

Divorce at the Notary: Protection of Creditors' Interests

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Abstract: In order to continue to grow and prosper, modern society is increasingly adopting the products of companies, institutions, and organizations providing credit services. However, as a result, dissolution of a marriage tends to pose problems and raises unavoidable questions concerning the determination of the nature of the obligations of the spouses and the division of these obligations, which is why it is quite common in divorce cases for a third party, a creditor whose interests also need to be protected, to be involved. In cases concerning family relations, protection of the public interest predominates because protection of the legal interests of the spouses as well as the creditors must be guaranteed, also the proportionality of the protection of the legal interests between the parties must be achieved, because everyone has the right to defend their violated rights, and the state must ensure the protection of those legal interests. However, this protection is often compromised due to the lack of information available to notaries, which could be alleviated by more extensive use of technology. The article's aim is to analyze the amendments to the Civil Code of the Republic of Lithuania as of 1 January 2023

concerning extrajudicial divorce at a notary, its advantages and drawbacks, as well as to discuss the existing and the possibility of adaptation of new technological solutions with an aim of improving the protection of creditors in the divorce process.

Keywords: *divorce, IT solutions, notary, protection of creditor's interests*

1. Introduction

According to Lithuanian statistical data of recent years and the summaries of justice of the European Union published by the European Commission, Lithuanian courts have one of the largest workloads in the European Union (*Lietuvos teismai*, n.d.). This situation is caused by the peculiarity of national law because the legal system of Lithuania regulates the obligation to go to court even in cases where there is no dispute between the parties (Tvaronavičienė, 2022). According to the 2020 data of the National Judicial Administration, more than half of the civil cases examined by the district courts were handled in a simplified procedure, with no legal disputes being resolved by the courts. This category of civil cases includes divorce cases, in which the marriage is terminated by the mutual consent of both spouses, provided there is no dispute between the spouses regarding the divorce. In recent years, the number of divorces by joint agreement of the spouses has exceeded 7,500 cases per year (Tvaronavičienė, 2022). It is obvious that such civil cases in which the conflict is not resolved inevitably increase the workload of the courts, burdening them. The court becomes a formal institution and performs an uncharacteristic function, increasing both financial and time costs, and placing an administrative burden on both the state and the spouses. Similar problems can arise in the United States too. Courts there also tended to experience overburdening, mainly as a result of an overload of divorce cases, which accounted for more than a half of all cases filed in courts (Rigby, 1984; Gerber, 1990). This overburdening can be put into perspective when statistics show that around 45% of all current marriages in the US are predicted to end in divorce (Saccuzzo, 2003; Preston, 1975).

In order to reduce the burden on the courts, mediation is mandatory in family disputes since 2020. In Lithuania, the introduction of the adoption of mediation proved difficult, due to the general population's ignorance

and unfamiliarity with even the meaning of this concept (Trinkūnienė, Trinkūnas & Bublienė, 2022). The application of mediation does not eliminate the need to appeal to the court, although the request for divorce is considered in a simplified procedure, which results in a longer process and a burden on the entire case system, with less time allocated to more complex cases, and people having to wait longer for decisions.

Lithuanian politicians aim to strengthen and improve the foundation of the judicial system, optimize it, and make it more accessible to the majority of society. Political will led to the adoption of a decision on January 1, 2023, in the area of the institution of family law, which will legalize amendments to the Civil Code (CC) simplifying the divorce, amendments to the marriage contract, the transfer of family property, and the execution of transactions for the disposal of property of minor children. From this point on, it will be possible to dissolve a marriage at a notary, provided that the spouses *meet all* the conditions stipulated by the law. The norms of the legal divorce system have been in force for almost a decade in Latvia, Estonia, Spain, Italy, France, and other European Union countries, and are based on the practice of these countries; divorce at a notary is less public, giving greater autonomy to the parties. The administrative procedure for marriage termination, providing its conditions are fulfilled, is uncomplicated, short, and less costly for the parties (Guga, 2015; Cetean-Voiculescu, 2016; Nicu, 2016). Some authors also argue that marriage dissolution at a notary allows to reach an uncontested divorce without the involvement of the court, which helps with disburdening the judicial system and increases the autonomy of the spouses (Kraljić, 2020). Seeing such overwhelming advantages of including the possibility of extrajudicial divorce at the notary in the legislation, Tanja Mitrović proposes that Serbia should also adopt this law, citing an example of Great Britain and emphasizing the success of such a system there (Mitrović, 2019).

In recent years, a characteristic tendency of judicial cooperation in civil cases has been to provide a lot of space for the autonomy of countries in European Union regulations, which promotes liberalization in European private international law. This is important in the area of family law, where the autonomy of the parties has traditionally been unanticipated or very limited (Ruggeri, Limantė & Vogrinc, 2022).

Simplifying the divorce process by no means implies a reduction in the protection of creditors' interests or a simplification of their protection measures.

However, this new system, which allows extrajudicial divorces at a notary, is not yet entirely perfect. In its current state, there is a strong possibility of problems arising in a near future, with notaries possibly becoming overburdened and some easily preventable cases of decisions of marriage dissolution having to be reviewed by the courts. Therefore, now that we are well on the way to the fourth industrial revolution, it is worth looking into the adaptation of technology in this area and how it would be compatible with the requirement of stringent data protection.

The article analyzes the legal norms regulating the protection of creditors' interests in the divorce process, their advantages and disadvantages, and presents arguments on the influence of simplifying the divorce process on the Lithuanian legal system, as well as provides examples on how this system could be improved.

2. Divorce by agreement of the parties

Marriage, one of the basic human rights, a free-will decision of two people to start a family, is a fundamental institution of family law, which can be considered as the basis for starting a family. The main principles of the international regulation of marriage can be found in Article 16 of the Universal Declaration of Human Rights, which deals with the right to marry, the right to create a family, and the equal rights of spouses. Family breakdown is a fairly common occurrence and creates complex issues, especially when a couple has minor children, and the family courts in many states are overburdened.

Depending on the reason for the divorce, Article 3.49, Part 2 of the Civil Code of the Republic of Lithuania lists three grounds for divorce: by mutual agreement of both spouses, at the request of one of the spouses, or through the fault of the spouse(s). Divorce by mutual agreement of the spouses is considered one of the simplest and most painless ways, which is applied in case there is no dispute between the spouses about either the divorce or the legal consequences of the divorce. This is when the spouses peacefully resolve the issues of the divorce itself and its legal consequences.

In Lithuania, 7,606 marriages were terminated by mutual consent of the spouses in the courts in 2022; in total, the courts examined 9,339 divorce cases. It follows that in 80 percent of the cases heard in the courts, there were no disputes between the spouses.

On January 1, 2023, the amendments to Article 3.51 of the Civil Code, which provided for a new possibility for spouses to divorce not in court but in a notarial procedure, came into effect. In January 2023, notaries approved 44 divorce contracts in Lithuania.

The addition of such a provision to the Civil Code is linked to the European Family Law Principle 1:2 (2), which stipulates that “[d]ivorce shall be delegated to a competent authority, which may be a judicial or administrative body.” According to Article 6, Part 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the issue of a person’s civil rights and obligations must be decided by an independent and impartial court. The notary was chosen as the competent authority for divorce, taking into account the fact that the notary is considered a preventive judge to whom the state entrusts the performance of functions ensuring public interest, operating in the sphere of civil legal relations and carrying out the legal establishment of subjective rights and legal facts.

Below are the conditions for dissolution of marriage by mutual agreement of the spouses, comparing the requirements of court against the ones of the notary.

Figure 1. Conditions for divorce by the joint agreement of the spouses.

CONDITIONS FOR DIVORCE BY THE JOINT AGREEMENT OF THE SPOUSES IN THE COURT	CONDITIONS OF DIVORCE BY THE JOINT MARRIAGE AGREEMENT BY NOTARY PROCEDURE
☐ MORE THAN ONE YEAR HAS PASSED SINCE THE MARRIAGE	☐ MORE THAN ONE YEAR HAS PASSED SINCE THE MARRIAGE
☐ THERE IS AN AGREEMENT SIGNED BY BOTH SPOUSES ON THE LEGAL CONSEQUENCES OF DIVORCE	☐ THERE IS AN AGREEMENT SIGNED BY BOTH SPOUSES ON THE LEGAL CONSEQUENCES OF DIVORCE
☐ BOTH PARTIES ARE ABLE-BODIED	☐ BOTH PARTIES ARE ABLE-BODIED
	☐ SPOUSES DO NOT LIVE A MARRIED LIFE FOR MORE THAN ONE YEAR, DO NOT HAVE ANY MINOR CHILDREN AND DO NOT MANAGE A JOINT FARM

According to the current legal regulation of family relations, all cases of termination of marriage until 1 January 2023 were resolved in the district court of general competence, regardless of the type of divorce and establishing

a rather flexible system of grounds for divorce and corresponding legal proceedings, giving the spouses the opportunity to choose the grounds for divorce depending on the specific life situation. Clause 2 of Article 3.51 of the Civil Code provides that divorce is possible only when the spouses agree not only on the divorce, but also on the legal consequences of its termination (Mikelėnas *et al.*, 2022), which must be discussed in the contract regarding the legal consequences of divorce. This is an agreement between the spouses that determines their personal non-property, as well as the property rights and obligations after the divorce. After the court has approved the divorce agreement and satisfied the spouses' request, a decision is made that has the force of *res judicata* (Civil Case no. 3K-3-350/2006; no. 3K-3-474/2006; no. 3K-3-243/2008) that the marriage has disintegrated and there is no way to save it. Such a final decision by the court cannot be changed in the part regarding the divorce and the division of property, due to possible violation of the interests of creditors, but in exceptional cases, the terms of the contract related to the division of property can be changed if one of the spouses acted dishonestly and hid joint property from the other spouse, as a result of which this property was excluded from the contract and remained undivided.

2.1 Peculiarities of divorce in notarial and judicial procedures

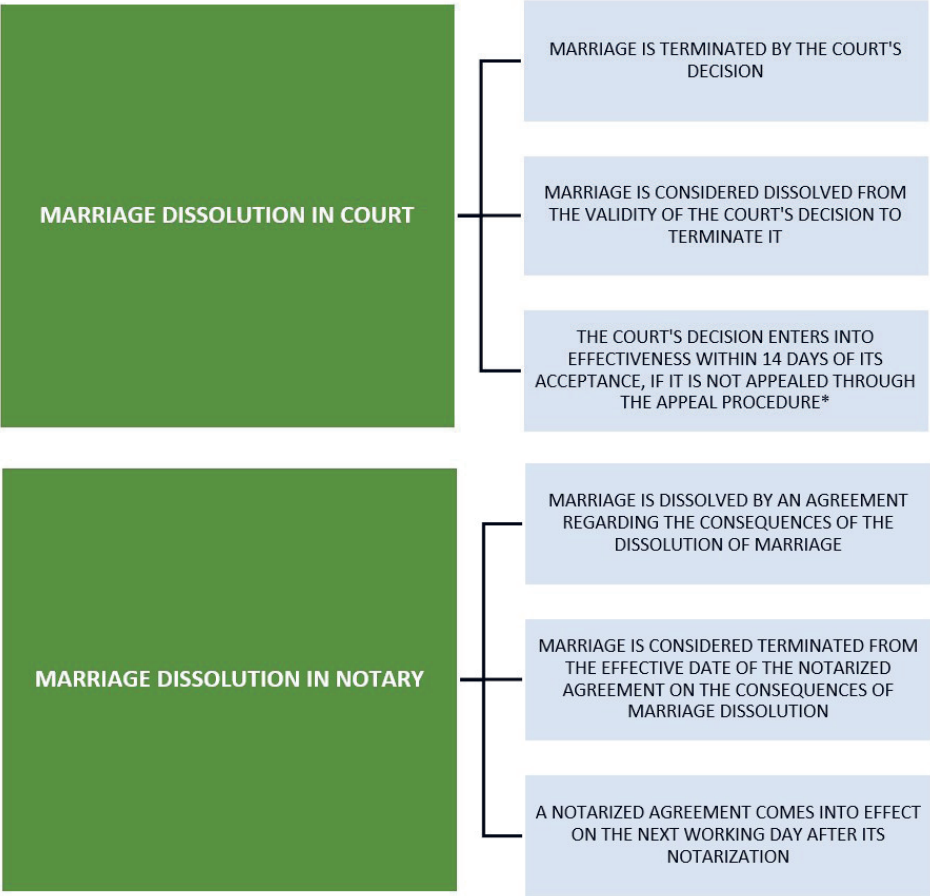
The new amendment to the law in Lithuania allowed the notary to perform the function of a court to dissolve a marriage where the spouses do not have minor children. In the event of a notarized divorce, the notary approves the contract regarding the legal consequences of the divorce, only if it does not conflict with public order or fundamentally violates the rights and/or legitimate interests of one of the spouses. The notary, like the court, must verify the legality of the contract. However, unlike the court, the notary has the power not only to verify the content of the contract, but also to conclude a divorce contract. One of the main functions of a notary is to legally consolidate the indisputable subjective rights and legal facts of individuals and to ensure that there are no illegal transactions and documents in civil legal relations. Part 3 of Article 3.53 of the Civil Code does not provide an exhaustive list of consequences on which the spouses must reach consensus in the contract. A notarized agreement on the consequences of divorce must discuss the issues of mutual maintenance, other property rights and obligations of the spouses (if these issues are not covered by the marriage contract and/or if the property, which is the joint property of the spouses, has not been divided by their joint agreement, approved by a notary or a court), as well as indicate what the spouses' surnames will be after the divorce. As we can see, the

new legal norm does not require the maintenance of minor children, because marriage can be terminated by notarial procedure only with the agreement of both spouses and only if there are no minor children.

2.2 Entry into force of divorce by joint agreement of the spouses

From 1 January 2023, the legislator, after giving notaries the power to dissolve marriages in notarial procedure, also amended the existing provisions of Article 3.66 of the Civil Code, Part 1 of which provided that a marriage is considered dissolved from the date of entry into force of the court decision to dissolve it or from the date of entry into force of the notary-approved contract on the consequences of divorce as shown in Figure 2. It should be noted that the court decision enters into force within 14 days from its adoption (Fig. 2), unless it is appealed. If appealed, the court's decision, unless it has been annulled, enters into force after the hearing of the case in the appeal procedure, and the decision of the court of appeal or a new decision enters into force from the date of its adoption (CPC, Art. 279(1)). In the meantime, a notarial marriage is considered terminated from the date of entry into force of the notary-approved contract on the consequences of the termination of marriage as can be seen in Figure 2. This agreement enters into force on the next business day after notarization. Despite the fact that the divorce by joint agreement of the spouses is examined by the court in a simplified procedure, and the court's decision itself, according to Article 540, Part 2 of the Civil Code, must be adopted no later than 30 days from the date of receipt of the request for divorce by mutual consent. Divorce in a notarial procedure gives the spouses the opportunity to speed up and facilitate the divorce process by their jointly expressed free will in the absence of a dispute, as a result of which the divorce will take effect on the next working day, from the date of the notary's approval of the agreement on the consequences of the divorce, so the divorce in a notarial procedure ensures an incomparably faster process of marriage dissolution.

Figure 2. Entry into force.



* The appellate procedure states that the court's decision may be appealed within 30 days from the adoption of the appealed decision.

3. Divorce, division of assets and liabilities, affecting the interests of creditors

Protection against the violation of the rights of creditors manifests as protection of the interest of certainty, when a person expects to remain in the position he or she is in at the moment and it is expected that this situation will not deteriorate. However, according to Oliver Williamson, it is not uncommon for many subjects to pursue their own interests, which is why they may behave dishonestly in order to realize their financial and economic interests. "People will do anything to maximize their interests—they will

lie, cheat, steal, etc. Deception and misleading information are common tactics.” (Williamson, 1985). Therefore, the issue of protecting and defending creditors' rights remains extremely relevant and, obviously, divorce cases are no exception.

Figure 3. Joint and several versus personal obligations.

JOINT OBLIGATIONS OF THE SPOUSES ARE:	PERSONAL OBLIGATIONS OF THE SPOUSES ARE:
Obligations concerning the encumbrances of the property purchased in the joint ownership of the spouses, which existed before the moment of acquisition of this property or appeared after its acquisition;	Obligations arising from when a spouse without the consent of the other spouse took on a loan or purchased goods in installments, when it was not necessary to meet the general needs of the family;
Obligations related to the costs of managing common property;	Obligations that arose before the marriage was registered;
Obligations related to maintaining the family household;	Obligations arising from an inheritance or a gift, except in cases where the gift or inheritance was received as joint property;
Obligations related to the payment of court costs, if the case was related to joint property of the spouses or family interests;	Obligations in the form of fines or legal violations when those are applicable only to one of the spouses;
Obligations arising from transactions concluded by one spouse with the consent of the other spouse, or later confirmed by the other spouse, as well as obligations arising from transactions that did not require the consent of the other spouse, if they were concluded in the interests of the family;	Obligations in the form of compensation for damage caused by the actions of one of the spouses;
Joint and several obligations of spouses.	Obligations concerning maintenance, tax and other obligations of another person.

The above figure highlights the nature of spouses' obligations to third parties. When presenting the classification according to the nature of the occurrence of the obligation, it should be noted that if the persons live together, the property is managed as a joint and several property of the spouses, but the spouses may have obligations of a personal nature. Usually these arise as a result of one of the spouse's dishonest actions.

In Lithuania, the legislator, emphasizing the problems of the creditor's position during the divorce, has foreseen the possibility to implement the protection of creditors' rights with legal instruments and to protect the creditors of the spouses, so that they have the opportunity to actually implement the protection of their interests. The Supreme Court of Lithuania in the November 13, 2013 ruling in civil case no. 3K-3-567/2013 stated: whether the transaction is necessary and meets the needs of the family is an evaluation criterion that depends on many circumstances. Taking into account the fact that in loan relations, the consent of the spouse is not required to enter into a loan agreement, it is necessary to determine the purpose of obtaining the loan, that is, whether the loan was taken to meet the needs of the family, because only in this case it will be possible to recognize this obligation as a joint obligation of the spouses (CC, 3.109(d), Art. 3). The obligations arising on the basis of the contract to meet the needs of the family will always be considered joint and several obligations of the spouses, regardless of whether one or both spouses assumed the obligations. When concluding a contract, the parties are free to determine their mutual rights and obligations (CC, Art. 6.223), ensuring fair implementation of the principles of the contract (CC, Art. 6.200). It is indisputable that in order to ensure repayment of the loan as much as possible, it is beneficial for the creditors that several co-debtors are responsible for the obligations (Šekštelo, 2018)—in this case, both of the spouses because two borrowers are always more reliable than one. Article 11.1.2 of the UNIDROIT principles also provides that when several debtors answer to the creditor under the same obligation, the obligation acquired in marriage is presumed to be joint and several as well, unless the circumstances indicate otherwise (UNIDROIT Principles of International Commercial Contracts, 2016).

Before the termination of the marriage and the division of all the property of the spouses, the joint property of the spouses and the personal property of one and the other spouse are first determined (CC, Art. 3.118(1)). This information is taken from the Real Property Register. The balance sheet of the spouses' property consists of tangible assets, movable and immovable objects, securities, money, claim rights, other tangible and intangible assets,

and property liabilities and debt obligations of the spouses to creditors. The proper qualification of the obligations assumed by the spouses is significant both for the spouses' relationship with creditors and for their family relationships.

As of 1 January 2023, the Civil Code of the Republic of Lithuania was supplemented by Article 3.54, which, in paragraph 1, stipulates the obligation of the spouses, in the event of division of their assets, to inform all joint creditors of both or one of the spouses about the provisions on the consequences of the divorce, by sending a draft of the contract on the consequences of the divorce and the contact details of the notary, to whom it is intended to apply for approval of the agreement. The protection of creditors' rights is an opportunity to ensure fair relations between the creditor and the debtor, when fairness in law is assessed according to a person being informed of certain facts. It is difficult to define the extent to which a person must be informed and when it can be said that he knew or ought to have known of certain circumstances but acted dishonestly, as a result of which unjustified inaction is considered dishonest behavior. (Supreme Court of Lithuania, 2008, A-1)

The purpose of informing creditors is to enable creditors of the spouse(s) to exercise their rights and to assess whether the agreement on the legal consequences of divorce does not violate their rights and legitimate interests (Supreme Court of Lithuania, 2022). Lithuanian legislation does not specify the requirements for the form of notification, but it is obvious that the notification to creditors should be in the written form, as only then can the notary be sure that the duty of the spouses to notify creditors has been properly implemented and that there would be no question about the content of the statement and the requirements of its appendices.

In the process of divorce, the legislator gave the creditors the right to adjust the content of the agreement on the legal consequences of the divorce by submitting their reasoned objections and arguments regarding the general method of dividing the spouses' joint property, by modifying the obligations or changing other provisions of the agreement on the legal consequences of the divorce, which may violate the interests of creditors.

In such a case, the notary must make a decision on the legal consequences of the divorce no earlier than within thirty days from the day of receiving information from the creditor on the legal consequences of the divorce. Upon receiving the creditor's motivated objections regarding the draft of

the contract concluded by the spouses regarding the legal consequences of the divorce, and the spouses not agreeing to take into account the demands submitted by the creditor, the notary will not confirm the legal consequences of the divorce. In such a situation, the spouses are offered the right to apply to the court for divorce.

If the spouses violate the obligation to inform the creditors about the divorce, in order to protect the creditors against the dishonest actions of the spouses, the legislator provides in Article 3.54(3) of the Civil Code for the protection of the interests of creditors, if these rights have been violated. Accordingly, creditors of one or both spouses who were not informed in accordance with the law about the conclusion or amendment of the divorce agreement, and whose rights were violated due to the consequences of the terms of the divorce agreement, have the right within one year from the date on which they became aware of the conclusion or amendment of the consequences of the divorce agreement, to contest these conditions in accordance with the procedure established by the court and to demand restoration of their violated rights. The protection of legitimate interests is also the protection of the public interest, therefore it is the duty of the state to ensure that everyone has the opportunity to defend their rights in court, both against unlawful actions by other persons and by state institutions or officials.

The example presents a situation in which the spouses approach a notary to dissolve their marriage. The notary can only verify the spouses' obligations to creditors on the basis of the data provided by the Real Property Register. For example, this would be data such as property seizure, registered property rights. However, there are many contractual obligations on the basis of which creditors can raise their claims. These obligations are not visible in the Real Property Register, such as promissory notes, loans, credit agreements, guarantees, etc.

In France, for example, there is no special register of the legal regime of property; third-party creditors can obtain information about changes in the legal regime of a couple's property from notices published in specialized journals. The so-called *Pact Civil de Solidarité* (PACS) is registered in the civil registry to make its existence known to third parties. However, the implementation of the legal regime of ownership depends on the registration of the deed of purchase in the public register (Ruggeri & Giobbi, 2021).

Figure 4. Portrayal of creditors traceable and non-traceable by the notary

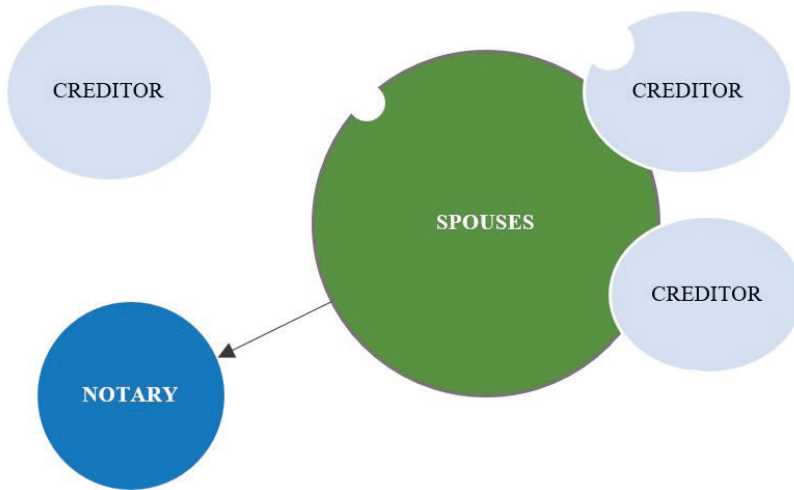


Figure 4 shows the problem described in this chapter where the notary is not able to see all the creditors to whom the spouses are indebted. As mentioned above, this problem arises because the legislator fails to provide a reliable mechanism to protect the interests of creditors, leaving it up to the notaries to create a properly functioning mechanism that must protect the interests of creditors, otherwise the contract approved by a notary will be considered to violate the interests of creditors and will be challenged in court proceedings, and thus will once again add to cases burdening the court. This, however, can happen due to no fault of the notary but because the notary, after having consulted all the public registers accessible to them, and subsequently having checked the property seizure register and the mortgage register, and having been informed of the fact that the property of the spouses is not seized or mortgaged, is not able to see all the creditors of the spouses. In such cases, the question arises on how the notary can ensure adequate and sufficient protection of creditors' interests, since there is no way to reliably verify the existence of any obligations or lack thereof.

4. Digitalization of the notaries. The current situation

The answer to the daunting question posed in the previous section may lie in adoption of new technology. Currently, the use of technology and innovative solutions for the purposes of data collection and journaling is indeed lacking. Lithuanian notaries have only recently started to take the first steps towards digitalization and modernization, which is so crucial in the face of the digital revolution. In 2009, the Public Electronic Service for Real Estate Transactions (NETSVEP) was introduced; in this environment, the absolute majority of property transfer transactions, legal facts about the transaction and the registration of property rights are prepared and executed, and data corrections required for transactions and other registrations of property rights are ordered (Chamber of Notaries, 2017a). With the help of the NETSVEP system, the notary prepares transfer transactions, such as real estate donations, sales, exchanges, separations, division of property of spouses, establishing servitude, determining the order of use, preliminary agreements, usufruct and other agreements, and prepares certificates of inheritance both in accordance with the law and according to the will as well as according to agreements on the division of inherited property. With the help of this system, the notary obtains all the information about the real estate being transferred, by simply entering the registry entry number, and the system automatically uploads all the latest available information about the property, the owner of this property, the facts of restriction of property rights, if any, information on the registration and cadastral marks of the property, and all other information required to perform a notarial act. Also, the NETSVEP automatically uploads all information about the personal document as well as information indicating which institution issued the document in question only by the entering of the identification code of the person who wishes to perform the notarial act. Thus, the document prepared by the notary is created automatically based on the data obtained from the NETSVEP system, which, after the notary has performed the notarial act, once the real estate transaction documents are approved by the notary with a qualified electronic signature, are submitted through the NETSVEP digital system to the State Enterprise Centre of Registers.

The NETSVEP system was designed to create and implement a public electronic service for real estate transactions for Lithuanian residents, including payments for the service provided, that is, to implement the “one-stop shop” principle of real estate transactions and to provide faster and better services to residents. Also, to create direct digital provision of official real property register and cadastral information for notaries and transaction

participants at the notary's workplace, to implement automated preparation of transaction data and documents, registration of rights, legal facts in the Real Property Register, and storage of these electronic documents. With the help of NETSVEP, the procedure for concluding real estate transactions has become simpler for the parties involved in the transaction, as there is no need to visit the Center of Registers, since the transaction can be finalized in one place—at the notary's office, as property transactions are prepared using modern electronic means, working directly digitally with the central real estate database. This digital system has not only made it possible to provide people with more efficient and higher quality services, but has also made real estate transactions significantly safer, as the electronic system prevents illegal manipulation of real estate and falsification of documents.

Recently, the number of cross-border notarial actions in Europe has been increasing in parallel with changes in the digitization of various procedures, caused by changes in both the European Union and national legislation, and further by the need to ensure that some actions can be carried out remotely or even in a conventional way, but with the help of information technology tools for the purpose of receiving or transmitting information. Both CNUE and its member countries, including the Lithuanian Notary, which has been a member since 2004, understand and agree that in the long term, what is possible in the “analog world” will become possible in the “digital world” as well, while maintaining the legal level and technical security. The notary is ready to keep pace with technological progress, which is why the European notary is considered to be one of the leaders in new technologies, especially when it comes to cross-border activities. At the level of the CNUE, projects with a technological and legal component have been created, thanks to which free legal information is provided through an information technology platform in a manner appropriate to the highest standards, using communication and roaming means, as well as tools for cross-border use in notarial practice. Individual CNUE member countries themselves are also developing complex and detailed technological solutions in various areas of information technology related to the activities of notaries, Lithuania being no exception. It should be noted that, over the past few years, the Chamber of Notaries of Lithuania has already developed, at its own expense, the eNotaras information system, which consists of an internal eNotaras information system portal for notaries and employees of notary offices, and an external eNotaras information system portal for customers.

It should be noted that the eNotaras information system, currently under development, will enable notaries to provide electronic services to notary's clients at the 3rd level of service maturity (two-way interaction). When

creating an order for notary services, the client can not only choose the notary's office and the services he or she wishes to order, but also upload and submit to the notary the documents required for the provision of services (Chamber of Notaries, 2017b). Thus, the client no longer needs to personally come to the notary's office to order notary services and to submit the primary documents required for the provision of notary services. Such "remote" procedures aim to replace, both at the European Union and, in individual cases, at national level, the physical participation of individuals, the preparation and transmission of documents on paper with digital (online) communication with the client and the secure transmission of electronic documents with the help of IT tools. Questions have even started to be raised about the possibilities, conditions, and scope of using artificial intelligence.

The eNotaras information system has been used in real notary activities since 1 January 2019, when the electronically managed notary register, which was created and integrated into the eNotaras information system, was started to be filled in. This register, which initially was intended to be kept electronically by notaries' offices, is a prerequisite for the further digitalization of the activities performed by notaries. This innovation is certainly a leap into the right direction, however it is definitely a little late in the game. When facing the fact that in other sectors it has been possible to store documents digitally for several decades and in the USA it was possible (depending on the laws of each state) to have journals chronicling all notarial acts maintained on electronic media since 2010, the adaptability of Lithuanian notaries to the digital age does not seem such a fantastic feat, especially given the extremely fast pace at which innovation moves these days.

The Lithuanian notary takes the same path as notaries in Latvia and Estonia, being not a substitute or an alternative, but a complementary system to traditional notarial actions, as a result of which amendments to the Notary Law came into effect on July 1, 2021, which legalize remote notarial actions, allowing notarial actions to be performed not only in the notary's office, but also remotely (remote notary is based on the eNotaras information system developed by the Chamber of Notaries of Lithuania, 2017a). After connecting to this system, clients can create their account, choose the desired notary office, remotely communicate with the notary and notary's assistants, prepare for the notarial act, and perform it. Accordingly, notarial documents certified by a remotely performed notarial act will also be issued only in electronic form, signed by a qualified electronic signature of a notary, which, among other things, will differ from notarial documents

on paper in that they will not be stamped by a notary. As electronic notary services are becoming more and more popular, from 1 July 2022, a hybrid method of performing a notarial act entered into force, whereby if one of the parties to the transaction, for certain reasons, would not want to or cannot perform the notarial act remotely and wishes to come to a notary's office, while the other party to the transaction chooses a remote notarial act, the latter does not need to go to the notary but can instead connect to the meeting at notary's office by a video call. Individuals, in order to receive notary services in a hybrid method, coordinate a time that is convenient for all parties, and the party who performs the notarial act remotely will receive a link to connect to the video conference on the portal www.enotaras.lt. It, where, in order to connect to the portal, their identity is verified using a qualified electronic signature, an electronic print received from the Center of Registers on a cryptographic USB device, or via the internet using a personal identification tool Smart-ID (Chamber of Notaries, 2017b). Although the eNotaras system is designed to be flexible, the most vulnerable point today is not the software but the hardware because the current servers on which the eNotaras system is installed are becoming too weak. As data volumes increase, new features will appear, and, given the fact that the system will have several hundred new users, this is only natural. Thus, in the period from 2019 to 2023, the Chamber of Notaries of Lithuania in accordance with the 8 December 2018 European e-justice strategy and action plan, approved by the Council of the European Union, is currently considering various options for strengthening the physical infrastructure, including the possibility of using "cloud computing."

5. Possibilities for future development

Figure 5 (see p. 131) showcases the problem that there may easily arise a situation where a notary would not be able to see all of the creditors to whom the spouses are obligated, since there is currently no available system in place in Lithuania that would show all of the creditors the couple is indebted to, suggesting the direction in which IT technologies for notaries should be developed in Lithuania. At the moment, the legislation provides mostly for spouses with no or minimal joint assets, where the issue of shadow creditors is very unlikely, and the divorce proceedings are extremely uncomplicated. For example, notaries do not maintain a detailed register of promissory notes, where they only capture the fact of the performance of an action but

do not include important details such as the period for which that promissory note is valid or the sum of the obligation. Such details would be extremely important if a couple with outstanding promissory notes were to file for a divorce at a notary and the notary wished to find out what the debts of the spouses were so that the divorce proceeding could go accordingly. Hence, if the notary wants to create transparency about the existing creditors when performing the extrajudicial dissolution of marriage, better registry and data collection systems should be created and maintained. Of course, creating such a system should take into account the problem of data protection, especially since the number of data thefts has increased rapidly in recent years. There should also be some stringent technical standards for notaries to follow when conducting e-authentication over open networks such as the internet, as well as closed networks, and accessing the collected data. Levels of assurance should be based on the potential impact or consequences of an authentication error (Williams, 2015).

Currently, however, the notary using the existing “one-stop shop” system can only extract information that is already easily accessible to people through the system called the electronic government portal. Previously, before this system was created, people would have to visit various government institutions in person to retrieve their personal data, but now it is just a matter of logging into one’s account. This, however, puts the notary in a rather precarious position, since its services become increasingly desolate if the only people who would need notary’s help in getting personal data are people not really knowledgeable in technology. The functionality of the notary as an institution is shrinking more and more as technology evolves, and some authors even question whether it will become extinct in the face of the current digital revolution. The development of science and technology is progressing so rapidly that notaries are being left far behind in the use of current technology (Heriyanti, Agustina & Pakpahan, 2022). In order to survive, they should be able to adapt and change with the times. Hence, the solution to our previously given example, where one of the functions of the Lithuanian notary of retrieving personal information from the Centre of Registers is becoming desolate would be to make the notary more relevant again by assigning it some additional functions. For example, it would be great if NETSVEP could be developed further to allow notaries to have a deeper interaction, where they would not only be able to retrieve documents, but would also be able, with the clients permission, if the client so requests, to contact the Center of Registers to change and organize the client’s documents held there. Currently it is a rather tedious process to

change and organize documents held by government institutions by oneself, as it can take a lot of time and requires knowledge of the processes of the said institutions that notaries already do have, so expanding the notary's functions would be extremely beneficial in this case.

Another problem which notaries may run into in the future is the excessive workload and the documents that need to be analyzed before a decision concerning the granting of extrajudicial divorce is taken, and that would significantly delay marriage dissolution proceedings and create long queues. This problem could be resolved by internally outsourcing the workload. Internal outsourcing means co-locating internal services and removing them from the business to whom they provide the service (Bywater Consulting, 2001). If such measures were employed, more documents could be checked manually by staff who would not need full qualification of a notary but who would still have sufficient education to be able to exert judgment on the validity of given documents. Such a practice of outsourcing could be extremely relevant, especially with more and more e-contracts being performed, where the validity of such documents has to be verified, and only then can the electronic documents be used as grounds for the preparation of authentic deeds by a notary (Heriyanti, Agustina & Pakpahan, 2022). Also, it is argued that internal outsourcing helps institutions save costs, increase available time for value-added activities in line positions, improve measurement capability, and achieve better service quality (Aksin & Masini, 2008). Another solution in the case of excessive workload would be the use of AI to find the relevant information, such as numbers, periods of validity or sides of the contract, by performing a scan of the document and creating a summary. It is crucial to understand this technology especially since artificial intelligence is being developed rapidly and its continuous integration is inevitable (Bekenova *et al.*, 2022). However, this again prompts the question of data protection, which should be addressed.

Overall, there are lots of possibilities for Lithuanian notaries to implement technology that could significantly improve the quality and speed of their work.

6. The international element in the divorce process

When looking into divorce, it is extremely important to also take into account the possibility of an international aspect being involved. The number of international marriages is constantly increasing, and more and more spouses choose to live outside the country of which they are the citizens (Ruggeri, Kunda & Winkler, 2019). If a divorce takes place in such a case, it is inevitably subject to international legal norms, which can be used to determine which country's legal acts are applicable in each situation and which country will have jurisdiction over divorce cases with an international element. If the spouses have the citizenship of different European Union states and/or dual EU citizenship and/or reside in different European Union Member States, the legal regulation of the European Union is to be applied. Also, if the parties are citizens of the Republic of Lithuania and another European Union country related to the dispute (bilateral and tripartite legal assistance agreements), international legal assistance agreements can also be applicable. Finally, there may also be cases where national law could be applied. Such would be a case if the spouse were from and/or resides in a third country. All in all, determining the country in whose court a marriage dissolution case is pending is far from being an easy and uncomplicated process.

The choice of the applicable law in the process of divorce is of great importance both in terms of the possibilities of divorce and for the regulation of the legal consequences of divorce. Therefore, in all cases, it is extremely important, if such an option presents itself, to consider and choose both the state where the divorce case will be heard and the law applicable to the divorce that is the most favorable. Concerning the former, when the spouses are citizens of different European Union countries and/or reside in different European Union countries, the parties can choose to have a marriage dissolution procedure performed in another EU country, if any of the following conditions are met:

Figure 5. Conditions for having a divorce in one of the EU states

Number	Condition
1	Spouses are the citizens of that EU country
2	The habitual residence of the applicant is located in that country, if he/she lived there for at least one year immediately before the submission of the application
3	The country in whose territory was the spouses' last habitual residence, provided one of the spouses still lives there
4	The habitual residence of the defendant is located in that country
5	In the event that a joint application was submitted, the country is the habitual residence of one of the spouses
6	The country is a habitual residence of the spouses

On the other hand, national laws applicable in each European Union country determine the grounds on which a divorce or legal separation can be granted, and the procedures involved. The rules vary greatly from one European Union country to another. However, a number of European Union rules help determine which courts have jurisdiction and which law applies in cases involving two or more European Union countries, for example, when spouses are from separate countries or have different nationalities. (Your Europe, 2022)

Lithuanian legal acts provide for a divorce with a foreign citizen in Lithuania on the condition that at least one of the spouses is a citizen of the Republic of Lithuania or a stateless person with his or her permanent residence in the Republic of Lithuania. It should also be noted that the courts of the Republic of Lithuania are competent to hear family cases if both spouses are foreign citizens, but their permanent residence is in the Republic of Lithuania. If there is no dispute between the spouses and there are no minor children involved and the couple wishes to proceed with the divorce procedures at a notary, or an international couple wishes to apply to a notary because they want to end their marriage in Lithuania, from 1 January 2023, Lithuanian notary is considered the competent authority for divorce by agreement of both spouses, referencing the European Family Law Principle 1:2 (2), which states that the dissolution of marriage must be delegated to a competent authority, which may be a judicial or administrative body, and referencing Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), which stipulates that the issue of a

person's civil rights and obligations must be decided by an independent and impartial court, and, finally, taking into account the fact that in Lithuania a notary is considered a preventive judge to whom the state entrusts the performance of functions ensuring public interest, operating in the sphere of civil legal relations, and carrying out the legal consolidation of subjective rights and legal facts.

However, now that we have established the laws and regulations in the European Union concerning divorce, it would be important to consider the issue of data sharing between its Member States. European Union continuously integrates different aspects which give grounds for communality among its Member States. This process of integration responds to the need for the organization to adapt to the social, political, and economic realities and to solve the dysfunctionalities arisen from the process, and the European Union prioritizes integration at the digital level within a broader social framework (Troitiño, 2022). When implementing such digitalization efforts, EU notaries should not be overlooked. Currently, states are mostly focusing on using new IT technologies only by their respective notaries, but efforts should be made to share the registry data and data about various spousal obligations between the Member States. This would make the process of divorcing at a notary in Lithuania and other EU countries, where such an option is available, as well as choosing to pursue marriage dissolution in another EU state, much more seamless and accessible. Of course, such efforts would not take place without rigorous discussions between EU countries on the rights of their citizens and organizations and data protection, and that could be one of the discouraging factors in implementing seamless data sharing even though it would be extremely beneficial to all parties since it would protect spousal as well as creditors' rights and ensure that all assets and obligations are considered in divorce proceedings.

7. Conclusion

Marriage is one of the basic human rights, a free-will decision of two people to start a family, which is a fundamental institution of family law. However, not all marriages last, which is why there exists a need for institutions capable of dissolving marriages in a reliable, speedy, and satisfactory manner.

In Lithuania, legislation allowing the right to divorce by notarial procedure came into force only recently, on January 1, 2023. This simplified divorce

procedure, however, is only available to married couples without minor children. This new legislation was expected to help decrease the burden of pending cases placed on Lithuanian courts. However, to this day, no decrease in the number of judicial divorce proceedings has been observed.

The simplified divorce process is to cover all divorces where the spouses agree to end their marriage with a common agreement and there is no dispute between them without differentiation. The new law gives notaries the power to decide how to transfer the family property and the property of minor children, and eliminates the need to go to court in such simple divorce cases.

Often a third party—creditors—are involved in divorce cases, which can complicate the proceedings since a division of obligations has to be performed. Creditors' interests must be protected reliably and smoothly, and the mechanism for this protection of creditors and their legitimate interests must be implemented as efficiently as possible. The regulation of creditor protection described in Article 3.54 of the Civil Code, however, is quite flawed since it does not account for the possible dishonesty of the spouses when they are required to disclose all of their obligations, which leaves it to the notaries themselves to protect both the interests of the creditors and the public interest against the actions of the spouses. The transfer of new judicial functions to notaries may be able to simplify the process of divorce, but with the lack of a real possibility to obtain all of the necessary information about spouses' obligations from the existing registers (in contrast, courts are able to do that), the notary's decision of the dissolution of the marriage can be often appealed, which, in turn, does not solve the problem of disburdening of the courts and saving time and resources for the courts and spouses.

One of the ways of solving this problem may be the implementation of new technology. In the face of the fourth industrial revolution, if the notaries will be reluctant to keep up with technological advances, their functionality will diminish and they will become extinct. In the case of notaries not being able to see all of the obligations of spouses, it would be beneficial to create a system that would enable more extensive data sharing between institutions and requires more informative journaling. Also, if in the future divorce at the notary's office would become more popular and notaries would become overburdened with the amount of document checking they will need to perform, it would be recommendable to internally outsource their workload and/or use AI.

A final issue to be considered is data sharing between EU countries. As the EU countries become increasingly closer and, in certain circumstances, couples may be able to choose where to divorce between several different EU countries, it is important that the data stored in other countries' registers is accessible to protect the interests of spouses and creditors, if the latter exist.

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