

NOTARIES PUBLIC IN LATE MEDIEVAL TRANSYLVANIA: PREREQUISITES FOR THE RECEPTION OF A LEGAL INSTITUTION*

Adinel Ciprian Dincă**

Abstract: *The introduction in the 14th-century and the further development of public notaries in Transylvania – almost exclusively in urban communities inhabited by German population – can be regarded as a peculiarity of the medieval legal system from Hungary. This establishing of a group of professional law-experts in Transylvania with regard to the European notarial system has not been thoroughly studied up to this moment. Therefore, the aim of the current paper is to open a field of discussion regarding the subject, starting in the first place with general considerations concerning the level of literacy reached in the province and the reception of the written law in Transylvania.*

Keywords: Transylvania, Middle Ages, notary public, literacy, canon law, parish church.

*Ne contractuum memoria deperriret,
inventum est tabellionatus officium,
quo contractus legitimi ad cauthelam
presentium per memoriam futurorum
manu publica notarentur¹.*

A very popular subject in contemporary medieval studies refers to the problem of continuity or break between Antiquity and the Middle Ages. Legal history engages the “continuity debate” by bringing forward its own arguments. Indeed, the practice of using notaries public to draft legal documents in non-contentious matters has clear ancient roots in the Roman *tabelliones* of classical antiquity. This is in fact one of the few public offices that not only is based on Latin republican traditions, but also inherits in selected regions an almost completely documented historical evolution during the early Middle Ages, up to the rediscovery of civil law and legal studies in the 12th-century. Following the collapse of the Roman Empire in the West, this form

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** PhD, Senior Researcher III, “G. Barițiu” Institute of History, Cluj-Napoca, adinel.dinca@ubbcluj.ro

¹ Archivio Segreto Vaticano, *Registra Lateranensia* 818, fol. 296 r-v / olim f. cclxxxii. This specific document is published and commented in its historical context by Kornél Szovák, *A Hungarian Humanist in Rome*, in *Gli archivi della Santa Sede e il Regno d'Ungheria (sec. 15-20). Az Apostoli Szentzsék Levéltárai és Magyarország (15-20. sz.). Studi in memoriam del professor Lajos Pásztor, archivista ungherese dell'Archivio Segreto Vaticano*, ed. by Gaetano Platania, Matteo Sanfilippo, Péter Tusor, Budapest – Roma, 2008, p. 11-22. About the *arengae* of the late medieval charters of the Papal Chancery, see Karl August Fink, *Arengen spätmittelalterlicher Papsturkunden*, in *Mélanges Eugène Tisserant IV*, 1964 (Studi e testi 234), p. 205-227.

of sanctioned legal expertise survived in areas like Italy, southern France and Spain, and was introduced further into the northern regions as literate modes of conducting business and law, that become steadily more entrenched from around 1200². Though basically a constant and equal institution throughout the Latin Europe of the Middle Ages, the notary public expressed itself quite differently on a regional basis and took usually irregular forms, shaped by local needs and customary practices. The plenary development achieved in Italy was never reached outside the Mediterranean area, where, for instance, Bologna around 1300 came to be known as a “republic of notaries”³, due to its hundreds of legal experts active at the same time, who were involved even in the political decisions of their home city.

² The pertinent literature concerning the medieval notary public (and also its post-medieval evolution) is far too extensive to be summarized easily within an introductory article like this one (see for instance the dedicated *Bibliographie zur Geschichte des deutschen Notariats*, ed. by Bundesnotarkammer, Ausschuss Notariatsgeschichte, introduction and indices by Wolf-George Harms, Würzburg, 2007). A bibliographical documentation on *notary public* or *notarial instrument*, *notarial sign* etc. at full length can be achieved with help provided by internet based instruments like <http://www.hgw-online.net/GHWBibliographie/>; http://opac.regesta-imperii.de/lang_de, <http://www.phil.uni-passau.de/histhw/bibliographie/> or with the assistance of the well-known medieval bibliographies compiled in Spoleto or in Leeds. The following introductory considerations are based mainly on the following general works, collected papers and case-studies: J. C. Brown, *The Origin and Early History of the Office of Notary*, in “Juridical Review” 47, (1935), p. 201-240, 355-417; Armando Petrucci, *Notarii. Documenti per la storia del notariato italiano*, Milano, 1958; Armin Wolf, *Das öffentliche Notariat*, in *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte. 1. Band, Mittelalter (1110-1500): Die gelehrten Rechte und die Gesetzgebung*, ed. by Helmuth Coing, München, 1973, p. 505-514; *Notariado público y documento privado: de los orígenes al siglo XIV*, vol. 2. Valencia, 1989; Peter Rück, *Die Anfänge des öffentlichen Notariats in der Schweiz (12.-14. Jh.)*, in “Archiv für Diplomatik”, 36, (1990), p. 93-124; Frank Morgner, *Notariatsakten*, in *Einführung in die Interpretation historischer Quellen. Schwerpunkt Neuzeit*, Paderborn, 1992, p. 81-94; R. Engelhardt, *Notariat und Notariatsurkunde. Überlegungen zu ihrer Rezeption und Verwendung im mitteleuropäischen Raum*, in “Archivmitteilungen”, 42, 1993-1, p. 21-25; Otto P. Clavadetscher, *Die Notariatsurkunde auf dem Weg vom Süden nach dem Norden*, in *Kommunikation und Mobilität im Mittelalter*, Sigmaringen, 1995, p. 221-230; Jürg Schmutz, *Notariatsakten als prosopographische Quelle für die Universitätsgeschichte. Ein Neuansatz zur Auswertung der Memoriali del Comune von Bologna*, in “Quellen und Forschungen aus italienischen Archiven und Bibliotheken”, 76, (1996), p. 125-146; Andreas Meyer, *Felix et inclitus notarius. Studien zum italienischen Notariat vom 7. bis zum 13. Jh.*, Tübingen, 2000, (Bibliothek des Deutschen Historischen Instituts in Rom. 92); Toni Diederich, *Siegelurkunde – Notariatsinstrument – Schreineintrag. Zur Rechtssicherung von Liegenschaften und Erbzinsen im spätmittelalterlichen Köln*, in “Archiv für Diplomatik”, 53, (2007), p. 353-366; *Il notaio e la città: essere notaio: i tempi e i luoghi (secc. XII - XV); atti del convegno di studi storici*, Genova, 9 - 10 dicembre 2007, ed. by Vito Piergiovanni, Milano, 2009 (Studi storici sul notariato italiano 13); *Handbuch zur Geschichte des Notariats der europäischen Traditionen*, ed. by Mathias Schmoeckel and Werner Schubert, Baden-Baden, 2009 (Rheinische Schriften zur Rechtsgeschichte 12); Reinhard Härtel, *Notarielle und kirchliche Urkunden im frühen und hohen Mittelalter*, Wien-München 2011 (Historische Hilfswissenschaften 4); *Il notaio romano tra sovranità pontificia e autonomia comunale (secoli XIV-XVI)*, ed. by Maria Luisa Lombardo, Milano, 2012 (Studi storici sul notariato italiano 15).

³ Reinhard Härtel, *Notarielle und kirchliche Urkunden im frühen und hohen Mittelalter*, Wien-München 2011, p. 92.

In other European countries, along a northern alignment from England to Hungary, where the institution of the notary public was an alien one, being imported either directly from Italy or from France at a rather later time and somehow in competition with various legal customs of a local nature, the notarial instrument (and notarial activity, in general) played a substantially diverse role in the public life. This particular type of legal record was not asked within a larger social and economic context, but in specific situations concerning matters of the Church or “international” affairs. Basically, the “Italian pattern” of the notary public as a free professional for hire is altered in the northern regions of the Late Middle Ages, *notarius (publicus)* being occupationally less independent and with a different social position, frequently a dependable salaried employee of ecclesiastical or municipal structures and making private use of his notarial authorization as a “side job”. An obvious narrow area of expertise and competence meant consequently a limited number of practitioners, as well as certain limitations in terms of organizing the practice. The institution of the notary public from much of the northern and central Europe in the Late Middle Ages was not familiar with the idea of professional corporations or guilds, nor with technical solutions for their scribal activity, such as an ample and constant registration of the issued instruments. Quite rare to encounter are also (outside the western Mediterranean) evidence regarding general aspects of notarial activity, like formularies of acts or theoretical approaches and descriptions of this profession.

Despite such variations and adaptations to local realities and traditions, the institution under consideration kept its original message unmodified, regardless of the place of its manifestation. It was first and foremost an active element of uniformity, of effective standardization concerning the legal procedure within the boundaries of Catholic Europe. It is of crucial importance for the entire Latin West, that the main “export” agent of the “learned law” and of the model for the notary public was the papal legation. Another key element for any discussion about the European significance of the notaries’ public activity is its close connection with the medieval urban environment. The urban setting of the High and Late Middle Ages is in the first place an entity established on legal foundations, entitlements and immunities, granted in writing according to the existing customary law, usually in a highly official form. Documentary practices were vital elements in the medieval communal life⁴. The office addressed in this article is for this reason

⁴ For the general context of pragmatic literacy in the urban environment, *La diplomatie urbaine en Europe au Moyen Âge. Actes du congrès de la Commission internationale de diplomatique, Gand, 25-29 août 1998*, eds. W. Prevenier, T. de Hemptinne, Louvain/Apeldoorn, 2000 (Studies in Urban Social, Economic and Political History of the Medieval and Early Modern Low Countries, 9). As a general reference see also E. Pitz, *Schrift- und Aktenwesen der städtischen Verwaltung im Spätmittelalter*, Köln, Nürnberg and Lübeck, 1959 or *Medieval Latin: An Introduction and Bibliographical Guide*, eds. F. A. C. Mantello, A. G. Rigg, Washington D.C., 1996, p. 205.

primarily an urban institution, as the notarial instruments were widely (and mostly across the borders) recognized and accepted. The commercial revival and innovation, with the leading role and forefront of the Southern Europe, is a strong ally of the notarial activity, a situation to be remembered when discussing the diffusion of this legal institution in Hungary and in its eastern territorial part, Transylvania.

Some investigation has been undertaken with regard to the institution of the notary public in medieval Hungary, but none of the published works has aimed so far to offer an exhaustive monographic treatment of the subject. Beside an analytical article written by Enikő Csukovits⁵, which is chiefly interested in the beginnings of the phenomenon in the early 14th century, sketching then the evolution for the following centuries, the targeted bibliography contains – as far as I am aware – either not so recent approaches⁶ or specific case studies⁷. Such contributions are indeed of great value, providing a deep insight into the subject, though they cannot replace a much desired larger or more comprehensive explanation of this institution. The entire scholarly literature agrees however, that the office of the notary public did not attain the position of importance in Hungary (that included also the Transylvanian territories), that it possessed in the southern countries of Europe. The reasons can be found in the social, economic and legal conditions of the country during the Middle Ages. And indeed, there was from the beginning a double obstacle or resistance in Hungary, elements that stopped an earlier development of the service offered by notaries public⁸.

In the first place, there was a wide network of convents, cathedral chapters and collegiate churches called “places of authentication”, *loca credibilia*, throughout the Hungarian Kingdom, entitled to issue official documents invested with public authority, *fides publica*⁹. It must be also added briefly that the legal

⁵ Csukovits Enikő, *Közjegyzők a középkori Magyarországon in 700 éves a közjegyzőség Magyarországon. A 2008. november 27-i jubileumi konferencián elhangzott előadások szerkesztett változata*, ed. by Rokolya Gábor, Budapest, 2008, p. 54-73.

⁶ Érdújhelyi Menyhért, *A közjegyzőség és hiteles helyek története Magyarországon*, Budapest, 1899; I. Barta, *Középkori közjegyzőségeink történetéhez*, in *Emlékkönyv Szentpétery Imre születése hatvanadik évfordulójának ünnepére*. Budapest, 1938, p. 31-46.

⁷ J. Köblös, *Az egyházi középélet Mátyás és a Jagellók korában*, Budapest, 1994, p. 57-66; Bónis György, *A sasadi tizedper közjegyzői a XV. század derekán* in “Levéltári Közlemények”, 40 (1971) 103-113; Bónis György, *Magyi János formuláskönyve és a gyakorlati jogtanítás in Jubileumi tanulmányok. A pécsi egyetem történetéből*, vol. I, ed. by Csizmadia Andor, Pécs, 1967, p. 225-258; Dreska Gábor: *Jegyzetkönyv, mintakönyv, tankönyv. A Magyi-formulárium in Arcana tabularii. Tanulmányok Solymosi László tiszteletére*, vol. I, ed. by Bárány Attila, Dreska Gábor and Szovák Kornél. Budapest, 2014, p. 43-52.

⁸ Iván Borsa, György Györffy, *Actes privées, „locus credibilis” et notariat dans la Hongrie médiévale*, in *Notariado público y document privado: de los orígenes al siglo XIV. Actas del VII Congreso Internacional de Diplomática*, Valencia, 1986, vol. 2, p. 941-949.

⁹ György Bónis, *Les autorités de „foi publique” et les archives des „loci credibiles” en Hongrie* in “Archivum”, 12, (1962) p. 87-104.

significance and probative value of the documents in the juridical practice of medieval Hungary, meaning the recognition of charters as reliable evidence in a court of law, was the outcome of a long process¹⁰. Up to the end of the twelfth century, old charters were seldom mentioned, since they alone did not provide strong enough proof without the support of witnesses' (oral) testimonies. Starting with the 13th-century, in a much wider context, the situation changed radically, and charters were generally accepted in all fields of administration and jurisdiction¹¹. These places of authentication assumed a notarial function, as they had as a primary task to meet most of the requirements on legal and administrative writing that rose constantly not only at a public level, but also at a private one¹². Therefore, to such *loca credibilia* was reserved in the history of Hungarian pragmatic literacy the central role played in other places by the classic form of the notary's public institution. The notary public never succeeded in challenging the importance of these "places of authentication".

The urban settlements of the Hungarian crown¹³ meanwhile developed particular solutions not only for issuing legal documents, but also for storing and protecting texts of capital importance. One of these parallel ways was the use of notaries public, who were responsible mainly for drafting legal acts that needed recognition outside the country. For internal correspondence and written communication the town's own notaries were responsible not only for composing letters, but for the administration and storage of documents. There is enough evidence though that the notaries public made available their knowledge to municipal structures and accepted work as scribes for an urban council in return for payment.

¹⁰ Csukovits Enikő, *Egyházi és világi oklevelek hitelessége a szentszéki bíróságok előtt (Egy vizsgálat tanulságai)* in *Emlékkönyv Jakó Zsigmond születésének nyolcvanadik évfordulójára*, Kolozsvár, 1996, p. 126-134.

¹¹ László Solymosi, *Die Entwicklung der Schriftlichkeit im Königreich Ungarn vom 11. bis zum 13. Jahrhundert*, in *Schriftkultur zwischen Donau und Adria bis zum 13. Jahrhundert. Akten der Akademie Friesach „Stadt und Kultur im Mittelalter“. Friesach (Kärnten), 11.–15. September 2002*, ed. by Reinhard Härtel, Günther Hödl, Cesare Scaloni and Peter Štih, Klagenfurt, 2008, p. 483-526; Katalin Szende, *The Uses of Archives in Medieval Hungary in The Development of Literate Mentalities in East Central Europe*, ed. by Anna Adamska and Marco Mostert, Turnhout, 2004, p. 107-142.

¹² Franz Eckhart, *Die glaubwürdigen Orte Ungarns im Mittelalter* (Mitteilungen des Instituts f. Österreichische Geschichtsforschung, Ergänzungsband 9, Heft 2), Innsbruck, 1914; László Solymosi, *Die glaubwürdigen Orte (loca credibilia) Ungarns im 14.–15. Jahrhundert*, in "Archiv für Diplomatik, Schriftgeschichte, Siegel- und Wappenkunde", 55, (2009): 175–190; R. Härtel, *Notarielle und kirchliche Urkunden im frühen und hohen Mittelalter*, Wien, München, Oldenbourg, 2011, p. 200-205.

¹³ Katalin Szende, *Die Erforschung der mittelalterlichen Städte Ungarns seit 1989*, in *Towns and Cities in the Middle Ages and the Early Modern Period as a Research Topic over the Past Two Decades. Papers and expanded works from the 30th Research Conference of the Prague City Archives*, held on 11th and 12th October at the Clam-Gallas Palace in Prague, compiled by Olga Fejtová, Michaela Hrubá, Prague, 2013, p. 439-470.

In the second place, there was the privileged position of the customary law within the legal system of the Hungarian Kingdom until the 14th century. An illustrative example in this respect is precisely what the papal judges experienced in Hungary shortly after 1300: *Item dicit (...), quod in regno Ungarie non secundum iura civilia vel canonica in causis procedatur, sed secundum consuetudinem regni et statutem, et ideo copia advocatorum in regno non existat, nec possit habere de facilli advocatum ideoneum (...)*¹⁴.

The institution of the notary public was brought into Hungary by the pontifical legations of the 13th and early 14th century¹⁵. The legations from 1228-1234, 1279 and 1301-1303 did not produce long-lasting effects in this respect, the issued notarial instruments remained within Hungarian boundaries merely extraordinary legal records produced exclusively by non-domestic scribes. The Hungarian legation of Cardinal Gentilis was not only of longer duration (1308-1311) and very intense in terms of legal actions and proceedings, but also more effective in implementing institutes of the canon law. It is no coincidence, that the oldest preserved instruments written by local notaries are known precisely from the second decade of the 14th century (1317, 1319)¹⁶. Transylvania was also intensely involved in this judicial endeavour, which has been made by the papal judges to restore order in Hungary in a difficult time. Despite progress, visible in the increasing numbers of the foreign and domestic notaries public, their office remained for the 14th- and even in the early 15th-century a marginal institution within the framework of the Hungarian legal system, a position imposed (as already stated) by competition with the places of authentication¹⁷.

¹⁴ *Acta legationis Cardinalis Gentilis. Gentilis bibornok Magyarországi követségének okiratai 1307-1311* (Monumenta Vaticana historiam Regni Hungariae illustrantia Series I, Tomus 2) Budapest, 1885, p. 313.

¹⁵ Csukovits Enikő, *Közjegyzők a középkori Magyarországon*, p. 58-59. Regarding the papal legations in medieval Hungary, see Gergely Kiss, Gábor Barabás, *Papal Delegates in Hungary in the XIth-XIIIth Centuries – Online Database* (2014–2016), in “Specimina nova”, Sectio Mediaevalis, VIII, (2015), p. 175-178.

¹⁶ Csukovits Enikő, *Közjegyzők a középkori Magyarországon*, p. 62.

¹⁷ Eloquent in this respect are two pieces of different documentary evidence. Firstly, a document issued by the cathedral chapter from Győr at 1350.III.9, stating in the very first line of the charter: *... in regno Hungarie, ubi non est usus tabellionum...*, (DL 41133, available on-line [http://archives.hungaricana.hu/en/charters/view/43337/?query=%3D\(41133\)&pg=1&bbox=492%2C3630%2C5610%2C-917](http://archives.hungaricana.hu/en/charters/view/43337/?query=%3D(41133)&pg=1&bbox=492%2C3630%2C5610%2C-917)). This phrase is strikingly similar to what a papal legate noted about the English situation in the first half of the 13th century: *tabellionum usus in regno Anglie non habetur*, see Patrick Zutshi, *Notaries public in England in the fourteenth and fifteenth centuries*, in *Estudios sobre el Notariado Europeo (siglos XIV-XV)*, ed. by Pilar Ostos and M. a Luisa Pardo, Sevilla, 1997, p. 94. A second indication of the local preference for the places of authentication is offered by the royal decree from 1405.IV.15, where explicitly the competence of a notary public is reduced: *Decrevimus in super, quod nullus publicus notarius in causis, que inter duos laicos vertuntur, sive coram iudice ecclesiastico, sive seculari procurare audeat vel ullatenus advocare, sed nec extraneum testimonium inter cives locum habeat, nec nobiles seu viri ecclesiastici inquisitiones possint*

The current state of research does not yet allow us to consider in detail the history of notaries public in medieval Transylvania, the eastern province of the Hungarian crown, in all its necessary details. Even a more general outline¹⁸ concerning the role played by their activities within the legal system of this province of the Hungarian Crown is difficult to achieve. The few attempts made by Sándor Tonk¹⁹ to provide a detailed overview still remain a very valuable source of information and a starting-point for further analysis, but in the light of the latest data collected with the help of digital technology by various databases²⁰, considerations of this kind must be substantially reexamined. Tonk engages thoroughly the question of economic and social conditions of the Transylvanian notaries public, as well as those details concerning their origin, education and career, which can still be gathered from the surviving sources. Another strong point of his analysis is the detailed consideration of the notarial instruments styled in Transylvania and the provided list of approximately 110 notaries public, known to have been active in the land until the Reformation. Less convincing is, in my opinion, his argument about the historical conditions that allowed the appearance and the spreading of the institution in Transylvania.

Amendments to the older view on this matter are requested not only in regard to the quantitative analysis, or concerning the examination of specific details already discussed above, such as the social and economic position of the Transylvanian notaries, the diplomatic of the *instrumenta*, or the evolution of the *signa notariorum*²¹, but also to better understand the wider cultural preconditions that determined a certain stage of development of notarial activity in pre-Reformation Transylvania. The comparatively important presence of notaries

faccere contra eos (Franciscus Döry, Georgius Bónis, Vera Bácskai, *Decreta Regni Hungariae Gesetze und Verordnungen Ungarns 1301–1457*, Budapest, 1976 (Magyar Országos Levéltár kiadványai, II. Forráskiadványok 11), p. 193).

¹⁸ Francisc Pall, *Diplomatica latină cu referire la Transilvania (sec. XI-XV)*, in *Documente privind istoria României, C, Introducere*, vol. II, București, 1956, p. 245; Sigismund Jakó, Radu Manolescu, *Scrierea latină în Evul Mediu*, București, 1971, p. 83-84.

¹⁹ Tonk Sándor, *A középkori közjegyzőség Erdélyben*, in *Művelődéstörténeti tanulmányok*, ed. by Csetri Elek, Jakó Zsigmond, Sipos Gábor, Tonk Sándor, București, 1980, p. 36-61, specially p. 37-38, 41; Idem, *Die Notariatsurkunden und die Notarszeichen in Siebenbürgen*, in *Graphische Symbole in mittelalterlichen Urkunden Graphische Symbole in mittelalterlichen Urkunden, Beiträge zur diplomatischen Semiotik*, ed. by Peter Rück (Historische Hilfswissenschaften 5), Sigmaringen, 1996, p. 709-715.

²⁰ <http://archives.hungaricana.hu/en/charters/>;
<http://urts81.uni-trier.de:8083/>; <http://www.arhivaistorica.ro/>.

²¹ There is a very interesting collection of hand-made copies of notarial signs, made probably by Dr. Georg Adolf Schuller (former keeper of manuscripts in the Brukenthal Library, see *Schriftsteller-Lexikon der Siebenbürger Deutschen*, ed. by Harald Roth, vol X, Wien-Köln-Weimar, p. 328-342) in the first quarter of the 20th-century, now kept in the Romanian National Archive, County Branch Sibiu, *Colecția Brukenthal*, LL₁₋₂₉ 166 (olim 180).

public in Transylvania²² (considering the larger Hungarian context) has been repeatedly explained in a rather simplistic manner: owing to unsuccessful trials before papal judges who were examining diverse issues in Hungary from 1307 to 1310, the clergy of the western *hospites* living in the southern area of the province learned the lesson and decided consequently to stimulate notarial activity in the midst of their communities²³. Such a linear interpretation of a historical phenomenon understood as a reaction-type event could have indeed played a certain role, but cannot be seen as the last word in this respect. The introduction and spreading of the legal institution of the notary public in Transylvania is part of a larger correlation of developments at the local level of society: the progress of the general use of basic literacy, the better access to higher education, the evolution of urban structures and of churchly communities. This is precisely the aim of the present paper, to attempt to offer a glimpse into the particular situations that played a role in the spreading of the legal practice of *notarius publicus*, a significant factor for the establishment of a “legal-rhetorical mentality”²⁴ in a peripheral zone of Latin culture.

The 14th century remains a time of slow advancement of the aforementioned office in Transylvania. Some time between 1328 and 1330, a notary public seems to have been active in Sebeș (Mühlbach; Szászsebes)²⁵, however no issued *instrumenta* have survived, nor does other evidence give additional prove to its existence. Until late, towards the end of the century, the few remaining instruments written on Transylvanian matters seems to have been produced exclusively by non-domestic *notarii publici*²⁶. Local notaries public are mentioned by the sources only for a later

²² Sándor Tonk, *Die Notariatsurkunden und die Notarszeichen in Siebenbürgen*, p. 710, estimates the total of notarial instruments preserved in Transylvania or regarding this province at approximately 250, a figure that in the light of new research should definitely be augmented, taking into consideration not only the original *instrumenta*, preserved until the present day, but various medieval and modern copies of such legal records. Meanwhile, around 35.000 documentary texts are evaluated to be the entire legacy of medieval Transylvanian charters, according to Sigismund Jakó, *Cercetarea izvoarelor medievale diplomatice în Transilvania*, in *Codex diplomaticus Transsylvaniae. Diplomata, epistolae et alia instrumenta litteraria res Transsylvanas illustrantia. Erdélyi Okmánytár. Oklevelek, levelek és más írásos emlékek Erdély történetéhez*, I (1023-1300), ed. by Zsigmond Jakó, Budapest, 1997 (A Magyar Országos Levéltár Kiadványai. II: Forráskiadványok 26), p. 33-60.

²³ Csukovits Enikő, *Egyházi és világi oklevelek hitelessége a szentszéki bíróságok előtt (Egy vizsgálat tanulságai)*, in *Emlékkönyv Jakó Zsigmond születésének nyolcvanadik évfordulójára*, Kolozsvár, 1996, p. 134.

²⁴ Ronald G. Witt, *The Two Latin Cultures and the Foundation of Renaissance Humanism in Medieval Italy*, Cambridge, 2012, p. 229 ff..

²⁵ *Urkundenbuch zur Geschichte der Deutschen in Siebenbürgen*, vol. I, 1191-1342 (= UB 1), ed. by Franz Zimmermann, Carl Werner, Hermannstadt, 1892, p. 421-426, no. 465 (1328-1330.V.30).

²⁶ UB 1, no. 460. Avignon, (1328.V.4); *Urkundenbuch zur Geschichte der Deutschen in Siebenbürgen*, 2: 1342-1390 (= UB 2), ed. by Franz Zimmermann, Carl Werner, Hermannstadt, 1897, no. 666, (1351.X.24); no. 729, (1357.X.30).

period, in 1388²⁷, respectively in 1397²⁸. However, even before the royal decree of 1405 that regarded the notaries public as an ordinary (but ancillary) presence in the urban environment of Hungary, such experts in legal matters seem to have been influential for the entire pragmatic literacy of certain towns. Perhaps the very same *Sthephanus Heynczimanni*, acting *plebanus* from Râșnov/Rosenau and *notarius publicus*, who issued in the year 1388 from Brașov/Kronstadt an instrument concerning the private business of the local clergy, could have been charged with drafting the charters of the same town. Brașov's documentary texts around 1390 are obviously styled in the form of notarial instruments, not only in respect to the lay-out as a *charta transversa*, but also in matters of internal styling (for instance, the initial protocol that starts with the invocation *In nomine Domini, amen*)²⁹. This hypothesis will be examined in the near future with the help of palaeographical methods. Such a significant role played by notarial activity for the urban writing experience is brought to light by a letter from 1476 written by magister Paulus, the notary of the same town of Brașov to his employers, *iudici et ceteris iuratis civibus civitatis Brassouiensis*, Paulus – himself acting as a notary public³⁰ – reporting about some disputes of Transylvanian settlements with the cathedral chapter from Oradea (Nagyvárad). In order to settle this quarrel caused by the toll (*teolonium*) imposed by the ecclesiastical party, the towns were expected to present written privileges (*instrumenta et privilegia*)³¹. Used mainly as interesting evidence for the medieval development of archival activity within the urban milieu of the province, the document and especially the notary's terminology and choice of words is by the use of the sequence *instrumenta et privilegia* (notarial instruments and privileges) not fortuitous and indeed very relevant even for the history of notaries public at the frontier of the medieval Latin culture.

Not accidental is also the fact that the first domestic notaries public in Transylvania are closely related to the parish church. They were either parish priests, or a member of the parish clergy (*rector scholae, altarista* etc.). This ecclesiastical institution, and above all those churches of the *hospites theutonici/saxones* of the land, played a determining role in the history of the literacy in medieval Transylvania, as

²⁷ UB 2, no. 1230. Brașov (Kronstadt) 1388.VII.26: *Sthephanus Heynczimanni in villa Rosarum* [Râșnov/Rosenau] *plebanus diocesis Strigoniensis sacra imperiali auctoritate notarius publicus*.

²⁸ *Urkundenbuch zur Geschichte der Deutschen in Siebenbürgen*, 3: 1391-1415 (= UB 3), ed. by Franz Zimmermann, Carl Werner, Hermannstadt, 1902, no. 1324, (1394.V.26-1409.IX.10), p. 93: *Alexius, etatis quinquagenarius, notarius publicus et rector scholarum in ipsa Stolzenburg*.

²⁹ Arhivele Naționale Române, Serviciul Județean (infra: SJAN) Brașov, Collection: *Colecția de documente a parohiilor evanghelice, jud. Brașov, Bod*, no. 11 (1397.III.23).

³⁰ Sándor Tonk, *A középkori közjegyzőség Erdélyben*, p. 59.

³¹ *Urkundenbuch zur Geschichte der Deutschen in Siebenbürgen*, 7: 1474-1486 (= UB 7) ed. by Gustav Gündisch, București, 1991, no. 4128 (1476.VI.22), p. 101-102 (National Archives of Hungary/MOL, Photographic Collection/DF, No. 246380, lines 6-10).

the most important channel of expression for written culture at a local level³². Due to the absence of regional centres for higher education – universities being ephemeral in medieval Hungary – or of other motivating occupational opportunities at home, the career as a parish priest was seen as a rewarding path in life for young Transylvanian Saxons³³, well-trained at the *studia* from Central Europe or even from Italy or France³⁴. Either in important urban centres, as Sibiu (Hermannstadt), Braşov (Kronstadt) or Bistriţa (Nösen or Bistritz) or in smaller settlements around them, the parish churches display a relatively higher rate of preservation for evidence of a fairly advanced literate mentality: archival records and fragments of book-collections. Remains of this kind reveal a pronounced orientation of the written culture from the above-mentioned regions towards pragmatic requirements, mostly of a legal and economic nature.

A significant proportion of the Transylvanians who are identified as notaries public throughout the medieval period is parochial clergy. Such examples are indeed not frequent for the first half of the 15th century³⁵, but the number of the *clerici* – *notarii* increases afterwards, and especially in the first decades of the 16th century³⁶. Moreover, it has already been observed that no less than 60% of notarial instruments issued for Transylvania dealt with specific questions of the parish church³⁷.

³² Adinel Dincă *Medieval Literacy in Transylvania. Selective Evidence from the Parish Church*, in “Transylvanian Review”, Vol. XXIV, No. 1, Spring 2015, p. 109-121.

³³ Sándor Tonk, *A középkori közjegyzőség Erdélyben*, p. 44.

³⁴ Georg Daniel Teutsch, *Über die ältesten Schulanfänge und damit gleichzeitige Bildungszustände in Hermannstadt*, in “Archiv des Vereins für Siebenbürgische Landeskunde”, 10, (1872), p. 193-232; Sándor Tonk, *Erdélyiek egyetemjárása a középkorban*, Bukarest, 1979; with additions from Maja Philipp: *Die Bürger von Kronstadt im 14. und 15. Jahrhundert. Untersuchungen zur Geschichte und Sozialstruktur einer siebenbürgischen Stadt im Mittelalter*, Köln, Weimar, 1986 (*Studia Transylvanica* 13) and Astrik L. Gabriel, *The University of Paris and its Hungarian Students and Masters during the Reign of Louis XII and François Ier*. Notre Dame, 1986 (*Texts and Studies in the History of Mediaeval Education* 17). Also some remarks on literacy within the discussed area at Adinel Dincă, *Reading Nicholas of Dinkelsbühl in Medieval Transylvania: Surviving Texts and Historical Contexts* in *Nicholas of Dinkelsbühl and the Sentences at Vienna in the Early XVth century*, ed. by Monica Brânzei, Turnhout, 2015, p. 453-471.

³⁵ For example: *Petrus Ungelter de Schelk Minori*, UB 3, no. 1774, (1415.VII.3), no. 1883 (1420.VI.2); *Nicolaus Thoscha de Tartula Braschowiensis*, UB 3, no. 2075, (1429.X.19); *Nicolaus Georgii de Prasmar, clericus Strigoniensis*, UB 3, no. 2442 (1442.IX.17); *Laurencius Michaleis de Villa Dominarum*, UB 3, no. 2594 (1447.VII.23).

³⁶ Some example only from the first quarter of the 16th century, taken from the “Schuller-collection of notarial signs”, see SJAN Sibiu, *Colecția Brukenenthal*, LL₁₋₂₉ 166 (olim 180): *Andreas Francisci de Cibinio, plebanus Montis Sancti Michaelis, notarius*; Arhiva Bisericii Negre, Braşov, I. E, no. 46 (1512.VI.02); *Anthonius (Johannis) notarius publicus*, Arhiva Bisericii Negre, Braşov, I. E, no. 88 (1520.VII.3); *Dominicus Anthony Norwnck de Byrthalben parochus ... et ... notarius*, SJAN Sibiu, “Collection of the Sibiu Chapter”, no. 71 (1523.XI.23).

³⁷ Sándor Tonk, *A középkori közjegyzőség Erdélyben*, p. 42.

The reception and diffusion on a regional level of the notarial “trade” is to be understood within the context of a broader access of young German-speaking Transylvanians to university education (starting with the middle of the 14th century) and within the advancing legal requirements typical for the urban environment. Furthermore, the educated parochial clergy, forming quite simply the intellectuals of the land, was the main vehicle for introducing into Transylvania the written law, either civil or canon. A prerequisite for the legal recognition of notarial instruments in the domestic legal procedure or their destination for the courts abroad is exactly the reception of the *ius commune*. This phenomenon is documented not only by tracing back those who studied abroad at law schools, but also by putting together the fragments of the libraries owned in the later Middle Ages by the parish churches. The university studies of law³⁸ and research into the accumulation of books (libraries) from the area allow consequently a fragmentary reconstruction of the reception of the written law (*gelehrtes Recht, droit savant*) on the local level³⁹. And again, the parochial church proves itself of a great use in this respect. *Casus legum*, a very important instrument for the canonists in the Middle Ages⁴⁰, found in a copy from 1417 in Cisnădie (Heltau)⁴¹, then the numerous works in the list of books from St. Mary’s church in Sibiu compiled in 1442⁴², or finally the small collection of law-books owned by the church from Ghimbav (Weidenbach)⁴³ are all selective proofs in favour of an interesting reception of legal literature within the province. *Decretum Gratiani, Liber extra, Liber sextus* or *Clementinae constitutions, Codex Iustiniani, Speculum iudiciale* etc., together with many other important names of medieval legal theory (among others Baldus de Ubaldis, Guido de Baysio, Johannes Calderinus, Johannes Andree, Johannes Petrus Ferrariis, Franciscus de Zabarellis, Panormitanus etc.) are available in the medieval

³⁸ György Bónis, *La pénétration du droit romain dans les pays slaves et hongrois*, in *Recueils de la Société Jean Bodin pour l’histoire comparative des institutions*, Bruxelles 1967, p. 77-86.

³⁹ Adinel Dincă, *Schriftkultur im südsiebenbürgischen Raum um 1500/Cultura scrisului în Transilvania de sud în jurul lui 1500*. Exhibition catalogue edited by “Begegnungs- und Kulturzentrum Friedrich Teutsch der Evangelischen Kirche A. B. in Rumänien”, Sibiu, 2013.

⁴⁰ Martin Bertram unter Mitarbeit von Marguerite Duynstee, *Casus legum sive suffragia monachorum. Legistische Hilfsmittel für Kanonisten im späteren Mittelalter*, in “Tijdschrift voor Rechtsgeschiedenis” 51, (1983), p. 317-363.

⁴¹ Archiv der Kirchengemeinde Heltau, Ms. D. 14.

⁴² Robert Szentiványi, *Catalogus concinnus librorum manuscriptorum Bibliothecae Bathyanayanae*, Szeged, Bibliotheca Universitatis Szegediensis, no. 294, p. 158-169.

⁴³ *Item, des Bapst decret myth den decretalen der ablas in das erst, das ander, das dryth, in das 4, 5, 6 decretalen bucher, auch die Clementina und dy Silvestrina*. SJAN Braşov. Collection: *Primăria oraşului Braşov. Colecția socoteli și impozite ale satelor din Țara Bârsei*. Shelf mark: “Pachet XXX/1”. Fol. 1 recto: *Eyne Vermerkunk aller czu stand des pfarhofffs czwr weydenbach wo ychs Michael pfarrer bey der Warheyth hab yn meinnen beruffen eyngang entfängen*.

libraries from Transylvania in considerable number, this time in printed form⁴⁴. Such books were used in the same manner as in other European contexts, namely as instruments of administration and juridical praxis, not as bibliophile values⁴⁵.

In this context and worthy of special mention are those works, either manuscripts or printed, that are directly related to notarial theory or practice. Significant evidence in this respect is the first section (fol. 2-221) of a small manuscript book, copied around 1431-1432 in the Transylvanian market-town of Aiud (Straßburg am Mieresch, Nagyenyed) by a certain *baccalaureus artium, Iacobus Haas*. It contains various canonistic texts (*Casus de summa decretalium Henrici de Merseburg, Johannes Andree De Sponsalibus* etc.), besides a practical treatise of procedural canon law, *Nicolaus Puchnik*⁴⁶, *Processus iudiciarius secundum stilum Pragensem* (fol. 121v-163v)⁴⁷. This work explains also how a notarial document should be used in the context of judicial practice: *forma instrumenti publici* (f. 151v). In the already mentioned library of St. Mary's church from Sibiu one can encounter two important names of Italian notaries: *Rolandinus Pasagerii*⁴⁸ and *Martinus Syllimanis*, the latter however not with a text related to notaries public⁴⁹. Preserving also older historical collections of local provenance, the library of the Romanian National Archive from Sibiu possesses the treatise *Artis notariatus*

⁴⁴ Such texts are present mainly in printed form from the last quarter of the 15th century, see Veturia Jugăreanu, *Catalogul colecției de incunabule*, Sibiu, 1969. Many of the almost 400 *incunabulae* of the Brukenthal-Library from Sibiu are the remains of two historical collections, the library of the local parish church and that of the Dominican Friary of the city.

⁴⁵ Friedrich Schuller von Libloy, *Siebenbürgische Rechtsgeschichte*, vol. I: Geschichte der siebenbürgischen Rechtsquellen; Bd. II: *Geschichte der siebenbürgischen Rechts-Institute*, Hermannstadt, 1854; Vincenzo Colli (ed.), *Juristische Buchproduktion im Mittelalter*, Frankfurt am Main, 2002 (Ius Commune, Sonderheft 155); Giovanna Nicolaj (ed.), *La diplomatica dei documenti giudiziari (dai placiti agli acta – secc. XII–XV). Commission internationale de diplomatique. X congresso internazionale, Bologna, 12–15 settembre 2001*, Roma, 2004; Franz-Josef Arlinghaus, Ingrid Baumgärtner, Vincenzo Colli, Susanne Lepsius, Thomas Wetzstein (eds.), *Praxis der Gerichtsbarkeit in europäischen Städten des Spätmittelalters*, Frankfurt am Main, 2006 (Rechtsprechung 23); Susane Lepsius, Thomas Wetzstein (eds.), *Als die Welt in die Akten kam. Prozeßschriftgut im europäischen Mittelalter*, Frankfurt am Main, 2008 (Rechtsprechung 27).

⁴⁶ Mikuláš Puchnik z Černic, canonist and rector of the university in Prague, see Zdeňka Hledíková, *Nikolaus Puchnik von Cernice († 1402). 1383–1393, 1395–1402 Generalvikar des Erzbischofs von Prag. 1402 Ernannter Erzbischof von Prag*, in Erwin Gatz, Clemens Brodkorb (eds.), *Die Bischöfe des Heiligen Römischen Reiches 1198 bis 1448. Ein biographisches Lexikon*, vol. I, Berlin, 2001, p. 593.

⁴⁷ Universität Bibliothek München, 8-o Cod. Ms. 152, see Natalia Daniel, *Die lateinischen mittelalterlichen Handschriften der Universitätsbibliothek München: Die Handschriften aus der Oktavreihe*, Wiesbaden, 1989, p. 128-131.

⁴⁸ Robert Szentiványi, *op.cit.*, Szeged, Bibliotheca Universitatis Szegediensis, no. 294, p. 168.

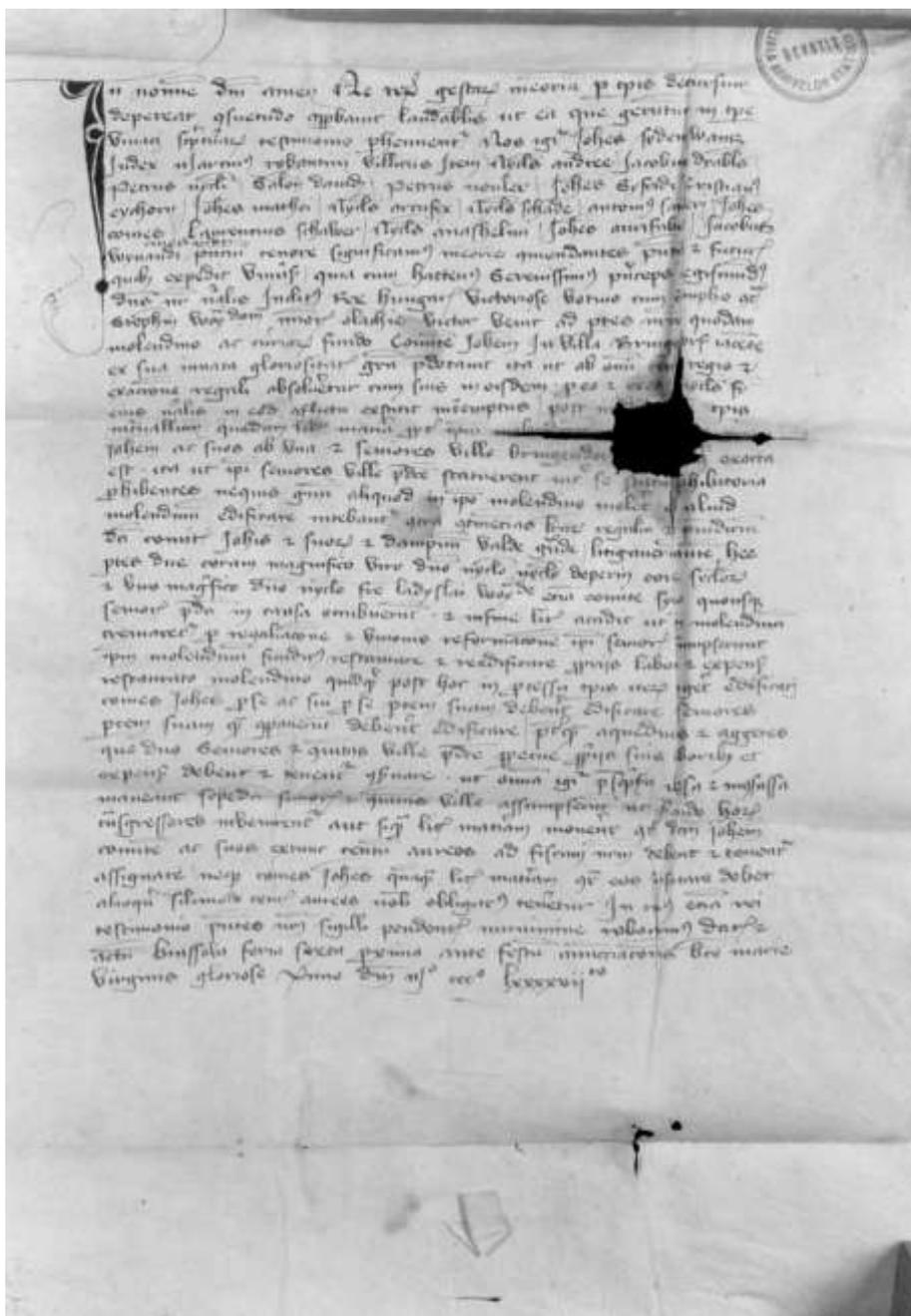
⁴⁹ Brukenthal-Library, Sibiu, Ms. 684, second half of the 14th century: *Explicit summa domini Martini de Sulimano super usu feudorum, deo gratias* (fol. 232v).

sive tabellionum libri duo (Lyon, 1556)⁵⁰, an isolated proof of the constant interest for the subject in Transylvania.

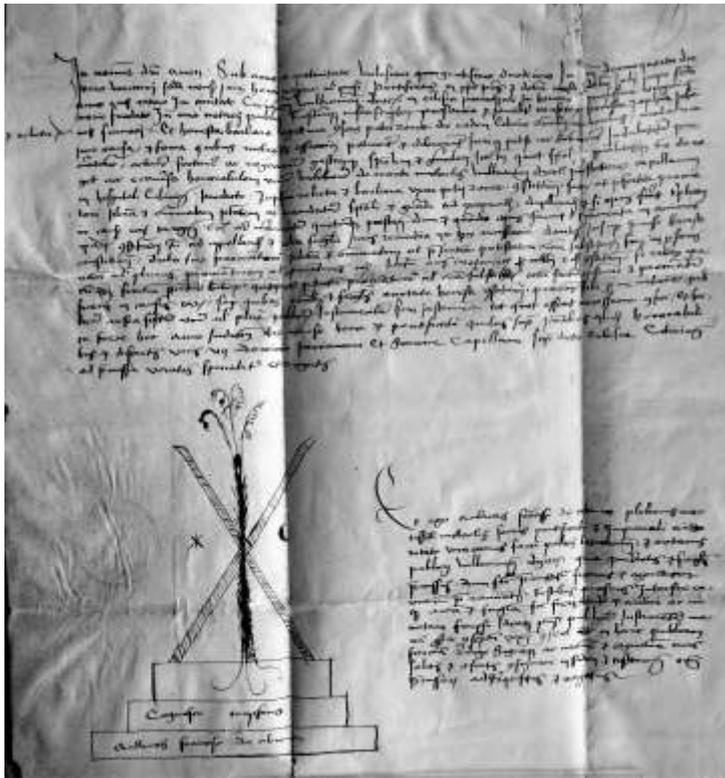
Further research is needed to explore in detail the history of notaries public in late medieval Transylvania. The foundations of their activity in the province must certainly be regarded as part of a complex evolution concerning the beginnings at the same time of a literate mentality and of a “rule-of-law-oriented” society. The fact must be also equally stressed that a group of educated individuals was needed for the introduction of this new rational model of conducting social, economic and legal actions. The parish clergy of the German settlements from Transylvania, first and foremost, assumed that role, because of the favorable historical conditions and although the relation between parish church and notary public was definitely not an isolated regional phenomenon⁵¹, it mirrors an additional image concerning the importance of the parochial system for the entire history of medieval Transylvania.

⁵⁰ See *Books published in France before 1601 in Latin and Languages other than French (French Books III & IV) A-G*, ed. by Andrew Pettegree and Malcolm Walsby, Leiden-Boston, 2012, no. 70531, 70532.

⁵¹ See, for example, Jan Kuys, *Weltliche Funktionen spätmittelalterlicher Pfarrkirchen in den nördlichen Niederlanden*, in *The Use and Abuse of Sacred Places in Late Medieval Towns*, ed. by Paul Trio, Marjan De Smet, Leuven, 2006 (*Mediaevalia Lovaniensia* / 1, 38), p. 27-45; Klaus Graf, *Andreas Nauer († 29. April 1506), Pfarrer zu Lorch und Übersetzer einer Notariatslehre*, in “Blätter für württembergische Kirchengeschichte” 110, (2010), p. 265-271.



1. SJAN Braşov, *Colecția de documente a parohiilor evanghelice, jud. Braşov, Bod*, no. 11 (1397.III.23).



2. SJAN Sibiu, *Arhiva capittului evanghelic Sibiu*, no. 46 (1512.VI.02):
Andreas Francisci de Cibinio, plebanus Mon / tis Sancti Michaelis, ... notarius.



3. SJAN Sibiu, *Parohia evanghelică Mediaș*, no. 170 (olim 219) (1523.V.10):
Dominicus Anthonii Norwnc de Byrthal / ben, parochus Zazalathnensis Albensis Transsilvane diocesis publicus / apostolica et imperiali auctoritatibus notarius.

