Załącznik nr 3b

Appendix 3b

Radosław Pastuszko, PhD
Assistant Professor at the Department of Agricultural Law and Land Management
Faculty of Law and Administration
Maria Curie-Skłodowska University of Lublin

SUMMARY OF ACHIEVEMENTS PRESENTING A DESCRIPTION OF THE WORK AND ACHIEVEMENTS OF THE HABILITATION CANDIDATE

1. Name

Radosław Pastuszko

2. Diplomas and academic/artistic degrees – with the name, place and year of their award and the title of the doctoral dissertation.

- 1997-2002: long-cycle LLM programme at the Maria Curie Skłodowska University of Lublin, Faculty of Law and Administration, major: law, graduated with the final mark "very good"
- 2002: Master in Laws exam passed with the mark "very good" and was granted the Master of Laws title at the Maria Curie Skłodowska University of Lublin, Faculty of Law and Administration
- 2002-2006: doctoral programme at the Maria Curie Skłodowska University of Lublin, Faculty of Law and Administration
- 2006: defence of the doctoral dissertation entitled *Charakter umów z tytułu przekazania gospodarstwa rolnego za świadczenia emerytalno – rentowe [The nature of agreements of transfer of farming estate for a pension benefit]* and the award of the academic title of Doctor of Laws at the Maria Curie Skłodowska University of Lublin, Faculty of Law and Administration. Advisor: Prof. dr hab. Aleksander Oleszko, reviewers: prof. dr hab. Edward Drozd, prof. dr hab. Mirosław Nazar

3. Information on previous employment in academic entities

- 1.10.2002 - 30.09.2007 – assistant lecturer (part-time) at the Department of Agricultural Law and Land Management of the Faculty of Law and Administration, Maria Curie Skłodowska University of Lublin.
- 1.10.2002 to present – assistant professor at the Department of Agricultural Law and Land Management of the Faculty of Law and Administration, Maria Curie Skłodowska University of Lublin.
- 1.10.2009 to present – Wyższa Szkoła Ekonomii i Innowacji, Lublin (employment under a civil-law contract)
- 2010 - 2011– Puławska Szkoła Wyższa

4. Specification of achievements pursuant to Article 16(2) of the Act of 14 March 2003 on academic degrees and academic title and degrees and title in arts (Journal of Laws of 2017, item 1789);

a) title of the scientific achievement/achievement in arts

Monograph: *Dostęp do zasobu gruntów rolnych w procesach globalizacji. Zagadnienia prawne [Access to resources of agricultural land in globalization processes. Legal issues]*

b) (author(s), publication title(s), year of issue, name of the publisher, editorial reviewers)

Radosław Pastuszko, *Dostęp do zasobu gruntów rolnych w procesach globalizacji. Zagadnienia prawne,* Lublin 2019, Innovatio Press Wydawnictwo Naukowe Wyższej Szkoły Ekonomii i Innowacji w Lublinie, pp. 300, ISBN: 978-83-66159-10-5

The editorial reviewers of the monograph were prof. dr hab. Adam Niewiadomski and dr hab. Katarzyna Popik – Konarzewska, professor of WSEI.

c) description of the scientific/artistic aim of the work(s) and the results achieved, along with the description of their possible application

4.1. Justification for the choice of subject

The monograph to be assessed addresses the issue of legal conditions for access to land resources in the perspective of globalization processes.

The choice of the topic resulted first of all from the lack of a monographic study that would discuss that matter. For agricultural law, the issue of agricultural land has been the core subject of research, analysis and sustained interest among scholars and case law. It is assumed that agricultural land is the subject of a special regulation in legislation, which is traditionally explained by the need to protect land as a productive good of non-reproducible character. Whereas legislation and research focused in previous years on various aspects of property-law (agricultural estate) and private-law analysis of its content, its exercise and limitation, in particular in the aspect of ownership transfers, the context of legal issues concerning agricultural land is much wider nowadays.

As global economic processes have revealed new circumstances, the protection of agricultural land in the broadest sense, namely the access to such lands, needs to be taken into account, and sometimes becomes an issue of primary importance.

The importance and functions of agricultural land in the context of environmental, climatic, spatial, cultural and social requirements as a factor for rural development, shaping the population structure, migration as well as the sustainability of family ties, neighbourly relations, integration and the cohesion of local development have been referred to more and more often. The specific renaissance of land issues in the dogma of agricultural law resulting from global economic processes, institutional changes of the Common Agricultural Policy of the European Union and the evolution of Polish law solutions has become the basis for a new, non-traditional view and assessment of the legal situation of agricultural land.

4.2. Research theses

Access to resources of agricultural land provides the basis for running the activities that guarantee the maintenance of life and health of both an individual and entire societies, and constitutes a factor for shaping and ensuring public security and social order. Agriculture is the oldest and the most traditional type of manufacturing and production activity, but the actual access to agricultural land (land resources) has been consistently and increasingly limited as a result of economic changes. This pressure results from a number of developmental factors. Typical and known for years, these are a consequence of industrialization and urbanization processes. The consequences resulting from the devastation of the natural environment are obvious too. However, there are new effects which constitute a factor significantly affecting land availability. These include the growing population of the world and the globalization of economic processes – also in the field of agricultural production. Since the first years of the 21st century, the growing phenomenon of taking over

large areas, especially agricultural land, has been observed. It seems that a number of these factors are not properly reflected at the level of international and EU regulation. It can even be assumed that the existing legal solutions, which are formally supposed to serve the protection of land – the land resources, do not function, and may even unduly and unjustifiably result in the limitation of access to land. It does matter how the right of access to resources of agricultural land is shaped, and what goals are achieved when using these resources. It may be noted a certain incompatibility of existing legal solutions to problems that stemming from economic practice in a global scale. This especially applies to the situation in developing countries, whose population living in rural areas depends on the adverse effects of climate and environmental change and changes in the ownership structure of land as a result of foreign investment in real estate. Land resources remain the most fundamental natural resources for most people in rural areas. In the era of progressing climate changes and global ownership changes, access to land resources has become even more important.

A threat to access to agricultural property resources translates into a real threat to the existing social and economic system and requires appropriate remedial action, with legal solutions being of fundamental importance. Due to the nature of the threats, it is reasonable to develop new instruments aimed at preventing the restriction of access to natural resources, including in particular agricultural land and related resources, i.e. water and forest resources. The question remains whether it is possible at all to devise a system of legal and non-legal instruments, which would be able to adequately address the postulate of protection of access to resources, considering the global scale of issues. It is the more important to address the question of the quest for instruments which, although indirectly, will affect the implementation of postulates put forward: ensuring sustainable access to agricultural land in the production terms, taking into account the societal, environmental and economic impacts. These instruments, seemingly, can operate within specific limits at the level of international law, EU law and Polish law. The approach to the subject proposed in this monograph is similar to those applied in the areas of environmental law, in particular nature conservation law. This applies, first and foremost, to the normative model of access and use of individual natural resources.

Legal regulations affecting the actual access to resources of agricultural land are developed in various manners, pursue different objectives and have varied character in international law, European Union Law and Polish law. The Polish legal order is characterised in the clear distinction according to the method of regulation: either private-law method or

public-law method. This diversity results in a number of consequences that must be taken into account for the achievement of the research objective pursued.

The determination whether there are grounds for legal distinction of the rules for access to agricultural land (land resource) can be understood in a varied manner. Legal conditions for the access to agricultural land are subject to analysis in the context of specific features of the land in question, which make it necessary to meet social and public needs. Ever-changing social relationships, the ways in which the estate is developed or used, as well as the functions thereof, result in that the agricultural land resource, when studied as a model, needs a reference to different legal regulations with different regulatory objectives characterised by a specific conflict between public law and private law. One also needs to consider the semantic variety of terminology that occur depending on the method and purpose of the normative act.

The effects of legal regulations extending the direct territorial scope of application of law are also important. The traditional sphere of legal analysis on agricultural land, which focused on the issues of ownership and transactions in national legal systems, must be extended. The globalization processes discussed in the monograph, which directly affect the agrarian structure in countries where large-scale land acquisitions take place, may constitute the basis for redefinition of the problem and application of a much broader range of legal issues related to access to agricultural land (land resources). This entails assuming that different legal instruments at international and national levels promote different normative values. Ever-growing pressure on agricultural land makes us try to reconcile different normative values, while at the same time posing a serious challenge to competing rights.

Of particular importance are the non-economic aspects related to land, such as its environmental, social and cultural dimensions, and even its humanitarian dimension, which are more and more taken into account in normative solutions. Depending on circumstances, normative instruments may be intended to protect different rights to land, going well beyond the traditional dimension of ownership.

Due to functions performed by agricultural land they are more and more often a subject of public-law analyses, wherein agricultural land is undoubtedly a unique good among the entire conglomerate of natural resources, constituting a specific guarantee of shaping and maintaining the social order, and in this context may be treated as a public good in the functional dimension. One should also note the strong link between land used in agriculture and the impact of changes made to agricultural land resources on other natural resources, in particular water or forest resources.

The assumption of the unique nature of agricultural land in normative perspective means that agricultual land is subject to special legal protection. The protection is primarily of a conservative nature and aims to maintain the appropriate productive potential of agricultural land. The aforementioned feature is clearly visible both in the traditional sphere of private-law regulations concerning the issues of property-related transactions, appropriate agrarian structure, as well as in typical public-law solutions, e.g. qualitative and quantitative protection of agricultural land. The globalization processes currently under way, which result in a real threat to the stability of access to agricultural land resources, require a much clearer articulation of conditions affecting land availability, which is an essential platform for appropriate normative solutions. This is so, because only where instruments ensuring access to agricultural land resources are in place, adequate legal mechanisms of agricultural land use can be formed, which respect all the functions of agricultural land.

4.3. Objectives of the study

The monograph constitutes an attempt to analyse the normative aspects of access to the agricultural land resource in a global perspective, which takes account of the objective and subjective levels of the problem. The study seeks to demonstrate and systematise the determinants of access to agricultural land to find whether it is justified in the present state of affairs to construct the category of right to access to agricultural land resource as a basis for further specific solutions, and in particular whether the applicable legal arrangements at the current level of socio-economic development take appropriate account of all the identifiable functions of agricultural land and their impact on social and economic relations.

The next objective of the study is to determine the nature and extent of availability to the land resource. This required the characterisation of emerging threats, taking into account regulatory and non-regulatory factors restricting the access, and their consequences. Such characterisation forms the basis for fundamental discussion on the legal instruments governing the access to the land resource, taking into account the solutions of international law, European Union law with particular regard to the system of Common Agricultural Policy, and national law.

Agricultural land, regardless of the fact that it satisfies individual needs of a given entity, is supposed to pursue social and public needs, which is most evident in the global perspective of the study. The specific nature of agricultural land does not depend on the status (whether public-law or private-law) of the person entitled to hold the land, and the assessment of the possibility of access to it requires a departure beyond the traditional perspective of

acquisition of ownership or other property right or obligation right allowing the use of land. The approach based on shaping the spatial structure (agrarian structure) has also proved inadequate. On the other hand, the attempt to recognise a land resource as a specific public good which serves to achieve public objectives, regardless of the ownership status, is reasonable and justified. Land is increasingly supposed to serve to meet the needs of communities concerned and thus gains a public dimension. In this context, it appears that the traditional link between the holder and the property is insufficient to present a comprehensive factual state but also a legal situation.

4.4. Research methods

The analysis in the dissertation was carried out using methods appropriate for solving legal problems. Of fundamental importance was the analysis of normative acts of international law, European law and national law and, to a limited extent defined by the research goal of work, laws of selected third countries. Worth noting is the dispersion of legal regulations and their diverse character, very strongly related to the protection of human rights, environmental protection, law on development projects, the right to safe food, and the right of ownership as a last item. The soft law that shape the essential priorities of protection of access to agricultural land resources are of significant importance for the evaluation of the existing system of protection of access to agricultural land. The research methodology takes into account the analysis of positions expressed by scholars of law, especially abroad Poland, who devote much more attention to the phenomenon of restricting the access to agricultural land resources than the Polish or even European literature. The study employs to a large extent the case law shaping the rules for the interpretation of the law on access to resources of agricultural land in the implementation of large-area land takeovers.

A multifaceted analysis of the subject also required the use of research methods that go beyond the legal and dogmatic method. As regards the determination of effects of legal solutions, consistency of the objective and the performed function, it was necessary to take into account the results of empirical research, in particular economic analysis, economy-oriented law analysis, and econometric and sociological analysis. This is so, because only using the numerical data obtained one can illustrate the scale and size of threats caused by large-scale taking over of agricultural land, determine social and economic effects, reveal differences in land rights and the level of their implementation, and indicate that global threats – most visible in the so-called countries of global South – are not unknown to the countries of the European Union, and EU-based entities are seriously involved in the process of large-

scale acquisitions. Hence tables and lists appear in the study to the necessary extent, while the footnotes present the most spectacular cases illustrating the process of large-scale takeovers of agricultural land.

The historical method was also used as an auxiliary method.

The methodological arrangement has also been subordinated to the multi-faceted research.

4.5. Structure of the study

The structure of the dissertation consists of three parts, which consist of eight chapters. In the first part, terminological arrangements and economic conditions for access to agricultural land are presented. Substantive considerations and analyses were preceded by comments from Chapter I, which provides a specific conceptual grid to explain and define concepts appearing in further parts of the study. As regards the meaning of concepts, especially those derived from studies in non-legal sciences, a justification for their meaning and interpretation was provided, according to the sources referred to in the content and footnotes.

The observations contained in this part have been limited to basic issues, determining further remarks that are essential in view of the purpose of the study. For these reasons, they do not have the character of a detailed analysis, nor do they aspire to be a whole representation of the problem. They are a methodologically necessary starting point and introduction to fundamental issues, by arranging the terminology and shaping the clarity and legibility of discussion.

Chapter II contains a description of the process of large-scale takeover of agricultural land, which should be regarded as the most characteristic element of changes determined by globalization of economic processes. The attempt to define such specific access takeovers was complemented by statistical data showing the scope, scale, conditions and consequences of transnational takeovers of agricultural land. These analyses constitute a necessary basis for the qualification of the process of large-area acquisitions in the normative perspective and the assessment of the impact on the access to agricultural land resources on a global level.

The second part of the study includes deliberations concerning legal mechanisms of access to agricultural land resources in the processes of globalization. The analysis was formulated across four chapters.

Chapter III deals with ownership changes and the perception of this right, taking into account various solutions in the world. Of particular importance here is the issue of customary

systems, differing from the classical Western legal culture, applied in countries with the highest number of large-scale land acquisitions, which directly affects access to land resources. The process of assigning legal titles to the land taken over has also been tackled.

The issues addressed in Chapter IV is characterised by the relationship between access to land resources and right to adequate food, derived especially from Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Access to land resources is necessary for the exercise of the right to adequate food. For certain groups of the population that are most vulnerable as a result of large-area takeovers of agricultural land, this means protection for the existing access to land, water, pastures, fisheries or forests, all of which may be production resources necessary for them to live a dignified life. In such cases, the right to adequate food may complement the classic dimension of land rights protection.

Chapter V presents those of other human rights that seem to be most linked to the protection of access to land and may provide an indirect basis for formulating the category of "resource access rights". It can be assumed that the protection of access to a resource constitutes, in this case, a type of metarule which enables the protection of other human rights recognised internationally and regionally. This applies primarily to the right to cultural integrity, gender equality and the protection of women's rights, and the right to housing. This perspective of relationships between human rights and land access protection is acknowledged in the UN General Assembly's Declaration on the rights of peasants and other people working in rural areas (UNDROP), adopted on 18 December 2018, to which a particular attention has been paid in the monograph.

Chapter VI of the study is an attempt to combine the legala nd economic aspects with those stemming from human rights which are applicable to large-scale acquisitions of agricultural land and limiting the access to land resources. It seems that in this case the right perspective is the principle of sustainable development, which takes into account the social and economic dimensions of the issues in question.

Part three deals with the issue of access to agricultural land resources within the legal framework of the European Union. The discussion in chapter VII addresses actions undertaken by the EU that have an effect on third countries in the area of large-scale land acquisitions. The analysis covers both the presentation of basic legal solutions affecting the restriction of access to land and the presentation of initiatives taking into account the negative consequences of the phenomenon.

The analysis contained in Chapter VIII of the study relates to the internal dimension of access to agricultural land in the European Union. This includes rules on the trade in

agricultural land in EU Member States in view of the principle of free movement of capital against the case-law of the Court of Justice. The second area covers the characteristics of access to agricultural land in the EU Member States, moderated both by treaty freedoms and the consequences of the legal model of the Common Agricultural Policy and other economic policies of the Union.

These deliberations are closed with final conclusions.

4.6. Conclusions

The observations and analysis of legal regulations presented in the study allowed the author to formulate some general and more detailed conclusions.

We should start with **a general conclusion** on the redefinition of the current research fields in agricultural law. The issue of access to agricultural land resources in the global dimension differs from the scientific discourse dominating the study of agricultural law, which concentrates around fixed planes, structures and mechanisms of Polish and European agricultural law. However, globalization processes, especially in the area of access to agricultural land resources, affect also the EU Member States, while the EU institutions, according to the conducted research, have become both a serious participant in international investment in agricultural land which compromises the rules of access, and the initiator of practical and legal actions to secure controlled, stable and equitable access to natural resources. Therefore, it is reasonable to broaden the perspective of scholarly analysis of agricultural law to include issues of globalisation, which have so far been treated too marginally. In this respect, the study opens a discussion and constitutes a starting point for introducing legal problems of global agriculture in the research area and points to the first, but fundamental point of reference, namely access to agricultural land resources.

Leaving open the conclusive decision as to whether and how such a right should be defined, it is possible, however, to formulate **partial conclusions** which point to the need for a scholarly and legislative effort to protect global, regional and local access to agricultural land resources.

- ✓ The concept of legal protection of access to agricultural land resources stems from the assumption that access to land is a kind of metarule on which further human, environmental and economic rights are based, due to the multi-faceted nature of resulting consequences. In such an approach, the prevailing understanding of land as a globalised resource, whose functions boil down only to the economic, financial and market (land market) levels – is insufficient. This contributes to calling into question

the existing national, European and international system of investment protection, carried out at the expense of the local population deprived of access to land.

- ✓ The formulation of instruments for the protection of private property rights is not sufficiently capacious either. Recognition of the right to land, the essential part of which is access, makes the resource of agricultural land a special common good to which people and communities have access, which they control, manage and use in many different forms, with the purpose of dignified life, in accordance with their social and cultural context. Therefore, legal instruments should recognize, protect and guarantee the diversity of systems of rights and titles for land holding. A doctrinally coherent and exercisable right to land covers, first and foremost, established human rights that take into account the right of access to resources of agricultural land and interdisciplinary economic, political and social aspects of land policy.
- ✓ The growing importance of agricultural land in global economic and legal transactions is a consequence of a number of conditions. The main reasons are the convergence of the crises: food, fuel, energy, climate, environmental and financial, as well as the development of new centres of economic production, investment, trade and consumption, changing patterns of supply and demand for agricultural products, as well as population growth.
- ✓ Another reason is the model of so-called green economy, which under the pretext of pursuing economic growth, production and consumption transforms natural resources into investment capital, and the growing demand for agricultural commodities for industrial applications. Other significant elements are changes in the use of resources. In this perspective, agricultural land is perceived as the object of investment, the purpose of which is to take over and maintain control over access to land resources from entities that have used them before. The phenomenon of large-area land acquisition remains in relation to the commercial and industrial production model, which depends on high external inputs, in particular chemical fertilizers and pesticides. This type of production leads to the destruction of agricultural biodiversity and has irreversible social consequences.
- ✓ The pressure on resources of agricultural land is also growing in the perspective of climate change. The consequences of climate change pose a significant threat to the access, control and use of these resources by individuals and communities depending on them. Their livelihoods are subject to negative impact, because resources are running out, soils become infertile, and climate change and extreme weather

phenomena become more severe. Access to land and related resources is further restricted by climate protection and climate change mitigation systems. Results of legal solutions adopted include acquisitions of access to land from the local population, based on the argument that peasant economies and the way they use natural resources are hardly effective or completely ineffective, and some community-based production systems are even environmentally destructive. Such a narrative depicts traditional and peasantry farming and use of resources as important negative factors of climate change and suggests that land and related resources should be taken away from peasants, fishermen, shepherds and indigenous peoples, and then assigned for "more efficient" methods of use by professional entities that systematically take into account climatic conditions.

- ✓ Further arguments supporting the shaping of protection of access to resources of agricultural land result from extraterritoriality of the acquisitions. The globalisation of economic and legal relations is manifested in the fact that investors look for land resources outside the territory of the countries or economic areas of their origin. The main consequence is restriction of access to land resources and preventing the most traditional type of this most traditional human manufacturing activity i.e. agriculture. The loss of access does not always mean losing the right to land, particularly as a formalised property right. In fact, land access and control are regulated, administered and used in many countries in as part of informal or customary systems that are not recognised or effectively protected by formal legal systems. In the context of land takeover, land access is lost without formal expropriation. The loss of access to land may also be made indirectly under appropriately formulated contracts or agreements. Such practices are common in large-scale land acquisitions, including those involving European economic and financial actors.
- ✓ The recognition of access to resources of agricultural land as a legally protected good contributes to the undermining of the trend towards deeming land and related natural resources as ordinary goods that are subject to "everyday" economic and legal transactions. It also challenges legal solutions regulating the free use of natural resources by investors or local governments without respecting customary and informal rights to the land, which do not guarantee fair access to and control of natural resources.

- ✓ The loss of access to land often refers, at least formally, to areas recognised as "unused", "set aside" or "vacant", but which are used by communities for different existential, cultural or religious purposes. Such use is defined as the "secondary use" of land, which justifies the admissibility and displacement of the indigenous population, for which they are necessary to maintain their own communities, cultures, beliefs or rituals. Land development projects often restrict the freedom of movement of the local population, preventing them from accessing the land acquired and almost always restricting recognised human rights.
- ✓ The existing system of human rights does not expressly recognise the right to land and, more so, does not have a formula for the right of access to land (land resource).
- ✓ Access to resources of agricultural land as a protected good can provide an appropriate basis and guarantee for recognised and protected human rights. Despite the growing awareness and recognition of the inseparable link between land and other human rights, the international human right has so far ensured only a limited right to land. The analysis carried out in the study clearly shows the ever-growing set of soft-law instruments, which recognise the inseparable link between access to land and human rights and the importance of protecting access to land. Also some of the human rights enshrined in fundamental human rights treaties contain provisions on land and natural resources.
- ✓ Land and related natural resources are a prerequisite for the exercise of recognised human rights, in particular the right to adequate food (Article 11 ICESCR). Women's rights, including the rights of women in rural areas (article 14 of the Convention on the Elimination of All Forms of Discrimination against Women), and indigenous peoples' rights are closely linked to safe, stable and equitable access to land and related resources. This applies in particular to access to water reservoirs used as fishery and forestry areas. The land-taking also compromises human rights to adequate housing (Article 11 ICESCR), especially when displacement concerns families or entire communities. Where land transactions resulted in displacement and forced eviction, violence by public or private security forces leads to an infringement of the right to the enjoyment of the highest attainable standard of physical and mental health (Article 12 ICESCR). Considering the close cultural ties of many communities with the land they live on on, the land takeover can also lead to an infringement of the right to take part in cultural life (article 15(1) ICESCR). Land takeovers also have a serious impact on the civil and political rights of those affected by this process. The issue of

failure to consult the local residents infringes the citizen's right to take part in the conduct of public affairs (Article 25 of the International Covenant on Civil and Political Rights), the right of access to information (Article 19 of the ICCPR), the right to self-determination of peoples and freedom of expression (Article 19 of the ICCPR). It is also an infringement of the principle of free, prior and informed consent (FPIC).

- ✓ The analysis of large-area investment activities aimed at gaining access to agricultural land resources provides numerous arguments in favour of the need to develop effective protection mechanisms.

Another group of conclusions justifying the construction of the right of access to agricultural land resources is connected with research on the **significance and function of property rights** as an instrument of protection.

- ✓ In global perspective, the Western model of private ownership is only one of many forms of control, use and protection of access to agricultural land resources. In a number of legal cultures and their rules, the access, management and use of land is based on customary and communal systems and practices in the field of ownership, which are rooted in social relations and the value system of a given group, radically departing from the classical approach to the right of ownership. Internationally, this diversity has been best expressed by the FAO. According to the FAO's established definition, land tenure is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land and other natural resources. Such a construct points to the multi-faceted nature of the right and reflects, at least to some extent, the complex relationship between the community and particular individuals with the land and other natural resources, and with nature itself. It should be stressed that the concept is devised to take into account the rights of access and use by entities that do not have formally recognised ownership rights. From the perspective of access to land, it appears to be understood in the light of CESCR General Comment No 4 of the Committee on Economic, Social and Cultural Rights, according to which "security of tenure" is an important basis for people and communities to protect and use their occupied land and to combat forced eviction, regardless of whether or not they have appropriate legal titles.
- ✓ Problems of the regulation of access to land remains a matter for national legislation, but it seems that due to its importance and consequences, resulting from globalization processes, with particular regard to the phenomenon of large-area land acquisitions,

they should be subject to more extensive international regulations. Due to the importance of international trade in the shaping of land trade transactions, it should be noted that international investment law pays little attention to counteracting land takeover processes. So far, there is no comprehensive legal framework directly related to the large-scale acquisition of agricultural land in the area of trade and investment. The development of legislation in this area would provide an opportunity for the international community to define principles that will restrict the preference of interests of corporations rather than sustainable development and human rights in land acquisition negotiations. Self-regulation of the business and corporate social responsibility systems are insufficient to address human rights issues in the context of land takeovers and restrictions on access to resources. They do not protect against human rights violations and do not ensure responsibility of states, liability of corporate actors involved and access to effective remedies for the individuals and communities affected.

- ✓ The process of land takeover can also be observed within the European Union. Undoubtedly, the scale of the acquisition of agricultural land in the EU is limited in comparison with countries in Africa, Asia and Latin America, but is progressing. The difference in scale does not prove much as the land resources both within the EU and individual Member States are generally less as compared with resources in developing countries. A particular feature in the EU is a close link between the acquisition processes and the concentration of agricultural land, which affects restrictions on access to land. The causes of the processes vary in nature. The relatively low price of agricultural land in the new Eastern European member States compared to the older EU Member States was of paramount importance. This has become a major incentive for investors to acquire farmland in these countries and, to a certain extent, has led to speculative processes. The processes of ownership reforms in former socialist states have resulted, in some cases, in the emergence of even dualistic agrarian structures, where land use is either strongly concentrated or strongly fragmented. This situation facilitated the process of acquiring agricultural land and the further progressive concentration of land (Bulgaria, Romania). However, agricultural land is an attractive investment perspective not only in the Eastern European Member States. It is Possible to observe the emergence of new entrants which have not yet been associated with agricultural activities which acquire agricultural land with the intention of changing its intended purpose. This process is called "artificial exploitation of agricultural land"

and consists in the actual loss of agricultural land for urban development, tourism and other non-farming commercial ventures. This contributes to the concentration of agricultural land in the EU and restricts farmers' access to land resources.

- ✓ Other factors are even broader and relate to all Member States, because they stem from different EU policies and legal institutions used in this area. The link between the land concentration process and the concentration of benefits stemming from the legal model of direct support under the CAP, which took place between 2007-2013 and 2006, is particularly evident. The model principle of the single payment scheme, which was not linked with production, constituted a response to the serious problems of subsidised overproduction during that period. However, the coupling of payments with land area led directly to the agricultural land concentration processes at the largest farms, while also disrupting the scale of support for other farms. Although the current model of CAP introduces more sustainable systems and the principle of modulation, the overall principle remains the dependence of support on the farm land area. The analysis of the normative and statistical material has also shown a somewhat paradoxical impact of the Common Agricultural Policy of the European Union. The consolidation of land ownership is a consequence of direct support solutions for agriculture in certain Member States which have led to a situation where more than 80% of the agricultural area is actually held (which often means formal ownership) by only 3% of economic operators. Due to the scale of the phenomenon, it is necessary to attribute global features to it.
- ✓ Another factor affecting land concentration and limiting the access refers to the high and still growing level of concentration on the EU food market, which allows the abuse of purchasing power of market entities, limits the income of agricultural producers and indirectly increases their vulnerability to the processes of taking over and concentration of agricultural land. Also, one cannot ignore legal solutions in the field of EU policy regarding renewable energy sources, which encouraged new investors to develop cultivation of energy crops, affecting the scale of agricultural land acquisition and a significant increase in real property prices. The excessive concentration of agricultural land in the largest farms leads to the actual limiting of the significance of the European model of family farming and may raise serious doubts in view of the objectives of the Common Agricultural Policy set out in the Treaty provisions. Economic pressure caused by the processes of concentration of agricultural

land and taking over agricultural land led to the strengthening of unequal access to land in the agricultural sector between industrial farms and traditional farms.

- ✓ The rules governing the functioning of the internal market are the main legislative mechanism that regulates transactions regarding land in the EU and between its Member States. According to Article 26 of the Treaty on the Functioning of the European Union, the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties. The acquisition of ownership or other legal title to land and regulation by law may entail any of the listed Treaty freedoms, with particular regard to the free movement of capital. The principle of free movement of capital is particularly important when looking at the real estate market in Europe, as it allows citizens and undertakings from one EU member state to invest in other member states. There can be no free movement of employees without the free movement of capital. Farmers must have the opportunity to settle in the new member states and must be able to buy and invest in farms.
- ✓ Nevertheless, it should be stressed again that land, especially agricultural. is not an ordinary market commodity. Due to the special nature of agricultural land, the question is more and more asked whether it should be reasonable to limit the application of standard market rules and to accept that the agricultural land market should be subject to more strict regulation. It may be considered whether the traditional approach to the free movement of capital is justified with respect to trade in agricultural land, in particular with regard to third countries, but also within the EU.
- ✓ Considering that agricultural land is not a mere market commodity, many arguments are in favour. The Earth is a "natural capital" that promotes a resource-efficient, ecological and competitive economy. It is also a limited resource that is subject to different applications and conflicting interests. Legal Solutions should guarantee the use of land that respects the environment and ecosystems, while creating jobs in rural areas. The sustainable model of agriculture (rooted in local, social and ecological realities) is a possible and feasible response to the concentration and scarcity of land in the EU. The economic pressure resulting from the adopted legal arrangements affecting the agricultural land concentration and takeover processes led to the strengthening of uneven access to land in the agricultural sector between industrial farms and traditional, small or organic farms.

The last conclusion is of a summary nature. Assuming that access to a broadly understood resource of agricultural land in its various manifestations is worth protection, will open the way to the exploration and implementation of appropriate protection instruments at all levels of impact, including agricultural law instruments, and ultimately to shaping the right of access to agricultural land.

5. Description of other scientific (and artistic) achievements

5.1. Introduction

Other scientific and research achievements include publication activities and active participation in scientific conferences. These achievements will be described based on the characteristics of scientific interests, taking into account the main research topics tackled in the publications and papers, and some basic research results will be indicated. Having been awarded the degree of Doctor of Legal Sciences I focused my scientific activity on varied subjects. It covers primarily the issues relating to the study of agricultural law, legal aspects of real estate trading and the law on notaries. The main lines of my research activity focus on the four main areas characterised below.

5.2. Trade in real estate

Issues of trade in real estate are one of the most important matters in agricultural law, therefore I have devoted to this subject a number of various studies.

My research areas cover issues relating to the trade in agricultural property in an international perspective (R. Pastuszko, *Land grabbing. Podstawowe zagadnienia prawne* [Land grabbing. Basic legal issues], "Studia Iuridica Lublinensia" 2017, vol. XXVI, no 1, p. 147-156) and the legal system of the European Union (B. Jeżyńska, R. Pastuszko, *Obrót nieruchomościami rolnymi a prawo Unii Europejskiej* [Trade in agricultural properties and the EU law], "Problemy Rolnictwa Światowego" 2018, vol. 18 (XXXIII), book 3, pp. 156–164). An important element of the subject matter of real estate trade are expert's opinions and consultancy on the model of agricultural real estate trade in Poland after the end of the transitional period specified in the Accession Treaty, which were developed for the Polish Sejm and Senate (B. Jeżyńska, R. Pastuszko, *Ramy prawne obrotu nieruchomościami rolnymi po 2016 roku* [Legal framework for the trade in agricultural real estate after 2016], Zeszyty Biura Studiów i Analiz Kancelarii Senatu, OE-197, Kancelaria Senatu 2012; B. Jeżyńska, R. Pastuszko, *Opinia prawna na temat propozycji zmian regulacji prawnych dotyczących obrotu nieruchomościami rolnymi* [Legal opinion on the proposal for the amendment of legal

regulations on the trade in agricultural real estate], Zeszyty Biura Studiów i Analiz Kancelarii Senatu, Opinie i Ekspertyzy OE-217, Kancelaria Senatu 2014; B. Jeżyńska, R. Pastuszko, *Konstytucyjne wytyczne w zakresie ochrony gospodarstwa rodzinnego w nowych założeniach prawa obrotu nieruchomościami rolnymi,* [Constitutional guidelines regarding the protection of family farms in new assumptions for the law on trade n agricultural real estate] Zeszyty Biura Studiów i Analiz Kancelarii Senatu, OE-224, Kancelaria Senatu 2014; B. Jeżyńska, R. Pastuszko: *Opinia do projektu ustawy o kształtowaniu ustroju rolnego oraz o zmianie niektórych innych ustaw* [Opinion on the draft act on the shaping of agricultural system (Sejm Papers no. 3109) of 2 March 2015; B. Jeżyńska, R. Pastuszko, *Zakres regulacji prawnej ustroju rolnego w Polsce* [Scope of legal regulation of the agricultural system in Poland], MRiRW 2016). The analyses and conclusions presented in these studies focused on the issue of admissibility and potential scope of national normative solutions governing agricultural real estate trade in the light of the provisions of the Treaty on the Functioning of the European Union and the political model delineated by the Constitution of the Republic of Poland. There is no doubt that Article 23 of the Constitution of Poland may provide the basis for a specific regulation of agricultural real estate trade. The Act of 11 April 2003 on shaping the agricultural system was to be of fundamental importance in this respect. In formal terms, the introduction of the concept of family farm to ordinary legislation should be assessed positively. However, a question arises to what extent the statutory concept of family farm implements the programmatic function of Article 23 of the Constitution on a substantive level. The definition of family farm adopted in the Act on shaping the agricultural system was determined only by one element traditionally specified in the content of the term "agricultural system". The subject matter of the Act focuses on shaping ownership relations in agriculture to a very limited extent, which may also raise serious objections as to the adequacy and precision of the institutional and legal solutions adopted. The Act on shaping the agricultural system as an embodiment of the principle expressed in Article 23 of the Constitution should significantly go beyond the strictly formal construct, built on the conditions of the farm area and the category of individual farmer. The current way of defining the terms "family farm" and "individual farmer" in the ordinary legislation definitely differs from the legal regulation of the status of family farms in Western Europe, and subsequent amendments to the Act seem to make the situation even more complex, and certainly do not remove the errors in the existing regulation, which have been pointed out in the literature many times. The new solutions should, to a much greater extent, create instruments to ensure improvement in the existing agrarian structure, rational use of land for agricultural production purposes, control of

speculative trade in land and ensure the sustainability of other forms of economic land management, especially long-term agricultural leaseholds.

The unique character of agricultural real estate was also subject to analysis in the field of regulations on land and mortgage registers (R. Pastuszko, *Charakter oraz szczególne funkcje ksiąg wieczystych w obrocie nieruchomościami rolnymi* [The nature and special functions of land and mortgage registers in the trade in agricultural real estate], "Rejent" 2015, no. 5, pp. 181-200; EN version: R. Pastuszko, Disposition of agricultural immovable property (agricultural farm) and the protective function of the land and mortgage register – comparative legal analysis, „Deutsch-Polnische Juristen-Zeitschrift" 2016, nr 1-2, s. 60-70). The publications pointed to selected aspects of the implementation of functions of land and mortgage registry towards agricultural real estate, in respect of which the legal status disclosed in the land and mortgage register, much more often than in the case of other types of real estate, does not reflect the actual legal status. The reasons for this state of affairs are diversified in nature and refer to both the land-registry area in the strict sense, and to substantive legal regulation, taking into account the diverse legal basis for an entry of the owner as a purchaser of agricultural estate, which concerns in particular the consequences of legal solutions adopted before 1990. Publications in this field have a very clear practical value, which has been noticed and highly rated by notaries.

Another part of the achievements under assessment are studies on the trade in agricultural real estate in the perspective of specific normative solutions of the Polish system of social insurance in agricultural sector, which is a continuation of the research presented in the doctoral dissertation (R. Pastuszko, *Od „przekazania gospodarstwa rolnego" do „zaprzestania prowadzenia działalności rolniczej" Uwagi na tle ewolucji systemu ubezpieczeń społecznych w rolnictwie* [From the "transfer of a farm" to the "cessation to run the agricultural business". Remarks on the evolution of the social insurance system in agriculture], "Ubezpieczenia w Rolnictwie. Materiały i Studia" 2015, no. 55/56, pp. 56-73; R. Pastuszko, *Kwalifikacja prawna umów zawieranych w związku z przekazaniem gospodarstwa rolnego w celu uzyskania świadczeń emerytalno-rentowych* [Legal classification of agreements concluded for transfer of a farming estate in order to be granted a pension benefit] [in:] B. Jeżyńska (ed.), *Obrót gospodarczy w prawie rolnym* [Business transactions in agricultural law], Lublin 2009, pp. 129-167; R. Pastuszko, *System emerytalno-rentowy rolników indywidualnych* [Pension system for individual farmers] [in:] A. Oleszko (red.), *Prawo rolne*,[Agricultural law] Warszawa 2009, pp. 337-355; R. Pastuszko, *Rozwiązanie umowy z tytułu przekazania gospodarstwa rolnego za świadczenia emerytalno-rentowe*

[Termination of an agreement on transfer of a farming estate for pension benefit], "Rejent" 2007, no. 1, pp. 73-93; R. Pastuszko, *Klasyfikacja (typy) umów przekazania gospodarstwa rolnego za świadczenia emerytalno-rentowe* [Classification (types) of agreements on transfer of a farming estate for pension benefit], "Rejent" 2006, no. 11, pp. 102-112; R. Pastuszko, *Gospodarstwo rolne jako przedmiot obrotu własnościowego w celu uzyskania świadczeń emerytalno-rentowych* [Farming estate as an object of transactions in order to be granted a pension benefit], "Rejent" 2006, no. 10, pp. 91-105; R. Pastuszko, *Nabycie własności nieruchomości rolnych w związku z przekazaniem gospodarstwa rolnego za świadczenia emerytalno-rentowe* [Acquisition of agricultural estate due to a transfer of a farm for pension benefit], "Rejent" 2006, no. 9, pp. 100-113). The legal institutions of farmers' social insurance linked to the trade in agricultural real estate underwent a far-reaching evolution. Acquisition of the right to pension benefits in agriculture had been associated with the "transfer of a farm", which predominantly boiled down to the alienation of ownership of agricultural land. This alienation in its evolutionary development took various forms, from the transfer of ownership under administrative-law arrangements (for the benefit of the State Treasury) through a free (in varying degrees of freedom) transfer of property under civil law institutions regulated in special legislation (retirement and disability legislation) or, finally, as part of general transactions under the Civil Code and the Act of 11 April 2003 on shaping the agricultural system. The considerable diversity of regulations and lack of consistency of the legislature were conditioned by varied purposes and functions of the transfer of farming estate for pension benefits resulting from changing guidelines of agricultural policy. The objectives related to farm transfer were aimed, historically, at the socialization of agricultural property (until 1989), through the assumptions of improvement of living conditions of individual farmers, independent of the socio-political system, the change in the agrarian structure and support for generational change in agriculture, to adaptation of the pension system institutions to the regulations of the European Union. The departure from the model of developing special, non-code types of contracts for independent functional conditions in insurance legislation should be assessed as a positive step. However, it will be a step too far to assume that in the light of the autonomous concept of agricultural activity in the Act on farmers' social insurance, the ownership issues and the model of trade in agricultural real estate remain neutral. This becomes particularly important for the assessment of the cessation of agricultural activity and the scope of obligations of pension authorities in view of the changes in the field of general trade in agricultural real estate.

The research activity covered also the problems of trade in other categories of real estate and other property rights, in the scope delineated by cooperative law (R. Pastuszko, *Stan prawny własnościowego spółdzielczego prawa do lokalu ujawniony w księdze wieczystej na podstawie uchylonego art. 215 prawa spółdzielczego a możliwość rozporządzenia tym prawem przez spadkobiercę* [Legal status of the cooperative right to the premises disclosed in the land and mortgage register pursuant to Article 215 of the cooperative law and the heir's possibility to dispose of this right], "Rejent" 2014, no. 12, pp. 131-141) and the Act on ownership of separate premises (R. Pastuszko, *Zamiana piwnic jako części składowych lokalu między właścicielami dwóch lokali tej samej wspólnoty mieszkaniowej* [Mutual exchange of cellar storage rooms as components of premises between owners of two separate premises within the same housing community], "Rejent" 2014 no. 9, pp. 136-139).

Some of the issues identified were also the subject of my papers delivered at scientific conferences (Appendix 4b).

5.3. Legal instruments of the Common Agricultural Policy

The continuation of legal and agricultural issues and related environmental protection problems both in the processes of agricultural production and rural development are the research on legal instruments and legal model of the Common Agricultural Policy of the European Union in the field of market solutions and rural development, the results of which were presented in subsequent publications (B. Jeżyńska, R. Pastuszko,*Pakiet legislacyjny WPR 2020 w świetle podstaw prawa UE i prawa międzynarodowego: kompleksowa analiza prawna* [Legislative Package on CAP 2020 in the light of the basics of EU law and international law: A comprehensive legal analysis], Zeszyty Biura Studiów i Analiz Kancelarii Senatu, OE-186, Kancelaria Senatu 2014; R. Pastuszko, chapters: *Europejski model rolnictwa* [European model of agriculture], *Organizacja i mechanizmy rynku rolnego* [Organisation and mechanisms of the agricultural market], *Rozwój obszarów wiejskich* [Rural development], [in:] A. Oleszko (ed.), Prawo rolne [Agricultural law], Warszawa 2009, pp. 147-159, pp. 193-207, pp. 260-284; R. Pastuszko (2008), *Instrumenty prawne jednolitej wspólnej organizacji rynków rolnych* [Legal instruments of the single common organisation of agricultural markets], "Annales UMCS. Sectio G (Ius)" 2007/2008, no. 54/55, pp. 103-113; R. Pastuszko, *Wspólna polityka rolna w zakresie organizacji jednolitego rynku rolnego i bezpieczeństwa żywnościowego* [Common agricultural policy in terms of organisation of the single agricultural market and food security], [in:] A. Oleszko, *Prawo żywnościowe wspólnotowego rynku rolnego* [Food law of the Community agricultural market], Wolters

Kluwer 2006, pp. 13-22). The analysis covered the system of fundamental legal institutions defined in primary and secondary law of the European Union. The analysis concerned the systematics and evaluation of legal instruments of the EU agricultural policy in particular areas of support for and organisation of agriculture. The research in this field identified new threats to the possibility, scope, intensity and profile of agricultural land use and constituted an incentive for undertaking long-term research on global problems of agriculture, the result of which is the monograph submitted for assessment.

At the same time, the issues of application of particular legal institutions in the normative solutions adopted in the national legal system (R. Pastuszko, *Renty strukturalne w świetle orzecznictwa sądów administracyjnych. Wybrane zagadnienia administracyjnoprawne w aspekcie praktyki notarialnej* [Structural pension benefits in the light of the case law of administrative courts. Selected administrative and legal issues in the context of notarial practice], "Rejent" 2009, no. 10, pp. 109-120; R. Pastuszko, *Zakres kognicji w postępowaniu o przyznanie renty strukturalnej w wyniku zawarcia umowy przeniesienia własności nieruchomości rolnych* [Scope of court's jurisdiction in the proceedings for granting a structural pension as a result of concluding an agreement on the transfer of ownership of agricultural property], "Rejent" 2007 no. 11, pp. 95-106).

This field of study was extended to the environmental aspects of the EU agricultural policy and legal issues related to the protection of natural resources and biodiversity (B. Jeżyńska, R. Pastuszko, *Ekologiczne aspekty Wspólnej Polityki Rolnej* [Environmental aspects of the Common Agricultural Policy] [in:] R. Biskup, M. Pyter, M. Rudnicki, J. Trzewik (eds.), *Działalność gospodarcza na obszarach chronionych* [Business activity in protected areas], Lublin 2014, pp. 183-198; B. Jeżyńska, R. Pastuszko, *Ochrona bioróżnorodności przed uwalnianymi do środowiska obcymi gatunkami inwazyjnymi. Zagadnienia prawne* [Protection of biodiversity against foreign invasive species released to the environment. Legal Issues], [in:] B. Jeżyńska, E. Kruk, *Prawne instrumenty ochrony środowiska* [Legal instruments for environmental protection], Lublin 2016, pp. 255-265). The issues related to the protection of natural resources were also covered by some papers presented at scientific conferences (Appendix 4b) and the participation in the project "Studia podyplomowe – Prawne instrumenty ochrony środowiska" ["Postgraduate studies – Legal instruments for environmental protection"] held at the Faculty of Law and Administration from 1 January 2015 to 31 May 2016 and financed by Norwegian and EEA funds from Iceland, Liechtenstein and Norway, as well as by national funds. The detailed scope of the research concerned the issues of soil protection and natural resources management, the use of real estate in areas of

legally protected nature and environmental aspects of rural development policy. Those directions of development of the Common Agricultural Policy which place particular emphasis on pro-environmental issues, i.e so-called "greening of the CAP", are still valid. On the contrary, the most recent guidelines for the CAP after 2020 indicate that environmental protection issues in agriculture will become particularly important and will be covered by the largest financial support.

5.4. System of public notaries

An important part of my current research activity concerns the issue of the systemic problems of the law on notarial services. The research in this area has focused on various problem areas, including the general systemic problems and foundations of notarial work in Poland (A. Oleszko, R. Pastuszko, *Prawo o notariacie. Kodeks etyki zawodowej notariusza. Księgi wieczyste. Postępowanie wieczystoksięgowe*, [Law on notarial services. Public notary code of conduct. Land and mortgage registers. Land and mortgage register proceedings],Warszawa 2016, pp. 360; Oleszko, R. Pastuszko, *Ustrój polskiego notariatu w świetle orzecznictwa Trybunału Konstytucyjnego* [The Polish system of public notaries in the light of the case law of the Constitutional Tribunal], "Studia Iuridica Lublinensia" 2014, vol. XXII, pp. 551-562) and classification of a notary public as an entrepreneur(R. Pastuszko, *Glosa do wyroku NSA z 19.05.2005 r., FSK 1656/04* [Commentary on the judgement of the Supreme Administrative Court of 19.05.2005, FSK 1656/04], "Rejent" 2011, no. 7/8, pp. 173-178). Among the various constructions of defining the legal status of a notary, one should choose the direction which adopts the status of a public trustee performing state functions by virtue of notarised deeds of an official nature, by requiring some transactions to be performed as a compulsory notarised deed. The consequence of adopting the construct of a notary public as a governmental activity in a separate structure of its public functions is the commonly emphasized rule of preventive jurisdiction of the notary. Although the notary remains outside the structure of the judiciary, the notary is in fact part of it - exercising the so-called juridical prevention through the fact that he or she prevents disputes, difficulties in evidence-taking and, most importantly, ensures legal security in the sphere of broadly understood legal transactions. The nature of the activities carried out means that the status of public notary differs clearly from the status of representatives of other legal professions of public trust.

The examination of the status of a notary entailed also the analysis of their professional duties (R. Pastuszko, *Prewencyjna opieka prawna notariusza umożliwiająca rolnikowi wybór umowy w systemie emerytalno-rentowym* [Preventive legal assistance by a

notary enabling the farmer to choose a contract in the pension system.] [in:] E. Drozd, A. Oleszko, M. Pazdan (ed.), *Rozprawy z prawa prywatnego, prawa o notariacie i prawa europejskiego ofiarowane Panu Rejentowi Romualdowi Sztykowi* [Studies on private law, law on notarial services and European law in honour of Public Notary Romuald Sztyk], Kluczbork 2007, pp. 475-483; R. Pastuszko, *Obowiązek wyjaśniająco-doradczy notariusza a wysłuchanie stron czynności notarialnej* [The explanatory and advisory duty of a public notary and hearing the parties during notarial activities], [in:], R. Sztyk (ed.), *III Kongres Notariuszy Rzeczypospolitej Polskiej. Nowoczesny notariat w bezpiecznym państwie* [The 3rd Congress of Notaries of the Republic of Poland. A modern system of notaries in a safe state], Warszawa-Kluczbork 2006, pp. 261-276). Pursuant to Article 80. § 3, a notary is obliged to provide the parties with necessary explanations regarding the notarial activity being performed. This obligation is dependent on the provision of § 2 of Article 80 of the Act on notarial services, requiring the notary, while performing notarial activities, to ensure proper protection of the rights and legitimate interests of the parties and other persons for whom the particular activity may have legal effects (the obligation of impartiality). These provisions set out criteria (of a professional nature) that define the limits of the professional diligence of a public notary. They also affect its systemic functions and characterize them to a large extent.

Another field of the research activity covered the professional self-government of notaries and the legal status of bodies of that self government (R. Pastuszko, *Kształtowanie sytuacji prawno-ustrojowej samorządu notarialnego w świetle orzecznictwa* [Formation of the legal and political situation of notarial self-government in the light of case law], [in:] A. Oleszko, *Ustrój i zadania samorządu notarialnego* [The system and tasks of the notarial self-government], Warszawa 2016, pp. 371 – 468; A. Oleszko, R. Pastuszko, *Charakter samorządu notarialnego jako strony w postępowaniu o powołanie (odwołanie) notariusza,*[The nature of notarial self-government as a party in the proceedings for the appointment (dismissal) of a notary] "Nowy Przegląd Notarialny" 2013, no. 3, pp. 5-17). The provision of Article 17(1) of the Constitution has specified the basic tasks of professional self-government organisations and the principles of their functioning, which includes the representation of public-trust officials and the exercise of care of the diligent performance of those professions. The authorities of notarial self-government play also the roles and fulfil tasks of a public nature, which must be recognised in terms of duties and not powers (article 65(1) of the Constitution).

Another aspect related to the status of a notary in the light of national law and EU law with respect to the citizenship requirement (R. Pastuszko, *Obywatelstwo jako wymóg*

podmiotowy powołania na notariusza w państwie członkowskim UE w świetle projektu nowelizacji ustawy - Prawo o notariacie [Citizenship as a subjective requirement for being appointed a notary in an EU Member State in the light of the draft amendment of the Law on notaries], "Rejent" 2012, no. 3, p. 84-97; A. Oleszko, R. Pastuszko, *Glosa do wyroku ETS z 25.06.2009 r., C-14/08* [Commentary on the ECJ judgement of 25.06.2009, C-14/08], "Rejent" 2010, no. 12, pp. 72-78). The citizenship requirement, regarded as a condition for the appointment of a notary, must be perceived from the perspective of European law, under the principle of freedom of establishment as expressed in Article 49 TFEU in conjunction with Article 51 TFEU. According to Article 49 TFEU, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. This rule in particular means prohibiting discrimination due to the country of origin. According to Article 51 TFEU, restrictions on freedom of establishment may be introduced in respect of "activities which in a Member State are connected, even occasionally, with the exercise of official authority". The Court of Justice interpreted that concept by by refusing notaries that "authority" . However, the provision of judicial protection does not preclude the fact that such protection by virtue of law of a given state may also be exercised by other institutions, such as notaries, of the Member States. This protection is exercised by a notary not as an entrepreneur operating a law firm – but as a person of public trust acting in the exercise of State's public functions in the form of issuing official documents taking into account the place and course of those activities within the established legal order. The fact that courts are authorised to examine the validity of a legal activity found in a notarial document does not prevent the notary from having the functions of a legal order body within the responsibilities conferred on him.

The research activities addressed also the question of the liability of notaries in the criminal-legal aspect (J. Barańska-Pastuszko, R. Pastuszko, *Kwalifikacja prawna niedopełnienia przez notariusza obowiązków zawodowych w świetle praktyki karnistycznej* [The legal qualification of notary's failure to perform professional duties in the light of the criminal-law practice], [in:] A. Dańko-Roesler, A. Oleszko, R. Pastuszko (eds.), *Rozprawy z prawa prywatnego oraz notarialnego. Księga pamiątkowa dedykowana profesorowi Maksymilianowi Pazdanowi*, [Studies in private law and notary law. A book in memory of Professor Maksymilian Pazdan], Warszawa 2014, pp. 19-30; A. Oleszko, R. Pastuszko, *Odpowiedzialność karna notariusza (wybrane zagadnienia)* [Criminal liability of a notary (selected issues)] [in:] A. Michalska-Warias, I. Nowikowski, J. Piórkowska-Flieger (eds.), *Teoretyczne i praktyczne problemy współczesnego prawa karnego. Księga jubileuszowa*

dedykowana Profesorowi Tadeuszowi Bojarskiemu [Theoretical and practical problems of modern criminal law. A jubilee book in honour of Professor Tadeusz Bojarski], Lublin 2011, pp. 501-510). The issue also covered the potential consequences for the protection of personal rights of a groundlessly accused notary (A. Oleszko, R. Pastuszko, *Notariusz jako podmiot ochrony dóbr osobistych wobec oczywiście bezzasadnego oskarżenia i wyroku uniewinniającego* [Notary as a person whose personal rights are protected against manifestly unfounded accusation and the subject of acquainting judgement], [in:] A. Dańko-Roesler, A. Oleszko, R. Pastuszko (eds.), *Rozprawy z prawa prywatnego oraz notarialnego. Księga pamiątkowa dedykowana profesorowi Maksymilianowi Pazdanowi* [Studies in private law and notary law. A book in memory of Professor Maksymilian Pazdan], Warszawa 2014, pp. 278-288) and selected conditions of disciplinary responsibility (R. Pastuszko, *Zarzut braku staranności zawodowej notariusza jako podstawa deliktu dyscyplinarnego notariusza* [Allegation of lack of professional diligence of a notary as the basis of notary's disciplinary offence], "Rejent" 2010, special issue, pp. 209-218). Notwithstanding the fact that a notary has the status as a public official under the law on notaries, it is not disputed that, by virtue of art. 115 § 13 (3) a notary is a public officer in terms of protection and liability for his notarial activities. The legislature, when classifying a notary, in some cases, pas a public officer, provides that a certain offence is committed by the notary by failing to fulfil the obligations of the payer (Article 10 (2) and (3) of the Act of 10 September 2000 on the tax on civil transactions, and art. 7 § 2 of the Law on notarial services in conjunction with Article 231 of the Criminal Code or Article 271 § 1 of the Criminal Code). It is noteworthy, however, that the notary's professional diligence is sufficiently safeguarded by the liability for damages (Article 49 of the Law on notarial services in conjunction with Article 415 of the Civil Code), which can fully compensate the injured for the damage suffered without involving the criminal justice system. The social harmfulness of the deed is in this case quite illusory in view of sufficient disciplinary and civil-law sanctions that fully compensate for the damage suffered by the injured and the personal satisfaction for attributing the notary a disciplinary offence.

As part of the research activities, the analysis covered also scope of application of the Act on access to public information to notaries (A. Oleszko, R. Pastuszko, *Glosa do wyroku Naczelnego Sądu Administracyjnego z dnia 11 stycznia 2018 r.* [Commentary on the judgement of the Supreme Administrative Court of 11 January 2018, I OSK 547/16], "Rejent" 2019, no. 1, pp. 73-83), and the issues related to the notary training and obtaining a certificate for admission to the professional exam (A. Oleszko, R. Pastuszko, *Glosa do wyroku WSA w*

Warszawie z 22.01.2013 r. VI SA/Wa 2150/12 [Commentary on the judgement of the Regional Administrative Court of Warsaw of 22.01.2013, VI SA/Wa 2150/12], "Rejent" 2013, no. 7, pp. 86-92).

5.5. Procedure of notarial activities

The issues of the law on notaries covered by my scientific research have not only been limited to the systemic issues but also included issues related to the procedures for individual notarial activities and duties in conjunction with the appropriate substantive regulation of a given type of legal activity. The reason behind the scope of research so outlined has become numerous and frequent amendments to the law on notaries in Poland over the past years.

The results of research conducted within this area have so far been presented in several studies. In these analyses, I have addressed the issue of the nature and probative force of a notarised deed (A. Oleszko, R. Pastuszko, *Glosa do wyroku Naczelnego Sądu Administracyjnego z 7.02.2017 r., I OSK 1101/15* [Comment on the judgment of the Supreme Administrative Court of 7.02.2017, I OSK 1101/15], "Rejent" 2018, no. 2, pp. 82-92; A. Oleszko, R. Pastuszko, *Charakter i moc urzędowa aktu notarialnego zawierającego czynność prawną* [Nature and official force of a notarised deed containing a legal action], [in:] M. Pazdan, M. Jagielska, E. Rott-Pietrzyk, M. Szpunar, *Rozprawy z prawa prywatnego. Księga jubileuszowa dedykowana Profesorowi Wojciechowi Popiołkowi* [Studies in private law. A jubilee book in honour of Professor Wojciech Popiołek], Warszawa 2017 Wolters Kluwer, pp. 1207-1220; A. Oleszko, R. Pastuszko, *Charakter urzędowy czynności notarialnych* [Official nature of notarial activities], [in:] Z. Władek (ed.), *Księga życia i twórczości. Księga pamiątkowa dedykowana Profesorowi Romanowi A. Tokarczykowi. T. 5. Prawo* [A book of life and work.A book in memory of Professor Roman A. Tokarczyk. Vol 5. Law], Lublin 2014, pp. 267-284; R. Pastuszko (2012), *Charakter czynności notarialnych w świetle orzecznictwa Trybunału Sprawiedliwości* [The nature of notarial activities in the case law of the Court of Justice], [in:] A. Dańko-Roesler, J. Jacyszyn, M. Pazdan, W. Popiołek, *Rozprawy z prawa prywatnego. Księga pamiątkowa dedykowana Profesorowi Aleksandrowi Oleszce* [Studies in private law. A book in memory of Professor Aleksander Oleszko], Warszawa 2012, pp. 405-413; A. Oleszko, R. Pastuszko (2010), *Tryb dokonywania czynności notarialnych - analogie do postępowania cywilnego* [The procedure for notarial activities - analogies with the civil procedure], [in:] A. Jakubecki, J. A. Strzępka (eds.), *Jus et Remedium. Księga jubileuszowa Profesora Mieczysława Sawczuka*, [Jus et Remedium. A jubilee book in honour of Professor Mieczysław Sawczuk] Wolters Kluwer 2010; A. Oleszko, R. Pastuszko

(2010), *Tryb dokonywania czynności notarialnych jako postępowanie o charakterze cywilnoprawnym* [Procedure for notarial activities as a procedure of a civil-law nature], "Rejent" 2010, no. 7/8, pp. 83-96). A notarised deed documents, in some ways, two legal domains. The first one requires keeping at least the constituent formal elements provided for by notarial law. If it relates to a legal action, it is important whether it has been made by implied facts which express the unquestionable content of the statement and cannot, at the same time, form the basis for attributing to the legal action the content that is not based on them. This content may complemented with a statute the rules of social coexistence and established customary practice (Article 56 of the Civil Code). The notary's powers to perform notarial activities are exercised in notarial proceedings, and notary activities should be identified with the activities undertaken as part of performance of its public function as a guardian of the legal order. Where doubts as to the interpretation of the legislation in question arise, or where there is an option to assess the exercise of a notarial activity considered unlawful (Article 81), the notary, as part of so-called self-verification mode, has the possibility of correcting its position and the obligation to make an appropriate decision whether to proceed with or refuse to perform the activity (Article 83 § 2). The notary's power is to give the statements of the parties who perform a given legal action the required legal form.

The issues included in the indicated part of the scientific achievements also concerned individual types of activities and duties of a notary public, including appointment of an heir in a notary's will (R. Pastuszko, *Redakcja testamentu notarialnego w zakresie powołania spadkobiercy czy ustanowienia zapisobiercy zwykłego* [The editing of a notarial testament in terms of appointing an heir or establishing an ordinary legatee], "Rejent" 2018 no. 3 pp. 44-60), elements and formal requirements of a notarised deed (R. Pastuszko, *Glosa do wyroku SA w Szczecinie z 7.04.2015 r., I ACa 221/14* [Commentary on the judgement of the Court of Appeal in Szczecin of 7.04.2015, I ACa 221/14], "Rejent" 2016, no. 12, pp. 125-135; R. Pastuszko, *Imię jako element stwierdzenia tożsamości przy dokonaniu czynności notarialnej* [First name as an element of identity check when performing a notarial activity], "Rejent" 2015, nr 2, s. 127-132), people present during a notarial activity (R. Pastuszko (2015), *Znaczenie prawne osób obecnych przy sporządzeniu aktu notarialnego*, [Legal significance of persons present at the drawing up of a notarised deed] "Rejent" 2015, no. 4, pp. 114-123) and land and mortgage register issues related to the notarial activity (R. Pastuszko, *Data złożenia wniosku aktowego w sądzie wieczystoksięgowym a zamieszczenie wzmianki o wpłynięciu wniosku* [Date of filing an application in the land and mortgage court and the placing of a

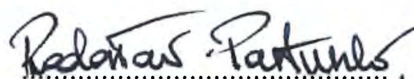
mention on the receipt of the application], "Rejent" 2015, no. 1, pp. 108-113; R. Pastuszko, *Zakres związania notariusza treścią pełnomocnictwa przy sporządzeniu umowy i zamieszczeniu w akcie notarialnym wniosku wieczystoksięgowego* [The extent to which a public notary is bound with the contents of the power of attorney when drawing up a contract and placing the land and mortgage application in the notarised deed], "Rejent" 2014, no. 8, pp. 121-126).

A detailed list of published scholarly papers and the information on achievements in teaching, research cooperation and popularization of science is included in Appendix 4b. Therefore, this summary of scientific and research achievements will be limited to a brief description of my output achieved to date after obtaining the degree of Doctor of Laws:

- My scientific output after receiving the doctoral degree comprises a total of 51 scholarly publications (Appendix 4b) - I am the author and co-author of 23 articles published in scientific journals, 8 commentaries on judicial rulings, 15 scientific publications in edited collective works, a co-author of the textbooks *Prawo rolne*[Agricultural law] and *Prawo żywnościowe wspólnotowego rynku rolnego* [Food law of the Community agricultural market], I am a scientific co-editor of a monograph and a thematic issue of the journal Studia Iuridica Lublinensia [ERIH+]. In Appendix 4b, I also listed 25 of my scientific publications published before the doctoral defence.
- I actively took part in 13 international and national scientific conferences, during which I delivered papers and chaired discussion panels.
- I was a scientific committee member at 4 scientific conferences, a secretary of the scientific conference organizing committee, member of the organizing committee of 4 scientific conferences and a scientific seminar.
- I am an active member of one scientific organization.
- In my didactic work, I have conducted lectures and practicals – on master's and bachelor's courses at the Faculty of Law and Administration of the Maria Curie Skłodowska University of Lublin at the following majors: law, administration of 1st and 2nd cycle, legal and business (1st cycle studies) and legal and managerial (2nd cycle studies); at the UMCS Campus in Puławy, for the majors: Public Administration; at WSEI in Lublin for the major of administration; for postgraduate students at the University of Life Sciences in Lublin
- I supervised 50 MA theses (42 - administration, 8 - internal security) and 102 BA theses at 1st cycle studies (84 - administration, 13 - internal security, 5 - legal and business studies) by conducting MA and BA seminars on agricultural law and land

management at the Faculty of Law and Administration of the Maria Curie Skłodowska University of Lublin, and 105 BA theses (the majors: administration and internal security) at Wyższa Szkoła Ekonomii i Innowacji in Lublin (Appendix 4b).

- I actively participate in the popularization of sciences, including in particular by developing expert's opinions and legal opinions for the Polish Sejm and Senate, for which I developed 5 studies co-authored with dr. hab. Beata Jeżyńska, Professor of UMCS. I also carried out training sessions for notaries and judges and delivered lectures for trainee notaries at the Lublin Chamber of Notaries.
- I have performed various organisational roles – the disciplinary ombudsman for students (2006-2016), I am a member of the Faculty Teaching Commission, the Faculty Commission for Evaluation of the Quality of Scientific Activity for 2017 – 2020, the Faculty Commission for fund-raising, the programme team for the major of legal and business studies at the Faculty of Law and Administration of the Maria Curie-Skłodowska University of Lublin.



Radosław Pastuszko