**NICOLAUS COPERNICUS UNIVERSITY IN TORUŃ**

**Faculty of Law and Administration**

**WALDEMAR CHWIAŁKOWSKI**

**NOTARIAL SECRECY**

**A doctoral dissertation**

**Dissertation advisor: dr hab. Marek Krzysztof Kolasiński, prof.UMK**

**Abstract**

The subject of the dissertation concerns verification of the hypothesis on notary’s secrecy, which at the level of ordinary legislation does not provide protection in scope of citizens’ basic liberties and rights adequate to social expectations. It refers to obligation of keeping confidential the information conveyed to the notary in relation to notarial activities. This is a particularly significant aspect of activity conducted by the notary towards a normative qualification of this profession in article 2 of the Notary Public Act of 14th February 1991. The Act grants the notary the status of a person performing a profession of public trust, and importance of the above-mentioned institution is confirmed by the fact it is placed in the Section I of the Notary Public Act entitled “Notary Public System”.

The obligation of keeping notary’s secrecy (similarly to the barrister and legal adviser) is a systematic responsibility specifying the identity of the profession itself. Essentially, it serves to provide legal protection of an individual’s private life which is one of the key constitutional values. The social conviction that the secrecy entrusted to the notary public while performing services will not be disclosed to third parties without legal grounds belongs to facts determining how the issue of notary’s secrecy is understood.

As a result, the basic research task was to establish if in the light of current normative regulations a protection level of notary’s secrecy is adequate to the social role of the notary public in the legal protection system. Although the issues proposed do not exhaust complexity of the whole subject, their detailed analysis allowed the essence and function of this legal institution in the legal system to be almost explored. It is noteworthy that in the law the definition of “secrecy” notion has not been specified so far. In legal meaning the professional secrecy is commonly assumed in case of a limited circle of insiders who have a legal obligation of keeping it. Its constitutive attribute is linking between information learnt and professional activity performed.

The detailed dogmatic and legal analysis demonstrates that in case of notary’s secrecy (contrary to barrister and legal adviser’s secrecy) a relevant implementation of the obligation of keeping the secrecy requires to every time characterise the content of information creating its material substrate. It is necessary pursuant to article 18 § 3, the first sentence of the Act on Law on Notary Public when the notary public testifies as a witness in legal proceedings. The ground for refusal to testify(answers to questions) is to fulfil one of two conditions: violation of good of the state or of important private interest.

The robust assessment of a current level of protection of notary’s secrecy requires presentation of historical development of this legal institution in Poland. However, the grounds for legal and comparative conclusions are the analysis of European standards in scope of professional secrecy protection formed by the legal system of the Council of Europe, European Union and selected European countries (Germany, France and Italy).

Considerations on constitutional sources of notary’s secrecy protection present that constitutional freedom and right to communicate in secret can be recognised as a model of control over constitutionality of other regulations.

Article 18 § 1 of the Act of Law on Notary Public was analysed under its three aspects, i.e. objective, subjective and temporal, which allowed the legal nature of notary’s secrecy to be known. Principles of functioning notary’s secrecy in legal proceedings were learnt by means of the detailed exegesis of conditions specified in article 18 § 1 of the Act of Law on Notary Public which allow keeping notary’s secrecy when the notary public testifies as a witness (protection of good of the state or of important private interest).

A critical analysis of the power of the Minister of Justice to release the notary public from professional secrecy in legal proceedings allowed formulating allegation of non-constitutionality in relation to article 18 § 3 the second sentence of the Act of Law on Notary Public, which refers to violation of the correct legislation principle under article 2 of the Constitution of the Republic of Poland and violation of the right to privacy of an individual using notarial services (article 47 of the Constitution).

A level of notary’s secrecy protection in criminal proceedings, which in the author’s opinion does not provide proper protection of information conveyed confidentially during notarial activities, was also examined. Relevant regulations in civil proceedings were critically assessed. They concern the obligation of submitting a document in form of a notarial deed containing confidential information covered by notary’s secrecy at the request of a court under article 248 § 1 of the Polish Code of Civil Proceedings.

Concluding, the current level of notary’s secrecy protection does not provide relevant protection of confidential information entrusted to the notary public. Current normative solutions do not protect privacy of persons for whom notarial activities are performed. As a consequence, certain proposals were made, which refer to modification of present regulation of notary’s secrecy in the Notary Public Act.