

Summary of the doctoral dissertation by Karol Kosiński, LL.M

Disciplin: Social Sciences

Field: Legal Sciences

Title of the dissertation: *Administrative and legal guarantors of trust in the self-government model of professions of public trust*

One of the crucial stipulations of the Constitution of the Republic of Poland enacted in 1997 was decentralization of public authority. It manifested itself in the possibility of creating professional self-governments, as secured by the Constitution. Article 17, Section 1 of the Constitution explicitly states that such bodies can be created for professions jointly referred to as “professions of public trust”. This category was something of a novelty, unfamiliar in Polish Legal Sciences. It did not belong to the so called legacy terms; it was not defined by the legislator; its understanding was not grounded in literature or judicatory. Till this day, judicial doctrine and decisions struggle with understanding this term. Such a situation has called for research that would determine the semantic scope of this category.

The aim of this dissertation is to establish an understanding of the constitutional term of “professions of public trust” and to analyze and assess the legal regulations connected with this distinct legal category. The results are to contribute to an improvement in the current legal state and to serve as an essential reference point for legal decision making connected with the creation of self-governments.

For the sake of clarity, the dissertation has been divided into six chapters.

Chapter One presents the essential meaning of the constitutional term of “professions of public trust” and serves as the basis for further analysis. It begins with remarks on the origins of the term. It offers a review of relevant research with respect to both the legal doctrine and decisions. Then, it discusses the possibility of determining the meaning of the term in the context of ordinary legislation, concentrating on providing an accurate definition. To do so, it is necessary to explain two crucial terms, i.e. “profession” and “public trust”. In addition, the chapter discusses the perception of professional self-government and public interest as the defining characteristics of the term in question as well as the relations between the terms of

“profession of public trust” and “liberal profession”. As a result, the chapter offers a potential definition of the term in question, which, in fact, determines the scope of this dissertation.

Taking the results of Chapter One into account, a profession of public trust should be understood as based on personal realization of tasks of particular importance to public interest and its security, which is systematic and remunerated, as well as accordant with the existing legal order. Such a profession is also linked to the existence of a special sphere of trust between representatives of the profession (the providers of the service) and those who rely on their services (the patients), which is guaranteed in administrative and legal terms within public law. The guarantors of trust should be manifested in the requirements of high qualifications, following professional ethics, keeping professional secrecy connected with collecting data on third parties, bearing a special kind of responsibility, i.e. disciplinary responsibility, and upkeeping institutions whose task is to secure due practice of the profession.

The special category of trust discussed above consists in trust created and strengthened by the state by means of guarantors, and, to be more precise, guarantors of credibility of the representatives of the professions that should be endowed with trust. The patients relying on the services of those representatives need to be certain, based on objective criteria, that they can trust the providers. For this reason, it is the legislator’s task to provide for such legal regulations that can secure the conditions for this type of trust.

Chapter Two discusses the ethics of professions of public trust, crucial from the point of view of this dissertation. First, it offers an overview of the issues of morality and ethics, explaining what professionals ethics is. This part of the chapter, though general, proves useful for the analysis and assessment of the regulations connected with the main topic. A detailed analysis of the contents of the codes of professional ethics in particular corporations has allowed to determine the role that is played by ethics in professions of public trust. This analysis reflects the whole scope of the issues connected, among other things, with the formalization of professional ethics, the legitimization of the bodies that provide for it, the obligation to abide by it, or to sanction its breaches. It is also essential to organize the terminological issues, which is caused by the need to systematize the terms and their definitions. The analysis included in this chapter is complemented with a discussion of the legal character of the codes of professional ethics for professions of public trust.

An administrative and legal guarantor of trust, as analyzed in Chapter Three, is the institution of professional secrecy. The obligation to keep the secrecy by the representatives of professions of public trust is implied by their access to personal, often sensitive, data of

third parties. In the first part of this chapter, the theoretical concept of this institution is presented. The main body concentrates on determining the legal character of professional secrecy, with particular attention paid to its constitutional, judicial, and ethical basis. In the conclusion, I focus on the problem of the legal consequences of a breach of professional secrecy.

Chapter Four includes an overview of disciplinary responsibility in professions of public trust. This analysis begins with defining this type of responsibility and its objectives. Then, I try to determine its legal character. I devote much attention also to the basis of disciplinary responsibility. Further, the chapter discusses the means of disciplinary responsibility provided for in corporate acts. The chapter is concluded with remarks on the disciplinary procedure in professions of public trust.

Chapter Five analyses the qualifications in professions of public trust. First, I explain the phenomenon that leads to setting out the criterion of rationing. This allows for a fuller understanding of the main topic of the dissertation. The main part of this chapter is also an attempt to determine the semantic scope of the term “qualifications”, which allows to proceed to an in-depth analysis on normative grounds. The analysis is complemented with remarks on the mutual recognition of qualifications within the European Union.

The last chapter of the dissertation is devoted to the institution of professional self-government, which is a body grounded in the constitution, whose key function is to secure due practice of professions of public trust. In this chapter, I focus on determining the role of professional self-governments, as provided for by the legislator. First, I explain the phenomenon of decentralization, as it serves as the basis for creating these bodies within the structure of the state. I focus on defining self-governments, with particular attention paid to the analysis of their constitutional functions and tasks identified in specific acts. The concluding remarks in this chapter are centred around the notion of “public interest”, which determines all activity of professional self-governments to a great extent.

The conclusion of the dissertation summarizes the analyses from all the chapters and offers insights *de lege ferenda*.

This dissertation includes a study in administrative law. The analysis would not be possible without references to sociological, ethical, and constitutional research.

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