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International Professional Union of Notarial Auxiliaries

INCLUSION OF PEOPLE WITH DOWN SYNDROME

Business Mediation

The redaction of a will before a notary for persons with disabilities

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NOTARIES SHOULD BE NEXT TO THE MOST VULNERABLE PEOPLE

Our association UIPAN since its foundation in 2016 was clear that among the purposes that should govern our activity was by statues marked: the defense and promotion of the principles, rights and freedoms enshrined in the International Bill of Human Rights, and in particular the values of justice, freedom and equality; as well as the employment of people with disabilities.

The notary institution has long focused on organizing events, training sessions and publications related to the legal rights of the most vulnerable people in our society: persons with disabilities, the elderly and others in danger of social exclusion. Proof of this are the initiatives of the International Union of Notaries and the AEquitas Foundation, created by the General Council of Spanish Notaries, whose work is being recognized nationally and internationally.

Sometimes, the notary and his team will have to devote more time to make sure that the person with a disability can understand and be understood.

It is true that the notarial function is limited to providing legal advice in order to draft and document the operations requested by grantors within the extra-judicial sphere. However, if the notary wants to remain a reference in society, he must go further and be involved in the needs of the population. It must be an example of self-denial and collaboration with public authorities in order to make societies more equal and pay more attention to the neediest and most vulnerable among us.

That will make the notary and his team pay more attention to the neediest people who need their advice, have some physical, sensory or genetic disability that makes them somewhat different from the generality of the population, but does not subtract an iota of equal rights and treatment. Sometimes, you will have to spend more time to get the person with disabilities to understand and be understood, which will require technological means to facilitate communication between these people and their representatives or facilitators.

The involvement of each notary and each employee is necessary to train people with disabilities, it is not enough with large congresses or seminars to deal with these issues. All the professionals of the Notary must put ourselves "the work monkey" and empathize with all the people who come to the Notary.

International Symbol of Disability
The first sketch was designer by the Danish student Susanne Koefoed in 1968 and defined by Karl Montan.

Following the 2006 United Nations Convention on the Rights of Persons with Disabilities, many States have been changing the old patterns of disability and have introduced laws that promote the dignity of persons with disabilities, their autonomy and value to the society of which they are part.

One more measure, is that governments, in a consensual way, increase taxes for the payment of pensions, although in many OECD countries they are already high, so this is not estimated to be the solution.

If notaries want to remain a reference in society, they must go further and be involved in the unique needs of the population.

International notary's organizations, as well as Latino national notaries, should continue to pay maximum attention to the most vulnerable and disabled, but they must transfer that spirit of work and behavior to all notaries that make up it and be an adequate reflection for their workers.

For its part, UIPAN, the only international association of Notaries auxiliaries with presence in 34 countries, will continue to influence issues related to people with disabilities, explaining their particular situation, giving them a voice, while also trying to provide the legal-notary vision that endorses their rights not only through this Quorum newsletter, but in our days and training courses, and, above all, always putting our eyes on the most vulnerable people.

NEW ATTRIBUTIONS FOR THE ITALIAN NOTARIES IN MATTERS OF VOLUNTARY JURISDICTION

Following the reform of voluntary jurisdiction by Legislative Decree No. 149/2022, new powers have been delegated to the notary that will be useful to the citizens. As happened in Spain with Law 15/2015 of 2 July 2015 on the Voluntary Jurisdiction, this measure will be very positive to speed up the procedures of citizens, safely and effectively, and this, because the notary – a public official who guarantees impartiality – can cooperate with the courts in some legal aspects.

Article 21 of the aforementioned Legislative Decree provides that the parties may choose to go to the notary, instead of the judicial authority, to obtain the authorization required for the conclusion of public and private deeds, in order to expedite and facilitate the obtaining of authorizations for the stipulation of public deeds and authenticated deeds in which a minor, an interdict, a disabled person or a beneficiary of the ad-administration of support measure is recorded.

Without doubt they are things that only the authority of a notary can guarantee.

This "two way" leaves to the interested parties the choice between the judicial authority and the "notario rotatorio" with respect to the figure from whom to request the issuance of the authorisation, maintaining in the event that the choice falls to the notary, the possibility of lodging a complaint with the judicial authority.

The notary issues the authorization after written request of the parties, which must be considered essential.

Authorization can only be issued by the "notary designated to do the deed".

A notary cannot stipulate the deed on the basis of the authorization issued by another notary.

In addition, the notary public may be assisted by advisers and obtain information, without formalities, of the spouse, relatives up to the third degree and the second degree of the minor or the subject of protection measure, or in the case of hereditary property, other called people and creditors resulting from the inventory,

if formulated. In the case provided for in the fourth paragraph of Article 747 of the Code of Civil Procedure, the legatee shall be heard.

If, as a result of the signing of the deed, a fee must be charged in the interest of the child or a person subject to a protective measure, the notary, in the act of authorization, shall determine the necessary precautions for the re-use of the same.

Authorization may be challenged before the judicial authority in accordance with the rules of the Code of Civil Procedure applicable to the co-responding judicial provision.

The authorization must be published, by the notary, also for the purpose of carrying out the advertising procedures, to the secretariat of the court that would have been competent to issue the corresponding judicial authorization and to the prosecutor of the same court.

The authorization may be challenged before the judicial authority in accordance with the rules of the Code of Civil Procedure applicable to the joint judicial provision.

Authorizations shall take effect twenty days after the notifications and communications referred to. Such authorizations may be modified or revoked at any time by the guardianship judge, but the rights acquired in good faith by third parties under agreements prior to modification or revocation are not affected.

Authorizations to promote, renounce, compromise or compromise in arbitration, as well as for the continuation of the commercial enterprise, shall remain the exclusive competence of the judicial authority.

There is no doubt that the Italian Notaries are fully equipped and able to supply new services with speed, efficiency and safety, indispensable values and characteristic of the notarial function.

An alliance that fosters new opportunities: Welcoming the signing of the Partnership Agreement between the Down de Caceres Syndrome Association and the International Professional Union of Notaries Assistants

Andrés Talavero Blanco
Law graduate
Down Cáceres Manager

The recent signing of the Collaboration Agreement between the Down Syndrome Association of Caceres (hereinafter Down Cáceres) and the Professional International Union of Notaries Assistants (UIPAN) marks an important milestone. This agreement symbolizes not only a joint commitment to inclusion and professional development, but also a step forward in building a more comprehensive and diverse society.

This agreement opens ways to numerous possibilities, since it contemplates synergies between the two organisations, which has a positive impact on the members of these institutions. These synergies result not only in the realisation of joint projects and the exchange of knowledge and experience, but also in the creation of a broader and more robust support network for its members. Unique opportunities are opened for training, professional and personal development, and participation in innovative initiatives. The collaboration between Down Cáceres and UIPAN extends its impact beyond the organisations themselves, radiating a positive effect throughout the community. In addition, it not only benefits members directly involved, but also serves as a beacon of hope and a role model for other organisations that want to contribute to the empowerment of inclusion.

The Convention demonstrates that it is possible to join forces to achieve common objectives, highlighting the importance of cross-sectoral cooperation in promoting social inclusion. It becomes a tangible example of how the union of distinct entities with a common purpose can break down barriers and open new paths towards a more inclusive and equitable future. Likewise, the agreement motivates other organizations to rethink their roles and responsibilities in society, encouraging them to adopt a more inclusive and collaborative approach. Ultimately, this agreement is not only an alliance between two organizations, but an invitation to society as a whole to participate actively in the creation of a world where everyone, regardless of their capabilities and characteristics, can contribute and thrive.

The prospects for the future are exciting as this agreement represents a firm commitment that will continue to evolve. It represents a seed planted in the fertile ground of collaboration and inclusion, destined to flourish in a variety of initiatives and projects. Through this agreement, the link between the field of law and the social context is strengthened. This demonstrates an integrated vision where the notarial perspective and equity are intertwined with social inclusion, clearly showing that, when communities come together in a common effort, the possibilities are endless.

Through this agreement, the link between the field of law and the social context is strengthened.

Finally, it is necessary to highlight the work of the people who made it possible to formalize this collaboration. Thanks to their determination and dedication, fruitful projects will be developed that will arise from the opportunities offered by this partnership.

UIPAN SIGNS AN IMPORTANT COOPERATION AGREEMENT WITH THE NOTARY PUBLIC LAW SCHOOL

In March, the organizations SCHOOL OF NOTARIAL PUBLIC RIGHT and UIPAN, through their top representatives Gonzalo Ruiz Sánchez and Dina Nicosia, have sealed their collaborative alliance for the benefit of both institutions.

The objective is to establish the framework of collaboration in order to develop joint training actions that result in the development and strengthening of scientific and / or formative development within those areas in which both have a manifest interest.

Especialmente, se dará énfasis a la organización de cursos, jornadas, seminarios y actividades de formación continuada en cualquier país del mundo. Se realizarán, además, cualquier otra colaboración de interés común a nivel de postgrados, especialistas y máster.

Asimismo, participarán en la confección de publicaciones y manuales de interés profesional, con especial atención en temas jurídico-notariales.

Podemos felicitarnos de que nuestro proyecto vaya extendiéndose por todo el mundo junto con organizaciones prestigiosas que nos hacen más fuertes. Queremos andar el camino asociativo y formativo al lado de otras instituciones que nos hacen más grandes.

FIRST INTERNATIONAL FORUM HELD BY UIPAN IN PORTUGAL

Undoubtedly, the forum or Colloquium held on October 21, 2023, in the splendid hall of the School of Law, of the Catholic University of Porto (Portugal), organized by UIPAN, has left no one indifferent. It's been a resounding success[1].

First of all, we would like to thank the University of Porto for its kindness and, in particular, we would like to thank the Porto notary, João Ricardo Menezes, for the organisation and preparations. Everything developed in a formi-dable way.

We had the opportunity to share professional thoughts and experien-cees about the notarial function. Before a mostly Portuguese au-dience, there was a group of participants from several countries, coming from Greece and Spain, most of the audition were Portu-guese.

[1] All the presentations of the Forum of Porto are avaible in Youtube: https://www.youtube.com/watch?v=eQkWYMqzS4U

André Almeida Martins, João Ricardo Menezes and Isidoro Calvo Vidal

They participated in the forum: the Director of the Faculty of Law: Prof. Dr. Manuel Fontaine; the President of the Order of Notaries: Dr. Jorge Silva; and the President of UIPAN, Ms. Dina Nicosia, who could not be present due to flight problems connected remotely.

The first round was under the theme: "**The exercise of the notary function at distance**" and was moderated by the notary of Porto: João Ricardo Menezes, sharing a table with Prof. Dr. D. André Almeida Martins (UCP teacher), Dr. D. Isidoro Calvo Vidal (notary of La Coruña) and by Paul David Arellano Sarasti (notary of Ecuador), who could not be present due to flight problems, although he recorded a video that was broadcasted.

Dina Nicosia via videoconference

All speakers developed a great degree in the transmission of information, explained the application of new digital functions in their various countries and the challenge facing the notary institution worldwide.

The second table was on the subject: "**The role of the notary in protecting vulnerable people"**. Truly, a very appropriate topic and in which notaries and their staff play a very relevant role. It was moderated by the Galician office and Vice President of UIPAN, Juan Carlos Rodicio Rodicio. He followed him: Prof. Dra. MS. Marta Rosas (UCP teacher), Lisbon notary João Maia Rodrigues, and Prof. Dr. Juan Carlos Martínez Ortega (CEDEU teacher and former UIPAN president).

Marta Rosas, J.C. Rodicio and J.C Martínez

In addition, they were accompanied by the previous members of UIPAN, the secretary, Annie Mellou and the treasurer, Luciano Piñera, along with a delegation of Greek fellows.

The Forum in Porto is the first step to strengthen the international projects of our Association in the beautiful Portuguese country. We want to do it little by little, but without losing the direction and inspiration that has made us an Association known and recognized by all international notary organizations. Proof of this is our presence in 34 countries.

Paul Arellano Sarasti en vdeo

We are confident that we will soon be able to organize a second meeting in lusa lands. Maybe in Lisbon?

PLETHORIC INTERNATIONAL SEMINAR ON "COMPANIES BEYOND BORDERS" IN THESSALONIKI

The international seminar "COMPANIES BEYOND BORDERS", held on 11 November 2023 in the Greek city of Thessaloniki, has been a full success of speakers and participants. The expectations created by the theme and the event were far exceeded as stated by the attendees.

Dimitrios Tzimas

The speech was initiated by the president of the notary association of Thessaloniki, **Dimitrios Tzimas**, who addressed greetings to the guests and attendees.

The first part of the seminar was dedicated to companies that currently exist in Greece. The new notary **Ioannis Mitliagkas** briefly presented the companies in Greek territory: personal partnerships, capitals, cooperativas.

Ioannis Mitliagkas

Anna Tsantila

Followed by Thessaloniki notary Anna Tsantila, who focused on the dissolution of companies and the distribution of corporate ownership. Various

types of socialities require various legal procedures. Dissolution becomes more complicated if societies are involved outside national borders.

The presentation afterwards was then taken by the notary assistant of Thessaloniki, Anna Me-llou, who analyzed the process of transformation of companies (mergers, divisions, company conversions). The new Greek law was inspired by the German law. New systems have been introduced into the business world, for example, splitting a part of the company and merging it into a new company. In addition, it analyzed the procedure for mergers or divisions of companies between different States. The procedure is common for all countries within the euro-peas union, to facilitate the movement of capital. The transformations of companies at national level and the process required when it comes to companies based abroad, e.g. a merger of a Greek company by a Germany company or the establishment of subsidiaries in other countries. The notary must know the diverging European regulations.

Anna Mellou

In the last speech of the first part, the president of the Greek notary association **Georgios Rouskas** pointed out the role that technology plays in founding companies. In order to remove the time-consuming obstacles of bureaucracy and minimise geographical constraints, the European Union has promoted a multitude of regulations for the digital economy, including cross-border business training.

Georgios Rouskas

In the second part of the seminar, the speakers analysed the types of enterprises in different types of companies in their countries.

Notary **Marianna Papakyriakou** presented the types of companies in Cyprus. A country that follows the English business model and the Anglo-Saxon common law. There are no personal partnerships or cooperatives, there is only the type of Limited Responsibility Societies (LTD) with the variations that this type has. These are private limited companies and public limited companies that are large companies with the possibility of buying shares from the public. In order for Cyprus to follow european law, it was incorporated into the types of companies covered by EU law, namely the European Company of Companies (SE) – Regulation (EC) No 2157/2001, the European Cooperative Society (SCE) – Regulation (EC) No 1435/2003 and the European Economic Interest Grouping (EOOS) – Regulation 2137/85. As Cyprus follows English law, there are no notaries in this country. Therefore, all companies are established through private agreements deposited in the Register of Companies and Intellectual Property. When a company wants to file with a notary in another country, the notary can consult the company's data and its statutes through the website https://www.companies.gov.cy. Copies are valid for 90 days.

Marianna Papakyriakou

Roland Krause

Next speaker was our beloved German notary **Roland Krause**, who pre-sented the German website https://www.unternehmensregister.de through which the notary can view all the data of a company. Through the same website, companies register electronically and through the same website, notaries can receive copies and certificates nessecary for writing a notarial deed.

Bulgarian notary **Ivalyo Ivanov** noted that Bulgarian company law recognise six types of companies: 1. General Partnership 2. Limited company 3. Limited liability company 4. Public limited company 5. the company limi-ted with shares 6. The company with variable capital. Of these six forms, the most common are the limited liability company and the public limited company. In order for a company to be represented in a notarial deed, it is obliged to provide a decision of the general meeting or a decision of the management board (depending on the form of the company). Any other information about the validity and history of the company is obtained digitally through the business register website of the companies which also provides the relevant certificates electronically, https://portal.registryagency.bg.

Ivalvyo Ivanov

Willy Van Buren

In Netherlands, notary assistant **Willy Van Buren** masterfully explained that there are different types of companies, depending on the purpose of the company. There are sports companies whose main activity is sport; charitable foundations; cooperatives for agricultural activities (the oldest form of enterprise). In the past, entrepreneurs preferred cooperatives, whether ge-neral, limited or simple. Most companies are private or public. All information about companies in the Netherlands can be searched on the company register website, https://www.kvk.nl.

The notary officer of Gijón, **Luciano Piñera Suárez**, spoke about the situation in Spain and made a brief presentation on the legal forms of the most common entities: commercial, civil, cooperative, etc. It explained the form of documents and the different ways of organizing the administration and representation of them, as well as the main requirements for the intervention and international representation of commercial companies.

Luciano Piñera Suárez

Dina Nicosia, president of UIPAN and notary officer, finally took the floor, presenting the various Italian forms of companies. Italy has a wide range of companies, which can be classified into different classes according to their facetristics and ends. The general distinction is: — capital companies incorporated before a notary. The procedures are now very fast and the constitution can be completed in a few days. Companies may be formed by signing a public writing or by signing a private contract in the presence of a notary. The statutes must indicate, among other things, the corporate object, the area of activity chosen and the contributions of the individual members. As for the corporate structure, since there is no clear distinction between the social heritage and the personal assets of the partners, it is a common practice for the partners themselves to manage the company.

Dina Nicosia

Notaries have been receiving completely digital public documents for many years. As of 15 December 2021, it is also possible for the notary to redact a notary deed of establishing a company by means of an electronic public act with videoconference with the participation of all or some of the constituents. In order to set up a company with the procedure entirely online, it is necessary that the established company has its registered office in Italy and that the contributions are made in cash, by bank transfer to a specific current account of the notary.

The deed can be signed with a digital signature or other qualified electronic signature. A company based in the European Union, in order to be able to operate on Italian territory, must have the requirements established by the law of one of the states that make up the EU. In essence, the company must be registered in the commercial register of the country to which it belongs: the registration documents in the Italian trade register or the R.E.A. shall be acquired in the ex-transfer register of the Member State. In order for the foreign non-EU company to be able to operate in Italy, it is essential to verify the so-called "reciprocity condition". This often depends on bilateral agreements between countries: the condition of reciprocity states that the foreign citizen can enjoy the same treatment as Italian citizens, provided that this treatment is guaranteed to Italian citizens in the territory of the foreign nation.

The more than one hundred participants of the International Seminar on Companies Beyond Borders, both for the quality of the speeches and the profesional prestige of the speakers, has been an endorsement of the training involvement of UIPAN. This is the way we want to develop our corporate work.

IX INTERNATIONAL MEETING OF NOTARIAL LAW, in Asunción (Paraguay)

On 23th of November 2023, took place in the capital of Paraguay, Asunción, the XI International Meeting of Notarial Law, with remarkable assistance and resounding success.

It had great jurists, among them, our friends, Fernando Báez Artecona, Paul Arellano Sarasti and Claudia Iris Varese, from Paraguay, Ecuador and Argentina. In addition, the last two had the opportunity to present the Encyclopedia Notarial sponsored by our Association.

Recognition and tribute were given to the distinguished professor Dª Gladys Teresita Talavera de Ayala, who participated in a course organized last year by UIPAN.

All the professionals of the Notary continue to bet on strengthening the law, justice and notary in their countries.

Paul Arellano Sarasti, Claudia Iris Varese and Fernando Báez Artecona

The president of UIPAN participates in the XVI National Assembly of Unic@

Our tireless President Dina Nicosia has participated in this Assembly of Italian dependent held in Naples on 18 November 2023.

The words spoken in the context of this Assembly were very gratifying, making a call at the union and at the profession of the auxiliaries of the Notaries.

Encouraged attendees to join the ranks of UIPAN, the World Association of Latino Notary Assistants.

Dina Nicosia, president of UIPAN

AWARDING MEDALS TO PROFESSIONAL MERIT

On January 19, 2024, members of UIPAN had the honor of attending the cited award of medals to institutions and people who have stood out for their professional work in the field of mediation.

Among them, we can mention the Organization of Consumers and Users and the Military Emergency Unit, as well as mediators from different parts of Spain and Ibero-America.

It was an emotional and splendid event organized by the Mediation Journal and the School of Mediation and Conflict Resolution.

On this occasion it was under the motto "No budget there is no mediation" wanting to convey the idea that it is necessary to have adequate economic means to enable mediation, in whose aspects public authorities and individuals must be involved.

Congratulations to the honored and to the organizers.

SUCCESSFUL COURSE ON THE WRITING OF THE PARTITIONAL NOTEBOOK (INHERITANCE)

On March 18 and 20, 2024, this course was taught with remarkable success. More than sixty enrollees from Spain and Ibero-America were able to remember and learn fundamental aspects of succession and inheritance.

The speakers, Rafael Rodríguez Domínguez and Juan Carlos Martínez Ortega, through clear exhibitions, practices and threats, instructed the participants in the necessary aspects when writing a partitional notebook or an inheritance writing.

This course will be held in other countries with application of their own legislation.

WE CONTINUE TO REMEMBER OUR UKRAINIAN COLLEAGUES

More than two years have passed since Russia's nefarious invasion of Ukraine.
We see the destruction of populations on television and it looks like an unreal video game, but it's real. Thousands of people die and see their future frustrated.
UIPAN will always continue to uphold the values of justice and peace.
We are with our Ukrainian comrades and affiliates; their pain is our do-lor.
That is why we urge the world notary family not to forget our colleagues and the citizen population.
This isn't a game. We trust that this madness ends as soon as possible for the good of the civilian population, alien to political adventures and follies.

THE WEBSITE OF UIPAN FAITHFULLY REFLECTS OUR INTERNATIONAL ACTIVITY

On May 21, 2024, it will be eight years since our UIPAN partnership was born. From that moment on, we already had a window open to the public around the world. Last year we completely renewed our website: www.uipan.org to make it more attractive and dynamic.

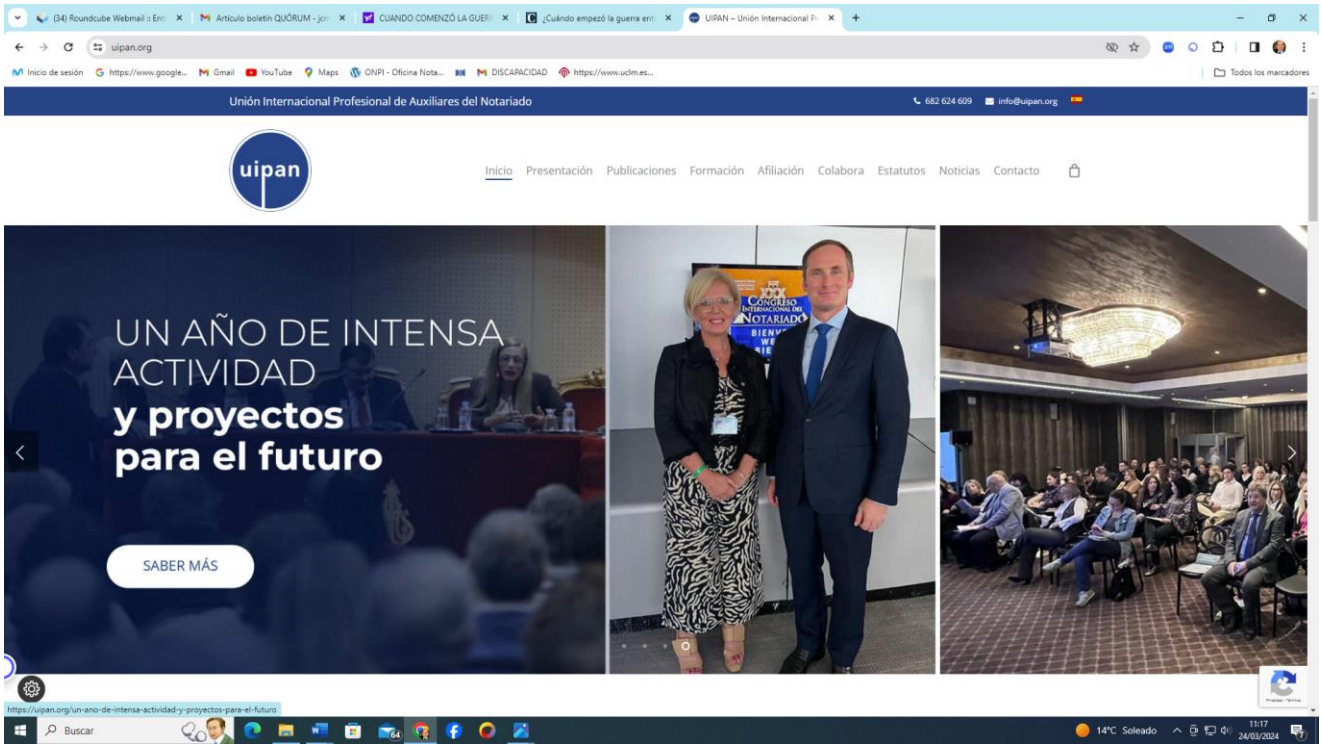
In it, our objectives and international corporate projects in the short and long term are clearly glimpsed. In addition, it exposes the training courses we are doing and, in open, there are all our QUÓRUM digital newsletters and the articles of professional interest that we periodically post.

Also, you can now acquire courses and publications by paying them directly through the web itself through secure payment tools, thus facilitating the management and accelerating the processes.

We have a splendid team of professionals who help us keep it up-to-date, both in its content and technical aspect.

Without a doubt, there is a lot of work after maintaining a website. It is the first reference, apart from social networks, to which anyone in the world can go with a simple clip.

For this reason, visit us.



ASK UIPAN, WE WILL ANSWER YOU!

On the Association's website, a banner with the name "Ask Uipan" has been created. The purpose is to be close to all notarial assistants, professionals of the Law and citizens of the world. Therefore, through a forum you can ask us all kinds of legal and notarial questions from any country in the world to which we will try to answer.

You can also ask us for help to have professional contacts in the different countries where UIPAN has affiliates.

All this service is totally free.

THE DIGITAL QUORUM NEWSLETTER IS RECEIVED WITH ENTHUSIASM

The Royal Academy of the Spanish Language defines the word quorum as "Number of individuals necessary for a deliberative body to make certain agreements." It is clear that the agreement and the pact are the basis of progress and, in addition, the ingredients that drive disagreement and conflict away.

For this reason, our digital newsletter, with increasing presence and international recognition, demonstrates our vocation and involvement in the legal and notarial field. We want to promote the culture of effort, respect, recognition of our fellow men with greater difficulties, such as people with disabilities.

We are aware that every day, it will be required more, but we are convinced that with the cast of affiliates and professionals who help us in each issue of the newsletter the target will be met.

The variety in the contents of Quorum, giving special emphasis to international notary issues, bring readers closer to different sensitivities on issues of tremendous legal, notarial and social relevance.

The authors who give us their works free of charge, are reputed professionals from the world of law and academics, without whose contribution this publication would not be viable. Quorum pages are open to all who want to publish their articles with us, provided they have legal-notary or social content.

We are sure that the present issue of QUÓRUM, the 16th, that you can see on your screen will be of interest to you. If so, we urge you to invite others to benefit from its content and, why not, join the UIPAN family.

STYLE RULES FOR THE PUBLICATION OF ARTICLES IN QUORUM

Shipping. All works must be sent by email to info@uipan.org and must be accompanied by a short c.v. of the author, as well as telephone and contact address. The Directorate will give receipt of its receive.

They must be signed and send us a bust photograph.

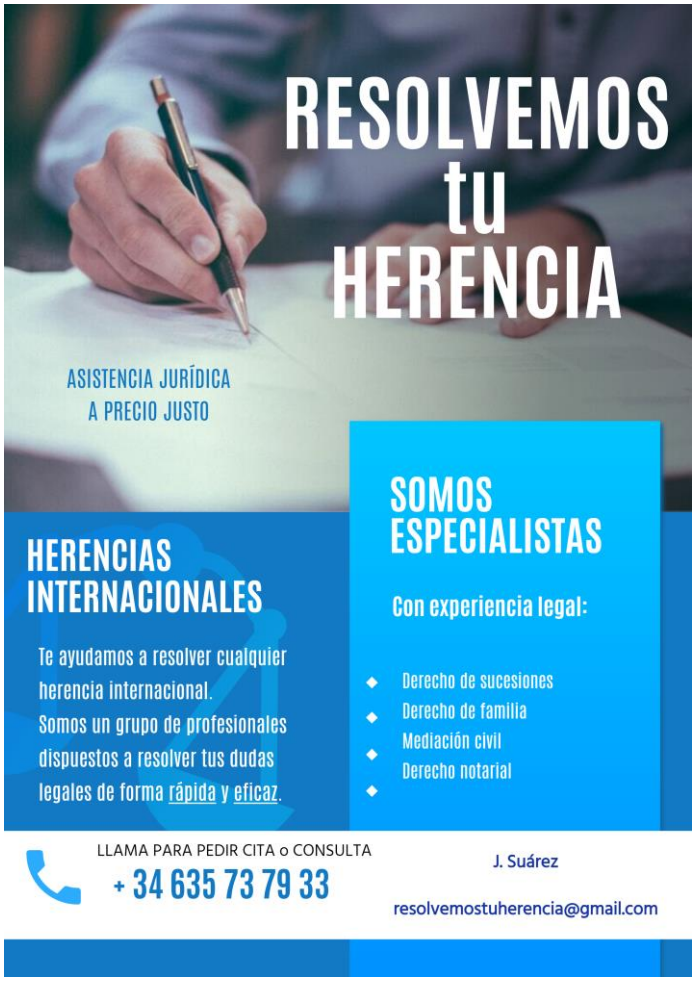
Extension. The content of the articles published in the QUÓRUM newsletter must always be original, and not excessively long. It must be maintained between 1 and 3 conventional pages (type Arial 11, single line), equivalent to between 1,500 and 2,400 words (maximum 13.000 characters without spaces).

Drafting. Articles should use the style of journalistic collaborations: phrases and paragraphs happen naturally.

Editing. In the text, it is possible to use bold letters moderately and only for a word that is expressly desired to highlight, and italics for citations, references, etc.

We also ask you to emphasize within the article those paragraphs that you believe, because of their importance, we should lead to "highlights" (paragraphs that appear interspersed in the text with larger letters). These highlights should be brief.

Evaluation. The articles will be evaluated by the Editorial Committee. Whatever the decision taken, the authors shall be informed in writing.



¿ YOUR CHILDREN OR YOU ARE GOING TO TAKE A COURSE OR MASTER OUTSIDE YOUR COUNTRY? UIPAN HELPS YOU.

We are aware that thousands of students are currently expanding their studies or degrees in other countries, even under the Erasmus programme. The challenge of sending our children to distant countries to parents worries us and gives us some fear.

UIPAN, with affiliates in more than thirty-four countries, puts at your disposal the contacts of our colleagues and friends in order to help you, provide help and information about accommodation, universities, travel, etc.

We seek to be close to you and your family.

Recently a colleague from South America wrote to us to see if we could help her in a postgraduate course in Spain. This is the idea, to exchange knowledge to help each other.

We will do everything in our power to help you, to the best of our ability. Contact us at: info@uipan.org

ON COVER

Discovery of Down syndrome, characteristics and rights

Noelia González Del Río

Psychologist and service coordinator of Atención Temprana y Habilitación Funcional en Down Cáceres.

Elsa Clemente Corriols
Psychologist in different services of Down Cáceres y coordinator of Servicio de Centro Ocupacional.

According to the discovery, from 1866, made by John Langdon Haydon Down and according to the results obtained in various subsequent investigations, Down syndrome is not a disease, but a genetic variation. This syndrome is known as Chromosome 21 Trisomy or Trisomy 21. It is, therefore, a genetic alteration that occurs during fertilization that causes extra material in Par 21, resulting in 47 chromosomes instead of 46. To date, the exact causes of this trisomy have not been completely deciphered by science. Research continues to better understand the reasons behind this genetic variation, as well as to explore ways to support people with Down syndrome in their overall development and well-being.

In the specialized publications of associations in the sector, such as Down Spain, this syndrome is defined as the main cause of intellectual disability and the most common human genetic alteration. This condition, resulting from an extra copy of chromosome 21 (Trisomy 21), carries a variety of impacts on cognitive and physical development. Its prevalence is a reminder of the importance of ongoing research and comprehensive support for people with this condition and their families. These organizations provide essential resources and promote awareness and social inclusion for people with Down syndrome. Its most notable features are as follows:

- Occurs spontaneously, in all ethnicities.
- Has an incidence of one per 600-700 conceptions in the world.
- There are two risk factors, when the mother is over 35 years of age or when it occurs by inheritance of the parents (occurs in one percent of cases).

• There are no degrees. Each person is unique, with his or her own personality and abilities determined.

In addition, according to the same sources, it is estimated that thirty-four thousand people have this syndrome in Spain and six million in the world. However, also noteworthy is the information recently published by BBC NEWS WORLD on 21 March 2023. According to the article, a marked decrease in the number of births of babies with Down syndrome has been observed in Europe, largely influenced by two interrelated factors. The first is the remarkable technological advance in the field of medicine, especially in prenatal diagnostic techniques, which allows the early detection of this genetic condition. The second factor is the consequent increase in the rate of interruptions of pregnancy after the diagnosis of Down syndrome. This phenomenon reflects a complex interaction between available medical options, personal decisions, and the ethical and social implications that accompany such choices.

From the legal point of view, also, an analysis of the framework that is related to Down syndrome can be performed. Down Spain and regional entities such as the Down Syndrome Association of Cáceres, provide a "Guide for fathers and mothers" aimed at new parents who need specialized information with the main purpose of finding answers. Among the document that can be consulted, some sheets, of blue color, classified under the heading "Legal Aspects" stand out. These tokens show the rights and duties that people with Down syndrome have. Among others, the following are identified:

• The right to be a person, since he has the right to be respected and to develop a full life, for example.
• The right to be educated.
• Right to work, like any other person.
• Duty to behave in accordance with established standards, to strive to learn, to respect differences and to endure frustrations.

These rights and duties, in Spain, are included in the basic general regulations of the Code of Disability Law, among which the Spanish Constitution, the

Convention on the Rights of Persons with Disabilities and the Revised Text of the General Law on the Rights of Persons with Disabilities.

University and students with Down Syndrome, a compatible linkage

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University Professor

The change in a greater presence of students with Down Syndrome in universities reflects a significant evolution in education and social inclusion. Historically, people with Down syndrome faced numerous barriers to accessing higher education. These barriers were not only academic, but also social and cultural, showing a lack of resources, support and often limited expectations about their abilities.

In recent years, however, there has been a progressive transformation in this trend. Among others, the factors that have contributed to the change are regulatory updates, improvements in adapted teaching methodologies and the existence of referents.

Norms and policies that promote inclusion and equal rights for people with disabilities have improved access to education. In this regard, it is noteworthy to mention that all the countries that signed the International Convention on the Rights of Persons with Disabilities have committed themselves to promoting and implementing standards to ensure that persons with disabilities enjoy their rights and have access, for example, to education, employment and information.

Advances in inclusive teaching methods have allowed students with Down Syndrome to receive better training from the beginning of the school stage, better preparing them for college level. In addition, universities and affiliated centers, too, are following a similar line and, for example, among other advances include, increasingly, specific resources for support, such as specific departments/services for student care or attention to special needs. In addition, technology has played an important role in providing tailored learning tools and accessible educational resources.

It is also relevant to the existence of people with Down Syndrome in the media, in leadership roles and in universities as it implies a powerful role model for others. This fact is happening, for example, in North American and European countries.

The transformations reflected not only benefit students with Down Syndrome, but also enrich the university environment, promoting diversity, empathy, awareness and understanding among all students. Strengthening inclusion in higher education is therefore an important step towards a better and more conscious society. The idea of eliminating barriers to access and allowing limits in the educational field to be set by the persons enrolled in official degrees themselves calls for a more inclusive and personalized formative model. This approach recognizes the diversity of skills, interests and needs of students, and seeks to adapt the educational system to respond to these realities.

Application of Occupational Risk Prevention for the elimination of barriers that hinder people with Down syndrome

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The application of Occupational Risk Prevention (hereinafter PRL) to remove barriers that hinder people with Down syndrome in the workplace is a topic of great importance. This approach not only seeks to guarantee the safety and health of these workers, but also to promote their effective and productive inclusion in the work environment.

In order to analyze the relevance of the link between PRL and people with Down Syndrome, in the first place, it is convenient to contextualize both concepts. According to the information published by Down Spain on its official website, “Down syndrome is the main cause of intellectual disability and the most common human genetic alteration... It is estimated that some 34.000 people with Down

syndrome live in Spain, and a total of six million in the world. The calculations indicate that between 30 % and 40 % of people with intellectual disabilities have Down syndrome...” The PRL, for its part, refers to a set of practices, regulations and attitudes aimed at preventing and minimising risks at work.

Barriers for people with Down Syndrome can be physical, as lack of accessibility in facilities, or intangible, such as prejudices and lack of knowledge about their abilities. Identifying these barriers is the first step to be able to eliminate them. To eliminate these barriers, clear decisions have to be made in various areas, such as those related to accessibility (to ensure that facilities are accessible, with ram-pas, suitable lifts and clear signage), with tools and equipment (to adapt tools and equipment to their skills and needs) and with flexibility in tasks (to modify tasks and responsibilities in order to align them with their strengths and capabilities).

Supervision and continuous support are crucial, to develop them can be implemented, among others, the following measures:

• Create a work environment that promotes inclusion and diversity. This involves not only adjusting and adapting tasks, but also fostering a culture of respect and acceptance.

• Provide training to both people with Down Syndrome and their peers and supervisors. This includes preparation for specific skills and awareness of how to interact and support workers with Down Syndrome.

• Assign an additional mentor or support in some tasks, as well as periodic visions to adjust PRL strategies as needed.

• Working in collaboration with specialized organizations, such as the Cáceres Down Syndrome Association, can provide additional resources and expert advice.

• Develop internal policies that are aligned with current legislation on labor inclusion and the rights of persons with disabilities.

The effective application of the PRL for the removal of barriers for people with Down syndrome not only benefits this group, but also enriches the work environment, promoting diversity, inclusion and equal opportunities. It is a commitment that goes beyond legal compliance, embracing a more humane and equitable approach in the world of work.

WE ARE ORGANISING THE IV EDITION OF THE UNIVERSITY NOTARY UPDATE COURSE

Who was going to say it when four years ago with the support of the Center for University Studies -CEDEU-, our Association started these courses, type of summer, notary update. It is clear that the hundreds of participants in these courses taught by notaries, lawyers and university teachers are proving very positive to extol the notarial function that is incardinated in the lives of people in all countries.

All legal professionals and students studying law need to know the legal tools they have at their disposal and the legislative developments that advance the world in rights.

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No one can deny that social networks occupy a key position in the knowledge of organisations. It has been said that if someone doesn‘t go out on google doesn’t exist. For this reason, UIPAN has always wanted to be close to its affiliates and people around the world with our positive and informative legal message.

The transmission of information is today, more than ever, visual and immediate. That’s why social media plays such an important role.

Unfortunately our facebook page was hacked and we had to open another new one and start over. But, little by little, the impacts of the new page are counted in the tens of thousands, which we congratulate ourselves on.

We wish to be by your side, both in X (formerly twuitter), facebook, instagram and Linkedin.

We are aware that the present and the future is in the network and, we want to be part of that future, be by your side daily with positive thoughts, commenting on professional news and providing legal notes and corporate communications.

We are very honored to know that anywhere in the world we have friends who follow us, who ask us and come to our pages in search of some friendly receivers.

EXERCISE OF THE NOTARY FUNCTION AT A DISTANCE [1]

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Introduction

At present time, the advancement of technology and the increasing adoption of telematics has brought with it new challenges in the field of recruitment, especially for vulnerable groups, including digital vulnerable ones. The participation and increasing number of users of social networks in this area have had important consequences in the exercise of some fundamental rights of people.

Exercise of the notarial function in person

Technological progress has revolutionised the form of agreements , unlike contracts in person, has saved time, money, and in a certain way has also provided security. However, there is a problem with respect to vulnerable people, who in face-to-face recruitment have different legal support and people such as experts and interpreters, which allow to precaute their rights, even with the intervention of a third party who, endowed with public faith by delegation of the State, called notary public, who is called to precaute the rights of these people in a vulnerable condition, which is not the case in telematic recruitment.

Role of the notary in telematic procurement

Although telematic contracting is governed by the principles of non-discrimination, functional equivalence and technological neutrality, there is a kind of resistance of people, especially because of ignorance or also called digital illiteracy, digital divide or caused by economic circumstances, age of people, lack of coverage and access to technology, to whom digital vulnerable people are considered.

Regarding what has been said so far, Wortman (2011), raises the need to redefine the function of the notary in cyberspace. Traditionally, the notary has been a guarantor of legal certainty in recruitment. However, in the digital context, the notary must assume a new role, combining legal security with computer security. The author proposes that the notary assumes an advisory and facilitator role in digital procurement. The notary should help the parties to understand the terms and conditions of the contracts, as well as to verify the identity of the parties and the authenticity of the documents.[2]

The regulations in some countries in Latin America and Europe already allow the provision of telematic or remote notary services. Technology, electronic signature and video conferencing platforms allow the notary and users to interact, view, listen and record video conferencing.

In Ecuador, article 5 of the Notarial Law allows the provision of public notarized service at a distance[3].

Conclusions

Technology should be considered as a tool for the provision of telematic notarized public service and not as a new form of contracting, which will not be possible to understand or assimilate if the technology is not known and handled correctly.

The notary in physical hiring has the possibility of evaluating with his senses the capacity of the people who attend his presence, he can ask, see, listen, analyze if they are nervous, if they are relaxed or if they have any pressure, if their tone of voice is normal or choppy, if they have a temporary space location, if

they are aware of what they want to do, that is, they can analyze the person's body language and evaluate with questions their effective ability to perform acts or conclude contracts.

In telematics contracting, it can be observed that the answers vary, showing that there is a degree of mistrust, related to the question regarding, whether notaries are trained to contract by telematic means, apparently the ignorance of the technology influences the capacity of the notary in his/her functions in the digital environment

This evidences a lack of training for notaries in electronic procurement, in the use of technology and secure platforms that allow the notary to authorise acts and contracts in a secure manner.

Recommendations

Of the above and analyzed, it is imperative the training of the notary and its dependents in the management and use of technology, telematics tools, audio and video recording, use of electronic signature, to later train in the public notary service telematic users and the notary service remote is a correct and duly applied reality.

Technology is a tool that must be at the service of the notary and the users of the notary service, which allows the notary to fulfill its function of providing legal certainty to the acts and contracts that he authorizes with his presence, now in the digital environment at a distance.

Technology is constantly changing, its exponential evolution makes it necessary that notaries also join this change, to train permanently, to be open to the use of new technologies, but always as a tool, surely the technological future will surprise us..

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[1] Extract from the paper given at the Notarial Colloquium held in Porto (Portugal), on 21 October 2023.

[2] The theories about digital contracting can help to understand the problem raised by Wortman. The theory of functional equivalence holds that electronic contracts are valid and binding to the same extent as contracts concluded by traditional means. This theory can help ensure legal certainty in digital procurement.

[3] Indicates article 5 of the Ecuadorian notarial law "…All notarial services shall be provided in a physical or telematic manner in accordance with the provisions of the law; in the case of telematics service, it will be done through means compatible with the computer system authorized by the Council of the Judiciary. The Council of the Judiciary will authorize digital systems complying with the principles of functional equivalence of technology and technological neutrality and complying with the guidelines issued by the Council of the Judiciary. Applicants for notarial services shall formally express the modality for the provision of the service.

The telematic services will be provided through videoconference or other telematic means compatible with the computer system authorized by the Council of the Judiciary in accordance with the nature of the act or contract, one of the parties must be found in the territorial constituency of the notary and, the others may be in any place. If it is not fusible to provide the service of notary telematics and the parties cannot attend the notary office, the notary may travel to perform his service outside his office in physical form, within his cantonal constituency".

TAX SERVICE VS NON-OWNER BORROWERS

María Cristina Clemente Buendía
Notary in Alicante

This article tries to approach from an eminently practical perspective the problem that, due to its undesirable and unknown consequences for the consumer, can involve the signing of deeds as a non-owner borrower and the transcendental work of advice and advice that the notary must provide in such cases.

Article 1, paragraph 2, 2 Spanish R.N. states that notaries "as legal professionals have the task of advising those who claim their ministry and advising them on the most appropriate legal means for the attainment of the lawful ends that they intend to achieve". As the illustrious notary and jurist Juan Vallet de Goytisolo wrote in an article published in the journal of the Notary of the 21st century, No. 2 (July-August 2005), "the duty of counsel far exceeds the duty to advise." Advice is a technical function; advice is a practical and, as such, prudential function.

And in the cases covered by this article, this advice and advice of the notary will be paramount, it cannot limit itself to authorizing the deed of loan mortgage that has been entrusted to him, and cannot wait for the client to ask for advice, in particular, because he does not know and does not even glimpse the possible fiscal consequences of his action, therefore, the notary must develop a function of anticipation and forecasting, his action must be proactive, this quality defined in the dictionary of the Royal Spanish Academy as "which actively takes control and decides what to do at every moment anticipating events", and considered in the business field as a soft skill or soft skill, is undoubtedly part of the notarial DNA.

The most common scenario referred to in this article will be that in which a young, unmarried person intends to buy his first home and the bank requires for the granting of the mortgage loan or for surrogacy therein, that his parents or partner, who do not buy, sign with him as joint and several debtors, not as mere guarantors, without prejudice to what we will say later on the binding decision of DGT V2183-16 of 19 May 2016.

It also arises at the time of the increase in the capital of the loan granted to a person who at the time of setting up the mortgage loan was unmarried, but married at the time of agreeing the novation and the bank requires that the original debtor, by his current spouse, take over the outstanding amount of the original loan and its extension, without in the latter case involving allocation of part of the property to the spouse in payment of that debt assumption.

In all these cases, therefore, the title of the property belongs to only one of the debtors, the remaining joint and several debtors are only debtors of security. We are facing the atypical legal figure of **the cumulative assumption of debt** admitted by our Supreme Court in its Judgment of **September 28, 1960, as "figure of guarantee, recognized doctrinally and jurisprudentially as different from the joint and several guarantees, on the basis of Articles 1158, 1255 and 1257 of the Civil Code"** and by the Directorate-General for Legal Security and Public Faith in its Resolution of 21 December 2005, BOE 14 February 2006.

From a tax point of view, it does not constitute a taxable event in the TPO modality, which only taxes the transfer of goods and rights between individuals, but not the transfer of debts, nor of AJD, since subjective novation by change of debtor, by addition or by release, are not acts registered in the Property Registe.

So far, an interpretation according to the interests of consumers and taxpayers, not shared by the Directorate General of Taxes, which aims to be subject to the Donations Tax by assimilating it to a discharge without consideration or to the modality of TPO by assimilating it to a guarantee, being the objective of this article to provide the consumer with the means that allow him to avoid tax consequences that do not correspond to him.

Undoubtedly, Law 5/2019, of 15 March (LCCI), which regulates real estate credit agreements, which has increased the advisory function of the notary, establishing at his charge "the verification of compliance with the principle of material transparency", introducing for this a new procedure in the mortgage contracting process, the **previous act of Article 15**, which also implies for the feudatory a function of verifying the fulfilment of external duties; anticipating its intervention to **the pre-contractual phase**, it allows us, by direct contact with the interveners

at this preparatory stage, in cases such as those that are the subject of this study, to have a longer period than we had until the entry into force of that law, 16 June 2019, for the elaboration of the legal instruments to which we will refer, that detail the position of the guarantors debtors and serve as a means of proof, among others, to destroy administrative presumptions "juris tantum" such as those linking the deductibility of the mortgage loan to the formal ownership of it.

The pre-loan report allows the notary a function of verifying the performance of external duties by direct contact with the interveners and destroying administrative presumptions.

When clients come to our offices for the signing of the aforementioned minutes and we verify that despite being a single owner of the property, this one or others, usually parents or couple, all intervene as borrowers/debtors of solidarity, we usually ask if they proposed to the Bank to sign as guarantors instead of borrowers and the answer is usually unanimous: yeah, but they told us that "risks" didn't admit it.

The reasons why the banks opt for the cumulative assumption of debt instead of the bond, are, as listed by the notary Carlos Pérez Ramos in his excellent Conference at the Matri tense Academy of Notaries, academic year 2014-2015, the following four:

"First. *For a question of quantification of banking risk*", so that in view of the direct risks (loans) and indirect risks (confidences) that are communicated to the CIRBE if the guarantor commits as a borrower, less risk is quantified to the detriment of the creditor bank than if it were obligated as guarantor, which, in turn, allows the real debtor (the borrower/owner) to obtain a larger loan.

Second. "*To avoid the settlement by TPO of the ensuing bond constitution*". This criterion should be reviewed in the light of the above-mentioned Linking Resolution of DGT V2183-16 of 19 May 2016, to which I will then return.

Third. "*For procedural reasons, prior to the Reform by Law*

1/2013 of Article 579 LEC to avoid starting another procedure against the guarantor when the result of the auction would not suffice to cover the credit, and currently to avoid the risk that the accumulation of shares will not be allowed judicially".

And I would add a fourth reason, for a hypothetical possible extension to the clauses for the strengthening of declarations of invalidity, in the interests of consumer protection, citing the well-known judgment of the Supreme Court of 9 May 2013, that of the floor clauses, according to which 'consumer's consent alone is no longer sufficient, but it is also necessary for the contract to exceed the control of abuse and transparency control'. But after the aforementioned LCCI which entailed the introduction of 'forecasts to enhance legal certainty,' the transparency and understanding of the contracts, and of the clauses that compose them, as well as the fair balance between the parties", as indicated by its statement of reasons, has been addressed to the greater transparency that the Judgment called for, so this reason seems to have ceased to be such.

Whatever, therefore, the reasons or reasons that lead the Banks to complete the creditworthiness of the acquiring debtor by means of the **cumulative assumption of debt**, as non-acquiring borrowers who perform a mere guarantee function, which in no case releases the owner debtor, our clients should know that the General Tax Directorate, if there are several jointly and several debtors, both in the original creation of the mortgage loan and in a subsequent novation, -including these new non-proprietary joint and several debtors-, and no further details are specified, it means, by **misidentification between the discharge of debt without consideration and the cumulative assumption of debt**, that there is a **covert donation** by the non-proprietary debtors to the owner borrower, since according to their biased interpretation they assume an obligation to return the money borrowed without consideration, that is, without the acquisition of property in the mortgaged property, and therefore constitutes a taxable event of the Inheritance Tax and Donations for the concept of donation, or by any other legal business free of charge "inter vivo" (Article 12.c Tax Regulatory: "release of the debt of another without consideration").

He even understands, in his voracious collecting appetite, that, although it is proved that only the owner debtor pays the loan alone, that would assume a conversion of several debtors to one, and therefore a real assumption of subjective novation by change of debtor, and as such, would require the expressed consent of the bank.

In reality, however, the chargeable event of the donation could be accepted only if the non-owners or guarantor borrowers paid the loan instalments and the ac-

quiring borrower had no obligation to repay those payments to them. Only then would the gift tax accrue and would be paid, month by month.

However, although the Courts are not assuming this criterion of the Directorate General of Taxes, since they understand that it is not possible to disassociate the purchase of the home from the mortgage loan, and that therefore it is sufficient to prove, by any means of proof admitted in law, that the borrowers own are those who are fully amortizing the loan by paying all their installments, **the most prudent and safe for our clients, consumers and users of the notary function is to advise them to grant them simultaneous granting to the mortgage loan deeds of instruments that accurately detail the position of the guarantor debtor and establish** a link of onerosity between all the borrowers who apply the final tax.

These instruments are the ones mentioned below, absolutely compatible with each other:

1st) An **inter-private loan** between borrowers in which the collateral debtor (non-owner borrower) lends half of the borrowing to the acquiring borrower, for the same period of time and interest rate as the mortgage loan.

In this way, with the payment of each instalment by the owner borrower, it is simultaneously giving satisfaction to the bank, and to the non-acquiring borrower, by taking over the payment of the part of the instalment that corresponded to that debtor of guarantee.

This loan can be formalized in public deed or by private document with signature legitimized notary and in both cases will be subject but exempt from TPO and not subject to AJD.

Although it is signed in unit of act and with number of protocols following the deeds of sale and mortgage loan that brings cause, the bank will never show interest in dealing with its management.

2nd) A **deed of determination or internal regulation of the relations between debtors** which, sometimes, if the bank permits, may be done by including a specific clause in the body of the deed of loan or mortgage novation. In it, the owner-borrower declares that it is he who has received the loan in its entirety, he being the one who pays all the instalments, so that the other non-acquiring borrowers, are merely collateral debtors and also if they reach to pay, they can repeat against the acquiring borrower.

If only this second instrument is granted, we must bear in mind the aforementioned consultation of the DGT, of May 18, 2016, V2183-16, which subject **to**

the modality of TPO the standard clause of cumulative assumption of debt by classifying it as a guarantee, in a change of criterion to that held until then, forgetting that the security under Article 1827 of the Civil Code must be express and that in its external relations, vis-à-vis the creditor, the guarantee debtor is a genuine joint and several debtor.

However, that rating has little real relevance for the granting borrowers, since if it is the case of the purchase and subsequent deed of mortgage loan in which the owner borrower and the collateral debtors are present, it would be an assumption assimilated to the creation of the guarantee simultaneous to the loan, in which it does not tax. It would only be subject to taxation if its constitution is not simultaneous with that of the loan, such as during a novation or subrogation, but neither in this case will it be relevant to the consumer, since the taxable person will be the creditor entity.

In view of what has been said, both proposed instruments:

1.- Exclude a possible settlement by donation at the time of granting the deed of mortgage loan or novation.

2.- They exclude a possible settlement by donation in the future, when the guarantee debtors want to leave the loan and this is agreed by the creditor, since until that discharge of debt the bond of onerosity created will be extended.

In concordant terms, the Directorate-General for Taxation was expressed in its Linking Consultation V5165-16 of 29 November, according to which the release of a "guarantee debtor" is not taxed by the gift tax on the understanding that the novation of the loan consisting of replacing the guarantee debtor, assuming the borrower owns its debt, **is a release of onerous debt or with consideration**, that is, the release of the debt would be the way in which the acquiring borrower returns to the debtor of guarantee the money loaned**.**

Notaries, with our impartial advice, provide clients with legal certainty to the intended business, but, in addition, a complete strategy that allows the consumer to defend their interests.

3.- In deeds of sale with a single holder and of a mortgage loan with more than one holder granted until 1 January 2013, the owner borrower is deducted 100 % of the amounts paid for the acquisition of his habitual residence, as it constitutes sufficient evidence to destroy the administrative presumption juris tantum that links the deductibility of the mortgage loan to the formal ownership of it.

Undoubtedly, notaries, with our duty of impartial and free advice, provide to all those who come to our offices not only the public instrument that will provide effectiveness and legal certainty to the business intended by him, but also, in cases such as the one addressed in this article, a complete strategy that allows the consumer to defend his interests.

I conclude this article as I began remembering the words of Juan Vallet de Goytisolo in the article reviewed: "*The client who enters our office...: he is – in principle – a destitute man in law, a man who puts himself in our hands, who puts his faith in us. This faith is manifested by the simple fact that a buyer, a borrower, knocks on our door. And without honoring this private faith, no one can pretend to honor the public faith*".

THE NOTARY TESTAMENT OF PERSONS WITH DISABILITIES[2]

Juan Carlos Martínez Ortega

Doctor of Law, lawyer

According to the World Health Organization (WHO), it is estimated that more than a billion people live with some type of disability, which corresponds to approximately 15 % of the world's population. It is clear that everyone, at some point in our lives, will suffer from a disability or we will know in our environment people with disabilities.

If we look back, we can see that the history of the different civilizations shows a vexatious and cruel treatment to which people with disabilities were subjected.

[2] Part of the presentation given at the Porto Forum on the Civil Service mentioned above.

All national constitutions extol as fundamental principles: equality and non-discrimination, which should also apply to persons suffering from any disability, regardless of the severity of the disability.

The legislator must weigh all these circumstances in order to promote the optimal personal, labor and cultural development of the most vulnerable people in our society, contributing to their social integration.

For WHO, disability is understood as a restriction or impediment to the ability to perform an activity in the form or within the range that is considered normal for any person.

Undoubtedly, disability has degrees, as we have seen when talking about people with down syndrome.

The United Nations Convention, known as the New York Convention, was a major step forward for the rights of persons with disabilities, recognizing that communication goes far beyond oral communication by stating in its article 2: "Communication" shall include languages, text visualization, Braille, tactile communication, macro types, easily accessible multimedia devices, as well as written language, hearing systems, simple language, digitalized voice media and other augmentative or alternative modes, means and formats of communication, including easily accessible information and communications technology; "language" means both oral and sign language and other forms of non-verbal communication.

The CNY recognizes as one of its basic aspects: 'persons with disabilities have legal capacity on an equal footing with others in all aspects of life".

1.- Remarkable progress in Spanish legislation

Inspired by the CNY, Law 8/2021 of 2 June 2021 was enacted in Spain almost three years ago, amending civil and procedural legislation for the support of persons with disabilities in the exercise of their legal capacity. This Law has meant a paradigm shift in the legal vision of this group, both in its theoretical and practical aspects**.**

The expression of our ideas and our emotions is vital to develop and maintain good mental health. For persons with disabilities, communication with the rest of their peers is crucial for their dignity, for self-respect and for them to be considered included in society on an equal footing with others.

The expression of our ideas and our emotions is vital to develop and maintain good mental health.

2. The will before a notary

In most legal systems, among the fundamental constitutional rights of any citizen is the right to inheritance, which induces, to promote the possibility of granting will and which is limited, in the generality of legislation, as a very personal act, not being able to leave its formation to the discretion of third parties.

It is configured as a civil, free and voluntary act of the individual.

2.1.- The legal capacity to grant a will

The Spanish Civil Code establishes a juris tantum presumption regarding the ability to grant will, stating that "all those who are not expressly prohibited by law may test". Figures the *favor testamenti*, which exalts the probate succession, over legal or intestate succession.

It is perfectly understandable that after the death of a person it is not easy to know his motivations and thoughts on the hereditary aspects, unless we turn to the will freely subscribed by the testator, who publicly externalizes his will through the vehicle established by the legal system.

In Spain, the current article 663 of the Civil Code establishes that children under 14 years of age may not be make a will. In other countries such as Portugal, Italy and Greece, this minimum age is estimated at 18. But we must emphasize that according to point 2 of said article "the person who at the time of testing cannot conform or express his will, even with the help of means or supports for it".

For this reason, article 665 CC states: "*The person with a disability may grant a will when, in the opinion of the Notary, he can understand and express the scope of its provisions. The Notary shall ensure that the granting person develops his own decision-making process based on his understanding and reasoning and facilitating, with the necessary adjustments, that he can express his will, desires and preferences*".

In Spain, the notary is the only professional who is responsible for assessing the ability of the testator at the time when he intends to make the open will, not in another time, past or future.

It is evident that the notary usually does not have technical knowledge in the medical and psychological areas, but this lack does not prevent him from adopting certain valuations in the capacity of the grantors, using the necessary supports and instruments.

The notary, in his capacity as a public official, may be considered in pure as another measure of support for persons with disabilities.

Taking into account the above, it is not a question of incapacitating, but of empowering any individual to govern his or her life and person on an equal footing with the rest of the population. In its virtue, all jurists, especially the notary, must open their minds and cultivate a broader vision of who has the capacity (without the need for judicial support) to test and who should be considered lacking capacity to perform such an act; establishing in this case, how many legal mechanisms and safeguards are necessary for their protection.

Following some rulings prior to Law 8/2021, we can state[3]:

1st. Asset transfers inter vivo may compromise the interests of the person with disabilities, but not so the provisions mortis causa that will apply to the death of the testator and that, to him, nothing can affect him personally after his death.

2nd. Since the will is a very personal act, no one can make a will for the interested party, who will have to personally express to the notary authorizing public his last will, thus becoming his point of support, safeguard, protection and enforcer against any third party who intends to influence the will.

3rd. The majority of the open wills of the people who come to grant them to the notary offices are usually simple, do not require a special aptitude or discernment, the grantors know who they want to benefit for their care, attention or familiarity, and to those who do not wish to leave anything of their patrimony.

In addition, in Spain the age for testing of 14 years is lower than that required to perform other inter-living acts.

All jurists, we must open our minds and cultivate a broader vision of who has the capacity to test and who should be considered lacking in such capacity.

In Spanish law, every person with the necessary support has legal capacity, therefore, by continuing the reasoning of Article 695 CC, the testator can express

[3] SAP de Badajoz (Sección 2ª), núm. 632/2020, de 14 de septiembre.

orally "*or by any technical, material or human means" his last will; in turn, the notary "uses the appropriate technical, material or human means*" in order to ensure that the testator with sensory disability understands the information, having to formulate the necessary explanations until he is convinced that the clause of the will "*truly collects his will*".

Naturally, each case and personal situation of the grantor will be different, therefore it will have to be evaluated differently, always taking into account his unique personal circumstances.

In short, we can say that our legal system incorporates the principle of presumption of capacity to test and incapacity should be the exception.

3.- Key function of the notary

The notary becomes an ideal source of support for the testator with disabilities, who will be able to advise impartially on the different legal options that assist him to conform his last will.

Of course, to be able to grant will testators must have a certain natural capacity, since sometimes people who do not have the natural capacity or the intellectual or volitional faculties necessary to grant will appear before him.

This notary judgement of capacity, without discrimination and in accordance with the law, is essential for granting a valid will. The wording of Article 665 CC indicates that the notary public, in support of persons with disabilities, must ensure that "the granting person develops his own decision-making process by supporting him in his understanding and reasoning and facilitating with the necessary adjustments, that he can express his will, desires and preferences".

The methods and paradigms that have conditioned legal actors in the past must be changed.

The aforementioned Law 8/2021 requires the notary, at the discretion of the grantor of any document, to use all appropriate technical, material or human means, so that, if any person with difficulty or inability to read or hear the reading of his will comes together, ensure that "he has understood the necessary information and explanations and that he knows that the will faithfully collects his will". That is, the notary has to verify in situ the suitability of the testator's ability, at the time of granting, to understand and be understood through the appropriate supports, which will, in many cases, lead to a previous interview with the person with disabilities.

The notary, in his professional performance must make a suit to the measure of each testator. The type formulas do not work, especially when we are facing vulnerable people or with a disability. We are facing an active public official, who not only listens to the testator with disabilities, but must ensure that "he develops his own decision-making process by supporting him in his understanding and reasoning and facilitating with the necessary adjustments" so that he can test, freely and voluntarily.

The international trust placed in notaries to guarantee the rights of persons with disabilities must be assumed by those with pleasure and involvement.

3.1. Intervention of witnesses in the public will

In countries such as Spain, the granting of an open will does not require the attendance of witnesses since 1991 (since then more than 16.000.000 wills have been authorized before a notary).

Article 191 of the Notarial Regulations establishes another means of proof or authenticity to underpin the last disposition of the testator and, although it is a faculty and not an obligation of the notary, it is highly recommended, even for other types of public instruments granted by people with a disability: stamp the fingerprint of the index finger.

States should encourage the notary fees of these public instruments to be accessible to the entire population.

Of course, notarial studies, such as public offices that are, must be an example of universal accessibility so that all people, with or without disabilities, can go to the notary of their trust without any obstacle. They must be properly equipped with the appropriate services, tools and devices. In this sense, the new paragraph of Article 25 NL indicates that, "To ensure accessibility for persons with disabilities who appear before Notary, they may use the necessary supports, instruments and reasonable accommodations, including augmentative and alternative systems, braille, easy reading, pictograms, easily accessible multimedia devices, interpreters, systems of support for oral communication, sign language, dactilological language, touch communication systems and other devices that allow communication, as well as any other that is precise".

From the wording of the transcribed precept, we can draw the idea that people with disabilities can choose, methods unthinkable decades ago,

such as "*easy multimedia devices... and other devices that allow communication, as well as any other that is necessary*". The digital age has surpassed the old way of doing things, rapidly evolving into previously unimaginable technological models. There are new methods and reliable communication systems that legislators and notaries should be aware of and incorporate in their use in offices.

We bring up the case of one of the brightest and most important scientists in modern history, Stephen Hawking, whose revelations about black holes or the Big Bang revolutionized the foundations of physics in our time. Did he have the ability to test? Naturally, yes. He could communicate through digital tools.

3.2.- The notary deed as a mean of strengthening capacity

In some circumstances, it may be desirable to use a record prior to the granting of the will of the person with a disability. It may provide evidence, documents, medical or mental reports to support the suitability of the person; you could even burn the authorization on a pen drive or DVD and leave it deposited in the Notary.

The person with a disability is not alone, can attend the granting of the public will with an expert professional or facilitator in the multiple systems that enable communication. This means that the notary will have at his side a professional who instructs him in the technical aspects of the media that he does not know, or in other words "to translate his thoughts".

Conclusions

The annals of history are full of harmful behaviors against the human being with disabilities, denying or restricting the rights inherent to grow the personal development: freedom, equality and dignity.

Undoubtedly, the New York Convention in 2006 and Spanish Law 8/2021, represent milestones for people with disabilities, fleeing sterile paternalisms and placing the person at the center of the equation, always respecting their wishes and preferences in decision-making.

In testamentary matters, the notary emerges as a fundamental support for the person with disabilities to test, provided that he can express and understand the scope of his manifestations.

All legal professionals must respect the diversity that exists today in order to communicate, using, where necessary, alternative or augmentative means of oral communication, among which are: sign language, dactilological language, easy reading, pictograms and some easily accessible multimedia devices. They may also request the intervention of interpreters, expert professionals or any other human or technical support that allows the person to understand and be understood in order to testify.

The real equality and dignity of persons with disabilities are gained and strengthened by exercising the rights enshrined in the Laws, defending them every day, with personal involvement of all legal operators, including notaries and their staff.

IN FEW WORDS

This section is intended to explain legal terms and the scope of legal aspects and situations in a brief but didactic way.

PERSONAL GUARANTEES

Rafael Rodríguez Domínguez
Lawyer

Among the personal guarantees of the Spanish legal system to guarantee compliance with an obligation, to answer the debtor of the payment jointly or jointly and severally, we have the guarantee and the guarantee, whose characteristics are:

1.- **THE ENDORSEMENT**

It is a direct personal guarantee, in which a natural or legal person undertakes to comply with an obligation of a principal debtor, in the event that the same does not comply with it, jointly and severally.

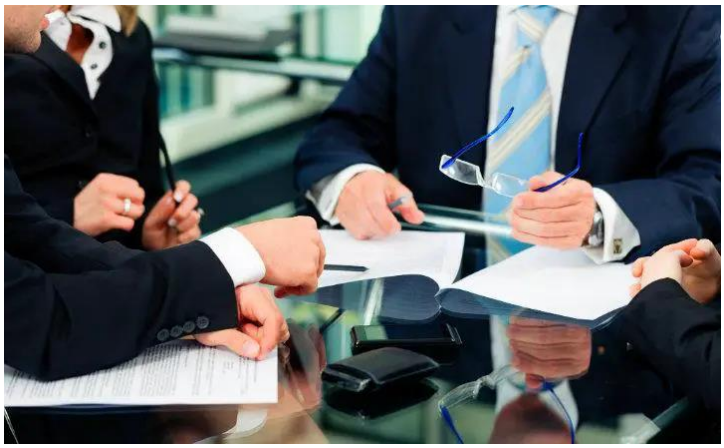
Therefore, the guarantee is a direct guarantee of compliance with an obligation, whereby the guarantor in the event of the default of the principal debtor becomes jointly and severally liable for that obligation. While in the bond it is an ancillary contract to the principal, by which the guarantor undertakes to comply with the obligation in the event that the principal debtor does not do so, that is, on a subsidiary basis, having first the creditor to claim it from the principal debtor.

The guarantee is used in financial transactions to respond to a person's payment obligations in case of default, such as in bills of exchange, promissory notes, etc. The guarantee is used in contracts where obligations to a third party are guaranteed as an ancillary contract.

2.- AND THE DEPOSIT

It is an ancillary guarantee to a main contract, which is usually given in the financial field, such as loans, claims, leases of property, etc., in which the debtor guarantees the obligation to the creditor to a third party.

With the death of the guarantor this condition is passed on to the heirs, who if they accept the pure inheritance and simply have to take charge of the obligation.



We may indicate that it is a contract by which a third party undertakes to comply with an obligation in case the principal debtor fails to comply. Therefore, the guarantor responds in a subsidiary manner in the event that the principal debtor does not do so. For this purpose, the guarantor cannot be compelled to pay the creditor without first excussion of all the assets of the debtor, unless the guarantor has waived the benefits of order, excusion and division.

These benefits are:

The order, whereby the creditor may not claim from the guarantor without first having claimed the principal debtor. In this case, the guarantor may claim the benefit of order in order not to pay the claim.

The excussion, whereby the guarantor is discharged from the obligation to pay as long as the debtor has sufficient assets to pay the debt (art. 1,830 CC).

And the division, set out in Art. 1837 CC, only when there are several trustees, the debt has to be divided among all guarantors in equal parts, so that each guarantor will only be obliged to pay his share.

Unlike the guarantee, in which the guarantor becomes jointly and severally liable for the obligation; in the bond contract, you can also become a solidary debtor, when guarantors renounce the benefits of order, excussion and division.

The Spanish Civil Code regulates bail in Articles 1822 to 1856, in Article 1822 CC, “By bond one is obliged to pay or comply by a third-zero, in the event of not doing so”. The bond can be conventional, legal or judicial, free of charge or for consideration.

As obligations that are the guarantee and the bond, they are extinguished by the payment or fulfillment, the loss of the thing due, the forgiveness of the debt,

the confusion of the rights of creditor and debtor, compensation and novation. Therefore, with the death of the guarantor this condition is passed on to the heirs, who if they accept the pure inheritance and simply have to take charge of the obligation, unless they accept the inheritance for the benefit of inventory, and, consequently, the debts are paid first and the surplus, if any, will be received by the heirs.

MEDIATION SPACE

With this window to mediation and other methods of out-of-court resolution of conflicts we want to emphasize the key role played in this century by the culture of the pact and the agreement in avoiding judicial collapse.

BUSINESS MEDIATION

Carmen Capilla
Attorney
Expert in Commercial Civil Mediation.
Trainer in alternative methods of conflict resolution
Professor at Universidad Udima and Universidad Camilo José Cela
Consultant in the prevention and management of conflicts in the company and families

Mediation is a procedure that enhances negotiation between the parties by achieving a satisfactory agreement quickly, flexibly and economically.

The conflict is real and innate to any system, and the company represents the fabric from which a real society is built, from which new social constructs emerge that frame the development of society in general.

Mediation as a method of conflict resolution opens a new paradigm for the company, the employer, the workers and all the elements that converge in the productive process of a company. It is mandatory and pending subject to know how to address those controversies, conflicts that occur every day within

organizations both vertically and transversally.

The verticality of organizations, managers, teams, intermediate employees, base, that system where each of the employees of the company converge with a different attitude and aptitude and that the dynamics of the business activity itself, sometimes frenetic, generates in the elements of the company tensions, confrontations, conflicts after all interpersonal, between teams, managers, middle managers, which makes that perfect system begins to lose the balance and order that must frame any efficient and effective productive process.

Internal conflicts generate a multitude of direct costs – flight of valuable workers, low stress, depression, anxiety – and indirect costs such as management errors, loss of profits, opportunities, improvement, business, poor quality of the work carried out with the consequent detriment to the image of the company, etc.

Assuming that the internal conflict is real, we are talking about a management team that, focused on the profitability of your company and on the global and efficient management of it, and becoming aware that the group of people to whom they respond is immersed in a multitude of conflicts that make them lose image and money, they make the decision to implement a company policy conducive to self-composition, in a collaborative climate, promoting communication and finding meeting points.

And that is where mediation, as a protocol implemented within the organization, with professionals specialized in mediation and conflict resolution techniques and the productive sector itself, work from the prevention, management and resolution of conflicts of the organization to improve coexistence, the dynamics of the components of the system and, therefore, the improvement of the productive process.

It is optimal to implement a company policy conducive to self-composition, in a collaborative climate, promoting communication and finding meeting points.

On the other hand in the transversal aspect of the company, conflicts with customers, suppliers, investors, administration etc. implies a wear and tear in companies that directly affects the income statement of a company, improving profitability is the subject that managers, financial directors, sales directors, entrepreneurs, etc. face every day, but it is precisely in the bad management of conflicts where much of the profits of the company goes, and that is why the company of the 21st century, modern, dynamic, efficient, needs to incorporate a plan of prevention and management of conflicts, that allows to address the conflict from its earliest beginning.

They are the professionals in conflict management, mediators, professionals from different sectors of the company and the law, who, with due training, can contribute to the company that conflict prevention plan that undoubtedly improves the structures within the organization and of course, we cannot forget the importance of confidentiality for the company, the basic principle of any mediation process. The opportunity of the company to "be able to wash the dirty rags at home" Spanish saying that comes to the case, since the company must preserve as much as possible its internal and external identity with the greatest possible neatness A possible disagreement between partners cannot reach the ears of the base employees, because this generates uncertainty and discomfort and this clearly results in the progress of the production process, or for example: a failure with a client or supplier must be resolved within the organization, it should not pass on to third parties, future customers, or future investors, in short, today more than ever we must protect our businesses.

The company must "wash dirty rags at home", preserving as much as possible its internal and external identity as neatly as possible.

Finally, the company does not escape the power that the image has in our social construct, therefore, and from its corporate social responsibility, it must detach a real organization, by and for the improvement of social, community coexistence, from the bases of its own organization, with the development of methods of work of commitment, collaboration, listening and solid elements of social peace.

Assuming from the business fabric the responsibility and assumption of their own conflicts and giving them a solution within the organization itself without having to resort to obsolete and unsustainable systems, results in the image that we all want of our society.

Mediation thus becomes the best way to resolve commercial conflicts, because of its immediacy and because it responds to that model of modern justice, adapted to the society of the 21st century.

CURRENT WORK ARTICLES

The accident at work during rest is considered an accident at work

An accident at work means any bodily injury suffered by the worker on the occasion or as a result of the work he performs as an employed person.

Most regulations regulate a pause of 15 minutes when the working day exceeds six hours and must be counted as effective working time.

In this sense, if the accident arises during that rest period, it would be counted as accident at work. In any event, the employer shall bear the burden of proof in order to rebut the causal link caused by the accident.

Such cataloguing must be extended, even if the employee is not in his or her usual job, whether or not he is in the office or outside the office during that statutory rest.

Moreover, the courts have also considered accidents at work some cases of death when the death is a consequence of the symptoms that began in their work or derived from it. Naturally, as we said earlier, the cause and effect of such a fact will have to be proved.

Notary public offices should be examples of attention in the prevention of occupational risks, inside and outside the office space. Periodic evaluations must be made to review that everything works properly, that workers are in good health through the usual medical examinations. In this respect, the notary must be very rigorous and not allow the neglect of his staff.

Without a doubt, prevention is better than cure!

Equipo Quórum.

INTERNATIONAL NOTARIAL FUNCTION

CHILE

The notary helps the regularization of property titles

This year's tremendous fires in the Valparaiso region have resulted in a major destruction of the deaths of more than 130 people. In this country, the notary

leaders went to work to help the population, among other things, to speed up the regularization of domain titles for affected families.

All documents of the persons affected by the claims will be granted free of charge.

When one has lost everything, the advice from the notaries is appreciated.

As we have always maintained, if the notariat wants to continue to be recognized as a positive and useful institution for society has to be on the side of the people who suffer. In times of tragedies, it is when the value of people and organizations is evident.

MEXICO

The National College of Mexican Notaries overturns with Acapulco

The force of nature with roar is unstoppable, as evidenced by Hurricane Otis, which, last October, devastated the beautiful and touristic Mexican city of Acapulco.

In the face of phenomena of such magnitude, we all do well to collaborate and support aid and relief efforts. In this, the National College of Mexican Notaries was put to work through its governing bodies. The first thing was to enable in the facilities of the College a point of concentration of food. In addition, all money raised through various training courses will be earmarked for the purchase of goods for distribution in an equitable and transparent manner.

The notary has a social responsibility that he cannot ignore and the Mexican example is praiseworthy.

APPOINTMENTS

Marius Stračkaitis is the new president of CNUE

Lithuanian notary Marius Stračkaitis became the new president of the Council of Notaries of the European Union (EUCN) for the year 2024. His appointment was solemnized on 11 January in Vilnius.

The CNUE represents 22 notaries of the European Union, with 50.000 notaries and more than 200.000 workers.

UIPAN has already had a first contact with the new president of the CNUE, coordinating various areas of joint work.

UIPAN, as an Association based in Europe wishes the new president much success in his work and to strengthen the legal certainty that all the professionals of the notary institution support every day.

GIARCARLO LAURINI, LEAVES AN INDELIBLE MARK

On February 28, 2024, we were left by the famous Italian notary Giancarlo Lau-rini. Few men have left such a pronounced mark on the notary institution as Giancarlo.

He was born in 1938, in Tito, province of Potenza. He served as a notary in Naples. He was Professor of Commercial Law at Frederick II University of Naples. He has written numerous scientific and professional publications. He founded and directed the magazine Notariato.

He had political commitment, being a deputy, member of the National Council of Economy and Labor and Commissioner of the National Order of Public

Accountants.

He served as President of the Italian National Council of Notaries from 1991 to 1998 and from 2010 to 2013. He always reconciled the commitment with the Italian notariat with that of the International Union of Notaries, since the 1970s. In 1992, he approved the proposal to establish the Administrative Secretary of the UINL in Rome.

He was appointed President of the UINL for the triennium 2005/2007.

But to his brilliant professional curriculum we must highlight his fabulous cordiality, his gift of people, his close treatment to all. Notary employees always treated us with admirable affection and consideration. He was a beloved and respected man. For this reason, we all mourn his absence.

But his enormous legacy of love for public faith inspires us to move forward, trying to make people's lives a little better.

THE FIRST SCRIBE WITH NOTARY REGISTER OF THE PARAGUAY

Fernando Rubén Báez Artecona

Lawyer, notary and public scribe in Paraguay University teacher, co-author of foreign books in matter of notarial law. National and international exhibitor

The invitation given to me by the International Union of Notariat Assistant Professionals (UIPAN) to write about my maternal grandmother, is given on the occasion of commemorating International Women's Day in this year 2024; what brings a great commitment and responsibility to me in describing it.

It is so that I am impressed by the emotion and full of pride to write this article about a person who marked not only a milestone for the notarization of this region of South America, but for the history of the women of the world who have fought and continue to do so for their rights. But the superlative love of her family and her commitment to the community has been what has most transcended in those who dealt with her.

Yes, I present to the First Notary and Public Scribe Holder of Registry of the Republic of Paraguay: Yolanda Bado de Artecona.

Attorney, Notary and Public Scribe Yolanda Bado de Artecona was born in the city of San Juan Bautista, Department of Missions, located south of Paraguay, on September 21, 1924. Decades ago, that city had been the birthplace of the renowned Paraguayan guitarist Agustín Pio Barrios, better known as "Mangoré". However, his family originated from the prosperous Itapúa, its capital Encarnación (known as "the Pearl of the South", off the coast of the Paraná River, border with Argentina), saw his childhood and youth develop, as well as in the stays of the family that were outside the city. She was the daughter of Don Luis Isidoro Bado and Doña Ulpiana Montiel de Bado. In Encarnación, she was received and practiced as a normal teacher, as well as in the capital of Paraguay, Asunción. Later he studied law (he graduated in 1960) and Notary (he graduated in 1962), both at the Faculty of Law and Social Sciences of the National University of Asunción (U.N.A.). The Paraguayan historian Luis Verón tells, that Dr. Yolanda was a prominent and active trade union leader of the Association of Educators of Asunción and other organizations, such as the Paraguayan League of Women's Rights, the social service of the National Penitentiary and the Colegio de Escribanos del Paraguay (whose Board of Directors made up her several times). The Decree of the Executive Branch dated March 6, 1963, marked it in the history of the Paraguayan notary, making it the first woman to exercise the function in the country (it must be borne in mind that at that time the granting of notary registers was in charge of the President of the Republic).

At the faculty, she met her beloved and unconditional husband, Prof. Dr. Miguel Ángel Artecona Livieres. From that union were born their beloved children: Fernando Luis and María Raquel (my mother, also notary and public scribe, who married with my father Dr. Rubén Darío Báez Maldonado – current Secretary of the Board of Directors of the Central Bank of Paraguay – and from whose union we were the result of my brothers Gabriela, José and I). However, Yolanda Ba-do of Artecona was subjected to a wheelchair by a disease that was deterrent-laughing until her death in Asunción, on April 8, 1989; situation that didn't stop her from working as a notary while her body allowed it.

Those who knew her remember her as a courageous, supportive, firm, honored, honest and recognised notary and counselor. For hers, we remember her as a beloved wife, mother and grandmother.

My memory is limited to recording the gestures of affection received by her at my tender age and the conversations at the family table; but to refer with some precision to his successful professional and professional career, I had to resort to bibliographic sources where he is mentioned.

The Escribana Yolanda Bado de Artecona was honored in life by the Colegio de Escribanos del Paraguay in 1975, on the occasion of the "International Year of Women", as well as in the book Centennial of the Colegio de Escribanos del Paraguay as well as a stamp of the National Post Office for the 100 years of the aforementioned guild.

The example of this outstanding pioneer, led to the entry into the role of brilliant women notaries, to cite some such as Prof. Dra. Gladys Teresita Talavera of Ayala (my dear mentor) and Prof. Dra. Graciela Velázquez de Ocampos, who were the first Doctors in Notarial and Registral Law by the Argentine Notarial University (over time, Prof. Dr. Gladys Teresita Talavera de Ayala was appointed as Senior Government Scribe by the Paraguayan National Congress, following a competition); and in the guild field, Prof. Escribana Ana Manuela González Ramos, who was the first woman in the Presidency of the Colegio de Escribanos del Paraguay, being reelected on several occasions, and later elected as Vice President for South America of the International Union of Latino Notaries during the term of the renowned teacher Prof. Dr. Dr. Cristina Noemí Armella (Argentina); as well, they reached the Presidency of the College of Scribes of Paraguay, Prof. Dra. Lucila Ortíz by Di Martino and the Scribe Gladys Delia Lichi Battilana.

Undoubtedly, the milestone marked by Yolanda Bado de Artecona made more women embrace the profession of notary in Paraguay, so much so that the function is exercised mostly by them to date.

My affectionate embrace as a grandson to the memory of this illustrious Paraguayan notary.

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JOIN THE INTERNATIONAL PROFESSIONAL UNION OF NOTARIES ASSISTANTS (UIPAN).

***Membership** of associations*

Associations of employees of Notaries from anywhere in the world may subscribe to UIPAN (International Professional Association of Notaries Assistants), having to request it in writing and attaching the following information:

· Association information, nationality, number of associates, location.
· Photocopy of all legal documents that justify their existence.
· Personal data of your legal representatives.
· Address, telephone and e-mail to get in touch.

The quota of the Associations that join will be the same as that of the numbering partners, i.e. EUR 30, without prejudice to other sources of support that they can make.

Membership of private partners:

UIPAN understands that in most of the countries where the Latino notary system is established, there are no associations of employees of Notaries. For this reason, UIPAN, opens its organisation wide to all the comrades of the world individually and to the friends of the public faith and professionals of law.

There are two modalities:

Numbering partners:

Members who pay a fee of only EUR 30 per year will have this consideration, who will have the right to vote in the Assemblies and may be elected in the management positions.

Sympathetic partners:

All other sympathisers shall be considered members, who will not have to pay any fee, benefiting from the same rights as numeraries except that they will not be able to vote in the Assemblies or hold managerial positions. Membership a UIPAN is total gratis.

Each affiliate will obtain, among others, the following benefits:

· Biannual digital newsletter to be published by UIPAN.
· Informative and periodic reviews of the activities of the Association.
· Bimonthly newsletter of legal-notary news.
· Information on notarial issues with an international dimension.
· Articles and presentations of professional interest.
· The right to participate in seminars, congresses, conferences and colloquiums organized by UIPAN or its member associations at special prices.
· Legal and notarial advice and exchange of international information.

Do not miss the opportunity to belong to an international organization with a clear vocation of service, of which hundreds of professionals from more than 30 countries on 4 continents are part. Find the affiliation form on the web: www.uipan.org.

UNDER ANOTHER PRISM

THE WARRIORS OF XI'AN

Juan Candela Cerdán
Oficial de Notaria jb

On January 31, 2024, the doors of the Archaeological Museum of Alicante closed, of the majestic exhibition of the terracotta figures of the warriors of **Xí An**. Terracotta Warriors are a collection of statues made in clay modeled and hardened to the oven depicting the figures of warriors and horses of the army of the self-proclaimed first emperor of China of the Qin Dynasty, the so-called Qin Shi Huang, who died presumably in the year 210 B.C. It is a type of funerary art buried in a battle formation composed of three graves between four and eight meters deep, located a kilometer and a half east of the emperor's tomb, and about 35 km east of Xi'an, as part of the Mausoleum of the Emperor Qin Shi Huang.

The figures were discovered by local farmers during water works, on February 2, 1974 near Xi'an (Shaanxi Province, People's Republic of China). According to 2007 estimates, among the three graves were figures of more than 8,000 soldiers built slightly larger than the natural, a cavalry of 150 animals and 130 chariots pulled by another 520 horses, although other non-military figures were also found, such as officials, acrobats, arts and musicians, a whole court so that in the afterlife, the emperor would not lack anything. Since 1987, the entire archaeological complex has been considered a UNESCO World Heritage Site.

In ancient times, the powerful did not want to move to a hypothetical "beyond" without their glories and belongings on earth, that is why, both Egyptians, Babylonians and other cultures, thought that in the other world they could take

earthly things and thus they made mausoleums and pyramids as a way of reaching the other world with their belongings and thus they were buried with their jewels, weapons and other utensils of everyday life, as if when returning to the new life they could enjoy what was achieved in the previous one.

According to the historical memoirs of ancient historian Sima Qian, construction work on the Mausoleum of Emperor Qin Shi Huang began little after the emperor, who was then thirteen years old, ascended to the throne in 246 BC, proclaiming himself the first emperor of China. This emperor is also credited with the construction of the first version of the Great Wall of China, of the reunification of the fighting kingdoms in the Qin Dynasty, and of other administrative, economic, military and technological advances in the region, but it was also known for its tyranny, was very named at that time the burning of books and the persecution of intellectuals contrary to his thought. Historian Sima Qian also wrote that the first emperor was buried in a mound, with models of palaces, pavilions and offices, as well as fine pots, precious stones and other valuable rarities. The chamber was built on a base in the shape of the known territory, using mercury to simulate rivers and oceans, and under a roof where the celestial dome was reproduced. The mound where the tomb is located has not yet been opened. For this construction, 700.000 workers were recruited between 246 B.C. and 209 B.C., when the work was interrupted by peasant revolts one year after the emperor's death. No obstante, in Sima Qian's account there is no mention of the terracotta army, presumably because of the Han dynasty's censorship. Legend says the tomb contains vast riches, but includes diabolical traps to ensure the king rests forever in peace.

The first pit was discovered in 1974 casually when neighbors were-they were digging a well in search of water. In the month of February in that same zone, some remains had already been found that had not been given too much importance, until the news of the discovery of the new grave reached the ears of the archaeologist **Zhao Kangmin** who began the excavation. This pit was discovered more than a kilometer away from the emperor's mound, so the mausoleum was larger than was known at the time. It is now known that the extension of the entire funerary complex covers 98 square kilometers. The grave opened to the public in 1979.

In 1980 two painted bronze chariots were discovered, each consisting of more than 3,000 pieces, pulled by four horses and guided by an imperial driver. According to some studies, the first of these chariots would serve to pave the path of the emperor's entourage, while the second would be the chariot in which the monarch slept. The chariots that were exposed were built about half the actual size, and had, at the time, silver and gold inlays.

In 2009, more beardless warriors were discovered, showing that they were young, around 17 years old. Everything suggests that the purpose of the army was probably to act as guardian figures of the tomb or to serve its ruler in the next life, which they also believed in.

The emperor Qin Shi Huang who had suffered three attacks on his life, believed firmly in immortality and entrusted scientists with the task of discovering elixirs to prolong life, for this purpose young emissaries were sent across the East Sea in search of the legendary Penglai, land of the immortals.

The first pit has an extension of 230 meters long by 62 meters wide and contains some 6,000 figures of warriors and horses, some of them still to be unearthed. In this pit the figures are arranged in an east facing battle formation, with a first triple line composed of 204 archers and whalers facing the front, followed by thirty columns of four formed by infantry soldiers interspersed in regular intervals with 35 wooden chariots pulled by four horses, and accompanying the whole set on each side and the rear with two lateral lines of soldiers looking at their respective flanks. This first pit was covered by a hangar covering the entire excavation and enclosure called the museum of warriors and terracotta horses.

The second pit consists of another group of 1,400 soldiers, many of them unrestored, with a more complex formation and with a greater variety of troops, including, in addition to archers, chariots and infantry soldiers, also lancers, cavalry soldiers and two commanders: one in the last row of avant-garde and one mounted on a tank behind the other tanks and infantry. Along with the new variety of soldiers, other non-military figures also appeared, such as strongmen, acrobats, dancers and musicians, as well as other bronze sculptures of swans, ducks and cranes.

In the third pit 86 figures were found, almost all officers, although the figures of four horses are also visible. It is known as “the pit of generals”, as it is believed to represent the army staff, although the statue of the commander-in-chief did not appear. Archaeologists believe this absence is because the mound would contain this general’s tomb, or his terracotta figure. That was the second grave open to the public.

There is a fourth pit, although it is empty because it probably remained unfinished.

The figures are life-size: they **measure 1.80 meters** high and are equipped with armor also made of terracotta. The uniforms also reflect the military ranks to

which they belong. The statues were made in separate pieces, using for example ten different molds for the heads, which were profiled producing the details of each one with clay so that each face was different. Thus, each of these figures has different features and characteristics: moustaches, hairstyles, young, old, traits of different ethnicities.

After assembling the parts, each soldier was equipped with a real weapon: bows, spears, swords, etc., although after the fall of the Qin dynasty the peasants plundered the tomb and stole many of them. The weapons that were conserved have traces of chromium caused by contamination from the enamel applied to the figures and wood components now missing, as well as the particularity of the land where they were buried, which contains high levels of mercury. This natural chrome process allowed the weapons to be preserved for two thousand years. In the excavation were found thousands of arrowheads, along with dozens of swords, spears, crossbows and other bronze weapons. The masts, poles, arches and wooden grips, of course, were rotted and incorporated into the earth and there is no trace of them.

Finally, the figures were adorned with enamels and paintings of different colors. But this painting was applied on a base of lacquer, which at the disentanglement of the pieces oxidized and was discarded, losing the paint with it. Now, the colored parts are moved to a laboratory installed in the field itself to preserve the colors thanks to modern techniques.

The main pit of the four that contain the discovered army measures 230 x 62 meters and is between 4 and 6 meters deep. It had about 6000 dams of slightly larger size than the natural of infantry soldiers (from 1.8 to 1.9 meters high), chariots and horses. The moat, originally with wooden columns supporting a wooden beam ceiling, is divided by 10 brick-lined corridors. The floor was made with compacted soil which was then made with more than 250.000 ceramic tiles. The second pit, somewhat smaller and R-shaped, had about 1,400 figures. In an obvious attempt to recreate exactly a royal army, pit 3, 21 x 17 meters, contains the commanders and resembles a command post on the battlefield.

In addition to infantry, the army includes 600 horses and nearly 100 chariots that carry officers and riders and have a team of two, three or four horses. Soldiers are arranged in regular ranks and are represented in different postures: most are standing, while some are crouched. The mix and particular disposition of the officers (slightly higher than the others, being their general the highest of all),

the cavalry, the whalers, the scramblers, the archers, the chariots and the blockmen give the illusion of a complete army on the battlefield, ready for action. There are light infantry units with archers located on the flanks and on the front, the heavy infantry behind them, while the chariots occupy the rear with their officers, coinciding with the deployments of troops mentioned in the former military treaties.

The size of the company must have required an enormous amount of firewood to feed the ceramic kilns that made the figures, not to mention the countless tons of clay coming from local deposits that were needed to make figures of up to 200 kilos each. In addition to the impressive end result, the company was a triumph of organization and planning.

Great effort was made to make each figure unique, even though all were made with a limited repertoire of body parts assembled from molds. These pieces have a thickness of 7.5 cm and consist of one head, a torso, one leg, another leg that makes a socket, two arms and two hands. The faces and hair, in particular, were modified to give the illusion of a real army composed of unique individuals, although in reality there are only eight types of torso and head. The hands were also modified with straight or bent fingers and changes in the angle of the thumb and wrist. The figures were not glazed, but were varnished to protect them and painted with vivid colors; in some figures there are traces of red pigment. It is amazing to think that all this almost infinite variety and realism were not meant to be seen by anyone.

Each figure would have held a weapon of some sort, probably real, such as swords, halberds, spears, bows and crossbows, but most of them were stolen long ago and valued for their bronze. The swords that are still preserved have kept their edge, and each had its manufacturer and supervisor inscribed. Warriors wear seven variants of the Qin armor, which is usually (by imitation) in the form of riveted or joined panels of leather or metal, with a design and matter-confirmed by uncommon archaeological finds elsewhere and in descriptions of texts and other art forms such as tomb paintings elsewhere. Some infantrymen do not wear armor, and shields are another remarkably absent element, despite evidence of their use in Qin armies from other sources. They may also have been stolen in antiquity, as some figures seem to carry an object in each hand.

In 2010, the archaeological team of the Xi'an Warriors, represented by its director **Xu Weihong**, received the Prince of Asturias Award for Social Sciences.

Undoubtedly, those of us who have been lucky enough to visit such a magnificent exhibition, have been amazed by the wonder of contemplating Xi's terracotta warriors after more than two thousand years in which they were born to protect their emperor Quin Shi Huang.