

Summary of the doctoral dissertation entitled: “Protection of Privacy in Constitutional Law”

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The underlying purpose of this dissertation is to assess legal norms which are aimed at securing privacy.

The topics discussed in the thesis include: Polish constitutional provisions (Articles 47-51 and Article 53 of the Constitution of the Republic of Poland, insofar as it provides for the individual freedom of conscience and belief); numerous legal developments which furtherly expand the provisions of the Constitution and finally, international law standards set by the Charter of Fundamental Rights of the European Union, the Convention for the Protection of Human Rights and Fundamental Freedoms (commonly referred to as the European Convention on Human Rights) and the International Covenant on Civil and Political Rights.

In order to achieve the set goal the author raises the issues of: functions performed by the right to privacy; a relation between the function of the right to privacy and the function of the Constitution; the phenomenon of legal multicentrism affecting the way in which the right to privacy is understood and defined at a national level; the evolution of the right to privacy in Poland, in contrast with American and German case; the wording of constitutional provisions seeking to protect privacy and their evaluation; the evolution of the case law developed by the Constitutional Tribunal in the area of securing privacy to individuals; defining constitutional values and finally, how and where limits for the protection of privacy should be set in the event of the impact with other constitutional values.

The dissertation is divided into six chapters. Chapter I, entitled “Introductory Issues” includes a brief description of how the idea of protecting human rights and freedoms was developing; also, a reference was made to the most important legal instruments in Europe and the US, which gave rise to the phenomenon of universalization of human rights.

This chapter also illustrates the current problems which arise when it comes to the defining of two concepts: “freedom” and “right” as well as the consequences of using one concept instead of the other in various pieces of legislation. A significant part of Chapter I

concerns the ways in which such notions as “the function of law” or “to perform a function” are understood. Also, issues of the function of the Constitution as the Basic Law, the function of human rights and finally, the function of the “right to privacy” itself are raised.

Chapter II “Supranational and European Standards for the Protection of Rights and Freedoms. The Case of the Right to Privacy” is dedicated in its entirety to the binding character of the norms of international law in domestic law insofar as they concern the issue of guaranteeing the right to privacy to individuals. Particular emphasis has been laid on the provisions of the International Covenant on Civil and Political Rights (Article 17), the European Convention on Human Rights (Article 8 of the Convention) and the Charter of Fundamental Rights of the European Union (Article 7 and Article 8). Additionally, the consequences arising from the state having adopted the obligation to comply with international obligations in the field of human rights protection.

Chapter III “The Concepts of the Right to Privacy in the Achievements of Foreign Case Law and the Doctrine of Law” presents a comparative approach and is composed of two subchapters in which the views of doctrine of law and constitutional courts in each of the selected jurisdictions have been presented.

The first subchapter raises the issue of the evolution of the right to privacy in the United States of America while the other discusses the expansion of the right to privacy in Germany. As far as the United States are concerned, they are more and more frequently referred to as “homeland” of the right to privacy as this is the country in which the need to secure the right to privacy of individuals was first expressed, which occurred through the recognition of the very existence of the right to privacy understood as the “right to be let alone”.

Instead, Germany remains a country the legal developments of which are frequently elaborated in Poland, together with the achievements of German doctrine of law and court decisions. It is clearly visible in the judgments of the Polish Constitutional Tribunal in which some references to the views expressed by the German Federal Constitutional Court have been made.

Chapter IV, entitled “The Privacy and the Right to Privacy in the Achievements of Polish Doctrine of Law”, presents a range of key concepts of privacy and the “right to privacy”, which have been developed by Polish lawyers, representing various branches of law. The concepts discussed in this part of the thesis have found its permanent place in the history of legal thought in Poland, being simultaneously reflected in court decisions and the judgments of the Polish Constitutional Tribunal.

Chapter V “Protecting Privacy in the Constitution of 1997 and in the Case Law of the Constitutional Tribunal” is a crucial part of the dissertation. This is its most extensive part, the most detailed and the most thoroughly documented, when it comes to the amount of literature as well as the number of court decisions and judgements of the Constitutional Tribunal. In this chapter all national constitutional regulations were analysed, on the basis of which it is possible to define the various terms used by the lawmaker with a view to composing the normative structure of the “right to privacy”. Moreover, the provisions crucial to consider the previously cited topic of the doctoral dissertation are used to reconstruct the circle of persons who enjoy the right to privacy as well as to enhance the visibility of individual rights that arise from the broader right to privacy itself.

The final Chapter VI “Limits of the Privacy Protection in the Polish Constitutional Order” discusses the constitutional limits of privacy protection. It primarily concerns the application of limitation clause set forth in Article 31 (3) of the Constitution, the collision of constitutional values (privacy versus other constitutional values) as well as the process of balancing constitutional principles. Additionally, a number of situations are pointed out in which privacy becomes a priority.

The “Closing Remarks” in the end of the thesis are aimed at summarizing the analysis and at evaluating the constitutional framework of the protection of privacy. A number of conclusions as to the potential changes in the law were also contained in this part of the thesis.