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Property records and legal security in Brazil: process of dejudicialization - notarial and registry law in Brazil *Real estate records and legal certainty in brazil: dejudicialization process - notarial and registry law in Brazil*

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1. Introduction

The historical contexts of Notarial and Registration Law can be seen with the need to perpetuate and regulate businesses carried out by man. According to Chicuta (1998, p. 202), the emergence of records of titles and documents is related to man's historical concern with perpetuating relevant acts and facts, as an example he cites the inscriptions and drawings on stones (rock paintings), still in the documents phase unwritten.

The origin of Notarial and Registration Law in Brazil can be seen from the Philippine Ordinances, which followed the medieval system. As Brandelli (2011, p. 26) highlights, as a Colony of Portugal, Brazil's main legal sources were the Ordinances that were in force there. Thus, the Portuguese influence in the introduction of notarial and registry activities in the country is undeniable, so much so that in much of what is in force today (21st century) in Brazilian legislation it is still possible to perceive Portuguese roots.

Souza (p. 22) explains that the notary or notary, as the professional in the field is also known, accompanied Portuguese navigations with the aim of recording the lands that were found by them, in addition to recording other events, it was a formality with the aim of ensuring that there would be no other people sharing in the discovery of the same lands.

During this period, notaries were appointed by the Emperor, without any criteria for donation and with lifetime investiture, and the positions could be passed on to others through purchase,

sale or succession, during this period there was no search for qualifications or skills to hold the position (RIBEIRO, p. 28).

Pero Vaz de Caminha was considered the first notary to set foot on Brazilian lands, even though he was not the official scribe of Pedro Álvares Cabral's fleet, since his narrative letter is the only official record of his arrival in Brazil. On the subject, Brandelli (2011, p. 45-46) says:

> The first notary to set foot on Brazilian soil, however, was Pero Vaz de Caminha, Portuguese, who narrated and documented in detail the discovery of Brazil and the possession of the land, with all its official acts, resulting in the only official document of the discovery from Brazil. [...] Since Brazil was a colony of Portugal, the ordinances that were enforced there came into force here too, becoming the main source of law in Brazil, where they were in force for a long period, with the Philippine Ordinances being applied until the beginning of the 20th century.

Pero Vaz de Caminha was responsible for registering the names of Monte Pascoal, Terra de Vera Cruz, Ilha de Vera Cruz and Terra de Santa Cruz, names given to the country after the arrival of the Portuguese, the records were made to guarantee the formality of the discovery of the lands, preventing other navigators from taking it for themselves.

The Philippine Ordinances, which remained in force in the country until 1917, when Brazil's first Civil Code of 1916 came into force, have exerted strong influences to this day. As Vasconcelos and Cruz (2002, p. 1-2) point out, Portuguese activity in the Brazilian notary sector is undeniable.

Thus, according to Silva (2008, p. 32), notarial and registry activities in Brazil were carried out from a private institution, with the Monarch being responsible for granting these activities, and periodic payment of taxes must be made to him. .

Ordinances were seen as a complex and dynamic framework of laws to be interpreted by notaries and applied in an environment where few people were able to at least master reading. For this reason, the sources of notarial and registry activities during this period are considered by scholars as centers of local institutional power, where notaries act as advisors to judges and consultants to individuals.

Changes in the scope of Notarial and Registration Law began to take place in Brazil with the unnumbered law of October 11, 1827, which prohibited the function from being passed on as a property title, starting to be conferred as a lifetime service.

According to Brandelli (2011), this law came with the objective of regulating the provision of the Offices of Justice and Finance, with its promulgation the transmission of the title

of property was prohibited, assuming a lifelong nature in a succession regime, transmitted from father to son, however, it was criticized for not bringing more important changes such as the lack of requirement for legal training so that the position could be held or even practical experience in the function. Ribeiro explains that:

> A law was enacted in Brazil on October 11, 1827, which regulated the filling of positions in Justice and Finance, prohibited the transfer of offices as property and determined that people with suitability and that they personally served in the offices, which did not prevent venality and the succession regime from persisting until recent times, with the transmission of such offices from father to son (RIBEIRO, p. 15).

Thus, the first regulation of the notary service in Brazil can be identified in 1827, according to Souza (p. 25), from that year onwards, the law began to prohibit the transfer of the position of notary as a property, however, it did not made no changes regarding family succession in the position, nor in the way services function.

For many scholars, such as Brandelli (2011, p. 48), Lima (2011, p. 1) and Miranda (2010, p. 1), the notarial and registration service in Brazil began to distance itself from Portuguese Law after the Law no. 601/1850 and Decree no. 1,318/1854, which established the so-called Vicar Registry, with the aim of discriminating between public and private domains and regularizing the situation of lands, ordering them to legitimize possessions and revalidate sesmarias. According to Oliveira:

> The obligation to register ownership in the religious authority's own book of the status of the property was created, for the purpose of determining what public lands and private lands would be. Land that was not subject to registration would be considered an area of public domain. There are those who point to this record, however, as having a cadastral nature, like that of the real estate databases currently maintained by municipalities. From then on, the requirement for a written contract to proceed with the transfer or encumbrance of properties subject to registration was reported, which, in certain cases, should be done by public instrument, in notes from a Notary Public (first forecast of such a professional in the national legal system) (OLIVEIRA, 2007, p. 2).

The aforementioned law states in its article 3, §2, the exclusion from the public domain. After this law, it was decreed that the owners of land, possessed by sesmarias and other concessions from the general and provincial government, did not need revalidation, legitimation and new titles that would give them the ability to enjoy, mortgage or alienate the lands they found. in your domain.

This is Decree No. 1,318, dated January 30, 1854. Article 91 of this same decree states the obligation to register the land they owned, considering the steps marked.

Thus, the registration of property ownership appears for the first time in Brazilian legislation, which was done by the owner, who wrote his declarations or had them written by someone else, in two copies, signing them or asking someone to do so, in the case of not being able to do so. know how to read and write (art. 93).

In addition to the owner, these declarations should include the name of the parish where the property is located, its area, its limits and borders, if these were known. In this way, the documents were delivered to the vicars who checked them and if they were within the rules, they placed notes indicating the date of delivery, returning one of the copies.

It is interesting to note that this process is still used today, but it has become more complicated. The registration of all legal mortgages became mandatory as of Law no. 3,272/1855, originating from the Mortgage Law Project written by Counselor Nabuco, Minister of Justice, in 1854. From that law it was possible to perceive the greater security that real credit already required, not complying with the principle of specialization (art. 3º and 4th), thus correcting the effect of the last law.

It is noteworthy that the mortgage bill became Law no. 1,237 of September 24, 1864. According to Fassa (2006, p. 52), this was due to the Vicar's Registry not meeting all the needs of the Empire, despite providing resources to the Treasury, it was insufficient in solving the related problems to mortgages. Principles regulated by it would remain until the current Civil Code, such as advertising, the specialization of the asset given as collateral and the debt, indivisibility, the need for a public deed, the priorities arising from multiple mortgages on the same asset, and the cessation of the effects of the mortgage after 30 years of its registration (SILVA. 2014, p. 69).

Soon after came Decree No. 370, of May 2, 1890, which included among the acts subject to registration the transfer of the domain inter vivos (art. 234). With this, the real estate registry was created in a public institution, of a legal nature, making it capable of providing certainty to ownership and guaranteeing real credit.

In 1903, it was created by Law no. 973 the public service corresponding to the “first private and lifetime office of the optional registration of titles, documents and other papers, for their authenticity, conservation and perpetuity and for the purposes provided for in article 3 of Law 79, of 1892” in the city of Rio de Janeiro, aiming to provide security to legal acts through an agile, practical and effective service, guarding and reserving public services.

Miranda (2010, p.1) explains that the aforementioned Decree opened notary offices in Brazil, in addition to imposing that records would be transcribed in uninterrupted order from the date of presentation and that unregistered documents would have no effect in relation to third parties. It is important to highlight that the aforementioned law was regulated by Decree no. 4,775, in February of the same year.

Thus, the registry offices assumed the responsibility to give validity and legal security to the acts carried out by men, and must keep and preserve the documents entrusted to them. Law 973/1903 was so important and effective that it was extended to other Brazilian states.

New developments in Notarial and Records Law can be seen with the promulgation of Law no. 6,015 of November 31, 1973, which regulates public records and provides other measures, in addition to Law no. 6,216, of 1974, which changed the aforementioned law. The importance of these laws in the creation and organization of registry offices in Brazil is highlighted, as they regulated activities related to public records.

Despite the evolution seen throughout Brazilian history in Notarial and Records Law, it was only with the Federal Constitution of 1988 that significant changes were seen, as it brought in its article 236[1]the provision of a law regulating these services, highlighting them as a private activity delegated by the Public Power.

It should be noted that the delegated activity in the aspect of Administrative Law is one in which the public authority transfers to an individual what it should perform, that is, it constitutes true “administrative deconcentration” in the forms of concession or permission. It is worth mentioning that the current Federal Constitution, in its art. 22, items I and XXV establishes the exclusive competence of the Union to legislate on Civil Law and Public Records.

The regulation of this article of the Constitution only occurred in 1994, with Law no. 8,935, Statute of Notaries and Registration Officials, which established as a principle

[1]Art. 236. Notary and registration services are performed privately, by delegation from the Public Power. (Regulation)
§ 1 The Law will regulate the activities, regulate the civil and criminal liability of notaries, registration officers and their representatives, and define the supervision of their acts by the Judiciary.
§ 2 Federal law will establish general rules for setting fees relating to acts carried out by notarial and registration services.
§ 3 Entry into the notary and registration activity depends on a public competition for tests and qualifications, and any position is not allowed to remain vacant, without opening a competition for appointment or removal, for more than six months.

basic and fundamental for notarial and public records services, which are “exercised in a private capacity, by delegation from the Public Power”. Regarding the delegation of notarial activity from the Public Power to the private sector, Ribeiro Neto states that:

> When analyzing the content of the delegation contained in the aforementioned art. 236, we see that there was a constitutional delegation of notarial and registration services to individuals. Through delegation, the competent Public Power excluded from its responsibilities notary and registration services, to be carried out by natural persons outside the scope of civil servants (RIBEIRO NETO, 2008, p. 33).

In this way, notarial activity is carried out by the private sector, with regulation by the Public Power, which must supervise the service performed. There were many changes brought about with the promulgation of the aforementioned law, among them is the entry of notaries and registrars, which now takes place through a Public Tender, subject to the same rules as private employers and workers.

According to Cahali (2007, p. 83), the aforementioned law made notarial and registration activities public services par excellence, being provided to citizens through delegation of Public Power. The importance of the law must be mentioned, considering that it was responsible for establishing a single legal regime for these activities throughout the country, making them gain social and legal importance.

It is noteworthy that in subsequent years the evolution of Notarial and Records Law was carried out based on laws that came to change some provisions of laws already in force, as is the case of Law no. 9,534, of December 10, 1997, which came to give a new wording to art. 30 of Law No. 6,015, of December 31, 1973, which provides for public records, in addition to amending arts. 30 and 45 of Law No. 8,935, of November 18, 1994, which provides for notary and registration services.

The provisions of the Civil Code of 2002, Law no. 11,789 of October 2, 2008 and the new Code of Civil Procedure, Law no. 13,105, of March 16, 2015. Therefore, considering that the Law evolves according to the needs of society, it is necessary that updates to legislation are monitored, always aiming for better application.

The concept of Notarial Law is given by Brandelli (2011, p. 52) as a set of legal norms whose purpose is to regulate the notarial function and records. Registration Law is conceptualized by Azevedo (2015, p. 17) as the set of rules that make up the legal regime of registrars.

Azevedo (2015, p. 17) considers Registration Law to be of paramount importance for the legal security of people and the most basic rights of human beings, since from birth to the end of their lives they will need to make use of records, services that emanate from of society, not defending individual interests or those of the State, but rather those of the community as a whole.

Differentiating between notarial and registry services, the former are configured as the act of interpreting and giving legal form to the will of the parties, providing authenticity to the documents, as well as preserving the originals and issuing copies, with a view to providing authenticity. to the facts. While registry services are configured as those aimed at registering titles of public or private interest, guaranteeing the security, authenticity and efficiency of acts of civil life (BRANDELLI, 2011, p. 52).

By virtue of article 236 of the Brazilian Federal Constitution of 1988, notarial and registry services must be carried out by the private sector through delegation from the Public Power, which is responsible for supervising all activities carried out, which are characterized as public services. Public service is understood as that provided by Brazilian public bodies, whose main objective is to meet the needs of society.

The concept of public service is not uniformly addressed by Brazilian scholars. One can find scholars who define public service only in the literal sense of the word and others who opt for a more formal notion, identifying it by its foreign characteristics and, even, in a more material concept, defining it by its object and the subjective element.

The formal element, according to Di Pietro (2012, p. 109) refers to the legal regime to which the public service is subject, the material one that considers the object of the public service, that is, the collective interest, and the meaning subjective refers to the ownership of the public service.

Considering the three elements, Duarte Júnior (2009, p. 1) conceptualizes public service in its subjective aspect as that which is provided by the State as a legal entity, in the material aspect as that service carried out in favor of satisfying the needs of society, considering, in this case, the activity carried out and from the formal aspect, considering the legal regime, becomes understood as that provided under the regime of Public Law.

According to Di Pietro (2012, p. 109), public service can also be conceptualized in a broad sense as all State activities, whether judicial or administrative, and in a strict sense as activities carried out by the Public Administration with the exception of legislative functions. and executives.

Conceptualizing public service, Meirelles (2020, p. 71) adopts the broad meaning, stating that it is provided by the Public Administration under the figure of its agents, considering the norms and state control, with the aim of satisfying collective needs. Mello adopts the strict meaning and conceptualizes public service as:

> Any activity offering utility or material convenience aimed at satisfying the community in general, but only enjoyable by those administered, which the State assumes as pertinent to its duties and provides by itself or by those who act on its behalf, under a regime of Law Public – therefore, consecrator of prerogatives of supremacy and special restrictions -, established in favor of interests defined as public in the normative system (MELLO, 2008, p. 54-55).

Thus, considering that the notarial and registry service is aimed at the interest of the community, It is clear that these activities are characterized as a public service. Among the characteristics of notarial and registration activities is rogation or instance, as these can only be initiated by the interested party or at the request of the Public Prosecutor's Office when the law authorizes it. As Ceneviva (2008, p. 54-55) highlights, despite being activities carried out privately, their characteristics are typical of public service.

In addition to their rogatory nature, these activities are also characterized by having public faith, as they act as representatives of the State and by the need for impartiality, as the notary and registered must act with equidistance between the parties. On the subject, Brandelli (2011) explains that the notary must perform his role in accordance with the Brazilian Legal System, considering the will of the parties and molding them within legality and equality between the parties.

In this way, the characteristics of notarial and registration services are focused on their execution, being a rogatory service, which is based on public faith and must be carried out impartially. It must be remembered that despite being an activity carried out privately, these are public services, therefore, they must consider the collective interest.

As for the legal nature of these services, Padoin (2011, p. 79-80) explains that they are administrative, with the delegation of these activities being an irrevocable act, with strict legal hypotheses provided for in Law no. 8,935/94 that may cause loss of delegation, if not

is fulfilling its objectives, guaranteeing publicity, authenticity, security and effectiveness of legal acts, as provided by law.

It is confirmed that the responsibility for monitoring compliance with these activities lies with the Public Authorities, as highlighted by Chaves and Rezende (2011, p. 102), and must also apply possible penalties, ensuring contradictory and broad defense. It is also worth mentioning the actions of the Public Authorities in conjunction with notaries, seeking ways to offer subsidies to develop services and techniques.

The legal nature of these activities, according to Miranda (2010, p. 1) can also be seen based on different criteria, subjective or formal and objective or material, and they must be considered to better understand the positioning of these activities. The author, based on the aforementioned criteria, explains:

The legal nature of notarial and registration activities must be seen under two criteria: a) from a subjective or formal perspective – consideration of the service provider; and b) from an objective or material perspective – focus on the activity performed. From a subjective or formal perspective, there is no doubt that the legal nature of notarial and registration activities is private, since by express provision of article 236 of the Federal Constitution/88, “notary and registration services are carried out in a private capacity, by delegation of the Public Power”.

Thus, the Federal Constitution of 1988 defined notarial and registration services as being a public delegation, exercised in a private capacity, therefore leaving no margin or space for their exercise directly by the Public Power. On the other hand, from an objective or material perspective, the legal nature of notarial and registry services is public, typical of the State, which for reasons of convenience carries them out privately, through delegation, in accordance with the law.

In this context, notary and registry services are characterized as a public service of an administrative nature, however, exercised by the private sector by delegation from the Public Power, which must exercise oversight of activities, always aiming to guarantee the collective interest.

2 Notary and registration services as a means of access to justice

The State's responsibility to guarantee access to justice arose when it took justice upon itself. Historically, it is worth highlighting, based on Capeletti and Garth (1988, p. 17), whether

perceive three waves of access to justice. The first wave is the expansion of legal assistance to the poorest classes of the population. While in the second wave there is the incorporation of collective and diffuse interests, making it necessary to review notions about civil process. Finally, the third wave brings informal justice, with attention focused on the general set of institutions and mechanisms, people and procedures used to resolve conflicts in society.

Access to justice is guaranteed by the 1988 Federal Constitution by the sum of two principles set out therein, namely: the principle of legal process provided for in its art. 5th LIV, which says that: "no one will be deprived of their freedom or their property without due legal process"; and the principle of legal protection provided for in art. 5th, XXXV, providing that: "the law will not exclude injury or threat to rights from the Judiciary's assessment". Analyzing these two fundamental principles established by the Federal Constitution, it is possible to say that access to justice is guaranteed in the Constitution.

With this, all people, as well as those who did not have the financial resources to face long periods of proceedings, are not left out of justice, assured of the filing of an effective writ of mandamus. It is stated, based on Freitas (2019, p. 97) that access to justice is not just a fundamental right, it is also the central point of modern proceduralism, presupposing the expansion and deepening of goals and methods of modern legal science. This granting of access to justice given by the 1988 Federal Constitution led to significant changes in the civil process.

Access to justice is a basic principle of the rule of law. In the absence of access to justice, people are unable to hear their voices, exercise their rights, challenge discrimination or hold decision-makers accountable. The Declaration of the High-Level Meeting on the Rule of Law emphasizes the right to equal access to justice for all, including members of vulnerable groups, and reaffirmed the commitment of Member States to take all necessary measures to provide fair, transparent, effective, non-discriminatory and responsible services that promote access to justice for all (WOLKMER, 2006).

The delivery of justice must be impartial and non-discriminatory. In the Declaration of the High-Level Meeting on the Rule of Law, Member States highlighted the independence of the judicial system, along with its impartiality and integrity, as a prerequisite

essential to uphold the rule of law and ensure that there is no discrimination in the administration of justice (CICHOCKI NETO, 2009).

In strengthening access to justice, the United Nations system works with national partners to develop national strategic plans and programs for justice reform and service delivery. UN entities support Member States in strengthening justice in areas such as: monitoring and evaluation; empower the poor and marginalized to seek answers and solutions to injustice; improve legal protection, legal awareness and legal assistance; civil society and parliamentary oversight; address challenges in the justice sector, such as police brutality, inhumane prison conditions, prolonged pre-trial detention, and impunity for perpetrators of sexual and gender-based violence and other serious conflict-related crimes; and strengthening links between formal and informal structures (WOLKMER, 2006).

The United Nations assists in the development and reform of national legal aid policies and structures and supports the capacity building of state and non-state actors who provide legal aid services in civil, criminal and family matters. The United Nations system also supports the provision of legal assistance by strengthening the capacities of rights holders, enhancing legal assistance programs that empower rights holders, particularly disadvantaged and marginalized groups, and supporting awareness raising and legal assistance and campaigns of public disclosure. To further contribute to the global knowledge base on legal aid, the UN system launched a Global Legal Aid Study to gather data on the current state of access to legal aid services around the world (WOLKMER, 2006).

In this context, based on the premise that it is the State's duty to guarantee social peace, it is understood that to do so it must facilitate access to justice, creating mechanisms to do so, which must be effective, providing an immediate response to demands. As Capeletti and Garth rightly state: “the system must be equally accessible to everyone; second, it must produce results that are individually and socially fair” (CAPPELLETTI; GARTH, 1988, p. 222). In this way, the State's judicial protection must be offered equally to all citizens, facilitating their access.

In Brazil, the principle guaranteeing access to justice is enshrined in the 1988 Constitution, article 5, XXXV, framed within the Fundamental Rights and Guarantees, more

specifically in Individual and Collective Rights. According to this article, it says that "the law will not exclude injury or threat to rights from the Judiciary's assessment".

As a result of these constitutional guarantees of access to Justice, the Judiciary is overcrowded with processes, making it increasingly slower, less effective and, consequently, less fair. Currently, procedural slowness is a negative factor in the Judiciary and represents a true denial of Justice, constituting a real obstacle to citizens' effective access to the Judiciary and the search for a solution to their conflicts of interest.

Thus, the de-judicialization of conflicts has been sought, with property records being part of this process, considering that access to justice is not limited to access to the judiciary, but rather the possibility of resolving conflicts and demands, considering the duty of the State of judicial protection. As Farrah (2020, p. 27) rightly states, access to justice goes beyond the judiciary.

It can be said that judicial protection concerns the State's duty to resolve conflicts through the application of objective Law in a specific case, being the typical competence of the Judiciary. According to Fux (2002, p. 22), jurisdiction has a protective nature of the order and the person, and its decisions cannot be modified by any other Power, being embodied in res judicata. It should be noted that judicial protection is intrinsic to the citizen's right to access justice.

Bedaque (2009, p. 93) defines jurisdictional activity as the effective protection of rights or obligations through the process. Thus, it is understood that judicial protection aims to protect substantive law through judicial provision. In turn, Yarshell (1993, p. 15) defines jurisdiction as the activity carried out by the State, with the objective of eliminating conflicts, asserting its power, in accordance with the concrete will of the law and seeking pacification.

Marinoni and Mitidiero (2012, p. 78) state that judicial protection must be timely and, in some cases, preventive, requiring observation of each specific case. It is important to highlight that judicial protection can come in three forms: cognition or knowledge; of execution; and security or precautionary.

Through the judicial protection of cognition or knowledge, according to Zainaghi, (2014, p. 4,679) what is sought is the understanding of the dispute through evidence, subdivided into five types: declaratory (declares a right); constitutive (declares the

constitution or modification of a right); condemnatory (imposes on the party the payment, delivery or obligation to do what was disputed); commandmental (expresses an order, which if broken leaves the individual subject to the crime of disobedience illustrated in article 330 of the Penal Code); and executive "*Lato sensu*" (presents an immediate executive nature, so that the provision should be granted, dispensing with the executive process). Regarding the modalities of judicial protection of cognition, Miranda says:

> Declarative action is action regarding whether or not the legal relationship is; As a rule, the constitutive action is linked to the constitutive claim,*res deducta*, when the claim to legal protection is exercised. When the constitutive action is linked to the law, immediately, there is no*res in iudicium deducta*, constitutive claim (there is this, in terms of the subjective right to legal protection, which is specialization, through the exercise of the claim to legal protection in a constitutive claim); the action of condemnation presupposes that the person or persons to whom it is directed have acted against the law, have caused damage and therefore deserve to be condemned (*comdamnare*); Mandatory action concerns acts that the judge or other authority must order to be carried out. The judge issues the warrant, because the author has a claim to the order and, exercising his claim to legal protection, proposed a mandamental action; executive action is the one by which something that should be there, but is not, is transferred to someone's legal sphere (MIRANDA, 1970, p. 32).

Fux (2002) states that the protection of cognition is the most expressive core of jurisdiction, in the case of judicial protection that aims to know the facts and then carry out the trial, with the judiciary imposing its will with coercion and authority.

Enforcement guardianship is characterized by the expropriation of an asset, as highlighted by Zainaghi (2014, p. 4,680). In this type of guardianship, cognition is dispensed with due to the fact that there is a liquid, certain and enforceable title. Fux (2002, p. 25) adds that in this type of judicial protection, material acts are the focus, resulting in greater decentralization of procedural activities, as well as a greater number of protagonists.

Security or precautionary protection, in turn, is that which aims to protect the conditions of fact and law so that justice is provided effectively. As Fux (2002, p. 25) explains, precautionary protection emerged with the aim of serving cognition and execution.

In the case of administrative guardianship, the State exercises a preventive and constitutive manner in the field of private subjective rights, including the notarial function. Thus, administrative supervision in Notarial and Registration Law is exercised by the notary, who must act to guarantee documentation and authenticity, preventing problems from occurring for the citizen. When purchasing a property, for example, the aim is to make the

acquisition of it and the conditions under which it was acquired, with the intervention carried out by the notary.

However, if the property to be acquired belongs to an orphan minor or an individual considered incapable, the intervention of the notary is not enough, the State entering the scene in the form of a judge who must intervene through an act of voluntary jurisdiction. It is also important to mention that the public function of administrative guardianship exercised by notaries does not emanate from the Judiciary, its role is to administratively protect the private rights of citizens, configuring itself as an organ of this guardianship (FABIÃO, 2007, p. 75).

Thus, administrative guardianship is that exercised by the State in both a preventive and constitutive manner aiming to protect the private subjective rights exercised by the notary or notary. It can be said, therefore, that the administrative supervision exercised by the notary aims to protect private interests.

It is worth highlighting, based on Aristides Sobrinho (2002, p. 14), that the administrative guardianship exercised by the notary does not emanate from the Judiciary, he does not assist the jurisdictional activity, he acts in function of the administrative guardianship of private rights, he is a body that aims to guarantee the exercise and enjoyment of these rights, in addition to composing legal transactions under private law.

In view of the above, it appears that the State acts under administrative supervision with the administrative rights of the private sector, being its responsibility to guarantee private rights, with the community being served in its interests, through the actions of the notary or registrar.

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