public notaries and notarial activity no. 36/1995 contains a lower number of notarial acts and actions than those provided in the Law of the R.M. nr.246 / 2018. On the other hand, some procedural acts stipulated in Law no. 36/1995 in Romania are not mentioned in the legislation of the Republic of Moldova. For example, the “fiduciary activities” referred to in Article 12 letter (f) of Law no. 36/1995 denote the fact that Romanian public notaries, together with financial institutions and lawyers, may have the quality of trustees. Public notaries in the Republic of Moldova do not have such competencies.

In Section **4.3. *Persons empowered by law with the right to draw up notarial deeds***, it was mentioned that in Romania, the notary public has more extensive powers than in the Republic of Moldova. Analyzing the provisions of art.12 of Law no.36 / 1995, we can see that in Romania are assigned in the competence of the notary public: acts of protest of promissory notes and checks, fiduciary activities, appointment of custodian or special curator, registration and retention of fingerprints special marking devices, certification of the procedural stages of the auctions and / or of their results, divorce procedure, liquidation of the succession liability with the consent of all heirs. We do not find these notarial deeds regulated in the legislation of the Republic of Moldova. An exclusive attribution of the notary public in Romania is that he can carry out, in accordance with the law, the activities of an agent of the Electronic Archive of Real Movable Guarantees.

In Section **4.4. *The judicial examination of the cases regarding the contestation of the notarial deeds*** is indicated that in the jurisprudence from the Republic of Moldova and Romania, there are frequent cases of administrative contentious in which the notaries hold the quality of defendant. Usually, the object of the legal action has multiple formulations, such as recognizing as illegal the notary's decision regarding the refusal to open the succession procedure, obliging the notary to issue the legal heir certificate on the deceased's succession patrimony, ascertaining the acceptance of the succession, annulment of the heir certificate etc. Contrary to the legislation of the Republic of Moldova, in the Law on public notaries and notarial activity no. 36/1995, the Romanian legislator provided a more restricted regulation of the reasons for which the notary public is entitled to refuse the elaboration of the notarial deed.

Paragraphs 1.4; 2.5, 3.4 and 4.5 contain the conclusions reached by the author following the research carried out in Chapter 1, Chapter 2, Chapter 3 and respectively, Chapter 4 of the thesis.

The paper end up with a presentation of the conclusions and proposals to amend the legislation.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

The research carried out in this scientific approach has highlighted the timeliness and importance of the researched topic.

The important scientific problem solved in the paper. The scientific results obtained in this paper have made it possible to solve an important scientific problem, which contributes to the considerable development of the theory of civil legal act and the legal regime of the notarial act through the legislation of Moldova and Romania, resulting in outlining the legal nature of notarial acts, their classification, the probative and executory force of notarial deeds, as well as the *elucidation* of difficulties in applying the relevant legislation, which had the *effect of formulation of* a scientific basis for the institution of the notarial deed, as well as *drafting* of the *Lex ferenda* proposals, in order to *improve* the legal and correct *application* of the law in both states.

The researches allow us to formulate a series of ***theoretical-scientific conclusions*** in the field of research of the legal regime of notarial deeds according to the legislation of the Republic of Moldova and Romania, which we present in a summary formula.

1. The main normative act that regulates the notarial activity in the Republic of Moldova is the Law on the notarial procedure no. 246/2018. Until the adoption of this law, the provisions of Law no. 1453/2002 on notaries (repealed) were applied on the territory of the Republic of Moldova. The second act in the hierarchy of sources of regulation of the institution of notarial deeds in the Republic of Moldova is Law no. 69/2016 on the organization of the activity of notaries. The relevance in the regulation of notarial legal acts in the Republic of Moldova is manifested in the Civil Code, which includes numerous provisions indicating compliance with the authentic form of notarial deeds, as well as the Code of Civil Procedure, which includes procedural rules applicable to the settlement of proceedings initiated as a result of contesting notarial deeds.

In Romania, the main normative act in the field of regulation of notarial deeds is the Law on public notaries and notarial activity no. 36/1995. Thus, in contrast to the legislation of the Republic of Moldova, which regulates the institution of notarial activity by two legislative acts, the Law on notaries no. 1453/2002 and the Law on the organization of the activity of notaries no. 69/2016, in Romania there is only one Law in this regard.

2. Following the comparative research of the legislation of the Republic of Moldova and Romania, we deduce that the Law on public notaries and notarial activity no.36/1995 in Romania, in art. 12, contains a smaller number of notarial acts and actions than those provided by the Law no.246 / 2018 regarding the notarial procedure in

art.11 paragraph (1), and on the other hand, some notarial acts and actions stipulated in the Romanian legislation were not stipulated in the Moldovan legislation.

3. The research of the legal regime of notarial deeds in the legislation of the Republic of Moldova and Romania shows an essential legal importance, because in notarial practice various questions arise regarding the choice of the norm to be applied to the elaboration of the notarial deed. Since the legislation applicable to the performance of notarial activity is composed of a multitude of normative acts, we are of the opinion that these sources of law can be classified into two categories: sources relating to the organization of notarial activity and sources attributable to the notarial procedure.

4. Legal acts issued by public notaries are of a mixed nature, as they can be included both in the broad category of administrative acts and in the category of acts of private law. The notary cannot enjoy an absolute freedom in the exercise of the profession, and consequently, his notarial deeds cannot have a purely private legal nature, because they are influenced and conditioned by the imprint of the public authority.

5. In contrast to the civil legislation of the Republic of Moldova, in which the term *authentic instrument* is operated, in Romania the phrase *authentic document* is frequently used. The Romanian legislator established two categories of documents - authentic and under private signature. We can conclude that in Romania, any document issued by a public authority and to which the law confers this character is considered authentic. The authentic document benefits from a presumption of validity, which exempts the user from any other evidence, not only regarding its contents, but also regarding the persons who drafted it.

6. Following the research of the terminology used by the legislator in the notarial legislation in Romania, the conclusion we derive consists in the need to replace the phrase “notary public” with that of “notary”. The term “notary public” is specific to the Anglo-American legal system (commonwealth) and not to the Latin legal system, a system that also includes the Romanian notary. Another argument in favor of replacing the term "notary public" with that of "notary" is that the profession of notary essentially involves carrying out a public activity, so that the expression “notary public” becomes tautological.

7. By the Law no. 246/2018 on the notarial procedure, the legislator of the Republic of Moldova completely excluded the notarial competencies that the local public authorities had. By way of comparison, we emphasize that the notarial legislation that was applied in the Republic of Moldova until 2018, certain competencies regarding the preparation of notarial deeds had the persons with the position of authorized official by the local public administration authorities. Unlike the Moldovan legislation, the local public administration in Romania is endowed with notarial attributions.

8. In the legislation of both states, it does not fully understand the difference between the legalization procedure and the authentication procedure. Theoretically, the legalization of the signature should be what in other states is known as *certification of signatures* and through which the signatures of the parties are authentic and not the content of the document. The authority that certifies (legalizes) the signature does not assume any responsibility for the legal correctness of the document, but only certifies the authenticity of the signatures.

9. In practical activity, there are frequent situations in which the parties conclude an agreement in a certain form (usually the authentic form), although the law does not require it. In Romania, this happens in the case of companies, where until recently the deed of incorporation could be signed in front of a notary public, although the law did not oblige the signatories to conclude the deed under such conditions. The summation is that the conclusion of the legal act in a certain form, if the law does not require this formality, does not give the legal act a greater legal force.

10. In Romania, the legal norms regarding the notarial mediation procedure are better elaborated, and in the Republic of Moldova, there is no legal mechanism to grant notaries the necessary levers to authenticate mediation agreements. The only legal provision in this regard is provided by art.35 of the Law of the R.M. no. 246/2018 and refers to the authentication of transactions resulting from a mediation, in which the role of mediator is held by a person other than the notary public.

11. Following the analysis of the norms of the Civil Code of the Republic of Moldova, we conclude that non-compliance with the authentic form leads, in accordance with art.324 paragraph (1) of the Civil Code, to the nullity of the legal act in all cases, while non-compliance with the written form legally does not always have the effect of nullifying it. By way of comparison, we bring an example that in art.1.258 of the Romanian Civil Code is enshrined a rule, which we do not find in the civil law of the Republic of Moldova, according to which in case of cancellation of the agreement concluded in authentic form for a cause of nullity of whose existence results from the text of the agreement itself, the injured party may request the obligation of the notary public to repair the damages suffered, under the conditions of tortious civil liability.

12. Notarial authentication of electronic legal documents is not possible in the Republic of Moldova. The impossibility of using the electronic notarial authentication procedure is based on the following reasons: *firstly*, being at a distance, the notary public cannot verify the applicant's capacity to exercise; *secondly*, there are difficulties with programming and information encryption systems; *thirdly*, there are no guarantees of security and confidentiality of the information stored by the notary on electronic media; *fourthly*, the lack of correlation at the normative level between the norms of the

classic notarial procedure with the rules of using the electronic signature. At the same time, we found that in Romania, there are few notaries who have requested authorization to perform electronic notarial deeds, and the problem would be the imperfect mechanism for identifying consent to authenticate the legal act.

13. As a result of researching the legislation of the Republic of Moldova and Romania regarding the enforcement formula, we found the presence of differences in approach. Thus, in Romania, as in the Republic of Moldova, enforcement is done based on an enforceable title and only if the claim is certain (results from enforceable title), liquid (its object is determined) and chargeable (is due). The difference is that in Romania, the investment of notarial deeds with executory formula is rarely used, because the documents authenticated by the notary public constitute enforceable titles, without the need to invest them with executory formula.

Another difference at the regulatory level is that in Romania the forced execution of the obligation can be started based on the request for approval of the forced execution addressed to the court, which we do not find in the Moldovan legislation. In the Republic of Moldova, the act invested with executory formula is imposed on the enforcement bodies as a final act, which, by itself, involves the coercive force of the state and is executed like a court decision. The creditor may address the bailiff directly to initiate enforcement in respect of the debtor's assets.

14. In both States, disputes arising out of the notary's refusal to perform a notarial act or action, to authenticate documents, to receive applications, and other actions of the notary may be challenged in the administrative court, and the rest of the disputes in which the notary has the quality of defendant, plaintiff, intervener or witness, will be settled in the courts of common law.

Based on the research results and in order to develop the institution of the notarial deed, we formulate the following *recommendations*:

1. Making changes in the name of the section from article 153 of the Law on public notaries and notarial activity no. 36/1995 by substituting the expression “*E. Carrying out and legalizing translations*” with the phrase “*E. Certification of translations*”.

2. Amendment of Article 138 paragraph (1) of the Law on Public Notaries and Notarial Activity No. 36/1995, as set out as follows: (1) *The divorce procedure by agreement of the spouses belongs to the competence of the notary public or, as the case may be, to the competence of the court, in accordance with the law.*

3. Amendment of Article 63 paragraph (2) of the Law of the R.M. regarding the organization of the activity of notaries no. 69/2016, with its exposition in the following wording: *"Persons in respect of whom the notarial deed was performed or refused in its execution, who consider that the respective actions are illegal, have the right to*

challenge them in the administrative contentious court at the place of the notarial deed or the refusal to perform it."

4. Amendment of Article 12 paragraph (4) of the Law of the R.M. no.246 / 2018 regarding the notarial procedure by exposing it in the following formula: *"Mandatory elements for identifying the persons indicated in the notarial deed or action are: (...)".*

5. Completion of Article 12 of the Law of the R.M. no.246 / 2018 regarding the notarial procedure, with paragraph (5), in the following provision: (5) *The identity of minors up to 18 years is established according to the birth certificate; in the case of fit military personnel, by documents issued by the military authority provided that they can, by their content, serve for identification; the identity of the detainees is ascertained by the proof of their registration in the penitentiary register and by the attestation of the commander of the place of detention.*

6. In order to prevent conflicts related to improper performance of notarial deeds by secretaries of local, municipal and district councils of the Republic of Moldova, as a *Lex ferenda* we propose to supplement Article 46 of the Law R.M. no.246 / 2018 regarding the notarial procedure, with paragraph (5), in the wording: (5) *The persons with competent responsibility function of the local public administration authorities where notary offices do not function fulfill, at the request of the parties, the legalization of the copies of the documents and the extracts from them.*

7. Amendment of Article 51 (2) letter (e) of the Law of the R.M. no. 246/2018 on the notarial procedure and the amendment of article 149 paragraph (1) letter (f) of Law no. 36/1995 on public notaries and notarial activity in Romania, with their exposure in the following formula: e) *fixing the defamatory information from the content of web pages, computer programs, social networks, telephone applications, other products and data media in the field of information technology, information that harms the rights and interests of the person and in the absence of an immediate capture could be liquidated (deleted) by the author.*

8. Completion of Article 123 of the Code of Civil Procedure of the R.M. with paragraph (7) and the completion of article 252 of the Romanian Code of Civil Procedure with paragraph (4), according to the text: *The circumstances that are confirmed by the notary when performing a notarial deed, do not need to be further proven, unless notary is not rejected in the manner established by law or if a significant violation is found in the procedure of execution of the notarial deed.*

9. The normative framework regarding the notarial activity carried out by the secretaries of the local, municipal and district councils of the Republic of Moldova needs to be revised. We plead that the norm from art.39 paragraph (1) letter (q) of the Law of

the R.M. no.436 / 2006 regarding the local public administration, by which the secretaries from the town halls were delegated competences in the notarial field, to be brought in accordance with the provisions of the Law of the R.M. no. 246/2018 regarding the notarial procedure.

10. We believe that Article 152 of the Law on Public Notaries and Notarial Activity no. 36/1995 is improperly placed in the subsection entitled “Carrying out and legalizing translations”. Performing translations and legalizing translations are two notarial procedures that must be charged separately, even if, for reasons of normative technique, the legislator regulates them together. The notary public deals only with the certification of the translator's signature, not with the translation itself.

11. In Romania, the norm from art.138 paragraph (1) of Law no.36 / 1995, the *divorce procedure by the agreement of the spouses belongs to the competence of the notary public, under the conditions of the law*, is not correctly formulated. In the current wording, this rule would suggest that the procedure for divorce by consent of the spouses is the sole responsibility of the notary public. In fact, divorce by consent of the spouses is possible to be found by the court according to articles 929-932 of the Romanian Code of Civil Procedure.

12. The instructions regarding the fulfillment of the divorce procedure by the public notaries, approved based on the Decision of the Executive Bureau of the Council of the National Union of Notaries Public of Romania no. 15/2011, contain a series of texts that derogate impermissibly from the provisions of Law no. 36/1995, reason for which they can be considered only as having the value of a recommendation.

Advantages and value of the proposed elaborations. The proposals and recommendations set out in the context of this doctoral thesis are intended to close the regulatory gaps identified in the legislation on notaries. At the same time, the recommendations regarding the modification and completion of some normative acts were submitted to the relevant public authority. The solutions presented in the paper can serve as recommendations for the authentication of notarial deeds, as well as for the examination of certain categories of litigations related to the contestation of notarial deeds.

Impact on science and culture. By capitalizing on the analytical recommendations, it will contribute to the completion of the national doctrine with important studies on improving the legislation in the field of notarial acts, namely: ensuring interpretive and decisional homogeneity in the application of legislation on the legal regime of notaries in Moldova and Romania; research of the functions and conditions related to the authentic form of notarial deeds; analysis of the grounds for classification of notarial legal acts; characterization of the main categories of notarial deeds; research of the legal regime of electronic notarial deeds; study of probative and enforceable force of

notarial deeds; approach of general rules elaboration of notarial deeds; elaboration of conclusions and formulation of proposals for improvement of the legal framework regulating the institution of notarial deed in the Republic of Moldova and Romania.

Topics for perspective scientific research. As the present doctoral thesis focuses on the exhaustive study of the legal regime of notarial deeds in the legislation of the Republic of Moldova and Romania, future scientific approaches will focus on researching the legislation, doctrine and judicial practice on notarial procedure. In addition, the topic subject to research needs to be developed in perspective by conducting scientific investigations focused on issues related to improving the regulatory framework of material, disciplinary and criminal liability of notaries.

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ADNOTARE

Schin George Cristian. „Regimul juridic al actului notarial în legislația Republicii Moldova și României”. Teză de doctor în drept. Specialitatea: 553.01 – Drept civil.

Chișinău, 2021.

Domeniul de studiu. Lucrarea fundamentează un studiu complex din sfera dreptului civil, axat pe regimul juridic al actului notarial în legislația Republicii Moldova și României.

Structura tezei: introducere, 4 capitole, concluzii generale și recomandări, bibliografia din 297 surse, 201 pagini text de bază.

Cuvintele-cheie: act juridic, act notarial, act autentic, înscris, acțiune notarială, notar public, autentificare, procedură notarială, certificare, forță probantă, forță executorie, procură.

Scopul și obiectivele cercetării. Scopul tezei constă în abordarea complexă a regimului juridic al actului notarial în legislația Republicii Moldova și României, în corespundere cu prevederile legislației în vigoare, a opiniilor doctrinare și practicii judiciare. În cercetarea efectuată ne-am axat asupra actului juridic notarial care contribuie la realizarea drepturilor persoanei și la fluidizarea circuitului civil, formei actului notarial în sens larg, definirii, trăsăturilor caracteristice ale actului notarial, delimitării actului notarial față de alte acte juridice conexe, structurii actului notarial, procedurii actelor notariale etc.

Obiectul cercetării este focusat pe analiza științifică prin prisma dreptului comparat a legislației din sfera dreptului civil, pe relevarea semnificației acesteia în materia actului notarial.

Soluționarea problemei științifice aplicative. Pe lângă dimensiunea teoretico-științifică a problematicii din sfera actelor notariale, participanții la raporturile juridice civile se confruntă cu dificultăți reale legate de adoptarea celor mai potrivite măsuri în ordinea juridică internă. Astfel, soluțiile cu valoare aplicativă propuse în lucrare vizează îmbunătățirea cadrului de reglementare din sfera actelor juridice notariale.

Rezultatele principale noi pentru știință și practică constau în investigarea prin prisma dreptului comparat a actului notarial ca specie a actului juridic civil, condițiilor de valabilitate ale acestuia, cercetării principalelor acte notariale, modului de întocmire a actelor notariale, examinarea controverselor cu referire la natura juridică a actelor notariale, elaborarea concluziilor și formularea propunerilor de perfecționare a legislației din domeniul supus cercetării.

Cercetarea își învederează caracterul novator grație faptului că distinge carențele cadrului legal, abordează în plan comparativ legislația și doctrina din Republica Moldova și România, crează oportunități de implementare în ordinea juridică a practicilor legislative performante. Identificarea și configurarea circumstanțelor care au stat la baza lucrării au contribuit la elucidarea direcției principale de cercetare și la propunerea unor soluții de perfecționare a legislației în domeniu.

Semnificația teoretică. Realizarea studiului teoretic contribuie la soluționarea unor probleme majore pentru știința juridică în general, dar și pentru dreptul civil, în special: identificarea celor mai importante aspecte ale evoluției legislației privind actele notariale, conturarea naturii juridice a actelor notariale, cercetarea trăsăturilor distinctive ale actelor notariale, analiza regulilor de întocmire a actelor notariale. Rezultatele și concluziile, ce reflectă soluțiile teoretice degajate, servesc drept suport pentru perfecționarea legislației.

Valoarea aplicativă. În baza cercetărilor realizate, s-a constatat existența unor carențe și omisiuni de ordin teoretico-normativ, precum și lipsa unor lucrări consacrate temei cercetate. Pentru înlăturarea acestor neajunsuri, au fost formulate concluzii și recomandări menite să îmbunătățească calitatea legislației din sfera de reglementare a actelor notariale. Drept rezultat, au fost relevate recomandări cu caracter practic a căror implementare poate influența în mod decisiv existența și consolidarea actelor normative din domeniul activității notariale.

Implementarea rezultatelor științifice. Rezultatele cercetării au fost expuse în propunerile *de lege ferenda* și în publicațiile științifice, discutate și evaluate în cadrul conferințelor de profil naționale și internaționale.

ANNOTATION

Schin George Cristian. „The legal regime of the notarial act in the legislation of the Republic of Moldova and Romania”. PhD in law thesis. Specialty 553.01 - Civil law. Chisinau, 2021.

Field of study. The paper bases a complex study in the field of civil law, focused on the legal regime of the notarial act in the legislation of the Republic of Moldova and Romania.

Structure of the thesis: introduction, 4 chapters, general conclusions and recommendations, bibliography from 297 sources, 201 basic text pages.

Key words: legal act, notarial act, authentic act, document, notarial action, public notary, authentication, notarial procedure, certification, probative force, enforceability, proxy.

Purpose and objectives of the research. The purpose of the thesis consists in the complex approach of the legal regime of the notarial act in the legislation of the Republic of Moldova and Romania, in accordance with the provisions of the legislation in force, the doctrinal opinions and the judicial practice. In our research we focused on the notarial legal act that contributes to the realization of the person's rights and to the fluidization of the civil circuit, the form of the notarial act in the broad sense, the definition, the characteristic features of the notarial act, the delimitation of the notarial act with respect to other related legal acts, the structure of the act notary, the procedure of notarial documents, etc.

The object of the research is focused on the scientific analysis from the point of view of the comparative law of the legislation in the field of civil law, on revealing its significance in the matter of the notarial act.

Solving the applied scientific problem. Besides the theoretical and scientific dimension of the issues in the sphere of notarial acts, the participants in the civil legal relations face real difficulties with the adoption of the most appropriate measures. Thus, the applicative solutions proposed in the paper aim at improving the regulatory framework in the field of notarial legal acts.

The main new results for science and practice consist in investigating through the comparative law of the notarial act as a species of the civil legal act, its conditions of validity, the research of the main notarial acts, the way of writing the notarial acts, the examination of the controversies regarding the legal nature of notarial acts, elaboration of conclusions and formulation of proposals for improvement of legislation in the field under investigation.

The research reveals its innovative character because it distinguishes the deficiencies of the legal framework, compares comparatively the legislation and the doctrine of the Republic of Moldova and Romania, creates opportunities for implementation in the legal order of the performing legislative practices. The identification and configuration of the underlying circumstances helped to elucidate the main research direction and to propose solutions for the improvement of the legislation in the field.

Theoretical significance. The realization of the theoretical study contributes to solving some major problems for the legal science in general but also for the civil law, in particular: identification of the most important aspects of the evolution of the legislation on notarial acts, outlining the legal nature of the notarial acts, research on the distinctive features of notarial acts, the analysis of the rules for the drawing up of notarial acts. The results and conclusions, which reflect the theoretical solutions, serve as a support for the improvement of the legislation.

Application value. Based on the researches carried out, there were found some deficiencies and theoretical-normative omissions, as well as the lack of works dedicated to the researched theme. In order to overcome these shortcomings, conclusions and recommendations aimed at improving the quality of legislation in the field of notarial acts were formulated. As a result, practical recommendations have been revealed, the implementation of which can have a decisive influence on the existence and consolidation of normative acts in the field of notarial activity.

Implementation of scientific results. The results of the research were presented in the proposals of lege ferenda and in the texts of the scientific publications, discussed and evaluated in national and international conferences.

АННОТАЦИЯ

Скин Джордж Кристиан. „Правовой режим нотариального акта в законодательстве Республики Молдова и Румынии”. Диссертация на соискание ученой степени доктора права. Специальность 553.01 - Гражданское право. Кишинев, 2021.

Область исследования. В основе статьи лежит комплексное исследование в области гражданского права, ориентированное на правовой режим нотариального акта в законодательстве Республики Молдова и Румынии.

Структура диссертации: введение, 4 главы, общие выводы и рекомендации, библиография из 297 источников, 201 основные текстовые страницы.

Ключевые слова: правовой акт, нотариальный акт, заверенный акт, документ, нотариальное действие, нотариус, заверение, нотариальная процедура, сертификация, доказательная сила, принудительное исполнение, доверенность.

Цель и задачи исследования. Цель дипломной работы заключается в комплексном подходе к правовому режиму нотариального акта в законодательстве Республики Молдова и Румынии в соответствии с положениями действующего законодательства, доктринальных мнений и судебной практики. В исследовании мы акцентируем внимание на нотариальном правовом акте, который способствует реализации прав человека и раскрытию гражданских отношений, на форме нотариального акта в широком смысле, на определении и характерных особенностях нотариального акта, разграничении нотариального акта по отношению к другим связанным правовым актам, на процедуре актов нотариус и т.д.

Объект исследования ориентирован на научный анализ законодательства в области гражданского права, на выявление его значения в вопросе нотариального акта.

Решение прикладной научной проблемы. Помимо теоретического и научного измерения вопросов в сфере нотариальных действий, участники гражданских правоотношений сталкиваются с реальными трудностями при принятии наиболее подходящих мер во внутреннем правовом порядке. Предлагаемые решения направлены на совершенствование нормативно-правовой базы в сфере нотариальных правовых актов.

Новые основные результаты для науки и практики состоят в исследовании нотариального акта, условий его действия, исследования основных нотариальных актов, способ оформления нотариальных документов, изучения споров относительно правовой природы нотариальных документов, разработка выводов и формулировка предложений по совершенствованию законодательства в исследуемой области.

Исследование раскрывает свой инновационный характер, выявляя недостатки национальной правовой базы, сопоставляя законодательство и доктрину из Республики Молдова и Румынии, создает возможности для реализации во внутреннем правовом порядке исполняющих законодательные практики.

Теоретическое значение. Исследование теоретически поможет решить основные проблемы юридической науки в целом и гражданского права, в частности: определение наиболее важных аспектов эволюции нотариальных актов, определяющих правовой характер нотариальных актов, научных отличительных особенностей нотариальных актов, анализ правил составления нотариальных актов. Результаты и выводы, которые отражают теоретические решения, служат поддержкой для совершенствования законодательства.

Значение приложения. На основании исследований, проведенных, было обнаружено существование недостатков и упущений теоретического правового порядка и отсутствие работ, посвященных теме исследованной. Для того, чтобы преодолеть эти недостатки были сформулированы выводы и рекомендации. В результате, были представлены практические рекомендации, реализация которых может влиять на существование и закрепление нормативных актов в сфере нотариальной деятельности.

Внедрение научных результатов. Результаты исследования были отражены в предложениях по внесению изменений в законодательство и в научных публикациях, обсуждаемых на национальных и международных конференциях.

THE LEGAL REGIME OF THE NOTARIAL DEED IN THE LEGISLATION OF THE REPUBLIC OF MOLDOVA AND ROMANIA

SPECIALTY: 553.01 - CIVIL LAW

**ABSTRACT
of the doctoral thesis in law**

Approved for printing 29.04.2021
Offset paper. Digital printing
Printing sheets: _2,0_____

Paper size: A4
Edition 50 ex.
Command nr. 10

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PRINT - CARO printing house,
14, Astronom Nicolae Donici, Chisinau mun. MD-2049
Ph.num : (022) 8533-86