Voluntary Jurisdiction In Ecuador: Notaries And Judges.

Ab. Helen Marcela Velástegui Mejía[1], Dr. Luis Chimborazo. Mg[2]

[1] Universidad Tecnológica Indoamérica, Orcid: https://orcid.org/0009-0001-4635-7991
[2] Universidad Tecnológica Indoamérica, Orcid: https://orcid.org/0000-0003-1850-4074

Abstract
This article analyzes voluntary jurisdiction in Ecuador, focusing on its historical evolution and the distribution of powers between judges and notaries. Traditionally, these matters fell exclusively under the purview of the judiciary; however, several legal reforms, particularly those of 1996 and 2006, transferred various powers related to non-contentious acts to notaries, with the aim of decongesting the judicial system and ensuring greater procedural efficiency. From a doctrinal and normative perspective, the study argues that so-called voluntary jurisdiction lacks the essential elements of contentious jurisdiction, such as conflicts of interest, adversarial proceedings, and final judgments. Consequently, a conceptual clarification is proposed, reserving the term "voluntary jurisdiction" for judicial proceedings and using the term "non-contentious acts" for notarial functions. The article highlights the role of notarial public faith as a cornerstone of legal certainty, procedural efficiency, and preventive justice, emphasizing that notaries do not administer justice but rather formalize and legitimize the will of the parties in accordance with the law. Finally, it concludes that the complementary coexistence of judges and notaries strengthens access to justice and that it is necessary to move towards comprehensive regulation of notarial procedures in Ecuador.

INTRODUCTION

Voluntary jurisdiction is a jurisdictional activity that over time has evolved as it is part not only of the contentious function, but also of the notarial function. In Ecuador, this activity was the exclusive competence of judges, until the issuance of the Reform Law, which was published in the Official Gazette Supplement No. 64, dated November 8, 1996. This reformatory law was the special emphasis so that certain attributions that were practiced by judges are part of the notarial function.

Subsequently, strengthening the voluntary jurisdiction contained in the Ecuadorian notary's office, the Reform Law was issued, which was published in Official Gazette number 406, dated November 28, 2006; subsequently, with the creation of the Organic Law for the Strengthening and Optimization of the Corporate and Stock Market Sector and the General Organic Code of Processes and the issuance of the Sixth Supplement, of the Official Gazette number 913, dated December 30, 2016, which contains the Reform Law of the Notarial Law, the list of all the attributions that are practiced before the notary is concluded.

That is why this academic-doctrinal scientific article is based on the duality of voluntary jurisdiction exercised by judges and notaries, and that it mainly tries to unravel the nature of voluntary jurisdiction, which corresponds in contentious practice; whereas, to refer to the practice of the notarial function, it would rather be non-contentious acts.

The outcome of the recommendation has emerged after a comparative analysis as set out in the previous paragraph. In the first, judges have the denominator power to administer justice, through the presentation of lawsuits, and in the second, notaries have the power to grant, approve, authorize, declare, extinguish, cancel and solemnize acts, contracts or documents, through petitions.

The general objective of this work is to identify the difference between the Voluntary Jurisdiction attributed and used by notaries and judges, in order to determine the principle of procedural economy and legal certainty. This essay has a methodology that compares both areas and proposes a conceptual precision: reserving the expression voluntary jurisdiction for judicial competence and using non-contentious acts for notarial action.

JURISDICTION

The jurisdiction was born within the historical evolution of Rome, which contains three periods: i. monarchy (700 BC- 509 BC), the king especially concentrated the exercise of justice, over time and thanks to the existence of social classes, based between plebeians and patricians, the latter were acquiring positions within the magistrate; ii. Republic (509 BC-29 BC), a republican and collegial government emerges, with elements of political tint such as the magistracy, the senate and the people; and, iii. imperial (29 BC-1629 BC), the exercise of justice passes into the hands of the emperor.

The third stage is the one that demarcates great importance, as far as jurisdiction is concerned. Since Justinian gives great significance to law and its practice, with the creation of: *Corpus Iuris Civile*, which contained the twelve imperial constitutions; the Digest, which contained various writings of Roman jurists (here the name "voluntary jurisdiction" appears for the first time); Institutas, a compendium of four books on law and jurisprudence; and the Novels, a compendium of the new laws promulgated by Justinian.

Because man, because of his capacity for reasoning and interests, creates bonds, opens space, can lead, as he can be guided by others. This is why conflicts of interest arise, and it is from this that the Law is created and that over time it is transformed, without the need for people to demand the creation of new laws. That is why, in short, an institution should be created, which, through an impartial person, who, representing the State, acts in the resolution of conflicts.

By identifying the beginning of voluntary jurisdiction in Roman Law, it emerges not as an institution, but as a legal, practical, political and historical necessity that was exercised by the magistrates. Those who fulfilled their function administering justice, specifically in the contentious jurisdiction; but in the face of the great burden and congestion, it became the Roman judges who carried out the jurisdictional intervention only to solemnize or authorize those acts without litigation.

In the doctrinal field, jurisdiction has been conceptualized in various ways. For this it is important to invoke certain doctrinaires who refer to the aforementioned voluntary jurisdiction, among these we first allude to Couture, jurisdiction is configured as a public function, exercised by the competent organs of the State in accordance with the legal requirements, through which, through the trial, the law applicable to the parties is determined. Its purpose lies in settling conflicts and controversies of legal relevance, producing decisions with the authority of res judicata, even susceptible to coercive execution.

For his part, Dr. Manuel Sánchez Zuraty (1996) maintains that jurisdiction is the public power to judge and guarantee the execution of what has been judged, in the corresponding matter. However, it distinguishes that the power to administer justice is independent and must be exercised only by those who hold the powers legally conferred to do so. In this way, jurisdiction can be defined as an essentially public function, whose holder is the State, but whose exercise is delegated to justice operators.

These, within the framework of their powers, know, assess and resolve the matters submitted to their authority, generating effects until the execution of the resolutions. Added to this is the important perspective of Chiovenda, cited by Cabrera Benigno[1], for

[1] Benigno, Cabrera, op. cit., Benigno Cabrera, p. 86.

whom jurisdiction constitutes the state function destined to concretize the will of the law. This task is materialized by replacing the activity of public bodies, individuals or other state entities, with the purpose of affirming the existence of the legal norm and guaranteeing its practical effectiveness in social reality.

It is here, where the essentiality of jurisdiction is demarcated, where it is identified that the power granted by the State, is not only attributed to the judges, since, being in a constitutional State, it is understood that the actions of the State are attributed to the powers of the State, since it no longer concentrates in it, to a single person; because there are different types of main powers such as: the legislative, executive, and judicial powers.

That is why the State, as a regulatory entity through legal norms, regulates and thus manifestly externalizes the assistance of its members, who must be regulated, as appropriate, through procedures. By directly identifying the function of the judge, which is to administer justice, limiting what Savigny establishes, cited by Jaramillo (2021), [2]his primary function is the comprehensive reparation of the violation of a right, which reestablishes the legal order, which must compensate for the damage that was caused due to the illegal action, and therefore that its compliance is guaranteed. From this comes the identification that the judge recognizes two important elements, when administering justice:

1. The right of the person who must be assisted because a right has been violated; and
2. The right that has been violated.

Thus, from what has been established, it is understood that judges have the faculty and power to administer justice and ensure that the established decisions are executed, filing a judgment, where the existence or not of a right is identified. And it is for this reason that, in order to comply with the execution of procedural acts, they must be invested with solemnity. On this, this power was attributed to the judges, as an additional activity, calling it an accidental function, which has allowed a society to develop normally; establishing in it the so-called voluntary jurisdiction, which empowers judges to solemnize and authorize acts in which the power to judge is totally lacking.

Within what is established as contentious jurisdiction, within the theoretical framework there are several classifications, however, within these the ones that have the most coincidences, there are two classifications:

1. Ordinary jurisdiction. They involve most matters such as: civil, constitutional, commercial, traffic, family, labor, among others; and
2. Special or accidental jurisdiction. Created to address those matters that require a different procedure due to their nature, principles and resolution, among the matters are: criminal, contentious-administrative, arbitration and mediation, as well as non-contentious acts.

Within the special jurisdiction exercised by other institutions and officials, it is worth highlighting the important link with the attributions conferred on the notarial function, since in the legal framework, there can be several ways to focus them on various aspects such as the administrative; which generates a crucial effectiveness for the development of the legal system and in this case, the notarial system. It is here that the real importance of carrying out constant evaluations in the different justice systems is found, in order to address all the concerns that are found in relation to the contribution of dejudicialization.

In the notarial function worldwide, there is a legal aphorism "Open Notary, closed court", a phrase attributed to Joaquín Costa, where it is mainly pointed out that from the shared function or attributions endowed in non-contentious matters that have been granted to

[2] López, Obando. (2009). Acts of voluntary jurisdiction exercised by judges and notaries. p.20

notaries, it has been possible to carry out a constitutional practical principle that is procedural celerity, which has contributed to the decongestion in the judicial system.

PUBLIC FAITH

Public Faith, from the epistemological point of view, is derived from the Latin word *Fides*, which means fundamental virtue of the human being; which implies the assertion of taking for certain a thing, whether solemn or not, that has been granted before any institution. As established by the doctrinaire, lawyer and notary of Peru, Mercedes Salazar (2007), [3]"as for common knowledge, public faith, lies in an absolute and public truth that is imposed in an obligatory way, not because it is a spontaneous process, but because of the responsibility that guarantees having a person or institution, granted by the laws".

Public faith is universal, since it arises from the need – of natural or legal persons – for a document to be valid and for its content to be reliable by the person or authority that issued it, so that it may have the determined effects, whether or not in a specific place. This guarantees one of the constitutional principles framed in the Constitution of the Republic of Ecuador, which is that of legal certainty. It is determined in three types:

1. **administrative**, carried out by the administrative sector to give authenticity to both the facts and acts that are carried out, through agreements, memoranda, resolutions, among other documents specific to the activity;
2. **judicial**, exercised by the Judicial Branch, and is granted in judgments or orders; and,
3. **notarial**, is public, because it is provided by the State, since it has consequences as it is a guarantee that the State grants to the Notary and that he gives to the user, ensuring that it was in legal and due form providing the act, contract or document with legal certainty.

The notarial function comes from the voluntary exercise that the parties have to perform an act or contract. And it is from here that the solemnity and the investiture of the Notarial Public Faith emanates, over which only Notaries have the power and capacity to solemnize and authorize acts and contracts that are presented to them. The notary as such, is invested with a public function granted by the State, where he authorizes, solemnizes and authenticates those acts or facts in the exercise of public faith. However, it should be taken into account that, although they are carried out within a public function, they are not considered public officials, since they are an auxiliary body, which is part of the Judicial Function.

That is why, for Salazar Puente de la Vega, public faith, when developed by notaries, takes acts, contracts and declarations for granted, presuming them to be true. (2007, p. 64). With this, it can be determined as a fundamental principle in the non-contentious jurisdictional notarial function, through which the State grants and functions the powers determined in 296 of the Organic Code of the Judicial Function; however, it can also be determined as a notarial function[4]. With this emphasis, as established by Pérez (2013), it is important to note that it can also be determined as a power conferred by the State, since the notary as such is not the holder of public faith, since the State is the holder himself and the notary the depositary. Within the public faith are the following characteristics:

1. It produces evidentiary effectiveness;
2. Official truth "Erga Omnes";
3. It is only the responsibility and exercise of a special person;
4. It transmits collective confidence;
5. It has a preventive function, its development forms the preparation of pre-constituted evidence, which is not born in the course of a process, but before it.

[3] Salazar, Mercedes. *Notarial Protocol*. Lima, Editorial Laser Gral Alvarado, 2007, p. 63.

[4] See Article 1 of the Notarial Law, Official Gazette Supplement 64 of 1996.

In this part, it is important to point out that public faith is totally linked to legal certainty. Legal certainty ratifies the conviction and trust that is established in the legal relationships created by those persons – whether natural or legal – in the different businesses that may be established through contracts or acts that are carried out before a notary. (Lucas & Albert, 2019, p. 47)

VOLUNTARY JURISDICTION

From a doctrinal perspective, non-contentious jurisdiction has been conceptualised as an atypical function within the framework of the court's action. Palacio (2001) argues that this category includes those interventions by the judge aimed at "integrating, constituting or conferring legal effectiveness on certain relationships or situations in the private sphere", without there being a conflict between parties that requires a judicial resolution. Consequently, it is a function differentiated from the jurisdictional activity itself, which is essentially characterized by settling controversies arising between subjects with conflicting interests.

It is in this section where it is found that the nature of voluntary jurisdiction has an accidental nature, since it is totally different from the nature that a judge must comply with, and is distant from the processes carried out by the judicial body. On the other hand, as it is part of the notarial function, it must be understood that voluntary jurisdiction is fulfilled with the purpose of solemnizing, authorizing and guaranteeing legal situations contemplated strictly linked to the legislation, with the particularity that the principles of legal certainty and procedural celerity are complied with and guaranteed.

Voluntary Jurisdiction, as such in Ecuadorian legislation, is established in those matters indicated in "CHAPTER IV VOLUNTARY PROCEDURES" "SECTION I GENERAL RULES" of the General Organic Code of Procedures, for matters strictly indicated in Article 334, on which the following text should be highlighted:

"… and those in which, by their nature or by reason of the state of things, they are resolved without contradiction."

That is to say, that voluntary jurisdiction exercised before a judge essentially presents by its nature, the lack of contradiction -which is a *sine qua non* requirement in this type of jurisdiction-, and that it requires the legal value or force necessarily granted by the judge. As established by Muñoz (2021), when talking about voluntary jurisdiction, as a jurisdictional activity, it is not the right thing to do because it is rather an extra-procedural or also extra-litigious stage, because it does not contain the same characteristics that an ordinary and contentious jurisdiction process entails, such as the conflict of interest, which is *a sine qua non* requirement for its resolution before a judge.

Within what is properly voluntary jurisdiction, it is the definition detailed by José de Vicente y Caravantes (1852), who points out that voluntary jurisdiction is understood as that exercised by the judge in certain acts or matters that, by their nature or by the state in which they are, do not admit controversy between the parties. Likewise, being an essential part, which must be initiated at the request of the interested parties, who resort to the judicial authority, limiting itself to granting them validity and legal effectiveness through its intervention or resolution, without the need to observe the formalities of an ordinary process.

It is in this way that it is understood that acts of voluntary jurisdiction are part of the accidental function acquired by judges, since their substance is administrative, but their form of execution is judicial. However, in view of the reality that is not only current, but also general, it starts from the attributions of voluntary jurisdiction, which became an attribution of the notary, with the aim of acting before and for the individuals who require it, who are free of controversy, so that, through the public faith, with which they are

invested by the State, may guarantee, grant, approve, declare, authorize, extinguish, cancel and solemnize[5] certain legal situations established in Ecuadorian legislation.

This is how the attribution that notaries have to act on non-contentious acts arises, and is linked to the provisions of the Constitution of the Republic of Ecuador, in Article 200, which establishes that it is notaries who have Public Faith. It is important to understand the essence of the notarial profession and the voluntary jurisdiction better known as non-contentious acts from the point of view of doctrine, to collect on the contributions that were executed in the First International Congress of Latin Notaries, held in 1948, among the various contributions that can be collected, are:

1. The notary is recognized as a professional in law, of an impartial nature, invested with public faith endowed by the State;

2. The notary does not administer justice, unlike judges, but it fulfills the preventive public function, which gives legality and security to the acts and contracts that are carried out before it; Like a judge, the notary complies with the principle of impartiality, which, unlike the former, does not act to resolve conflicts, but rather avoids those, through documents that produce legal certainty, which are aligned with the requirements required by law.

In Ecuador, voluntary jurisdiction as such, was exclusively within the competence of the judges of the civil area, until 1996; legal situation, in which certain acts were attributed to the notary, with the Reformatory Law, which was published in the Official Gazette Supplement number 64, dated November 8, 1996. Year in which, certain attributions of the then Code of Civil Procedure were delivered, and became part of the Notarial Law, for example, those acts were summarized in the numerals:

"10. which relates to the extinction or subrogation of family patrimony, **11**. referring to the power to receive statements for insinuations for donations, **12**. concerning the receipt of declarations for Effective Possessions, **13**. relating to processing applications for the dissolution of a community of property jointly by the spouses, **14**. which is related to authorizing the sale in voluntary auctions of real estate of minors, which has free administration, **15**. Receive summary and knotted information, **16**. Establish evidentiary reasons for refusal to receive documents or to pay taxes from public officials or withholding agents, **17**. To notarize marriage agreements, solemn inventories, special powers of attorney, revocation of power, **18**. To practice requirements for the fulfillment of promises of a purchase and sale contract, as well as for the delivery of the thing due and the delivery of the execution of obligations[6].

The most important reform for the Ecuadorian notarial service is undoubtedly the one that corresponds to the year 1996, since the great procedural burden that was found in the civil courts, as a solution for its decongestion, was precisely to transfer to the notary, certain legal situations of voluntary jurisdiction. Obeying the structure of the theoretical order of the jurisdictional exercise, it is found that the voluntary jurisdiction declares the right to the specific case, an exercise that judges and today notaries fulfill, through notarial formalities, where the notary expresses the legality of the act or contract, through the will of the parties who have concurred before him and the legitimacy of the right they exercise. in compliance with the requirements of the legal system.

However, it is important to highlight the procedural duality between what is the true essence of the Voluntary Jurisdiction exercised by the Judges, and lately delivered as an attribution to the Notaries, where a lack of a clear notarial procedure has been detected. Consequently, another of the amendments to the Notarial Law that are of great importance

[5] See Article 296 of the Organic Code of the Judicial Function.

[6] This numeral 18 is currently deleted, according to the Fifteenth Reformatory Provision of the COGEP, numeral four.

is the Reform Law, which was published in the Official Gazette number 406, dated November 28, 2006, also incorporates the following numerals as attributions of notaries: **"19**. To proceed with the opening and publication of closed wills; **Question 20**. To register the signatures of officials and representatives of legal persons; **21**. To authorize acts of demarcation and demarcation in rural areas at the request of a party; **Question 22**. To process divorces by mutual consent in cases in which the spouses do not have minor or dependent children. **23**. To proceed with the liquidation of the property partnership or conjugal partnership; **Question 24**. authorise the voluntary emancipation of an adult child; **25**. To process the petition for a declaration of interdiction to administer the property of a person declared guilty by a criminal enforceable sentence; **Question 26**. solemnize the declaration of the cohabitants on the existence of a de facto union[7]; **Question 27**. declare the extinction of usufruct[8]."

However, in order to understand the function of the notary public in voluntary jurisdiction, it is important to understand and highlight the nature of the notarial service. The notary public is a public service that involves the exercise of the principle of notarial faith; This delegated public function gives total authenticity to the declarations, acts or contracts solemnized before the notary, as well as what is established by the notary with the requirements and formalities that the law requires. In this way, the voluntary jurisdiction, indicated and understood in the Notarial Law, is at the request or request of a party, similar to what is done before a judge; where the Notary acts directly, and under the principles of procedural celerity and legal certainty, when it is understood that they are invested by the Notarial Public Faith that they have, quickly and effectively resolves what is requested.

Among the similarities between the main reforms to the Notarial Law and therefore to the notarial service, applied to voluntary jurisdiction in non-contentious matters, are the following: **1. In material scope**, the 1996 reform was limited to formal security functions, while the 2006 reform extended jurisdiction to matters of civil status and family, with direct effects on the personal sphere; **2. Regulatory purpose**, the first sought administrative efficiency and judicial discharge; the second, in addition to efficiency, prioritizes effective access to justice and the humanization of the notarial service; **3. Trend**, both reforms follow the same line of legal policy: to transfer to the notary powers in voluntary matters, consolidating the notary as an essential institution in the modern administration of justice.

Elements of jurisdiction that are not part of voluntary jurisdiction:

1. Conflict of interest. - Intervention only occurs to validate acts, by the interested party(s).

2. Contentious process. – It is not regulated through a procedure, such as the presentation of the claim, response, evidence and judgment; since there is no contradiction of the party.

3. Judgment. – A dispute that has the force of res judicata is not resolved, rather there are resolutions or rulings that validate and authorize acts and/or contracts.

4. Burden of proof. – It is not necessary to prove, but to prove the requirements demanded by law.

5. Forced execution. – The judge cannot impose any coercion for the enforcement of his decision, because there is no opposition or condemnation.[9]

[7] On this number, it lacks an authentic notarial procedure, since it is voluntary jurisdiction, the minimum that must be established is the existence of a written request before a notary.

[8] In this number, there is a very ambiguous wording, because if we look closely, it is only limited to the fact that the notary declares the extinction of the usufruct, nothing is said about the use and habitation, in addition to lacking a true notarial procedure.

[9] In this section, there is an exception in terms of the formalization before a Notary of "Transactional Agreements" that do have the force of res judicata, and when approved in court, it is mandatory and even forced.

In this way, it is possible to establish the essence of voluntary jurisdiction without making a specific approach for judges or notaries, since an analysis is made of the elements of voluntary jurisdiction at a global level, the same ones that compose it and give it essence.

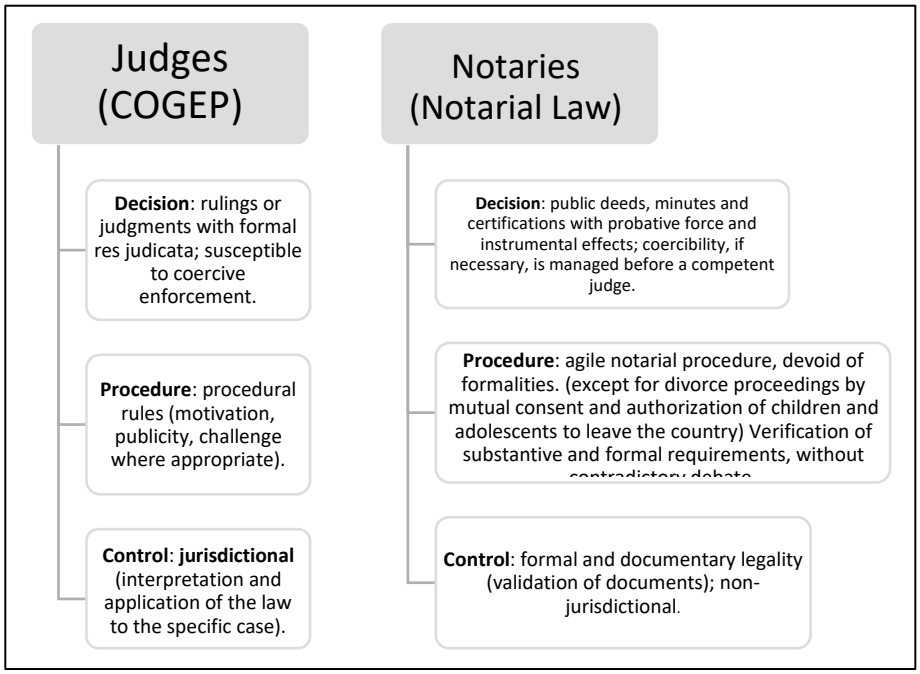

Table 1. Distinction of the practice of Voluntary Jurisdiction according to COGEP and Notarial Law. Author: own.

FORMAL DIFFERENCES IN THE RESOLUTION OF ACTS OF VOLUNTARY JURISDICTION BY JUDGES AND NOTARIES

Voluntary jurisdiction is configured as a unique space of procedural law, since in it there is no controversy between parties, but the need to confer legal effectiveness to certain acts. In this context, both judges and notaries intervene, although they do so under different forms of action, which reflect the nature of their functions and the way in which the State distributes the protection of rights. In the judicial sphere, the judge resolves acts of voluntary jurisdiction by means of rulings or judgments, subject to the procedural principles of motivation, publicity and control of legality. These resolutions have the authority of res judicata and, if necessary, can be enforced with the coercive support of the State (Chagcha, 2024). The judge, in his capacity as holder of the jurisdiction, exercises the competence that corresponds to him to declare the right and ensure its compliance.

On the other hand, the notary intervenes through public deeds, acts and certifications, instruments endowed with public faith that have full probative force, in which he can authorize, grant, approve, declare, extinguish, cancel and solemnize legal situations with respect to which he is expressly empowered[10]. Its function is not to judge, but to verify and formalize the will of the parties, provided that it complies with the requirements of the law. As Mendoza's (2025) research points out, the Ecuadorian notary has specific attributions for certain acts of voluntary jurisdiction, and not a general competence.

The notarial procedure, unlike the judicial one, is more agile and devoid of procedural formalities, which makes it a close and efficient mechanism for citizens. Consequently, as Lucas & Albert (2024) points out, it can be argued that the judge guarantees comprehensive jurisdictional control, essential when *state rule* is required, while the notary provides speed, proximity and simplification in non-contentious matters. Thus, both

[10] See Article 296 of the Organic Code of the Judicial Function.

operators contribute in a complementary way to strengthening access to justice and legal certainty.

VOLUNTARY JURISDICTION IN COGEP AND NOTARIAL LAW

The COGEP incorporates a catalogue of procedures under the name of voluntary jurisdiction, in which judicial intervention does not seek to settle a conflict, but to give legal effectiveness to certain acts or situations. In these cases, the judge, in the exercise of his jurisdictional competence, limits himself to verifying requirements of form and substance, issuing resolutions that have the force of formal res judicata.

The Notarial Law, on the other hand, confers on the notary specific powers to intervene in certain acts traditionally classified as of voluntary jurisdiction. These include divorce by mutual consent, the dissolution of the de facto union, certain inheritance procedures and acts of protocolization or documentary authentication, among others. However, unlike the judge, the notary does not exercise jurisdictional competence in the strict sense, but acts as a depositary of public faith, verifying the will of the parties and granting legal certainty through notarial instruments, which enjoy legal effects.

PRINCIPLE OF PROCEDURAL CELERITY, PROCEDURAL ECONOMY AND LEGAL CERTAINTY

Within the voluntary jurisdiction in the practice of notary, the principles of procedural celerity, procedural economy and legal certainty have great connotation, since they justify the intervention of the notary as he is the depositary of the public faith with which they act. These principles are a framework for a reliable, efficient and deformalized model of justice. In accordance with the provisions of Article 169 of the Magna Carta, the procedural system must guarantee speed in the procedures, which is complied with and guaranteed, through a more effective and agile way, respecting the rights of the parties.

As for procedural economy, the doctrinaire Echandía (1998) defines it as the result through action with the minimum use of procedural activity. This allows notarial intervention to guarantee procedural decongestion and optimize efficient and accessible justice.

The principle of legal certainty, is established in Article 82 of the Constitution of the Republic of Ecuador, which states that "legal certainty is applied on the basis of the Constitution and legal norms (...)", they are exercised by the competent authorities, therefore, the notarial activity is delegated and is effected in turn by preventive security, which translates as an inherent function of the notary to protect the possible consequences of the act or contract carried out before him or her by the principle of immediacy that they comply with when carrying out their attributions in unity of act, since with this, they know, inquire and warn the parties about the consequences of carrying out such an act or contract. That is why the notary acts as a preventive instrument and with its very nature guarantees social peace, due to the functions it fulfills.

It is important to note that the notarial function in conjunction with legal certainty, as a constitutional principle – it is a guarantee annexed to preventive security – since it is deployed by reason of the relationship between the user of the legal act or contract and the notarial instrument, which immediately produces that there is talk of a who and a before whom. In this sense, it expresses the public attestation granted by the notary, together with the existence of mandatory documentation related to the deed, together with the reading and the granting." The intention of this is that the user has the legal certainty of the content of the deed made, without it subsequently obtaining changes or alterations that affect its object or reason. Because of the instrument that the notary grants, the matrix of that deed rests in the archive that he is in charge of, who acts as guardian and protector of all those notarial instruments that rest in his office, becoming one of his responsibilities.

CONCLUSIONS

Within the present research, the essence of public faith has been determined as a principle exercised by the notarial function, since it is fulfilled as a veracity of the acts authorized by the notary, from which derives the principles of the constitution such as procedural celerity, procedural economy and legal certainty. These grant a decision based on a control of legality that resembles that of a judge through the exercise of jurisdiction, as well as the notary when he is the depositary of the public faith granted by the state.

Having emphasized the substitution of the terminology of voluntary jurisdiction by the denomination of non-contentious acts, it is important to indicate the following: within the legal basis in the General Organic Code of Processes, as well as the theoretical, technical and legal support, the existence of three important elements is determined: the existence of parties with contrary interests, strictly regulated procedure and the judgment with the force of res judicata. Those elements in contrast, are the main axis of the voluntary jurisdiction developed within the litigation, and that, once the analysis for the notarial function is done, it is not congruent, because it does not meet the three elements raised above.

Even more so when the main function of the judge is to administer justice and that of the notary the power of public attestation. Contrary functions, and that thanks to those indicated in Article 296 of the Organic Code of the Judicial Function, which speaks about the competence of the notary and his performance in a clearer and more strenuous way.

All the more so, having reviewed the inconsistencies of the legal nature of the voluntary jurisdiction, which has no practical, legal, theoretical or legal link that is established in the Notarial Law, which in reality comes to comply with attributions subject to non-contentious acts.

It is in this way that voluntary jurisdiction in Ecuador in a differentiated sense: in the judicial seat, as a jurisdictional competence fully regulated in the COGEP, and in the notarial headquarters, as specific attributions granted by the Notarial Law, to intervene in non-contentious acts. The maintenance of the expression notarial voluntary jurisdiction constitutes a conceptual error, since the notary lacks jurisdictional power in the strict sense. The technically appropriate category is that of non-contentious acts, which best describes the function of verification and formalization under public faith.

However, the reference to non-contentious acts in the notarial function should not only be referred to as a new name, since in a more referenced framework, being an auxiliary body of the judicial function, it is being removed from the interest of society, and violating important principles such as procedural celerity, procedural economy and legal certainty that are intrinsically linked to the notary. That is why, in relation to the reality of the existence of bills already presented to the National Assembly, as well as International and national sessions of the notary public and the Federation of Ecuadorian Notaries itself; when making a more hegemonic analysis, a Comprehensive Notarial Organic Code should be referred, which brings together unified procedures.

In addition, having compared the practical procedure carried out by judges and notaries, determined in the General Organic Code of Procedure and the Notarial Law; It has been obtained that the nature of notarial practice emerges from the practice of voluntary jurisdiction as a special procedure. And that, being an auxiliary body of the Judicial Function, it guarantees the fulfillment of which the Notary, being invested with public faith and having the feasibility of having direct contact with the petitioner or petitioners and above all by complying with the attributions that lack the jurisdiction itself, allows the consolidation of an efficient notarial model, reliable and fully aligned with the principles of legal certainty, procedural celerity and procedural economy.

The practice of the Notarial Law in Ecuador and in history, reveals a clear important milestone, since analyzed what has been the nature of the jurisdiction itself, which corresponds to the judges by their power to administer justice, and on the other hand the accidental jurisdiction that is executed by notaries, by the attributions granted from the litigation to the notarial function, that this set of attributions should rather be considered as non-contentious acts, due to the intrinsic nature of the notarial function. Only in this way will it be possible to consolidate a modern, reliable notary model aligned with constitutional principles.

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