

The thesis aims to develop a model of civil liability for damages of a notary in Polish law. The thesis endeavours to give strong evidence, that a notary is liable in tort based on the article 49 of the Polish Code of Civil Procedure in connection with the article 415 of the Civil Code. The argument in favour of a notary being liable in tort is its status. A notary bears tort liability as a person of public trust, appointed to carry out notarial acts as official acts, exercising the prerogatives of public authority as defined by the act. Therefore, a notary cannot, at the same time, act as a typical entrepreneur acting in accordance with the principles of the free market of notarial services and be liable for the service provided due to improper performance of the agreement concluded with the client for the execution of a notarial act.

Since the obligation to carry out a notarial act is a professional activity of a notary, it has to be stated that there is no agreement between the parties and the notary regarding the performance of a particular notarial act. It stems directly from the act on notaries, specifically art. 1 § 1 of the Polish Notary Public Act, according to which a notary 'is called to carry out notarial activities' and art. 91 of the Polish Notary Public Act, which stipulates the so-called notarial coercion. As a consequence, upon the fulfilment of appropriate prerequisites, a notary generally carries out notarial activities upon the demand of a particular entity, as such an obligation arises by law.

For the liability of a notary, it is important that the damage is caused outside the notarial relationship and the unlawfulness of the notary's conduct consists in the breach of norm specifying the conduct of a particular professional group, such as notaries.

Due to the importance of the notary profession, the act obliges the notary to exercise 'due diligence' while performing notarial acts. The considerations included in the part of the work dedicated to the issue of culpability lead to a conclusion that a statement that a particular conduct of a notary does not correspond to the objectified standard of due diligence is not yet the same as their culpability. A plea of culpability can only be raised when it is established that in the specific circumstances the notary could have acted with due diligence, but did not do so. The measure of conduct set out in Article 355 § 2 of the Civil Code, in essence referring to the measure of due diligence, should not be formulated at the level of obligations that cannot realistically be enforced, in isolation from specific circumstances.

When several notaries run one notary office, each notary performs notarial acts in by their own name and is liable for the acts performed by them. In case a claim arises in connection with notarial act performed by a notary who is - a partner or a member of a partnership - only that notary would be liable for damages. Allowing any other solution would be in contradiction with the regulation set out in the art. 4 § 3 sentence 2 of Polish Notary

Public Act, which excludes the liability for notarial activity on the part of a partnership or a partner who did not execute the notarial act. The general rules applicable to a given partnership apply only to the obligations which do not arise from the execution of a notarial act .

The analysis of the notary's liability for his or her replacement leads to a conclusion that the liability of a notary for acts performed by his or her replacement relates only to the article 22a § 4 of Polish Notary Public, which pertains to the case of notarial trainee, covered by the patronage of a notary. As a result, a notary will not bear civil liability for damage caused by a substitute notary appointed in the course of art. 21 § 1, 21 § 3 and 22 of Polish Notary Public. The regulation in art. 22a of Polish Notary Public Act, which imposes on a notary public the liability for a notary trainee, in case he/she is allowed to carry out notarial acts strictly specified by the act, shows that the act does not provide for the liability of a notary public in other cases.