

Abstract

Doctoral thesis “Criminal and disciplinary liability of civil law notary for acts committed in connection with the performance of a function”

mgr Maciej Zając

Criminal liability of a notary-at-law is a multifaceted and complex phenomenon because of fact that it is made on the basis of four different branches of law: civil, notarial, criminal and tax law. It is easy to notice that the civil and criminal understanding of the notarial law institutions and their effects differ from each other. Even the status of a notaries-at-law is uncertain. A separate issue is the duties that tax law imposes on a notaries-at-law which are associate with penal-fiscal sanctions. In recent years, numerous amendments to the notarial law have been made in the matter of both the ways to become a lawyer notary, the increase of numbers of legal instruments that notary-at-law my draft and tasks of the notarial self-government. The aim of the dissertation is to discuss the criminal and disciplinary liability of a notary-at-law, a notary apprentice, a notary's deputy and a retired notary-at-law. In addition, the basic issues related to the notarial law have been explained, which will allow for criminal assessment of the phenomena and issues in the manner required by law. Due to numerous amendments to the notary law act that have emerged in recent years, it is necessary to examine the impact of changes made on the criminal and disciplinary liability of a notary-at-law. In addition to presenting the criminal liability of a lawyer notary in a typical approach, focusing on offenses of abuse of duties and authentication of untruth, the dissertation presents the criminal liability of a notary involved in money laundering and terrorism financing as well as criminal liability connected to public documents, as well as penal-fiscal responsibility.

Due to the nature of the discussed issues, the most important way to do the research was given to formal-law explorations. The analysis of legal acts, jurisprudence and literature was considered the basic research method. In addition, a case study was carried out.

The dissertation consists of six chapters. The first chapter contains an overview of the notary-at-law, notary apprentice, notary's deputy and retired notary including their status-at-law in general and their status as public officials. It also comprises an analysis of the nature of the notarial instruments, their role and probative value in civil law. In this chapter there is also a historical outline of the development of a notary, from ancient times to the current shape of the Polish notary-at-law, including criminal responsibility.

The second chapter contains an overview of crime stipulated in art. 231 of the Penal Code. This chapter contains a detailed presentation of the conditions of liability including analysis the offender of prohibited act, the object of protection and the manner of violation in relation to the lawyer notary, notary apprentice, notary's deputy and retired notary. In particular, an indication was made to extend the meanings of a public officials, as well as to include professional self-government tasks under the criminal protection.

The third chapter is constructed in a manner analogous to the second chapter, but contains the representation of the crime as stipulated in art. 271 of the Penal Code. Author has tried find an answer in which circumstances drafting a notarial instrument involves the confirmation of untruth, which notary instruments are considered as document in the meaning of art. 271 of the Penal Code and who has power to issue a document within the meaning of the above-mentioned provision.

The fourth chapter includes the analysis of duties of a notary-at-law as a remitter of tax on civil law transactions and inheritance and donation tax, as well as penal-fiscal responsibility. It comprises a study of all prohibited acts that can be committed by a notary-at-law or a person drafting notary instruments. In addition, the status of the court fee and the fee for placing an inscription in the Inheritance Register were analyzed.

The fifth chapter contains issues related to criminal liability provided in the Act of public documents and related to money laundering and terrorism financing. This chapter contains both a rules analysis of criminal liability for a lawyer-notary which is stated in the Act on Counteracting Money Laundering and Terrorism Financing as well as the Criminal Code.

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