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*Professional secrecy in legal practice and guarantee of its protection in  
Polish and the United States of America law.*

## SUMMARY

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This doctoral dissertation concerns professional secrecy in legal practice in Polish legal system and the legal system of the United States, taking into account EU regulations. The selected topic reflects my interests, namely, topics related to professional associations, widely-understood professional secrecy in professions of public trust, and the right to privacy. Moreover, my scientific stay of several months in the United States of America has triggered in me an interest in legal regulations in other countries and the exploration of different aspects of a legal system based on precedent.

This, in turn, has incited me to attempt to compare Polish legal regulations with the rich experiences of American legal culture which could be called the cradle of privacy rights that lie at the foundation of professional secrecy. It should be noted at this point that legislative, executive, and judicial power is implemented on two different levels: national – federal, and state. Characteristic feature of American political system is therefore so called dual federalism, which may sometimes pose a problem with the implementation of the comparative law methodology. That notwithstanding, professional secrecy in legal practice is regulated similarly in the state of the United States. Nevertheless, I refer to the differences worthy of the mention in separate chapters of this dissertation.

Widely-understood institution of professional secrecy in legal practice in Poland constitutes a research topic of various scientific fields and numerous legal branches. Due to its inseparable bond with the notion of a professional association and a public trust profession, it is a subject of interest principally in the area of administrative law. Therefore, apart from a strong concentration on administrative and legal conditions of the notion, it was necessary to refer to the provisions of such legal branches as constitutional law, criminal procedure and law, and civil law. Like in the analysis of professional secrecy in American law, it was crucial to reach not only for constitutional provisions but also those pertaining to administrative, civil, and criminal law.

In order to reach a certain transparency and clear structure, I have assumed a dichotomist division into Polish and American law throughout the entire paper. The principal source material in the part regarding Polish regulations were for me the 26 May 1982 Act on the Legal Profession (Journal of Laws 1982, no. 16, item 124, as amended), executive acts to this act, rulings of the Supreme Court, Constitutional Tribunal, Supreme Administrative Court, Voivodship Administrative Courts, Supreme Disciplinary Board, Supreme Disciplinary Court, and particular provisions found in different acts. During the elaboration of the dissertation, the diverse source materials in the area of legal literature have also been very

useful. In the part on the United States, American court rulings, literary works of legal doctrine representatives, and collections of rules that constitute guidelines for court rulings have been the basis of the research.

Due to the wide scope of the research topic as well as certain limitations related to the framework of this paper, I have decided to work on the selected legal norms related to legal professional privilege, namely, its characteristics, guarantees protecting it, and the responsibility of legal profession representatives in cases of its violation.

From among numerous theses posed in this dissertation, some of them deserve special attention. First of all, an undeniable need for legal professional privilege should be stressed. In this dissertation, I have attempted to determine whether its nature is subjective or absolute. Additionally, in particular parts of the dissertation, I have focused on the determination of the level of legal professional privilege and the evaluation of the effectiveness of the guarantees that protect it, particularly the system of disciplinary liability of lawyers.

When discussing the topic of legal professional privilege, I have used the following methods: dogmatic and legal, historical and legal, and comparative law method. In certain chapters, I have also referred to statistical data with the use of empirical methodology.

Subsequent chapters describe basic notions related to professional secrecy, the profession of a lawyer, and its status in those countries. Legal professional privilege is one of the rules governing the execution of this profession due to its specific nature and position.

The dissertation is divided into three chapters and subchapters, where each of them focuses on a different aspect of legal profession and legal professional privilege. At the same time, each separate subchapter discusses the above-mentioned issues in both Polish and American law. The objective of the paper is primarily to compare the nature of professional secrecy in the legislature of these countries, its scope, legal basis, the consequences of its violation, and the specifics of legal profession. While in Polish positive law, the systematics of those notions, their position and status appear to be relatively easy to order, in American law, they are not unified in the legislature or doctrine. As mentioned above, this is due to American dual federalism. In the context of legal profession status and professional secrecy, state regulations namely, statutes that constitute a part of American positive law, and state court rulings which are part of precedent-based law, play a special role. Sometimes, they are a reflection of the compliance with the formerly defined national rules which serve as mere guidelines though.



Chapter One is an introduction of notions regarding the general characteristic of the legal profession and the nature and rules of its execution in Polish and American legislature. First subchapter describes the legal profession in Poland from the historical point of view. I have made an attempt to define its role and position primarily from the point of view of its belonging to the category of professions of public trust. The fundamental legal act on this stage of the paper was the Act on the Legal Profession. The nature of the legal profession in the view of American law is much more diversified due to the above-mentioned dual federalism. There is no category of professions of public trust there although the element of trust does appear as a crucial value in the execution of legal professions. Moreover, in order to complement the definition of a legal profession, in the USA exists the notion of a legal practice, and they are also defined in different manners depending on the state. In this part of the dissertation, I have primarily based my arguments on state statutes and state rulings. Second subchapter of Chapter One discusses the specifics and rules of the legal profession execution. In order to describe this issue, I have mainly used the above-mentioned legal acts. When describing the rules of the execution of legal profession in Poland, it was necessary to refer to the regulations from the area of legal ethics, especially the Code of Ethics for Lawyers. Moreover, in the part concerning the United States, the federal level guidelines of the *American Bar Association* (the organization of American lawyers) have also proven useful.

Chapter Two consists of issues regarding the fundamentals of law and ethics as well as the scope of and waiver of legal professional privilege in legal profession in Poland and the United States. In this part of my dissertation, prioritization of legal and ethics sources, their mutual relation, and an attempt to provide a solution in a situation of conflict of legal provisions play a significant role. In Polish and American legislature, the notion of the right to privacy resulted crucial and it has been evaluated from the point of view of the existence of secrecy. Additionally, when discussing the issues from the area of Polish legislature, it was necessary to refer to the notion of personal property.

As it is a consequence of the above-described cases of its waiver, the third block of issues refers exclusively to the guarantees that serve to protect the legal professional privilege in Polish and American law. The first subchapter indicates different types and guarantees and describes them, except for the liability, especially disciplinary liability, which, being a key guarantee, is discussed in detail with the second subchapter.

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