

mgr Daniel Dyjak

Wroclaw, 27th May 2022

University of Wroclaw

Faculty of Law, Administration and Economics

Constitutional Law Department

Abstract of the PhD Dissertation

'Transitional Justice in an example of Property Commissions Functioning in the Third Republic of Poland'

prepared under the supervision of dr hab. Sylwia Jarosz-Żukowska

In Poland, the academic discourse on various aspects of dealing with the past has been going on with greater or lesser intensity for years. It also concerns effects of post-war nationalization and in case of the Warsaw lands, also property communalization. So far, the discussion lacks a comprehensive analysis of the legal nature and effects of functioning of the so-called property commissions (church regulatory commissions and the Warsaw commission) in light of transitional justice and rule of law.

The main research purpose of the dissertation is an attempt of answering to four research problems and to verify research hypotheses made on their basis.

The first research problem analyzed in the dissertation is to investigate the purpose of property commissions and circumstances of establishment of such commissions. The second research problem is a question whether it is necessary to appoint property commissions if the Constitution of the Republic of Poland protects freedoms and rights of an individual. The third research problem focuses on the question of whether the purpose of the property commissions is to strengthen the rule of law in its formal or material dimension. The fourth and last research problem investigates what is the place of property commissions in the separation of powers system (whether they are public administration bodies or *quasi-judicial* bodies).

Considering the main research purpose of the dissertation, the functioning of property commissions has been analyzed in the light of the concept of democratic state ruled by law and idea of transitional justice. An important part of the dissertation is also an analysis of the complex and highly controversial legal nature of both types of commissions, as well as the legal effects of their decision in the area of property rights.

Main research methods used in the dissertation are a legal-dogmatic method, a historical-legal method and (to a lesser extent) a legal-comparative method.

The dissertation is divided into six chapters. The Chapter 1 called *Property Nationalization and Reprivatization in Poland* discusses legal and historical issues. It concerns the essence and features of nationalization and reprivatization. To show the origin of the problem, the chapter discusses historical conditions and legal grounds for the nationalization of Warsaw lands and church lands. The chapter ends with an analysis of constitutional grounds for reprivatization of property seized after World War II.

The Chapter 2 called *The Idea of Transitional Justice* introduces the concept to the reader. It also captures most common models of transitional justice and compares the concept with distributive and retributive justice. The chapter includes also a legal comparative analysis of transitional justice in the field of property restitution in selected countries of Central and Eastern Europe.

The Chapter 3 called *Historical Property Recoveries and the Property Commissions* makes an in-depth analysis of restitution of church property and Warsaw lands reprivatization in light of transitional justice. The doctrine mentions several instruments of transitional justice helping to deal with the past, one of which is a property commission. The chapter ends with analysis of the Polish property commissions as an example of transitional justice implementing.

Two consecutive Chapters 4 and 5 present the functioning of property commissions which can definitely be considered to be in line with transitional justice concept. The explanatory memorandum to the draft of the Act of 9th March 2017 on Special Rules for Removing the Legal Effects of Reprivatization Decisions Concerning Warsaw Property Issued in Breach of Law¹ says that church commissions and the Warsaw commission are 'bodies similar in their structure and functions'. This part of the dissertation is to present genesis, purpose, legal nature and competences of church commissions and the Warsaw commission, taking into account judicial control of their decisions. Considering the latter topic in the regulation proceedings before church commissions, a special attention has been paid to the status of communes as they were particularly affected by church commissions decisions.

The dissertation ends with Chapter 6 called *The Functioning of Property Commissions in the Light of Standards of State Ruled by Law*, which analyses if the property commissions achieved their goals and how they performed their tasks in the light of formal and material approach to the concept of state ruled by law. As part of the formal approach, the property

¹ Journal of Laws 2017, Item 718, with further amendments.

commissions functioning have been analyzed from the perspective of rule of law, separation of powers, right to fair trial and further rules arising from it, state liability for damages and legal certainty. In the material approach, respective analysis was made from the perspective of the principle of common good protection, social justice and property rights and acquired rights. Also, a place of both types of commissions in the separation of powers system has been analyzed due to their unclear position in the public administration.

The end of the dissertation presents a summary and conclusions resulting from the research, as well as answers to the research problems and verification of the research hypotheses.

Daniel Dyjek