**Lazarski University**

**Faculty of Law and Administration**

**Patryk Jończyk**

**Summary of doctoral dissertation entitled:**

**„The Activities of Notaries in the Polish and Canon Law System"**

**written under the direction of The Rev. Prof. Florian Lempa**

The security of legal transactions requires that acts intended to have legal effects are carried out by persons who have appropriate legal knowledge as well as professional competence and moral attributes. The performance of an action by such a person should guarantee its formal and factual correctness. Such a role, in various legal systems, is played by the notaries.

The analysis of activities carried out by the notaries, functioning in different state and religious communities shows that there is no uniform catalogue of these activities. The examination of them in all communities would go beyond the framework of a doctoral dissertation, therefore, the subject of the dissertation is only the activities of notaries in the Polish law system and the Catholic Church. The choice of such a subject was dictated by the fact that both legal orders in terms of notarial activities have not yet been elaborated in the form of a monograph, and such elaboration seems to be useful in notarial practice, both state and ecclesiastical, especially considering the fact that as a result of the ratification of the Concordat of 28 July 1993 concluded between the Holy See and the Republic of Poland, the Polish state recognized the canonical legal order as autonomous and binding in Poland.

The topic of the dissertation is a comparative law subject, which implied comparative studies, primarily within the scope of notarial activities themselves, as defined in both legal systems. The dissertation was written using the following research methods: historical-legal, comparative and dogmatic-legal, which was the dominant method. The dissertation considers the legal status as of 1 October 2018.

The dissertation presents a hypothesis that the state order in Poland and the canonical order in the Catholic Church, in relation to the institutions of the notary, have common roots, because the sources of both notaries are the rules of Roman law. Due to the specificity of notarial activities performed by state notaries and church notaries, other hypotheses have been presented, especially that due to the common roots, these activities may be identical, but due to the nature of these communities and the nature of legal transactions occurring in them, they may differ.

The dissertation consists of six chapters. The first two of them have an introductory nature, while the others explicate the issues contained in the dissertation’s title. Each of the chapters contains final conclusions, which are a transition to the next thematic threads.

Giving a correct answer to the question about the roots of the Polish and canonical notary without conducting historical and legal studies is hard to imagine, hence the first chapter of the dissertation was devoted to the genesis of the notary. Due to the fact that notaries functioned in different cultures and legal systems in which the written language was used, in order to be able to determine with certainty where the Polish and canonical notary comes from, in **Chapter I** the sources indicating the existence of the notary not only in the Roman Empire, but also in Mesopotamia, Greece and Egypt and allowing to extract its specificity were analyzed.

**Chapter II** provides an overview of regulations shaping the development of the contemporary Polish and ecclesiastical notary. They are presented in chronological order, so that the reader will be able to gain knowledge about the precedency of canonical regulations and the intensity of the development of legal regulations, which took place in the years 1933-1989 within the Polish law.

**Chapter III** contains a discussion of the legal status of notaries in the applicable Polish and canon law. It shows the legal requirements for candidates for notaries, the principles of their appointment and removal, basic duties and rights, as well as regulations concerning their liability.

**Chapter IV** deals with the concept and types of notarial acts and the principles of their performance under Polish and canon law. In the first place, it explains the concept of notarial activities under Polish law. Then, based on the subjective criterion, particular types of these activities reserved for the notary and other entities were classified and separated. In the second part of the first point of this chapter, the issue of the so-called „notarial coercion” related to notarial activities, the issue of the official power of notarial activities and the procedure of their execution were also explained. The second point of the chapter, in contrast, concerns the term and types of notarial acts and the rules of performing them under canon law. Symmetrically to the first point, it also discusses the so-called „canonical coercion” related to canonical notarial activities, the official power of canonical notarial activities and the rules of performing them.

**Chapter V** contains the characteristics of notarial activities carried out by state notaries. It illustrates the full range of their activities.

**Chapter VI**, on the other hand, describes in detail the notarial activities of church notaries both in the administrative and judicial departments arising from the general and particular canon law.

The thesis that the roots of both Polish and church notary go back to Roman times was proved. This allowed to conclude that both the state and church notaries belong to the so-called Latin notary. In the dissertation it was established that the notary in the Latin notary is characterized by such elements as: acting on the basis of granting competent authority, the status of a person of public trust, normative determination of the legal status and granting the official power to performed activities by the legislator.

The dissertation shows that in the course of history, along with the development of Christianity, also on the Polish lands, there has been a wide application of the church notary in practice. Only at the moment of the establishment of modern states, and more precisely at the beginning of the 20th century, the separation and independence of the state notary took place. Finally, the separation of the state notary from the church notary occurred due to the separation of the state from the Church and the formation of an independent secular state. The consequence of this separation is that notarial activities carried out on the basis of state law regulations have legal effects in the state order, but as a result of the canonization of state law regulations, they retain their validity also in the autonomous canonical order. However, the same cannot be said about notarial activities carried out by church notaries, because they retain their validity only within the church community. To be treated as binding in the system of state law, additional statutory or concordat arrangements are needed, as is the case, for example, with a decree that establishes a church or a chapel, under which a property is excluded from the conduct of legal transactions (Article 8(3) of the Concordat).

 Two other research hypotheses were also verified in the dissertation, that due to common roots, notarial acts may be the identical, whereas due to the nature of communities and the nature of their legal transactions, they may differ. In both cases, this verification was positive. The verification, with reference to the first hypothesis, was based on the analysis of individual activities requiring the participation of a notary. As a result, it was determined that a significant part of notarial activities performed by state and church notaries overlap in scope.

 While analyzing the notarial activities of state notaries, it was stated that they mainly focus on property matters. These activities include in particular: drafting protocols; drafting acts of succession certification and European Certificate of Succession; drafting notarial deeds; making certifications; protesting bills of exchange and cheques; delivering statements; accepting for safekeeping; drafting abstracts, duplicates and extracts of documents, as well as various types of projects of acts, statements and documents; filing applications for entries in land and mortgage registers; carrying out and selling the object of registered pledge through a public tender; issuing certificates; receiving declarations of acceptance or rejection of inheritance and drawing up notarial wills.

On the other hand, notarial activities of church notaries include two areas of activity, i. e. church administration and the judiciary. It has been established that in the administrative division, the notarial activities provided for in the canon law involve: writing down protocols; documenting and drawing up administrative acts; sending documents; storing and securing documents in the archive; making it possible for interested persons to familiarize themselves with the content of acts and other documents in the archive; certifying the copies to be in conformity with the original and drawing up a summary of the fact that the documents have been destroyed after a certain time. As far as the church's judiciary is concerned, the role of church notaries is limited to the following activities: taking minutes of court hearings, hearings of witnesses and other court sessions, as well as of oral court complaints; making copies and extracts of court files; certifying court files; providing legal advice to those interested in filing a complaint with the church court; storing and securing court files; keeping correspondence and recording it in the journal.

Moreover, it has been demonstrated that both legal orders allow for optional notarial acts at the request of the persons concerned. Notaries in both legal orders also have the right of refusal to perform a notarial act if it would be: contrary to legal regulations, the applicant would not have a legal interest or full legal capacity. It was established that in both legal orders notaries are subject to disciplinary, civil and criminal liability. However, due to the nature of the communities in which both notaries operate, the sanctions provided for in both legal orders differ. This has allowed the conclusion that in both jurisdictions, notarial activities contribute to the security of legal transactions.

Regarding the second hypothesis, it was established that the differences, both quantitative and substantive, are due to the nature of the state and church communities and the nature of their legal transactions. To argue this hypothesis, it was pointed out, among other things, that due to the fact that the legal transaction in the state community in general is greater than in the church community, the number of notarial activities characteristic only for the state order is greater than the number of notarial activities provided for by the canon law. This is particularly visible in the case of property turnover, which as such is carried out on the state market, not on the church market. Moreover, in the state order, there are no notarial activities, which constitute the important part of notarial activities in the canon law, which are activities regulating the functioning of pastoral structures of the church.

The conclusion contains a summary of the analyses carried out and the final conclusions.