

Impact Factor:

ISRA (India) = 3.117
ISI (Dubai, UAE) = 0.829
GIF (Australia) = 0.564
JIF = 1.500

SIS (USA) = 0.912
PIHII (Russia) = 0.126
ESJI (KZ) = 8.716
SJIF (Morocco) = 5.667

ICV (Poland) = 6.630
PIF (India) = 1.940
IBI (India) = 4.260
OAJI (USA) = 0.350

SOI: [1.1/TAS](https://doi.org/10.15863/TAS) DOI: [10.15863/TAS](https://doi.org/10.15863/TAS)

International Scientific Journal Theoretical & Applied Science

p-ISSN: 2308-4944 (print) e-ISSN: 2409-0085 (online)

Year: 2019 Issue: 09 Volume: 77

Published: 30.09.2019 <http://T-Science.org>

QR – Issue



QR – Article



Ziada Amanturovna Syrgakova

KNU named after J. Balasagyn,

Candidate of Law,

Associate Professor of the Department of Civil,

Labor and Environmental rights

Faculty of Law, Bishkek, Kyrgyzstan

HISTORY OF DEVELOPMENT OF THE INSTITUTE OF NOTARY IN PRE-REVOLUTIONARY PERIOD

Abstract: The article discusses the evolution of the development of the notary institution from Ancient Rome to the pre-revolutionary period.

Key words: history, origin, formation, notary institution, notary, tabellion, scribes, notaries.

Language: English

Citation: Syrgakova, Z. A. (2019). History of development of the institute of notary in pre-revolutionary period. *ISJ Theoretical & Applied Science*, 09 (77), 381-384.

Soi: <http://s-o-i.org/1.1/TAS-09-77-69> **Doi:**  <https://dx.doi.org/10.15863/TAS.2019.09.77.69>

Scopus ASCC: 2308.

Introduction

It seems possible to single out a number of features that allow us to assume with sufficient confidence about the approximate time of the notary. The word notary comes from the Latin word “nota” meaning a sign. The history of notaries dates back to Ancient Rome. The term “notary” comes from the Latin word “nota” - “sign”. The word “notary” meant “scribe”, “scribbler”. From here follows the formation of the words “notarialis” - notarized [1, 4]. Meanwhile, many historians of jurisprudence turn to the monuments of ancient Babylon [2, 28]. According to historical sources, notary services were used in the states of the Ancient East and in the Roman Empire [3,5]. However, in other ancient states there was a layer of people who are the forerunners of today’s notary public, these are ancient clerks who were entrusted with fixing and securing the legal force of various documents, such people were called agoranomosy in Ancient Egypt, or hieromemnes or epistates in Ancient Greece [4,7]. For the first time the history of notaries was described in detail in 1875 by N. Lyapidevsky. He argued that the notary appeared in Ancient Rome, where there were a special kind of scribes - tabellions, who did not serve in the public service, but carried out legal execution of

agreements and contracts under state control for a fee, and then registered them with the judiciary [5, 51].

Their duties included not only the compilation of various messages and petitions, but also the certification of various transactions. There were two categories of scribes: those in the public service (sciibae) and in the maintenance of private individuals (exceptores et notarii).

The first ones were elected by the magistrate for life from Roman citizens who were not deprived of their civil honor. They prepared public documents, kept public accounts, made extracts and issued copies of these documents, as well as prepared decrees and orders of the magistrate and kept them. In praetor trials, the scribes were in the public service and received a salary from him, they kept a judicial journal in which all the most important features of the case were added to the memory of the judge.

The second were, as a rule, freedmen, self-employed, and slaves. They performed clerical functions at the discretion of their master, but these documents were not of an official nature.

However, there was a third, special category of people engaged in the execution of legal documents and materials - tabellionns. They were free people who were not in the service of the state and with private individuals, representing a kind of

Impact Factor:

ISRA (India)	= 3.117	SIS (USA)	= 0.912	ICV (Poland)	= 6.630
ISI (Dubai, UAE)	= 0.829	PIHHI (Russia)	= 0.126	PIF (India)	= 1.940
GIF (Australia)	= 0.564	ESJI (KZ)	= 8.716	IBI (India)	= 4.260
JIF	= 1.500	SJIF (Morocco)	= 5.667	OAJI (USA)	= 0.350

independent corporation. Tabellions were engaged in drafting for all comers legal acts and court papers for remuneration and under state control. The Tabellions provided legal assistance by drafting agreements and contracts for any person contacting them. Documents issued by Tabellions officially possessed the increased evidentiary power, a dispute about the authenticity of which was not allowed. The tabellions registered the documents they compiled with the judicial authorities, introducing them into the judicial protocol in order to give the documents the significance of a public act and, according to N. Lyapidevsky [6,2], protect the act from loss. Only a free Roman citizen with the appropriate legal knowledge could become a tabellion, which, combined with the importance of their activities, predetermined the high social status of the tabellions - Cicero called them an "honorable estate" [7.35].

Subsequently, tabellions and notaries formed the basis of the institute, which, having received a wide distribution in Italy and the new name "notary", along with Roman law was accepted and assimilated by the new European peoples [8,4].

Relatively accurate time of the emergence of the notary institution in Russia of the XV - XVI centuries and with its development, "a lot was borrowed from foreign notaries, since by the time it appeared in Russia, notaries were already known in other countries" [9,4], it seems not quite correct.

A notary as a body of pre-trial jurisdiction arises in a state-organized society with the advent of the relevant categories of cases requiring such consideration.

Naturally, the notary institution appeared in Russia as a result of the development of civil circulation, the need of the economy for legal recognition and consolidation of subjective rights, and the need to protect private property. Practice shows that historically the notary has been an integral part of the legal system of any country where the terms of commodity circulation are present [10,4].

It must be borne in mind that statehood as a whole and its individual institutions have deeply objective foundations rooted in the origins of public life and its social organization, and therefore, the establishment of the notary institution took into account the state, legal, historical, social and other features of the Russian state.

The first mentions of notarial activity that came to us as a specialized direction in the political system of the then Russian society date back to the 16th century [11,15]. However, it is undoubted that the elements of notarial activity, indicating the birth of the notary institution in Russia, appeared much earlier.

In Russia, as in Europe, there is a clear connection between the institution of notaries and the church, which was directly interested in its existence, as it was a member of civil circulation and carried out jurisdictional activities in several areas. The church

contributed to the development of notaries, whose competence by the 7th century, goes beyond the framework of "church" affairs.

Historically, the competence of the Russian Orthodox Church included family and inheritance matters, considered by special persons - sovereign, thousand and governor. In addition, priests and deacons, namofilaks and hartofilaks were the custodians of books, letters and paperwork under the bishop himself. In this form, notarial production is emerging in Russia, which is largely closely connected with church charters, as, incidentally, is the whole life of that time [12,102]. Orthodoxy as an organized religious institution entrenched in Russia at the end of the first millennium.

An important event in the history of the state in general and of the notary public as a legal institution in particular is connected with the name of John III Vasilievich. Written legal transactions were established by the Judiciary, which the prince approved by a high decree in 1497.

On February 7, 1613, the Zemsky Sobor announced Mikhail Fedorovich to be the Tsar. The time of the reign of the first Romanov is characterized by the active participation of government bodies in the commission of private legal acts and the preparation of documents, which had a definite effect on the gradually developing institute of Russian notaries. According to the decree of Mikhail Fedorovich in 1635, all loan agreements, luggage and loans were to be executed without fail in writing under pain of their complete invalidity. Acts of the purchase of yards in Moscow were recorded in the Zemsky order.

Under him, the activities of the local clerks, as well as the дума clerks in the Razryadny and Ambassadorial orders, intensified. Like the tabellions that compiled legal acts and court papers in Ancient Rome, arena clerk, and later clerks in Russia, were engaged in a similar craft, thereby laying the foundations of the notary profession in our country. The evidence of this special class of people (scribes, local scribes, local clerks, clerks from the square, local scribes), who made up a kind of corporation of professional scribes specializing in transactions, dates back to the 16th century.

Clerks united in free artels, the purpose of which was to support people in this profession, to provide mutual assistance and protection from possible attacks. In Moscow, written acts were made on Ivanovskaya Square, which gave historians the basis to consider it "the main notarial organization of the Moscow state". In addition, in Moscow there were other "large and small areas" with different competencies [13.5].

Cathedral Code of 1649, the Bylaws of 1729, the Provisional Regulations on the notarial part of 1866. In total, by the end of the 19th century, the right to perform notarial acts had: city and exchange notaries, specialized brokers (ship, exchange, private, banking,

Impact Factor:

ISRA (India)	= 3.117	SIS (USA)	= 0.912	ICV (Poland)	= 6.630
ISI (Dubai, UAE)	= 0.829	PIHHI (Russia)	= 0.126	PIF (India)	= 1.940
GIF (Australia)	= 0.564	ESJI (KZ)	= 8.716	IBI (India)	= 4.260
JIF	= 1.500	SJIF (Morocco)	= 5.667	OAJI (USA)	= 0.350

workshop, etc.), magistrates, customs officials, town halls, municipal councils, bailiffs and commercial verbal courts [14].

In Kyrgyzstan, as a system of bodies, it took shape only at the beginning of the 20th century. It is how the notary system of bodies developed quite late although unsystematic, ruined notarial actions (actions to certify transactions) were carried out by various authorities in the Kyrgyz state long before the establishment of the notary institution. For example: “Seven Rivers ... The capital of the ancient state of Sogd — Somarkand, March 25, Tuesday, 711. A prenuptial agreement ... As a well-known person makes clear from the provisions of this agreement, the rich Ut-tetin married Sogdian Dudgoncha, who was under the tutelage of (and the former one of the wives) the ruler of Navaket, the Sogdian city of Semirechye. The terms of the contract stipulate the equal rights of the husband and wife during marriage, as well as in case of divorce. The temporary obligations of the parties are especially noted. The prenuptial agreement was accompanied by the groom’s obligation to the guardian of the bride, according to which, in the event of a divorce, the husband must return the wife to a healthy and unscathed guardian, his son, family. If this condition was not fulfilled, he had to pay the same persons 100 drams 13 (pure silver, unblemished, weighing dinars) in compensation. (Marriage contract. Sogdian archive from Mount Mug)” [15, p.40].

The marriage contract was concluded between people “noble” on the terms of equality of both spouses, their mutual expression of will. This contract was certified in the mosque in the presence of witnesses. The role of the contract certifier was played by the supreme dignitary of the mosque. In these conditions, he is the progenitor of a modern notary. The equality of both parties in the contract, their expression of will, is it not a condition of a civil law transaction, which is certified by a notary? The most important prerequisite for the emergence of notaries were large land disputes. Under the influence of land relations in the settled agricultural areas of the Khanate, the Kyrgyz people occasionally drew up their written documents. Among the legal documents

of the Kokand Khanate, a document drawn up in 1856 should be noted. According to this document, Berdy-Khodt fa-minbashi, with khan’s permission, sold a piece of state land in the Dzhulbarmek locality to members of one community from the Munduz clan for 10 tills. A few years later, this community resells the same land, but already for 20 tills, to another community of the same genus. The agreement was certified with khan’s permission by his viceroy - bek. The document was executed in 1873 [15, 147].

But the story does not stand still. The next step was the accession of Kyrgyzstan to Russia. Between 1855 and 1867, the Kyrgyz of the northern regions voluntarily accepted Russian citizenship, and the rules of the Russian law began to apply to them. The Kyrgyz people of Ferghana under the influence of the Kokand Khanate were subject to Sharia. Officially, Ferghana and the southern regions of Kyrgyzstan became part of Russia in 1856. Despite the accession and priority of the norms of the Russian law in Kyrgyzstan for the settled population in the judicial proceedings, the Kazi court was guided by Sharia based on the Koran, and the biy court was governed by customary law (adat).

Nothing was said about the positions of notaries in the Kyrgyz courts, although at that time the Regulation on the notarial part of 1866 was already in force in Russia. After the entry of Kyrgyzstan into Russia, our country loses its national specifics in the field of law, and in particular the notary public and its further development is in accordance with the norms of Russian law. This accession subsequently led to almost identical legal and, in particular, notarial systems of the two countries. So after accession, Kyrgyzstan falls under the influence of Russian laws. Regarding the notary, the Regulation on the notarial part of 1866 as a development of the judicial reform of 1864. Despite the annexation, the Kyrgyz continued to live their families, communities. The strong influence of Sharia, national customs and traditions prevented the development of notaries among the Kyrgyz population.

Institute deals were known to world civil law back in the days of the Roman Empire, which is often committed to this day [16,78].

References:

1. Poltava, N. (2002). *Notary: Course of lectures / Poltava N., Kuznetsov V., 2nd 1. Poltava N., Notary: Course of lectures / Poltava N., Kuznetsov V., 2nd ed., revised. and add. Moscow: Omega-L.*
2. Romanovskaya, O. V., Romanovsky, G. B. (2001). *Organization of notaries in Russia.* Moscow: Prior.
3. Argunov, V. N. (1991). *Notarial services to the population.* Moscow: Owls. Russia.

Impact Factor:

ISRA (India)	= 3.117	SIS (USA)	= 0.912	ICV (Poland)	= 6.630
ISI (Dubai, UAE)	= 0.829	PIHHI (Russia)	= 0.126	PIF (India)	= 1.940
GIF (Australia)	= 0.564	ESJI (KZ)	= 8.716	IBI (India)	= 4.260
JIF	= 1.500	SJIF (Morocco)	= 5.667	OAJI (USA)	= 0.350

4. Argunov, V. N. (1994). *The legal basis of notarial activity: a manual for a special course with the application of the curriculum and basic regulatory acts / ed.* Moscow: BEK.
5. Lyapidevsky, N. (1875). *History of notaries*. T. 1. Moscow: Univ. type of (Katkov and Co.).
6. Lyapidevsky, I. I. (1875). *History of notaries*. Moscow.
7. Ciceron (1975). *Selected Works*. Moscow.
8. Lyapidevsky, N. (n.d.). *Decree*. Op.
9. Poltavskaya I., & Kuznetsov, V. (1998). *Notary: course of lectures*. Moscow.
10. Poltava, I., & Kuznetsov, V. (n.d.). *Notary*.
11. Steshenko, L. A., Shamba, T. M. (n.d.). *Notary*.
12. Belyaev, I. D. (1999). *History of Russian legislation*. St. Petersburg.
13. Zlotnikov, M. F. (1916). Podyachi, Ivanovo Square. To the history of the notary of Moscow Russia. Pg.
14. Zvyagintsev, M. (2007). *Information portal*. Retrieved 2019, from <http://www.nalogi.ru/faq/detail.php?ID=156684>
15. Kozhombardiev, I. K. (1968). *History of the Kyrgyz SSR: Textbook / under. Ed. - F.: Kyrgyzstan, - T.1.*
16. Syrgakova, Z. A. (2016). Invalidity of transactions: History and current status. *Scientific almanac, N 8-2 (22)*, p.79. <http://ucom.ru/doc/na.2016.08.02.078>