

*Tadeusz Zembrzusi*

## **The Notary or the Court of Law – a Handful of Comments on Authority to Make Entries to Land and Title Registers**

### **I. Introduction**

The dynamic development of new technologies has made it possible for formerly existing barriers to be transcended, ostensibly permanent solutions – modified. This also applies to the judiciary, in its traditional form and format<sup>1</sup>. Multi-faceted computerisation, ever-more progressive automation, and the multitude of case management systems and open registers<sup>2</sup> are all conducive to the introduction of such measures. It has been observed that the functionality of public registers<sup>3</sup> the judiciary leans

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<sup>1</sup> Cf. J. Gołaczyński, *Informatyzacja ksiąg wieczystych. Uwagi ogólne (Computerising Land and Title Registers. General Comments)*, [in:] J. Gołaczyński (ed.), *Informatyzacja ksiąg wieczystych i postępowania wieczystoksięgowego (Computerising Land and Title Registers and Land and Title Proceedings)*, Warsaw 2020, p. 3 *et seq.*

<sup>2</sup> For more, see M. Kaczorowska, *Realizacja zasady jawności ksiąg wieczystych w prawie polskim w dobie informatyzacji. Zarys problematyki (Exercising the Principle of Land and Title Register Transparency under Polish Law in Times of Computerisation. An Outline of Related Issues)*, [in:] J. Gołaczyński (ed.), *Informatyzacja ksiąg wieczystych i postępowania wieczystoksięgowego*, Warsaw 2020, p. 41 *et seq.*

<sup>3</sup> See T. Stawicki, *Rejestry publiczne. Funkcje instytucji (Public Registers. Functions of the Institution)*, Warsaw 2005, p. 23 *et seq.*; H. Ciechanowski, *Rejestr rejestrów publicznych (Register of Public Registers)*, „Archiwa-Kancelarie-Zbiory” 2015, No. 6, p. 250 *et seq.*

on is by no means limited to judicial dispute cases<sup>4</sup>. Such a state of affairs raises questions concerning the admissibility and justifiability of modifying the way these registers are handled, not least with regard to land and title register-related issues.

During recent months, the legal community has been debating solutions of significant impact on the form and functioning of the notary profession<sup>5</sup>, as well as the role, importance, and legal nature of motions for entries to land and title registers<sup>6</sup>. Propositions include far-reaching amendments to the Law on Notaries of February 14<sup>th</sup> 1991<sup>7</sup>, Civil Code Law of April 23<sup>rd</sup> 1964<sup>8</sup>, Code of Civil Procedure Law of November 17<sup>th</sup> 1964<sup>9</sup>, and Land and Title Registers and Mortgage Law of July 8<sup>th</sup> 1982<sup>10</sup>. The determination to introduce new legislation is blatant. While the government draft bill to amend the Law on Notaries and selected other laws (document No. 2701)<sup>11</sup> was rejected by the 67<sup>th</sup> Session of the *Sejm* of the Republic of Poland on December 1<sup>st</sup> 2022<sup>12</sup>, well-nigh identical proposals were re-submitted pursuant to a deputies' draft bill to amend the Law on Notaries and selected other laws.

Modifications to principles of professional notarial liability were connected to structures tying in with broadly defined civil proceedings issues, by granting notaries the right to make entries to land and title registers, and issue notarised orders for payment. The former is intended to make

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<sup>4</sup> See S. K o t e c k a, *Dostęp do rejestrów publicznych w postępowaniu sądowym (Access to Public Registers in Judicial Proceedings)*, [in:] *Jawność i jej ograniczenia (Open Proceedings and Restrictions thereto)*, vol. 8, *Postępowanie sądowe (Judicial Proceedings)*, J. Gołaczyński (ed.), Warsaw 2015, p. 215 *et seq.*

<sup>5</sup> The moderate influence of legal communities – notaries in particular – on the legislative process is not a new phenomenon. Cf. E. D r o z d, *O potrzebie zmian w prawie notarialnym (On the Need to Amend the Law on Notaries)*, „Rejent” 2001, No. 5, p. 26 *et seq.*; C.W. S a l a g i e r s k i, B. T y m e c k i, *Zasada legalizmu w postępowaniu notarialnym (The Legalism Principle in Notarial Proceedings)*, „Rejent” 2005, No. 9, p. 269.

<sup>6</sup> For more, see P. M y s i a k, *Wniosek o wpis w księdze wieczystej (Motion to Make an Entry to a Land and Title Register)*, „Rejent” 2008, Nos. 7-8, p. 73 *et seq.*

<sup>7</sup> Uniform text: *Journal of Laws* 2022, item 1799. Hereinafter referred to as “LoN”.

<sup>8</sup> Uniform text: *Journal of Laws* 2022, item 1360, as amended.

<sup>9</sup> Uniform text: *Journal of Laws* 2021, item 1805, as amended.

<sup>10</sup> Uniform text: *Journal of Laws* 2023, item 146, as amended.

<sup>11</sup> <https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=2701>.

<sup>12</sup> <https://www.sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?nr=2701>.

the process of making entries to land and title registers more efficient and swifter by reducing the workload for land and title courts – the ostensible intent behind the latter would be to relieve the judiciary of their obligation to resolve parts of civil law cases examined in civil law proceedings pursuant to the reversed litigation construct<sup>13</sup>. Both concepts may well be perceived as symptoms of something akin to privatising the justice system<sup>14</sup>. Explored in greater detail herein, the latter introduces novel IT solutions, and expands notary competencies to include non-litigation judiciary actions<sup>15</sup>.

## **II. The notary in the preventive justice system context**

The need to document specific occurrences – legal transaction-related in particular – reliably is of fundamental significance to the market economy<sup>16</sup>. Warranting legal transaction security is the uppermost *raison d'être* for the notarial profession<sup>17</sup>. In the Latin-type notarial model<sup>18</sup>, the notary is considered a bearer of public authority, equipped with the power to exercise some of state authority<sup>19</sup>. The notary is thus a body offering legal protection, and exercising a public function consisting in the discharge of tasks entrusted by the state in connection with enforcing law.

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<sup>13</sup> See M. Kostwiński, *Merytoryczne rozpoznanie sprawy w procesie cywilnym w ramach konstrukcji odwrócenia sporu (Substantive Examination of Cases in Civil Law Proceedings Pursuant to the Reversed Litigation Construct)*, Warsaw 2019, p. 8 *et seq.*

<sup>14</sup> See T. Zembrzusi, *Notarialny nakaz zapłaty – w stronę prywatyzacji wymiaru sprawiedliwości (The Notarised Order of Payment – Roadmap to Privatising the Justice System)*, „Gdańskie Studia Prawnicze” 2023 (in press).

<sup>15</sup> Cf. M. Setkiewicz [in:] *Notariat. Czynności notarialne. Praxis (The Notarial Profession. Notarial Actions. Praxis)*, A.J. Szereda (ed.), Warsaw 2021, p. 22.

<sup>16</sup> Cf. J. Biernat [in:] *Prawo o notariacie. Komentarz (Law on Notaries. A Commentary)*, A.J. Szereda (ed.), Warsaw 2022, p. 6.

<sup>17</sup> For more, see M. Setkiewicz [in:] *Notariat...*, A.J. Szereda (ed.), p. 6 *et seq.*

<sup>18</sup> For more, see J. Biernat [in:] A.J. Szereda (ed.), *Prawo...*, p. 18 *et seq.*; A. Oleszko, *Notariat w systemie wymiaru sprawiedliwości (The Notarial Profession in the Justice System)*, Warsaw 2014, p. 43.

<sup>19</sup> See T. Ereciński, *Kilka uwag o pozycji ustrojowej notariusza, jego odpowiedzialności cywilnej oraz sądownictwie dyscyplinarnym (A Handful of Comments Regarding the Notary's Systemic Position, His/her Liability under Civil Law, and the Disciplinary Justice System)*, „Rejent” 2006, No. 5, p. 44.

The aforesaid notwithstanding, the notary remains outside the state authority structure. Pursuant to the legalism principle<sup>20</sup>, he/she shall exercise „preventive jurisdiction”, usually referred to as the preventive justice system. The purpose enshrined therein is that of safeguarding the process of all parties involved delivering their responsibilities as stipulated by law, so that their interests are sheltered as legally required<sup>21</sup>. In consequence, notarial tasks and responsibilities shall include the process of reviewing and *ex ante* eliminating any legal action identified as defective or unlawful. Notarial proceedings<sup>22</sup> are considered proceedings under civil law as stipulated in the Law of Notaries, a non-judiciary body having been equipped with measures to safeguard the accuracy of legal transactions. In principle, notarial proceedings are devoid of any dispute concerning law<sup>23</sup>, as suggested by the fact of notaries engaging in notarial actions by and between willing and consenting parties to aforesaid actions (*inter volentes et inter consentientes*)<sup>24</sup>.

While dissimilarly to an attorney or legal counsel, the notary is not the mandatary to any party to legal action, impartiality should remain the foundation of the notarial profession as a public trust institution. The notary's position in opposition to so-called classical legal professions (involving the provision of services to a specific party's benefit) merits highlighting<sup>25</sup>. Rather than „natural, duly comprehended partiality tying

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<sup>20</sup> For more, see C.W. Sałagierski, B. Ty mecki, *Zasada legalizmu...*, p. 250 *et seq.*

<sup>21</sup> See Supreme Court resolution of March 8<sup>th</sup> 2013, Ref. No. III CZP 5/13, „Legalis” No. 584421.

<sup>22</sup> For more, see A.J. Sz e r e d a, *Rozważania o „postępowaniu notarialnym”* (*Ponderings on 'Notarial Proceedings'*), „Rejent” 2012, No. 5, p. 99 *et seq.*

<sup>23</sup> A dispute may occasionally arise once notarial proceedings are over.

<sup>24</sup> See K. L u b i ń s k i, *Kontrowersje na temat istoty i charakteru prawnego spraw o odmowę dokonania przez notariusza czynności notarialnej sprzecznej z prawem oraz właściwości funkcjonalnej w tych sprawach sądu okręgowego* (*Controversies Regarding the Substance and Legal Nature of Cases Involving the Notary Refusing to Perform an Unlawful Notarial Act, and the Functional Jurisdiction of the District Court in Connection therewith*), [in:] *Z zagadnień prawa procesowego cywilnego. Zbiór rozpraw dedykowanych pamięci Profesor Marii Jędrzejewskiej* (*Selected Issues of Processual Civil Law. Collection of Treatises Dedicated to the Memory of Professor Maria Jędrzejewska*), P. Rylski, K. Weitz, T. Zembrzuski (ed.), „Studia Iuridica” 2018, No. 75, p. 122.

<sup>25</sup> Cf. T. E r e c i ń s k i, *Kilka uwag...*, p. 49.

*in with caring for client interest*<sup>26</sup>, the goal of stabilisation is significant at this juncture. Pursuant to Article 80 § 2 of the LoN, whenever engaging in notarial action, the notary shall be obliged to properly safeguard the rights and justified interests of all parties involved, as well as of other persons for whom the action at hand might have legal effect. Reference source writings point out that the notary can and shall „engage in lawful notarial action in conformity to the letter of law, the aforesaid duly arising from the legal status and responsibilities of a notary as a person of legal trust”<sup>27</sup>. Entrusting notaries with specific adjudication responsibilities is well-grounded in tradition, and embedded in the Latin-type notarial model<sup>28</sup>. Nonetheless, such responsibilities ought to be subject to restrictions.

### **III. Authority to make entries to land and title registers**

Connected to the system of legal allegations and guarantees, land and title registers have for centuries been an essential component of the economy, as well as the foundation of real estate transaction security<sup>29</sup>. Serving registration and evidentiary purposes<sup>30</sup>, they constitute a subject-centred register contemporarily kept by the judiciary in an ITC system<sup>31</sup>.

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<sup>26</sup> See M. Setkowi cz [in:] *Notariat...*, A.J. Szereda (ed.), p. 25.

<sup>27</sup> See S. W ó j c i k, *Wpływ notariusza na powstanie stosunków cywilnoprawnych z umów* (*The Notary's Influence on the Emergence of Contract-Based Civil Law Relationships*) [in:] *Problematyka prawna reprivatyzacji notariatu polskiego* (*Legal Considerations of Reprivatising the Polish Notary Profession*), R. Szytk (ed.), Poznań-Kluczbork 1996, p. 231.

<sup>28</sup> Cf. T. Ereciński, *Kilka uwag...*, p. 46.

<sup>29</sup> For more, see A. W u d a r s k i, *Funkcje ksiąg wieczystych w ujęciu prawno-porównawczym* (*Land and Title Register Purposes in the Legal Comparative Context*), „Rejent” 2015, No. 5, p. 9 *et seq.*

<sup>30</sup> For more, see E. G n i e w e k, *Księgi wieczyste* (*Land and Title Registers*) [in:] *System Prawa Prywatnego* (*System of Private Law*), Z. Radwański (ed.), vol. IV: *Prawo rzeczowe* (*Property Law*), E. Gniewek (ed.), Warsaw 2005, p. 69, and source literature referenced therein.

<sup>31</sup> Pursuant to Article 25<sup>1</sup> of the Land and Title Registers and Mortgage Law of July 6<sup>th</sup> 1982 (uniform text: *Journal of Laws* 2023, item 146), in the original 2011 version, options of setting up and updating land and title registers included the ITC format. Consequences of changes made over the years included the need to migrate land and title registers from traditional hard copies to electronic format, the process spanning the years 2003-2014.

Processes of computerising land and title registers and formalising land and title proceedings have been duly reflected in efforts to establish and improve the electronic land and title register system, an outcome of introducing partial, and (later) full electronic land and title registers, ultimately followed by ITC land and title ledgers<sup>32</sup>. The effort to computerise land and title proceedings included an essential stage of introducing the obligation of said proceedings to be initiated by specific entities with the use of the ITC system<sup>33</sup>. Notably<sup>34</sup>, notaries<sup>35</sup> were provided with the capacity to perform activities in electronic format<sup>36</sup>, albeit both the quality and reliability of land and title register proceedings have been, and in all likelihood will be, criticised<sup>37</sup>.

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<sup>32</sup> For more, see M.B. Rękałek - Pachwicewicz, *Elektroniczne księgi wieczyste (ogólna charakterystyka, podstawowe problemy praktyczne) (Electronic Land and Title Registers (General Description, Fundamental Practical Issues))* [in:] *Sądowe postępowanie egzekucyjne. Zasadnicze kierunki zmian z 2016 roku (Court Execution Proceedings. Fundamental Directions of 2016 Changes)*, A. Marciniak (ed.), Sopot 2017, p. 16 *et seq.* Cf. P. Mysiak, *Elektroniczna księga wieczysta – dążenie do nowej jakości w obrocie (Electronic Land and Title Register – Roadmap to New Quality in Legal Transactions)*, „Monitor Prawniczy” 2004, No. 15, p. 702; P. Armada - Rudnik, *Przyszłość ksiąg wieczystych po elektronizacji (The Post-Computerisation Future of Land and Title Registers)*, „Nieruchomości” 2009, No. 12, p. 10 *et seq.*; A. Stefańska, *Elektroniczna księga wieczysta (Electronic Land and Title Register)*, Warsaw 2011, p. 9 *et seq.*

<sup>33</sup> Cf. A. Maziarz, *Elektroniczne postępowanie wieczystoksięgowe (Electronic Land and Title Proceedings)*, „Rejent” 2013, No. 11, p. 80 *et seq.*; J. Gołaczyński, *Informatyzacja ksiąg wieczystych...*, p. 36 *et seq.*; A. Góra - Błaszczykowska, *Wszczęcie postępowania wieczystoksięgowego drogą elektroniczną (Initiating Land and Title Proceedings Electronically)* [in:] *Sądowe postępowanie egzekucyjne. Zasadnicze kierunki zmian z 2016 roku*, A. Marciniak (ed.), Sopot 2017, p. 61 *et seq.*

<sup>34</sup> The Law of January 15<sup>th</sup> 2015 regarding amendments to the Code of Civil Procedure Law and selected other laws (*Journal of Laws* 2015, item 218) came into force as of July 1<sup>st</sup> 2016.

<sup>35</sup> As well as court bailiffs and heads of tax offices.

<sup>36</sup> See A. Kościółek, *Elektroniczne postępowanie wieczystoksięgowe (Electronic Land and Title Proceedings)*, „Monitor Prawniczy” 2015, No. 4, p. 747 *et seq.*

<sup>37</sup> Cf. A. Kosobudzka, *Uwagi na temat funkcjonowania elektronicznej księgi wieczystej (Comments Regarding the Operability of Electronic Land and Title Registers)*, „Rejent” 2008, No. 9, p. 69 *et seq.*; A. Góra - Błaszczykowska, *Wszczęcie...*, p. 76.

The notary's system-based responsibility<sup>38</sup> to include the correct land and title register motion in notarial deed content<sup>39</sup> is of paramount importance. The aforesaid mechanism exercises the notary's public mission, an indicator of efforts to secure accurate entries to land and title registers – which in turn allows the actual legal status of a property to be confirmed<sup>40</sup>. The aforesaid is classified as notarial action<sup>41</sup>. The notary shall perform the “*act of filing the motion in substitution of the party concerned, as it were*”<sup>42</sup>, applying appropriate form to a motion filed by a legitimated entity<sup>43</sup>. Pursuant to Article 626<sup>4</sup> of the Code of Civil Procedure, the notary shall file the motion for an entry exclusively via the ITC system, including his/her secure electronic signature duly verified with a valid qualifiable certificate<sup>44</sup>. Documents recognised as grounds for making land and title register entries shall be attached to the aforesaid motion<sup>45</sup>. The notary is therefore not, *de lege lata*, an applicant or party to proceedings<sup>46</sup>, his/her actions merely technical in nature<sup>47</sup>, and tying in with the responsibility to draft the so-called full deed, land and title

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<sup>38</sup> On pain of liability for damages.

<sup>39</sup> See E. Gniewek, *Wnioski o wpis do księgi wieczystej formułowane przez notariuszy w ich aktach notarialnych (Motions for Entries to Land and Title Registers Filed by Notaries in (their) Notarial Deeds)*, „Rejent” 2006, No. 5, p. 61 *et seq.*

<sup>40</sup> Cf. Supreme Court resolution of May 22<sup>nd</sup> 2013, Ref. No. CZP 17/13, Supreme Court Civil Chamber Adjudicature (OSNC) 2013, No. 11, item 123.

<sup>41</sup> See P. Biernacki, *Złożenie przez notariusza wniosku wieczystoksięgowego jako czynność notarialna (The Notary Filing a Land and Title Register Motion in Notarial Action Terms)*, „Rejent” 2016, No. 2, p. 49 *et seq.*

<sup>42</sup> See J. Gołaczyński, *Informatyzacja ksiąg wieczystych...*, p. 37.

<sup>43</sup> Cf. E. Gniewek, *Wnioskodawca i uczestnik postępowania wieczystoksięgowego (Applicant in and Party to Land and Title Proceedings)*, „Rejent” 2005, No. 9, p. 66.

<sup>44</sup> Any further land and title-related processual documents shall be drafted in conformity to general rules regarding pleadings.

<sup>45</sup> If drafted in electronic format.

<sup>46</sup> For more, see E. Jefimko, *Postępowanie wieczystoksięgowe jako szczególny rodzaj postępowania nieprocesowego (zagadnienia wybrane) (Land and Title Proceedings as a Particular Form of Non-Processual Proceedings (Selected Matters))*, „Przegląd Sądowy” 2002, No. 10, p. 59 *et seq.*; E. Gniewek, *Wnioskodawca i uczestnik postępowania wieczystoksięgowego*, „Rejent” 2005, No. 9, p. 66 *et seq.*

<sup>47</sup> Cf. A. Góra-Błaszczykowska, *Wszczęcie...*, p. 68.

register motion included. The notary's position is stipulated as that of an "intermediary between the applicant and the land and title court"<sup>48</sup>.

Proponents suggest that notaries be equipped with authority to examine – on demand by a party to respective proceedings – motions for entries and actual entries to land and title registers<sup>49</sup> with regard to property ownership, within a scope indispensable to establishing separate property ownership, and/or establishing or encumbering separate property ownership with regard to restrictions to ownership under property law, or any other claims involving said property<sup>50</sup>. It has been pointed out in the justification to the proposed bill that the notary shall carry out measures auxiliary to the justice system when drafting deeds of inheritance confirmation defined as legal security actions, and/or engaging in any other official activities. The above justifies notaries being entrusted with additional competencies formerly reserved for the judiciary – provided that such actions do not involve any dispute between participants of aforesaid actions or parties to potential judicial proceedings.

The average waiting time for a motion in land and title register proceedings exceeds three and a half months, and may exceed one year in large cities in case of land and title register entries<sup>51</sup>. Notably, however, the number of land and title register motions has been declining over recent years<sup>52</sup>. Proponents are distancing themselves from assertions that the introduction of electronic land and title proceedings has contributed to "securing easier and swifter access to the judicial system"<sup>53</sup>, a develop-

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<sup>48</sup> See Supreme Court resolution of September 12<sup>th</sup> 2002, Ref. No. III CZP 50/02, Supreme Court Civil Chamber Adjudicature (OSNC) 2003, No. 9, item 114; Supreme Court ruling of April 15<sup>th</sup> 2010 r., Ref. No. II CSK.

<sup>49</sup> It has been proposed that the Minister of Justice issue decisions regarding individual notaries and notarial deputies being approved for access to the ITC system, rules of IT security duly applicable.

<sup>50</sup> Furthermore, it has been suggested that notarial competencies be expanded to include all and any entries made as a result of notarial actions.

<sup>51</sup> <https://gov.legalis.pl/projekt-ustawy-o-zmianie-ustawy-prawo-o-notariacie-oraz-niektorych-innych-ustaw-2/>.

<sup>52</sup> From the year 2020 onwards.

<sup>53</sup> See J. G o ł a c z y ń s k i, *Informatyzacja ksiąg wieczystych...*, p. 38.

ment usually interpreted in success story terms<sup>54</sup>. According to proponents, bestowing additional competencies upon notaries “addresses the public requirement of any agreement involving ownership transfer and/or establishing restrictions under property law being enforced without undue delay”<sup>55</sup>. The aforementioned shall ostensibly produce the outcome of “expediting the entry-making process and improving its efficiency as well as improving the effectiveness of the real estate trading system, while making it easier for citizens to secure entries confirming property rights established to their benefit, and enjoy reduced mortgage loan costs”<sup>56</sup>.

Once implemented, the project should in no way affect previous solutions concerning judicial entries to land and title registers; it will rather constitute an alternative auxiliary mechanism, its use depending on the will of parties concerned. Introducing such an alternative will be a long-term and costly exercise<sup>57</sup>, with considerable impact on public fund distribution<sup>58</sup>. The cost of implementing solutions planned<sup>59</sup> is to be covered from funds earmarked for running courts of law<sup>60</sup>, whereas the implementation itself shall – in all likelihood – tie in with the State Treasury being deprived of revenue from court fees paid for filing land and title register motions<sup>61</sup>; it may be reasonably expected that aforesaid fees will to a certain extent be appropriated by notaries.

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<sup>54</sup> See A. K o s o b u d z k a, *Uwagi...*, p. 69 *et seq.*; A. K o ś c i ó ł e k, *Elektroniczne...*, p. 753.

<sup>55</sup> See justification for the draft law, p. 4.

<sup>56</sup> See justification for the draft law, p. 5.

<sup>57</sup> The draft law justification specifies the general 2023 cost of the draft as totalling PLN 12.83 million, all respective sources listed, while pointing out that the cost of connecting all notaries to the Land and Title Register System and introducing the new Electronic Land and Title Register authorisation system has been estimated at approximately PLN 5 million. It has been anticipated that it may take up to four years before the new system is implemented.

<sup>58</sup> The currently operated ITC system, access for notaries duly planned, was funded from the public purse.

<sup>59</sup> Estimated at no less than PLN 15 million.

<sup>60</sup> Cf. P. R o j e k - S o c h a, *Notariusze z nowymi kompetencjami, ale i pod nadzorem ministra – Sejm zaczął prace (Notaries with New Competencies, yet under Ministerial Supervision – the Sejm has Initiated Works)*, <https://www.prawo.pl/prawnicy-sady/zmiany-w-postepowaniu-dyscyplinarnym-notariuszy,515419.html>.

<sup>61</sup> Depending on the type and number of demands, the fee may range from PLN 300.00 to PLN 725.00.

#### IV. Notarial action in the field of particular legal protection

Notarial action is defined as any activity the notary is authorised to engage in within the framework of competencies conferred upon him/her pursuant to applicable legal norms, in a form and manner duly regulated by legislation<sup>62</sup>. The notary shall only be authorised to perform actions for which legal grounds have been stipulated in Article 79 of the LoN.<sup>63</sup> *De lege lata*, the notary shall engage in actions as listed herein: 1) draft notarial deeds; 1a) draft inheritance confirmation deeds; 1b) take action regarding the European Certificate of Succession; 1c) take action tying in with succession management for enterprises owned by natural persons, and/or temporary representation with regard to the business owner's spouse participating in the enterprise, pursuant to rules stipulated in the Law of July 5<sup>th</sup> 2018 regarding succession management for enterprises owned by private individuals, and other measures to facilitate business succession<sup>64</sup>; 2) draft certificates; 4) draft minutes; 5) draft documents protesting bills of exchange and/or cheques; 6) take in (for safekeeping purposes) currency, securities, documents, and/or data on electronic data carriers stipulated by provisions on the computerisation of operations engaged in by entities charged with public assignments; 6a) keep shareholder lists for simple joint-stock companies, and take related measures; 7) draft exact copies (corrections included), abridged copies, and extracts of legal documents; 8) on demand by parties concerned, draft tentative versions of deeds, statements, and other legal documents; 8a) file motions for entries to be made to land and title registers, including documents recognised as grounds for making entries to land and title registers; 9) take other action as stipulated by separate legal provisions.

The traditionally recognised institution of notarial action apart, the proponent has introduced the notion of “*actions in the field of particular legal protection*”. Pursuant to Article 1 § 1 of the LoN, the notary shall engage not only in actions that parties are obliged or willing to confer

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<sup>62</sup> See J. Biernat [in:] *Prawo...*, A.J. Szereda (ed.), p. 9.

<sup>63</sup> Or any other regulations the standard enconced in Article 79 clause 9 of the LoN references.

<sup>64</sup> Uniform text: *Journal of Laws* 2021, item 170.

notarial form upon, but also those in the field of particular legal protection, set out in Article 79 clauses 1(d) and 5(a) of the LoN, i.e. duly regulated as regarding the examination of motions for entries to land and title registers, and issuing notarised orders for payment. Under the former, the notary shall, on demand by the party concerned, examine motions for entries to land and title registers as concerns the following: establishing ownership, and/or establishing or encumbering separate property ownership with regard to restrictions under property law, or any other claims involving said property; examining motions for entries to land and title registers with regard to property addition or severance, in whole or in part, for purposes of establishing separate ownership rights to a property, including the disclosure (in land and title registers) of restrictions to ownership and/or disposal, as well as any other rights and/or claims involving said property. The notary shall further take other action and examine other documents essential to the process of examining motions for entries to land and title registers as concerns the establishing of separate ownership of property, and/or correct entries he/she had made beforehand. Pursuant to article 79 clause 1(e) of the LoN, on the other hand, the notary shall be obliged to notify the applicant and any other persons whose rights have been deleted or encumbered or who are to benefit from the respective new entry, of the entry duly made<sup>65</sup>, while instructing them as to the date and manner of appealing against the entry, and consequences of failing to appeal.

Changes described in the draft affect processual law as well. Article 626<sup>14</sup> of the Code of Civil Procedure stipulates that provisions of Chapter 6 Section III Ledger Two of the Code – i.e. land and title proceedings – i.e. land and title proceedings – shall duly apply to actions taken by the notary, said actions listed under Article 79 clauses 1 (d) and 1(e) of the LoN. The aforesaid implies the need to apply the respective norm arising from Article 626<sup>8</sup> § 2 of the Code of Civil Procedure, pursuant to which the notary would decide as to making an entry after having merely examined the content and form of the motion, documents attached to the application, and the content of the land and title register, i.e. perform

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<sup>65</sup> For more, see E. Gniewek, *Wnioskodawca i uczestnik...*, p. 78 *et seq.*

actions which had triggered doubt, and been the subject of judicial discrepancies focusing – among others – on the question whether the evaluating entity’s cognition should be reduced to examining formal issues only, or whether substantive grounds for the motion should be subject to inspection, however limited<sup>66</sup>. Notaries will face an intricate realm of obstacles to land and title register entries<sup>67</sup>, often as not in itself a true challenge for judges and/or court referendaries<sup>68</sup>.

Pursuant to the draft, Article 626<sup>8</sup> § 8 of the Code of Civil Procedure stipulates that land and title register entries<sup>69</sup> shall require the signature of a judge or court referendary – or a notary. The newly proposed §§ 12-14 stipulate that a land and title entry<sup>70</sup> within the scope of Article 79(d) of the LoN can be made by the notary drafting the notary deed regarding the respective right. Such entry can be appealed by virtue of a complaint filed with the court<sup>71</sup>, which would then duly examine the case as a court of first instance, applying provisions of Article 518<sup>1</sup> § 3 and Article 398<sup>24</sup> of the Code of Civil Procedure, respectively. The complaint shall be filed with the court no later than within a term of one week as of the date of the entry notification having been served, or – should a notification not have been served – as of the date of having been informed of the entry (Article 626<sup>8</sup> § 13 of the Code of Civil Procedure). It is further

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<sup>66</sup> For more, see H. C i e p ł a, *Kognicja sądu wieczystoksięgowego (Cognition of Land and Title Courts)*, „Przegląd Sądowy” 1999, No. 9, p. 26 *et seq.*; G. B i e n i e k, *Kognicja sądu wieczystoksięgowego w świetle orzecznictwa Sądu Najwyższego (Cognition of Land and Title Courts in Light of Supreme Court Adjudicature)*, „Przegląd Notarialny” 1999, No. 4, p. 12 *et seq.*; E. J e f i m k o, *Postępowanie wieczystoksięgowe...*, p. 70 *et seq.*; J. D o m i n o w s k a, *Zakres merytorycznego badania wniosku o wpis w postępowaniu wieczystoksięgowym (Scope of Substantive Examination of an Entry-Related Motion in Land and Title Proceedings)*, „Państwo i Prawo” 2007, No. 5, p. 85 *et seq.* Cf. Supreme Court resolution of September 23<sup>rd</sup> 1993, Ref. No. III CZP 81/93, Supreme Court Civil Chamber Adjudicature (OSNC) 1994, No. 2, item 27.

<sup>67</sup> For more, see E. W a r z o c h a, *Przeszkody do wpisów w księgach wieczystych (Obstacles to Land and Title Register Entries)*, „Rejent” 1996, Nos. 7-8, p. 51 *et seq.*

<sup>68</sup> Cf. A. K o s o b u d z k a, *Uwagi...*, p. 79 *et seq.*

<sup>69</sup> Made as of the moment of saving to the central land and title register database.

<sup>70</sup> As well as any corrections to entries.

<sup>71</sup> Responsible for handling the land and title register the notary had made an entry to.

stipulated that should no grounds for the land and title register entry be identified, or should an obstacle to making such entry be identified, or should other circumstances justifying the court returning the motion for an entry prevail, the notary shall be obliged to submit the entry-related motion to the court without undue delay (Article 626<sup>8</sup> § 14 of the Code of Civil Procedure). Under such circumstances, the option of filing a complaint against a refusal to perform a notarial action – provided for under Article 83 of the LoN – would be redundant, and thus not applicable. The mechanism of judicial *quasi*-supervision over the notary's actions<sup>72</sup> in case of a refusal to perform the motion-specified action would be preserved. Motions accepted and rejected alike would be subject to judicial control.

Once implemented, aforesaid solutions may trigger multiple misgivings in practice, not least involving a distrust concerning the need to examine the new appeal measure, modelled on the complaint against a court referendary's actions. However temporarily, one may further expect discrepancies with regard to the extent to which notaries would be applying the land and title proceedings regulation under Article 626<sup>1</sup> *et seq.* of the Code of Civil Procedure, among others with regard to assessments of individual legal grounds for making the entry – i.e. checking for obstacles to such entry<sup>73</sup>. Would then the notary responsible for making entries to the land and title register not become “*a justice with no dispute or justice with the dispute absent*”<sup>74</sup>? The public impression might be that such an entity would, in all actuality, be examining its own motion, regardless of the assumption that the aforesaid only applies to circumstances where no dispute arises in principle between parties to notarial proceedings. The

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<sup>72</sup> For more, see P. Ryłski, *Tryb postępowania wywołanego wniesieniem zażalenia na odmowę dokonania czynności notarialnej* (Course of Proceedings Initiated by Filing an Appeal against a Refusal to Perform Notarial Action), „Polski Proces Cywilny” 2011, No. 2, p. 114 *et seq.*; K. Lubiński, *Kontrowersje...*, p. 115 *et seq.*; Cf. S. Rejman, *Zażalenie na odmowę dokonania czynności notarialnej* (Appeal against a Refusal to Perform Notarial Action), Ministry of Justice Bulletin 1957, No. 5, p. 24 *et seq.*; M. Rewuski, *Zażalenie na odmowę dokonania czynności notarialnej – Commentary – Ref. No. III CZP 42/07*, „Monitor Prawniczy” 2011, No. 6, p. 337 *et seq.*

<sup>73</sup> See E. Warzocha, *Przeszkody...*, p. 52.

<sup>74</sup> Cf. M. Setkiewicz [in:] *Notariat...*, A.J. Szereda (ed.), p. 27.

legal community has also been known to occasionally express the belief that “*awarding notaries the capacity to adjudicate with regard to land and title register entries on grounds of contracts they had drawn up themselves seems to be contradicting the ‘nemo iudex in causa sua’ principle*”<sup>75</sup>.

## **V. Land and title register entries in the context of the essence of the matter**

The admissibility of notaries making entries to land and title registers merit an assessment in terms of their respective actions. Article 626<sup>8</sup> § 6 of the Code of Civil Procedure stipulates that in land and title proceedings, an entry to a land and title register<sup>76</sup> is tantamount to a ruling, with no justification for the entry required. The entry is a form of a judicial ruling, consisting in the disclosure (in the land and title register) of the establishing, transfer or termination of rights *in rem*, rights *in personam*, and/or claims; or in the removal of a discrepancy between the legal status disclosed in the land and title register and actual legal status, inclusive of a respective discrepancy alert<sup>77</sup>. Under such circumstances, what we have is an autonomous ruling requiring no proclamation order<sup>78</sup>. That ruling is not undermined with the contemporaneous development of entries

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<sup>75</sup> See the opinion of the National Council of the Judiciary of November 9th 2022 concerning the governmental draft bill to amend the Law on Notaries and selected other laws, p. 3.

<sup>76</sup> A deletion in the land and title register is also classified as an entry.

<sup>77</sup> See S. Rudnicki, *Ustawa o księgach wieczystych i hipotece. Przepisy o postępowaniu w sprawach wieczystoksięgowych. Komentarz (The Land and Title Registers and Mortgage Law. Provisions on Proceeding in Land and Title Cases. A Commentary)*, Warsaw 2005, p. 135.

<sup>78</sup> Pursuant to the Land and Title Registers Decree of October 11<sup>th</sup> 1946 (Journal of Laws No. 57, item 320, as amended), a court of law would rule concerning an entry by issuing a decision.

<sup>79</sup> Or subfields.

<sup>80</sup> Cf. M. Świątko, *Znaczenie wpisu w księdze wieczystej (The Significance of a Land and Title Register Entry)*, „Monitor Prawniczy” 2018, No. 20, p. 1092.

made electronically by respective records saved to proper fields<sup>79</sup>, with electronic signatures duly attached<sup>80</sup>.

The notion of an entry encompasses any land and title register annotation<sup>81</sup> giving rise to a change to the legal status of a property, or to specific factual data<sup>82</sup>. Register title taxonomy (constitutive v. declaratory) has gained fundamental significance in legislation and doctrine<sup>83</sup>. The legal significance of entries varies. They may be exercised as substantive (merit-based) rulings regarding entries producing the outcome of certifying a property's legal status<sup>84</sup>. They may occasionally concern an issue other than a property's legal status, becoming an action technical in nature<sup>85</sup>, requiring a prior ruling by the court responsible for the given land and title register, or an order pursuant to Articles 354 and 362 in conjunction with Article 13 §2 of the Code of Civil Procedure<sup>86</sup>. Such entries, however, are exceptional, their significance gradually eroded over the years<sup>87</sup>. Most

<sup>81</sup> The regulation regarding the process of establishing and updating land and title registers in IT systems introduced a joint annotation concept for all entries recognised as actions technical in nature. For more, see P. S i c i ń s k i, *Wzmianki w księdze wieczystej, cz. 1 (Land and Title Register Annotations, Part 1)*, „Nieruchomości” 2006, No. 2, p. 13 *et seq.*

<sup>82</sup> See H. C i e p ł a, E. B a ł a n - G o n c i a r z, *Ustawa o księgach wieczystych i hipotece. Komentarz po nowelizacji prawa hipotecznego, wzory wniosków o wpis, wzory wpisów do księgi wieczystej (The Land and Title Registers and Mortgage Law. Post-Amendment Commentary, Sample Entry Motion Forms, Sample Land and Title Register Entries)*, Warsaw 2011, p. 65.

<sup>83</sup> See W. S i e d l e c k i, *Orzeczenia konstytucyjne w postępowaniu cywilnym (Constitutive Rulings in Proceedings under Civil Law)* [in:] *Księga pamiątkowa ku czci Profesora Kamila Siefki (Commemorative Volume Dedicated to Professor Kamil Siefka)*, Warsaw-Wrocław 1967, p. 303; R. S t r z e l c z y k, *Charakter prawny wpisu roszczeń z umowy deweloperskiej do księgi wieczystej (Legal Nature of Entering Developer Contract Claims to Land and Title Registers)*, „Rejent” 2012, Nos. 7-8, p. 13.

<sup>84</sup> Article 518, first sentence, in conjunction with Article 13 § 2 of the Code of Civil Procedure.

<sup>85</sup> Cf. K. M a r k i e w i c z [in:] *System Prawa Procesowego Cywilnego (The System of Processual Civil Law)*, T. E r e c i ń s k i (ed.), *Postępowanie nieprocesowe (Non-Processual Proceedings)*, vol. IV part 1, section 2, T. E r e c i ń s k i, K. L u b i ń s k i (ed.), Warsaw 2021, p. 1548 *et seq.*

<sup>86</sup> Cf. Supreme Court resolution of June 26<sup>th</sup> 2001, Ref. No. III CKN 766/00. „Lex” No. 551117.

<sup>87</sup> For more, see E. J e f i m k o, *Postępowanie wieczystoksięgowe...*, p. 55 *et seq.*; K. M a r k i e w i c z, *Zasady orzekania w postępowaniu nieprocesowym (Rules of Adjudicating in Non-Processual Proceedings)*, Warsaw 2013, p. 72 *et seq.*

frequently, a land and title register entry is interpreted as a ruling pertinent to the substance of the case, in terms of resolving as to registering the current legal status of the given property<sup>88</sup>.

One does occasionally stumble upon a belief that land and title proceedings do not resolve disputes as to the governing law, and that no decisions under property law are passed thereunder<sup>89</sup>. Nonetheless, the “*essence of the case*” in land and title proceedings is determined by property law-related contributing factors contained in any motion for a land and title register entry – such are the rulings key to resolving the justifiability of action taken by the individual filing the motion, demanding legal protection through having his/her rights *in rem*<sup>90</sup> confirmed – and duly constituted should respective legal provisions require such entry<sup>91</sup> – or requesting reinforcement for the effectiveness of his/her rights *in personam* and claims<sup>92</sup>. The list of circumstances pursuant to which the proponent provides notaries with authority to make land and title register entries falls under the former category. Land and title register entries establishing ownership, and/or establishing or encumbering separate property ownership with regard to restrictions under property law, or any other claims involving said property; providing for property addition or severance, in whole or in part, for purposes of establishing separate ownership rights to a property, including the disclosure (in land and title registers) of restrictions to ownership and/or disposal; as well as any other rights and/or claims involving said property, are all forms of unquestioned resolution as to the essence of the matter under material law, and that – as stipulated in Article 626<sup>8</sup> §6 of the Code of Civil Procedure – is most certainly a ruling. What we are dealing with here is an act of authority, resolving (directly or indirectly) on matters of subjective law, tying in with the disclosure of ownership rights in the land and title register, a right of considerable public significance<sup>93</sup>. Endowing notaries with authority to make entries to land and title registers, said authority formally classified

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<sup>88</sup> See A. Maziarz, *Postępowanie wieczystoksięgowe. Komentarz (Land and Title Proceedings. A Commentary)*, Warsaw 2008, p. 140.

<sup>89</sup> Instead of many, see A. Oleszko, *Notariat...*, p. 92.

<sup>90</sup> Entries to Section II.

<sup>91</sup> Entries to Sections II or IV.

not as a ruling, but rather as notarial action supplemented with the qualifier “*particular*”, shall result in the introduction of a specific, unjustified, and systemically incomprehensible dualism of actions affecting land and title register content and trading in real estate alike. Assessing the land and title register proceedings formula as a particular type of non-processual proceedings regulated in the context of proceeding under civil law<sup>94</sup> ought to be supplemented with an attempt at positioning notarial actions amongst acts of exercising justice, or – alternatively – providing legal protection.

## **VI. Exercising justice v. providing legal protection**

One might well claim that notarial action in the field of particular legal protection would in practical terms and in principle be performed reliably and correctly, with all due diligence<sup>95</sup>. No real threat to the certainty or security of legal transactions is observable herein<sup>96</sup>. Yet reflection is triggered by the proponent’s authoritarian assumption that the notary making an entry to the land and title register would only “*be offering legal protection, in recognition of existing solutions with regard to the process of issuing inheritance certificates, a measure which supersedes judicial rulings in proceedings to affirm succession*”<sup>97</sup>. In view of the nature of land and title register entries, one may well ask whether equipping notaries with competencies in land and title proceedings formerly reserved for courts of law is restricted to offering legal protection, or can such move in all actuality entail the exercising of justice.

<sup>92</sup> Entries to Section III, listed in Article 16 of the Land and Title Registers and Mortgage Law and other laws.

<sup>93</sup> Cf. Supreme Court resolution of September 20<sup>th</sup> 1996, Ref. No. III CZP 104/96, Supreme Court Civil Chamber Adjudicature (*OSNC*) 1996, No. 12, item 163.

<sup>94</sup> See E. J e f i m k o, *Postępowanie wieczystoksięgowe...*, p. 54 *et seq.*

<sup>95</sup> Cf. A. O l e s z k o, *Zakres staranności notariusza przy sporządzaniu czynności notarialnej (Scope of Notarial Due Diligence in Performing Notarial Action)* [w:] *Problematyka prawna reprivatyzacji notariatu polskiego*, R. Szytk (ed.), Poznań-Kluczbork 1996, p. 68 *et seq.*

<sup>96</sup> Cf. A. O l e s z k o, *Pewność obrotu prawnego nieruchomościami a zasada wpisu w księdze wieczystej (Certainty in Real Estate Transactions v. the Rule of Land and Title Register Entries)*, „Rejent” 1998, No. 6, p. 104 *et seq.*

<sup>97</sup> See justification for the draft law, p. 2.

<sup>98</sup> Cf. Constitutional Court ruling of June 13<sup>th</sup> 2006, Ref. No. SK 54/04, OTK ZU 2006, No. 6, item 64.

The respective functions of exercising justice and protecting the legal rights of an individual are correlated with the right to fair trial<sup>98</sup>. Exercising justice<sup>99</sup> is a qualified form of legal protection – yet the notion itself should not be limited to imperative judicial measures consisting in imposing penalties or resolving legal conflicts. It also pertains to matters free of conflict, with intent to secure the enforcement of all relevant legal standards<sup>100</sup>. Article 175 of the Constitution of the Republic of Poland stipulates that on Polish territory, justice shall be exercised by the Supreme Court, common courts, administrative courts, and military courts. The exercising of justice has been entrusted to courts of law on principle of exclusivity. One might well ask whether the phrase “*court of law*” may extend to notaries charged with performing actions listed in draft Article 79 clause 1(d) of the LoN.

The right to fair trial does not preclude the capacity for referring a case to be adjudicated or subjected to adjudication measures to be exercised by an entity other than a court of law, as defined by Article 175 Constitution of the Republic of Poland. The aforesaid notion may extend to state courts duly specified in the basic law, as well as to other *quasi-judicial* bodies, provided that system-rooted conditions stipulated under Article 45 of the Constitution have been met<sup>101</sup>, said conditions including competence, independence, impartiality, and autonomy<sup>102</sup>. In a judgement

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<sup>99</sup> For more, see M. Wałasik, *Konstytucyjna koncepcja sądowego wymiaru sprawiedliwości (Constitutional Notion of the Judicial System of Justice)* [in:] *Honeste procedere. Księga jubileuszowa dedykowana Profesorowi Kazimierzowi Lubińskiemu (Honeste procedere. Commemorative Volume Dedicated to Professor Kazimierz Lubiński)*, A. Laskowska-Hulisz, J. May, M. Mrówczyński (ed.), Warsaw 2017, p. 835 *et seq.*; P. Zaborowska, *Sądy pokoju w perspektywie konstytucyjnej – zagadnienia wybrane (Justices of Peace in the Constitutional Perspective – Selected Issues)* [in:] *Konstytucyjne aspekty procesu cywilnego (Constitutional Aspects of Civil Law Proceedings)*, A. Orzeł-Jakubowska, T. Zembrzuski (ed.), Warsaw 2023, p. 82 *et seq.*

<sup>100</sup> See Supreme Court resolution of November 24<sup>th</sup> 2021, Ref. No. III CZP 80/20, „Legalis” No. 2633178.

<sup>101</sup> Cf. P. Grzegorzczak, K. Weitz [in:] M. Safjan, L. Bosek, *Konstytucja RP. Komentarz (Constitution of the Republic of Poland. A Commentary)*, vol. 1, Warsaw 2016, p. 1119.

<sup>102</sup> See T. Zembrzuski, *Notarialny nakaz zapłaty...* (in press).

of October 24<sup>th</sup> 2007, Ref. No. SK 7/06<sup>103</sup>, the Constitutional Court explicitly accentuated that *“the Constitution gives rise to the principle of justice being exercised by judges only. An impartial and independent court of law is one that is in principle formed by judges. Exceptions shall be admissible, should two conditions be met in conjunction: firstly, exceptions shall be justified with a constitutionally legitimate goal, and fall within the boundaries of said goal being delivered (...). Secondly, all ‘materially’ essential conditions determining the court’s independence, impartiality and autonomy must be met”*. In consequence, the necessity to respect aforesaid values arises, coupled with the requirement to set up judicial control mechanisms to assess the correctness and justifiability of any action taken<sup>104</sup>. It seems that only the latter – embodied within the admissible complaint fileable with a court of law against an entry made by a notary – has truly been guaranteed in the regulation proposed.

Notwithstanding the above, the opinion that Article 45 clause 1 of the Constitution does not oblige the legislator to refer cases to be resolved *“from start to finish”* by judicial bodies is notable<sup>105</sup>. Cases devoid of law-centred disputes do not have to be perceived in categories of exercising justice. It is also possible for some cases to be submitted for resolution by specific non-judicial bodies – such as notaries. Regardless, it ought to be borne in mind that the legislator is unconditionally responsible for *“providing the individual with access to a court of law (...) with intent to have the non-judicial body ruling duly inspected”*<sup>106</sup>.

## VII. Summary

Reforming institutions such as land and title registers and land and title proceedings usually affects the legal position of entities generating

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<sup>103</sup> OTK-A 2007, No. 9, item 108.

<sup>104</sup> Cf. P. R y l s k i, *Pozycja ustrojowa i procesowa referendarza sądowego w postępowaniu cywilnym (System and Processual Position of the Court Referendary in Civil Proceedings)*, „Prawo w Działaniu” 2011, No. 10, p. 167.

<sup>105</sup> Cf. K. L u b i ń s k i, *Kontrowersje...*, p. 127 *et seq.*

<sup>106</sup> See Constitutional Court ruling of January 13<sup>th</sup> 2015, Ref. No. SK 34/12, OTK-A 2015, No. 1, item 1.

and using public registers in multiple and major ways<sup>107</sup>. One could well agree with the assumption that “*the development of information societies and information and communication technologies inflicts a new take on managing information resources at the disposal of public entities*”<sup>108</sup>. Nonetheless, the aforesaid proposition does not entitle anyone to abandon the principle of land and title registers being kept and updated by courts of law<sup>109</sup>, or endowing notaries with new roles in land and title proceedings. The land and title register institution is not deserving of another “*breakthrough moment*”<sup>110</sup>. In alluding to a twenty-year-old quote from Stanisław Rudnicki, one might well have misgivings as to whether proposed solutions will become a “*remedy for the current condition, wherein the backlog of motions to be examined and land and title register entries to be made are a tribulation to the public as well as a restriction to mortgage loan development.*”<sup>111</sup>

A body of the state and exercising its functions in the justice system, the court of law provides legal protection, duly reflected in a decision of authority made and contained in the ruling issued<sup>112</sup>, a principle applicable also to entries made under land and title proceedings. Notaries have been and shall be significant to such processes as land and title register dissemination, and continual record updates<sup>113</sup>. Nonetheless, a non-judicial body should not take any actions, including ones formally qualified as notarial, that may be perceived as encroaching upon the field of exercising justice.

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<sup>107</sup> Cf. M.B. Rękawek-Pachwicz, *Elektroniczne...*, p. 15 *et seq.*

<sup>108</sup> See J. Gołaczyński, *Informatyzacja ksiąg wieczystych...*, p. 39.

<sup>109</sup> Cf. R. Sztyk, *Obowiązki notariusza w postępowaniu wieczystoksięgowym (Responsibilities of the Notary in Land and Title Proceedings)*, „Rejent” 2001, No. 11, p. 13.

<sup>110</sup> Cf. P. Siciński, *Wniosek o wpis do księgi wieczystej po wprowadzeniu systemu informatycznego – wybrane zagadnienia (Motion for an Entry to be Made in the Land and Title Register in the Wake of IT System Implementation)*, „Monitor Prawniczy” 2003, No. 20, p. 952.

<sup>111</sup> See S. Rudnicki, *Postępowanie wieczystoksięgowe po zmianach (Land and Title Proceedings in the Wake of Change)*, „Monitor Prawniczy” 2002, No. 3, p. 105.

<sup>112</sup> For more, see T. Zembrzusi, *Nieważność postępowania w procesie cywilnym (Nullity in Civil Law Proceedings)*, Warsaw 2017, p. 150 *et seq.*

<sup>113</sup> Cf. E. Gniewek, *Wnioski o wpis...*, p. 61 *et seq.*

Controversial attempts at something akin to privatising the system of justice should be channelled not only as acting upon postulates for efficiency and swiftness – the constitutional context has to be accounted for as well<sup>114</sup>. A functional symbiosis of the notarial profession and courts of law as a quality of an effective justice system may become distorted in consequence of introducing the non-judiciary land and title proceedings model. The proposed solutions may well give rise to qualms not only in terms of the constitutional standard of the right to fair trial – they do not warrant actual workload relief or improvements to procedural effectiveness as set out in Article 626<sup>1</sup> *et seq.* of the Code of Civil Procedure. The after-effects of disfiguring the position of notaries as persons of public trust and their status, typical for the so-called Latin-type notarial model – with an equilibrium between private and public components<sup>115</sup> – may turn out to be difficult to predict.

*Tadeusz Zembrzusi – Professor of University of Warsaw, Chair of Civil Procedure, Faculty of Law and Administration, [www.zembrzusi.eu](http://www.zembrzusi.eu), ORCID No. 0000-0001-8239-6827.*

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<sup>114</sup> See T. Zembrzusi, *Notarialny nakaz zapłaty...* (in press).

<sup>115</sup> See Constitutional Court ruling of December 10<sup>th</sup> 2003, Ref. No. K 49/01, OTK-A 2003, No. 9, item 101. Cf. M.K. Kolański, *Odpowiedzialność cywilna notariusza (Civil Liability of Notaries)*, Toruń 2005, p. 39 *et seq.*; M. Setkowi cz [in:] *Notariat...*, A.J. Szereda (ed.), p. 5 *et seq.*