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ATYPICAL NOTARY ACTIVITIES

A doctoral dissertation

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Abstract

The considerations included in the work aim to verify the main research hypothesis, which could be summarized in a statement that a notary, under the existing legal system in Poland, may perform activities that are not typical notarial activities (atypical notarial activities), and a wider range of notarial activities would be beneficial for extending the "area of justice" understood as respecting and protecting the rights of citizens, improving the efficiency of the state and its coherence.

In order to verify the hypothesis presented above, an analysis was carried out regarding the boundaries that cannot be exceeded when entrusting a notary with new activities and an attempt was made to answer the question as to what conditions must be met for these activities not to violate the principles of the Constitution, in particular the constitutional principle of the administration of justice by courts, and not to be contrary to the basic systemic principles of the notary profession. In addition to that cognitive goal, the study achieved a practical goal by analyzing individual activities that could be performed by notaries, including comments *de lege ferenda*. In particular, attention was paid to several activities, i.e. issuing payment orders, keeping registers, granting divorces, entering into and dissolving civil partnerships, conducting mediation, acting as an attorney or a counsel.

The basis of the research method used in the work is the dogmatic method. In addition, a historical method was used, which allowed, in particular, to determine the scope of notarial activities performed by the notary in the past. The comparative method used in the work enabled to compare notarial activities performed by notaries in Poland and in other countries where the Latin notary rules are in force, and highlighted the essential features of a notary in this system, in contrast to the common law system.

On the other hand, the use of a statistical method allowed - based on specific numerical data - to describe the studied phenomena and to draw conclusions as to directions of changes.

Finally, the axiological method used in the work attempts to answer the question whether the extension of notarial activities is appropriate and what values it could bring for a citizen, society, state and for a notary.

As presented in this work, a notary public is not a court and does not administer justice, which is associated with making a decision resolving a legal dispute, issued on the basis of appraisal activity. Therefore, when considering the participation of a notary in legal protection activities one must determine when a dispute arises, what types of decisions under legal protection may be attended by a notary and under what conditions they can be taken.

The most important condition for such activities should be the fulfillment of the right to a court trial, which is protected in the Constitution and in the acts of international law cited in this work. This can be guaranteed if the court has the right to final verification of these decisions. Moreover, a decision in a case that may be aided by a notary should be connected with deciding on the formal conditions of the claims submitted, without examining their validity, although this does not mean that the notary is to be deprived of any decision-making powers when performing such actions.

When entrusting a notary with new activities, one must not forget about an important systemic principle of this profession, which is impartiality, which allows this occupation to be distinguished from other legal professions.

Keeping in mind the above limitations, an analysis was made of individual notarial activities that could be performed by notaries.

Considering a proposal for notaries to grant divorces, attention was drawn to the need to make the divorce procedure less formalized and to the fact that a divorce with the consent of both parties before a notary does not increase conflict between the parties, but even motivates them to adopt a conciliatory attitude.

A notary may also participate in concluding and dissolving civil partnerships, although this structure is not known to Polish law so far. The presented proposal to enter into civil partnerships on the basis of an agreement in the form of a notarial deed is based on the great freedom in shaping property and personal relations between spouses.

Another proposal is a register of marriage contracts kept by a notary office, which would be an effective and desired way to give spouses certainty that the contract is effective against third parties. It would also be important for creditors, as it could provide them with

reliable information on the possibility of pursuing their claims without unnecessary formalities. Also, a power of attorney register could in many cases provide the parties to a legal transaction with certainty as to the proper authorization of persons acting as proxies. In connection with the existence of the Notary Register of Wills, it seems important to note that the introduction of an obligatory access to the register after a testator's death would certainly contribute to the fulfillment of a testator's last will.

Issuing orders for payment by a notary would be a chance for creditors to shorten the waiting time for an enforcement order, and direct contact with the person issuing the document, who is obliged to provide explanations to parties, could be desirable for both the creditor and the debtor.

In the case of mediation, it seems impossible to include such activity in the statutory catalog of notarial tasks. A notary cannot be obliged to conduct mediation, but should be able to do so after meeting requirements for mediation provided for in separate regulations, or possibly in standards uniformly adopted for the entire notary. The argument against including mediation in the catalog of notarial activities is the fact that these activities are subject to detailed regulations contained in a statute Law on Notaries, while mediation proceedings are by their nature informal.

Summing up, it can be said that the work outlines new areas for notarial activity, which may contribute to improving the performance of state authorities, in particular courts. Since the notarial procedure is less formalized, and moreover, the notary is obliged to provide information on the effects of the activities performed, extending the catalog of notaries' activities could also be satisfactory for citizens.

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