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Axiology of Law and Human Rights: A Few Theoretical Remarks in the Perspective of Internal Integration of Legal Sciences

Aksjologia prawa a prawa człowieka. Kilka uwag teoretycznych w perspektywie integracji wewnętrznej nauk prawnych

ABSTRACT

The aim of the article is to link two research problems. The first of them concerns the determination of the relationship between the axiology of law and human rights. The task of the second is a presentation of this relationship from the perspective of the internal integration of legal sciences. The article explains the mutual relations between the axiology of law and human rights. The following theses are proposed. The first is that human rights, due to their axiological character, are an integral part of the axiology of the entire legal system. At the level of the Constitution of the Republic of Poland, these are included in the rules of the state system. In essence, they contribute to building an integrated value system. The second thesis materializes in the statement that human rights integrate not only the branches of law, but also legal sciences. They are present in every branch of law, i.e. in constitutional, criminal and civil law, labour law, legal theory and international law. They become the subject of scientific reflection in various legal sciences. For these reasons, human rights perform very important functions in the internal integration of legal sciences. The third thesis concerns the level of international law. Human rights, through the European protection system, integrate the European legal space. The protection standards of the European Court of Human Rights play the main role. They contribute to building a common European axiological dimension of human rights.

Keywords: axiology of law; value; human rights; integration of legal sciences

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INTRODUCTION

Integration of legal sciences is one of the most essential issues in jurisprudence, not only due to the importance of processes of integrating different areas of law and the multifaceted nature of the property under analysis, but also because "it is a phenomenon that becomes topical again and again and is still recurring in the reflection on law".[1] The law embedded in social realities is determined by various factors which make the degree of its stability or mobility variable. Similarly, more or less variable may be the social environment of the law and factors affecting its content. Law is an ever-evolving order, and its change is a product of the inevitable collision between various political views, economic factors, moral dilemmas, integration processes, etc. An obvious consequence of these confrontations is the necessary yet difficult choice to be made between colliding values. That is why, in view of legal change and new legal paradigms, integration of legal sciences is a process that neither has an end nor provides a definitive solution. It is a continuous and consistent striving towards reflection on law that should be based on acceptance of various ways of pursuing science.

The study seeks to identify the interrelationship between the concepts of "axiology of law" and "human rights". This entails the obligation to explain what type of relationship is between these crucial and semantically broad aspects of law, the common denominator of which is undoubtedly the concept of value. And, of course, the problem is to be presented from the point of view of internal integration of legal sciences.

The law, albeit multifaceted, constitutes a system, thus a specific whole. Internal integration of legal sciences means the necessity to perceive law as diversity in unity but also as unity in diversity. In this context, I propose a thesis that human rights, albeit diverse in terms of their catalogue and structure, integrate the whole axiology of the legal system, thus contributing to internal integration of legal sciences. This is the manner in which elements or aspects belonging to the scope of the so-called external integration of the legal sciences are bound to be included in this dominant viewpoint of the study, since both values and human rights are of interest to specific areas of study besides law.

In W. Lang's view, "the axiology of law creates a set of values made relative to the standards of evaluation, contained implicitly or explicitly in a given law system, and to the principles to which the system refers. This set constitutes a moral background of law".[2] We therefore identify the axiology of law through

[1] M. Król, A. Bartczak, M. Zalewska (eds.), *Integracja zewnętrzna i wewnętrzna nauk prawnych. Cz. 2*, "Jurysprudencja" 2014, no. 3, p. 7.

[2] W. Lang, *Aksjologia polskiego systemu prawa w okresie transformacji ustrojowej*, [in:] *Zmiany społeczne a zmiany w prawie. Aksjologia, konstytucja, integracja europejska*, ed. L. Leszczyński, Lublin 1999, p. 48.

its internal dimension and extra-systemic dimension. Human rights, on the other hand, are definitely determined in axiological terms, because they are a carrier of values that are particularly dear to man. This dearness is largely determined by the recognition of human rights on the part of their normative classification as principles of law.[3] In turn, the principles of law create values that have been recognised by the lawmaker as being particularly valuable and as such they acquire the status of an elementary legal value. With this assumption, their aim is to make the legal system an axiologically coherent construct.[4] It is therefore legitimate to claim that axiology of human rights is a component of axiology of law.

When juxtaposing the concepts of value and principle, I am aware of the difference between these concepts. I will use the argumentation of R. Alexy, who explains these relationships using the practical division of concepts according to G.H. von Wright: into deontological, axiological and anthropological concepts. The former express orders, prohibitions and consents. Axiological concepts perform the function of classifying something as beautiful, brave, democratic, social, etc., while anthropological concepts are of a pragmatic nature. Their examples are: will, interest, action, decision.[5] According to this division, Alexy classifies principles as deontological concepts, since they express optimization orders, and values as axiological concepts.[6] As a side note, it must be stated that "it has been widely accepted in jurisprudence for some time that the statements of legal texts cannot be reduced to unambiguous norms of conduct of a definitive or conclusive nature".[7] This thesis is particularly important with regard to principles of law, which require the implementation of certain states of affairs as much as possible. Values form the basis for principles, and legal formalism results in that what is valuable, i.e. a certain value, is covered by the enforcement order, and this order results in the value having the status of legal principle.

Despite the significance of the axiological dimension of human rights, the relevance of these rights is now much greater. It is widely recognised that human rights have become one of the most dynamically developing ideas of the second half of the 20th century, which does not mean problems with the normative approach to them, their observance, guaranteeing and application. The significance of this idea is so great that human rights has become a measure and justification in social life, an important element of politics and, of course, an essential part of the legal

[3] G. Maroń, *Zasady prawa. Pojmowanie i typologie a rola w wykładni prawa i orzecznictwie konstytucyjnym*, Poznań 2011, p. 288.

[4] L. Leszczyński, *Zagadnienia teorii stosowania prawa. Doktryna i tezy orzecznictwa*, Kraków 2004, p. 169.

[5] R. Alexy, *Teoria praw podstawowych*, Warszawa 2010, pp. 117–118.

[6] *Ibidem*, p. 118.

[7] M. Błachut, *Prawnicze interpretacje praw człowieka*, [in:] *Z zagadnień teorii i filozofii prawa. Lokalny a uniwersalny charakter interpretacji prawniczej*, ed. P. Kaczmarek, Wrocław 2009, p. 133.

system. Alexy, when describing human rights as fundamental rights, emphasised their formal and substantive fundamentality. The former resulted from the primacy of fundamental rights in the hierarchy of the legal system as a law directly binding on the legislature, the executive and the judiciary. The latter recognises fundamental (human) rights as important determinants of the normative structure of the state and society.[8] A similar view is expressed by K. Stępień, who, appreciating the importance of human rights, argues that "they constitute an important criterion for assessing the activities of the authorities, the constitution and other legal provisions. They are the rationale behind the activities of opposition movements and socio-political upheavals. They are a governmental agenda objective and an important element of international policy".[9] The flourishing of the idea, however, does not mean that everything goes smoothly. Human rights at international and European levels have developed so quickly and extensively that it seems increasingly justified to argue about the hypertrophy of human rights, especially in the context of the problems with guaranteeing their effective observance that we can notice at the level of states and in the international legal space.[10] We should realise that human rights, as much as they are significant, are equally legally flawed. Their dependence on the sphere of politics and other external factors is so great that they can influence the rationale for changing the face of the legal system. This dependence makes them a legal matter susceptible to mobility and, in any case, a much more mobile matter than traditional legal institutions under civil, criminal or administrative law. This is very important from the point of view of internal integration of legal sciences.

The article has been written based on the research method of literature analysis. The use of this method is justified both by the subject matter of the issue under study and by the theoretical-legal perspective of the analysis. The juxtaposition of axiology of law with the axiological dimension of human rights is intended to show to what extent the values on which human rights are built participate in forming axiology of law as a systemically fundamental category. In legal theoretical terms, this is intended to lead to confirmation of the thesis of the significant role of human rights in the internal integration of legal sciences.

[8] R. Alexy, *op. cit.*, pp. 390–391.

[9] K. Stępień, *Antropologiczno-metafizyczne podstawy praw człowieka*, [in:] *O prawach człowieka nieco inaczej*, eds. R. Moń, A. Kobyliński, Warszawa 2011, p. 63.

[10] For more on the topic, see J. Zajadło, *Filozoficzne problemy ochrony praw jednostki*, [in:] *Ochrona praw jednostki*, ed. Z. Brodecki, Warszawa 2004, p. 33 ff.

RESEARCH AND RESULTS

1. Axiology of law and axiology of human rights or some reflections on the building of an integrated system of values

In the family of democratic states, the axiology of human rights constitutes now a crucial part of legal axiology, relatively the youngest one, because human rights in the current normative, jurisprudential and institutional form in the European legal space date back to 70 years ago, and in the Polish legal order little more than 30 years ago. As regards criminal law or civil law, we may say that they have existed since the dawn of the statehood, while human rights had to pave their way in an onerous process of transforming states and societies.[11] However, the very origins of the idea date back to the Enlightenment era.[12] Nonetheless, in order for the extra-legal idea of human rights to become a law, it must gain acceptance of political authority to such an extent that it can be included in the texts of normative acts as a result of political decisions. Initially, these were constitutional acts, and over time they were developed and specified in statutory legislation. The progress and the development of human rights accelerated when it entered in the level of international and regional European law as a result of a political decision. Through the embodiment of democracy and respect for human rights, the process of integrating the European legal area within the Council of Europe has begun.

Undoubtedly, the relationship between axiology of law and axiology of human rights can be considered on several levels, but from the perspective of the deliberations herein, the most important is the thesis about the influence of both these types of axiology integrating the legal system. Of course, a few reflections on this subject come to mind.

The intra-systemic and extra-systemic character of axiology of law correlates with the intra-systemic and extra-systemic character of axiology of human rights. The discussion of the dichotomy of axiology of the system of law is the thesis put forward by S. Ehrlich on the lack of substantive justification for the absolutisation of the monopoly of law.[13] This author draws attention to the fact that since antiquity

[11] For more details on the history of human rights, see L. Koba, *Dzieje, charakter i treść praw człowieka*, [in:] *Prawa człowieka. Wybrane zagadnienia i problemy*, eds. L. Koba, W. Wacławczyk, Warszawa 2009, pp. 13–30.

[12] W. Osiatyński, when analysing the origin of rights of the individual, points out that the most frequently indicated period of the appearance of the idea of human rights is the Enlightenment and the period of the 18th-century revolutions, but also points to other – quite extreme – views on the matter. These include views that link the origin of human rights to the medieval era and even ancient times, but also those that link the emergence of human rights to the beginning of the industrial era. See W. Osiatyński, *Prawa człowieka i ich granice*, Kraków 2011, pp. 25–32.

[13] S. Ehrlich, *Norma, grupa, organizacja*, Warszawa 1998, p. 121 ff.

there have been many systems of norms in social reality and therefore systems of law were not closed systems. The natural consequence, therefore, was to include in the system of law the values that had been formed outside this system, although the first to emerge in the historical process was a solution based on the coexistence of separate adjudication systems, one based on law and another based on rules of equity. This is the dimension in which the ancient *epieikeia* and *aequitas*[14] or the Court of Chancery adjudicating on the basis of equity should be seen.

In continental law, the function of integrating legal and extra-legal values will be fulfilled by general clauses, which are "a kind of bridge between the legal system and the set of extra-legal rules".[15] At the same time, it is worth noting the close relationship between law and the values that it is supposed to serve. Law is clearly an instrument serving the interests of individuals, individual social groups, and finally society as a whole. Thus, it must recognise those values that are considered important from the point of view of man and society. The position presented by Z. Ziembiński, who recognised the value of law as a means of achieving and securing goods that are valuable from the perspective of both the individual and society as a whole, is fully reasonable.[16]

While considering axiology of human rights as an important part of axiology of law, it is also worth paying attention to the compatibility of the structure of both these types of axiology. Traditionally, in axiology of law, we distinguish intra-systemic axiology formed by the principles of law and extra-systemic (non-legal) axiology. It can be said that principles of law are the backbone of the legal system, on which the system is based, which means that the principles determine setting detailed provisions (rules) in accordance with the principles of law.[17] At the same time, through general clauses, the axiology of law is enriched with values that arise outside the legal system in social life. As a rule, we can also make such a dichotomous division in the areas of personal rights and political rights. These include rights that are directly linked to legal values, i.e. the right to enjoy liberty and security, the right to a fair trial, the prohibition to punish without legal grounds, or the right

[14] For more details on adjudication based on equity in antiquity, see H. Kupiszewski, *Prawo rzymskie a współczesność*, Warszawa 1988, p. 227 ff.; W. Waldstein, *Aequitas und summum ius*, [in:] *Festschrift zum 90. Geburstag von U. von Luebtow*, Berlin 1991, pp. 23–33; K. Amielańczyk, *Obecność i znaczenie zasady słuszności w rzymskim prawie karnym*, "Studia Iuridica Lublinensia" 2011, vol. 15, p. 29 ff.; P. Thomas, *Ars aequi et boni. Legal Argumentation and the Correct Legal Solution*, "Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung" 2014, vol. 131(1), pp. 41–59.

[15] H. Kupiszewski, *op. cit.*, p. 123.

[16] See S. Wronkowska (ed.), *Z teorii i filozofii prawa Zygmunta Ziembińskiego*, Łódź 2007, p. 247.

[17] J. Wróblewski treated principles of the legal system as norms of a fundamental nature, i.e. more significant than the norms based on tchem. See J. Wróblewski, *Prawo obowiązujące a „ogólne zasady prawa"*, "Zeszyty Naukowe Uniwersytetu Łódzkiego. Nauki Humanistyczno-Społeczne. Seria I" 1965, vol. 42, p. 24.

of ownership. Others, in turn, show a closer relationship with social values. These include the right to have one's private and family life, home and correspondence respected, the right to marry, and freedom of thought, conscience and religion.

Not only is the structure of both these types of axiology similar but it also may be said that they interpenetrate. Irrespective of Chapter 2 of the Constitution of the Republic of Poland[18] governing human and civic freedoms, rights and obligations, it is Chapter 1 in which a clear axiological declaration has been expressed on the guarantees for establishing political parties (Article 11), trade unions and other organisational structures (Article 12), and the freedom of the press and other mass media (Article 14). The state also undertakes to protect marriage and family (Article 18), property and inheritance (Article 21), and to ensure equality between churches and other religious organisations (Article 25 para. 1). It should be noted that Chapter 1 titled "The Republic" is the general part of the Polish Constitution, the latter being a collection of the most important principles of the Polish state system of governance. The question of human rights has proved to be so valuable that in the opinion of the constitutional legislature deserves a place alongside the principles of democratic rule of law (Article 2), separation of powers (Article 10), legalism (Article 7), respect for international law (Article 9), or decentralisation of state power (Article 15 para. 1).

For their axiological dimension, human rights both form an integral part of axiology of law and play a function that integrates the entire axiology of the legal system. We are observing the emergence of a kind of feedback. Human rights in the axiological dimension integrate axiology of law, but this relationship is mutual, because the legislature, when building the axiology of the law concerned, must aim at those social values which underpin individual human rights and which are not perceived in the same manner in individual social groups. This is linked with a widespread belief that no legal system can be fully neutral in terms of axiology.[19] In such a situation, the legislature acts as an arbitrator who assesses and determines the level of social axiology reflected at the normative level in the form of the legal character and scope of specific human rights and other legal institutions. The legislature therefore objectifies values because it needs to build an axiologically coherent legal system. In other words, the legislature's action is deliberate and purposeful. This means that the process of forming the axiology of law and determining the hierarchy of values is based on reflective hierarchy, unlike impulsive hierarchies, which are often referred to by people's systems of values.[20]

[18] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended), hereinafter: the Polish Constitution. The English translation is available at https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm (access: 10.12.2023).

[19] W. Sadurski, *Moralna neutralność prawa*, "Państwo i Prawo" 1990, no. 7, pp. 28–29.

[20] For more on this topic, see R. Wiśniewski, *Problemy i drogi hierarchizowania wartości*, [in:] *Wartości – tradycja i współczesność*, eds. D. Ślęczek-Czakon, M. Wojewoda, Katowice 2009, pp. 91–104.

In my opinion, the process of developing social values is similar to the relationship concepts in which values are emotional projections arising about any object or state of affairs. According to such a view, values are determined and variable.[21] Values evolve with the evolution of social relationships and there is generally no public consensus on their uniform understanding. The axiological diversity of society is particularly notable with regard to rights concerning privacy, marriage and family life, the right to life, including abortion and euthanasia, freedom of expression or freedom of thought of conscience and religion. This differentiation in the social perception of values forces the legislature to make them more objective, since it is unable to establish a law fully acceptable to all social groups. As regards legal institutions which are viewed positively as axiologically justified by some members of society and regarded as harmful by others, and therefore axiologically unjustified, the legislature must make a choice, guided by its own preferences, tenets of political programme or electoral promises. In such a situation, the axiology of the legal system is expressed in "consistently presenting by the lawmakers in legal provisions their preferences".[22] Of course, the legislature should take into account the prevailing views in society, at least because democracy is based on the majority rule. However, if there is a clear diversification of social axiological preferences (which is often the case for human rights), then the legislature-arbitrator is in a particularly difficult situation. From the lawmaker's point of view, the legal system will be axiologically integrated, but from the point of view of social assessments, the axiological dimension of the system will of course be diverse. This is undoubtedly a problem that we can explain by the fact that the legal system is one, in contrast to the differentiated system of values embraced by heteronomous society.

The axiological integrity of the legal system is related to the issues of normative conflict and legal loopholes. The problem of axiological integration of the legal system looks even more dynamic from the point of view of the lack of consensus both among legal scholars and in the case law regarding the understanding of the concept of legal loophole, including in particular the axiological gap. The legislature, when building the legal system, has the right to consider values as objective values, including (and perhaps above all) also those that carry human rights. However, such

[21] G. Kacprowicz notes that "the global economic development and modernisation processes lead to value changes in two directions. The first relates to the scale of values determined by two extremes: traditional values (i.e. also traditional models of family, institutions and authorities, especially religious ones) and secular-rational values (individual achievement, independence and rational-legal legitimisation of institutions). The second is related to the shift from the orientation towards materialist value (survival and physical and economic security) to post-materialist values (self-realisation, quality and comfort of life, spiritual aspects of religion)". See G. Kacprowicz, *Małżeństwo jako obszar przemian zachowań i wartości Europejczyków*, [in:] *Wartości i zmiany. Przemiany postaw Polaków w jednoczącej się Europie*, ed. A. Jasińska-Kania, Warszawa 2012, p. 31.

[22] L. Leszczyński, *op. cit.*, pp. 124–125.

actions may sometimes generate a state of normative conflict or loopholes in the law, and sometimes both at the same time. It should not be ruled out that the legislature's preferences expressed in specific statutory provisions will be incompatible with the principles of law expressed especially at the constitutional level, which will result in the legislature completely abandoning the idea of regulating a specific legal institution by committing the so-called legislative omission. As a result, the specific issue will be left legally unregulated in its entirety.[23] This is a particularly difficult situation as it excludes the interference of the Constitutional Tribunal in this case. The Constitutional Tribunal, in its decision of 28 October 2015, stated that "its competence does not cover the situation where the legislature leaves a specific issue outside the scope of legal regulation, deliberately leading to the creation of a legal loophole".[24] The Constitutional Tribunal further states that in such a situation it is only the legislature that can remedy the non-compliance with the Polish Constitution.[25] There is a view shared by some scholars in the field that the Constitutional Tribunal cannot fill the legal loophole with its ruling only with regard to an axiological gap, but no longer with regard to an instrumental gap and a structural gap.[26] Regardless of the above, however, the Polish constitutional court takes the view that a legal loophole may result from the legislature's conscious decision to abandon regulating a specific matter,[27] while most scholars in the field and most of the case law of common courts share the view about a loophole generated in the law by not taking legislative action due to the legislature's lack of awareness of the need to take them. Examples of this include certain theses taken from the decisions of Polish courts. In the decision of 25 May 2001,[28] the Supreme Court upheld the dominant position that a loophole in the law is a lack of regulation which is unintended by the legislature. Further in the statement, the Supreme Court argues that "there is no question about the so-called apparent gaps and loopholes in the sense that someone believes that the matter in

[23] Ruling of the Constitutional Tribunal of 3 December 1996, K 25/95, OTK ZU 1996, no. 6, item 52.

[24] Decision of the Constitutional Tribunal of 28 October 2015, P 6/13, OTK-A 2015, no. 9, item 161, point 2 with substantiation.

[25] A similar thesis can be found in the resolution of the panel of seven judges of the Supreme Court (Criminal Chamber) of 23 March 2011, I KZP 32/10. In this resolution, the Supreme Court has stated that "it is also beyond doubt that when there is a legal gap of an axiological nature, it cannot be filled by way of interpretation, as it is the exclusive domain of the legislature to remedy it".

[26] K. Gonera, E. Łętowska, *Artykuł 190 Konstytucji i jego konsekwencje w praktyce sądowej*, "Państwo i Prawo" 2003, no. 9, pp. 4–5.

[27] A similar thesis has been formulated in the resolution of the Supreme Court (Criminal Chamber) of 30 June 2008, I KZP 12/08. In this resolution, the Supreme Court has stated that "this [axiological gap] means a situation when the legislature has intentionally left the analysed issue unregulated, because the lack of the relevant regulation must be regarded as a negative regulation. This does not mean, however, that it is possible to fill the identified gap by analogy".

[28] Decision of the Supreme Court (Military Chamber) of 25 May 2001, WA 15/01.

question should be legally regulated while it is not, which should be treated only as the incompatibility of someone's legal ideal with the actually applicable law. The assessment of whether we are dealing with only a legally irrelevant issue or a legal loophole should be closely related to knowledge of positive law and axiological preferences and the intended goals set by the legislature. It is only where these two conditions are met, it can be determined whether the legislature has deliberately left the situation concerned beyond the scope of legal regulation or whether it has created a loophole in the law".[29] Naturally, one should agree with the view that most of legal loopholes result from the fact that the legislature is not able to predict all the consequences of its regulations, and those which it has not foreseen contribute to their creation. We should also accept the Constitutional Tribunal's view that a deliberate failure to legislate is the source of loopholes. If we take such a position, then an argument can be proposed that such an omission may result in the legislature contributing to the disintegration of the axiology of the legal system.

This entails the problem that there is no precise distinction between the apparent gap and the actual gap. The problem referred to above can also be seen at the level of the relationship between the law and the social expectations as to the content of that right, particularly where a thesis is proposed that the content of the right is inadequate to the current level of development of social relations. When we consider this lack of adequacy at the level of human rights, then there is an axiological problem. P. Sut describes this relationship as "lagging behind social development" and clearly distinguishes situations of axiological gaps in the law in terms of completeness or incompleteness of the legal system from that lagging behind social needs, values and purposes as a result of that completeness or incompleteness of the legal system.[30] I think these aspects are closely interrelated.

The lack of general acceptance for the legal form of certain institutions may cause numerous repercussions such as social debate, political disputes or scientific legal analyses. The exchange of ideas at the level of science, presenting arguments for and against, putting forward proposals for the law as it should stand, also performs the function of internal integration of legal sciences, although it may also result in deep divisions within the academia.

Human rights are the axiological bond of the branch structure of law. They integrate both the branches of law and particular legal sciences. For example, the right of ownership is listed in the Polish Constitution as the basis of the social market economy (Article 20), in civil law it is a fundamental property right, and a violation of that right can have effects in the area of criminal law or compensation

[29] *Ibidem*.

[30] P. Sut, *Nienadążanie prawa za rozwojem społecznym a cele prawa*, [in:] *Integracja zewnętrzna i wewnętrzna nauk prawnych. Cz. 1*, eds. M. Zirk-Sadowski, B. Wojciechowski, T. Bekrycht, "Jurysprudencja" 2014, no. 2, p. 121 ff.

effects. We can also talk about ownership in a tax, inheritance or insurance context. Therefore, ownership as a fundamental human right, under different branches and branches of law, is treated either as a right of the individual or exists in the context of other associated rights of the individual. Thus, we can also examine other personal and political rights such as the right to life, to a fair trial, freedom of expression, freedom of religion, and other rights.

2. Axiological integration of human rights in the system of the Council of Europe

When writing about the axiological dimension of human rights in the context of the axiology of the Polish legal system, it is advisable to move from the level of the Polish state law system to the level of the European legal space to reflect on the European standards of human rights protection. The regional, European system of human rights protection[31] based on the Council of Europe undertook to integrate European countries around the values of democracy, the rule of law and human rights. This was possible due to the common cultural core of European countries, especially since its originators at the beginning of this process formed a close group of Western European countries.[32] T. Barankiewicz, when writing about A. Kość's methodological orientation in studying the philosophy of law, referred to the latter's view that the many existing legal cultures in the world, because of their distinct identities, are irreducible one to another.[33] Since law in general, and human rights in particular, are a cultural phenomenon, this is, in my opinion, the main reason for the failure of the attempt to build a universal system of human rights protection in international law and the relative success of the effectiveness of the regional European system. It is easier to build an understanding of human rights in countries belonging to one cultural circle than to implement such a project in a cultural "Tower of Babel".

In the inter-systemic dimension, the basis for integrating the axiological and substantive dimension of the understanding of human rights in the context of different legal dogmatic disciplines is the European Convention on Human Rights

[31] For more details on this topic, see D.J. Harris, M. O'Boyle, C. Warbrick, *Law of the European Convention on Human Rights*, London–Dublin–Edinburgh 1995.

[32] The Council of Europe is a regional intergovernmental international organisation established under the London Statute of 5 May 1949. Its signatories were the ten founding states, i.e. Belgium, Denmark, France, the Netherlands, Ireland, Italy, Luxembourg, Norway, Sweden, and the United Kingdom. Currently, the Council of Europe brings together 47 member states. For more details on the Council of Europe, see H. Robertson, *The Council of Europe*, London 1961; F. Benoit-Rohmer, H. Klebes, *Prawo Rady Europy. W stronę ogólnoeuropejskiej przestrzeni prawnej*, Warszawa 2006.

[33] T. Barankiewicz, *Transkulturowa orientacja metodologiczna w uprawianiu filozofii prawa – doświadczenia, szanse i ograniczenia*, [in:] *Transkulturowość filozofii prawa Antoniego Kościa*, eds. P. Stanisz, T. Barankiewicz, T. Barszcz, J. Potrzeszcz, Lublin 2016, p. 39.

(ECHR or the Convention) and the European Court of Human Rights[34] (ECtHR or the Court).[35] Due to a unique review mechanism based on the institution of individual application,[36] the European legal space has managed to develop human rights protection standards characterised by a high degree of effective implementation in the internal legal orders of the Council of Europe member states. The Court, supporting, based on the principle of subsidiarity, the effectiveness of the national systems of human rights protection, examines applications brought against the state, concerning a violation of the Convention, which has the character of an incidental violation of rights under the Convention and a violation which is a manifestation of a systemic violation of the ECHR. In the first case, the state is obliged to execute the ruling in the national legal system, while in the second there is an obligation to adopt a law that remedies the systemic deficiency concerned.[37]

An element of integration of the material dimension of the understanding of human rights in the Council of Europe member states is the case law of the ECtHR that determines human rights standards. The Court's case law establishes a law-making relationship with the general wording of the provisions of the ECHR. This is particularly evident in the development of ECtHR judicial standards. More than 60 years of ECtHR case law allows pointing to its important role in integrating the European legal area of human rights. Owing to the case law, conventional rights and freedoms have become precise enough to enable national courts to resolve specific situations and apply human rights standards. As a result of the judicial activity, as L. Garlicki writes, the juridisation of the Convention and the national constitutions of the Council of Europe member states has taken place.[38] This juridisation was concurrent but, of course, was effected under the influence of the ECHR system. The taking into account of judicial standards by ECHR member states was primarily due to procedural requirements resulting from the review mechanism of the Convention and, to some extent, also by the authority of the very judicial standards. However, it is now difficult to determine the strength of this authority,

[34] Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 19 January 1993, ETS No. 005.

[35] The ECtHR's significant role in shaping human rights standards in the context of taxpayer rights in relation to property protection is discussed by A. Murdecki, *Ochrona praw podatników w świetle orzecznictwa Europejskiego Trybunału Praw Człowieka w Strasburgu*, "Krytyka Prawa. Niezależne Studia Nad Prawem" 2020, vol. 12(1), pp. 134, 138–147.

[36] For more details on the application to the ECtHR, see H. Bajorek-Ziaja, *Skarga do Europejskiego Trybunału Praw Człowieka oraz skarga do Europejskiego Trybunału Sprawiedliwości*, Warszawa 2008, pp. 23–71.

[37] A.S. Sweet, H. Keller, *Introduction: The Reception of the ECHR in National Legal Orders*, "Faculty Scholarship Series" 2008, no. 89, p. 15.

[38] L. Garlicki, *Kryteria oceny efektywności europejskiego systemu ochrony praw człowieka*, [in:] *Efektywność europejskiego systemu ochrony praw człowieka. Ewolucja i uwarunkowania europejskiego systemu ochrony praw człowieka*, ed. J. Jaskiernia, Toruń 2012, p. 825.

especially in the context of the different scale of difficulty in implementing the ECtHR's judicial standards in various member states of the system.

The integration of the European legal space in the field of personal and political human rights should be assessed in the categories of the success of the Strasbourg system. However, it should be clearly stressed that this integration means the construction of a common European axiological dimension of human rights and not an analogous, identical understanding of ECHR rights in all Council of Europe member states. In the very foundations of the system stemming from its Statute, the aim of the Council of Europe "is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress". This objective has been defined in a reasonable and feasible manner, as this is how the process of building a certain, not an analogous, level of understanding of ECHR rights in the countries of the system should be assessed. This means that the extent of understanding of particular rights in different Council of Europe states may vary to some extent. The following arguments can be presented to support this. Firstly, the different scope the states are bound with conventional rights in terms of both their catalogue and the way in which they are understood, stems from the procedure for the entry into force of substantive protocols to the ECHR. While the procedural protocols to be effective require the approval of all parties to the Convention, the ratification threshold for substantive protocols is significantly lower.[39] This means that a number of member states are not obliged to accede to these protocols. For example, Poland has not yet signed Protocol No. 12 to the ECHR on a general prohibition of discrimination. This means that applications for discrimination may be filed against Poland in respect of the rights and freedoms set out in the ECHR. However, in countries which have ratified this Protocol, an application against discrimination may concern infringements of any right conferred by national law. Therefore, the scope of protection set by this Protocol is considerably broader. Secondly, the ETPC, when determining human rights standards, sets a so-called minimum standard, or a minimum level of protection. This means that individual countries may guarantee the protection of that right in their legal orders at a level higher than that laid down in the ECtHR standard. An example is, in the context of Article 2 ECHR, the definition of the minimum standard of protection of the right to life from birth. However, nothing prevents setting in the national law the level of protection of the right to life from conception. Thirdly, on the basis of limitation clauses (restrictive clauses),[40] the national legislature may, subject to the conditions laid down in that clause, impose restrictions on the rights

[39] C. Mik, *Koncepcja normatywna europejskiego prawa praw człowieka*, Toruń 1994, pp. 50–51.

[40] For more on this topic, see M.E. Badar, *Basic Principles Governing Limitations on Individual Rights and Freedoms in Human Rights Instruments*, "The International Journal of Human Rights" 2003, vol. 7(4); B. Latos, *Klauzula derogacyjna i limitacyjna w Europejskiej Konwencji o ochronie praw człowieka i podstawowych wolności*, Warszawa 2008.

covered by that convention in the national law of the state. Based of the construct of limitation clauses, the Court formulated the concept of margin of appreciation.[41] The concept of margin of appreciation is absent both in the text of the ECHR and in the proceedings from the preparatory work on the Convention, but it is an integral part of the Strasbourg case law.[42] This concept is based on the premise that states should have "a certain sphere of autonomy in deciding how to implement the requirements under the Convention in a way that corresponds most fully to the specificity of local conditions".[43] This concept was devised in recognition of a certain degree of distinctiveness of countries connected by a common history, continent, culture and law. Not only does this sphere of autonomy in deciding on the full scope of understanding of the convention rights given to the states allow them to take into account regional values affecting social interactions, but also determines the existence of the national identity characteristic of a given state.

Building greater unity between European states based on a certain degree of similarity in understanding individual rights and freedoms can clearly be considered the integration of the European legal area in the field of human rights. What is wrong, however, is when the ECtHR shapes its judicial standards by failing to leave the margin of appreciation to the member states. It is not surprising in such a situation that a state is unwilling to implement standards of human rights protection when those standards violate values that are important for the society of that state. This practice of the ECtHR may cause disintegration of the legal order of the European legal space of human rights in the future. The question arises: whether such a situation should be seen in terms of a dictate of the Strasbourg Court or rather the ill will of the state in implementing the standards of the Strasbourg Court?

CONCLUSIONS

Law is obviously an ontologically complex phenomenon. The problem of integration of legal sciences was already recognised in the Polish legal theory at the end of the 1960s.[44] This issue has been explored with varying intensity to this day. However, it was recognised at that time that the study of law could not be reduced to

[41] For more on this topic, see G. Letsas, *Two Concepts of the Margin of Appreciation*, "Oxford Journal of Legal Studies" 2006, vol. 26(4); A. Wiśniewski, *Koncepcja marginesu oceny w orzecznictwie Europejskiego Trybunału Praw Człowieka*, Gdańsk 2008.

[42] R.S.J. Macdonald, *The Margin of Appreciation Doctrine in the Jurisprudence of the European Court of Human Rights*, [in:] *International Law at the Time of Its Codification: Essays in Honour of Robert Ago*, Milano 1987, p. 208.

[43] L. Garlicki, *Wartości lokalne a orzecznictwo ponadnarodowe – „kulturowy margines oceny" w orzecznictwie strasburskim?*, "Europejski Przegląd Sądowy" 2008, no. 4, p. 4.

[44] L. Nowak, S. Wronkowska, *Zagadnienie integracji nauk prawnych w polskiej literaturze teoretyczno-prawnej*, "Studia Metodologiczne" 1968, no. 5, pp. 107–112.

its formal analysis alone. Law is not only the text of a normative act, but also other legal phenomena. These include the diverse dynamics of social processes, attitudes of citizens towards the law, problems of an ethical nature and the axiological layer of law. All these phenomena are analysed in the context of lawmaking, as well as legal interpretation and law application. There is no doubt that, irrespective of the thesis of the autonomy of law as one of the social subsystems,[45] certain aspects of law are the subject of interest of other sciences and there are also certain boundary problems at the division line between law and other sciences, which enforce the cooperation of legal sciences and other social sciences contributing to the external integration of these sciences. At the same time, within the legal sciences themselves, there are also boundary problems in the inter-branch dimension, which affect the intensification of processes of internal integration implementing the postulate of ensuring communication and cooperation between individual legal sciences.

The western philosophical and legal thought also comprises concepts which, approaching law in a non-positivist way, have proposed a broad view of law that is largely integrative in nature. One such example is Dworkin's integral theory of law also referred to as interpretivism.[46] Law in Dworkin's perspective is a cultural fact, which is reconstructed and learned through a process of interpretation (law as interpretive fact).[47] This interpretation in turn constitutes an act of understanding a particular social practice.[48] According to Dworkin's reasoning, the multifaceted nature of law is demonstrated by the bases of adjudication, i.e. rules and principles. Of particular relevance are principles[49] and among them policies, i.e. such principles that define the goals to be achieved as a certain political requirement that is determined by economy, politics or other needs of the community. These principles determine the mobility of the law and its close links with various aspects of social life.

Human rights are the matter that promotes such processes of integration actually in any possible way. Social, economic, technological and political transformations always touch the problem of human rights causing an interest in law and cooperation of various fields of knowledge also beyond law. The modern phenomenon and extraordinary popularity of human rights cause this matter to become the subject of multifaceted research. We are trying to learn more about their past and determine their origin. To this end, the concepts that arose and were presented in various eras since antiquity are analysed. We are looking for answers as to which philosophical currents have left the greatest mark on modern human rights. We also study the

[45] For more on this topic, see W. Gromski, *Autonomia i instrumentalny charakter prawa*, Wrocław 2000.

[46] For more on this topic, see R. Dworkin, *Biorąc prawa poważnie*, Warszawa 1998.

[47] J. Oniszczuk, *Filozofia i teoria prawa*, Warszawa 2008, p. 967.

[48] *Ibidem*.

[49] Dworkin divided principles into principles *sensu stricto* and policies which set politically determined objectives to achieve.

vast normative and judicial material that determines the legal and at the same time complex dimension of national and international orders including the inter-systemic and inter-institutional relations between them. We evaluate the effectiveness of the systems, conduct legal-comparative studies, and formulate proposals *de lege ferenda*. We are interested in the future of human rights, especially in the context of contemporary threats and the increasing number of legitimate violations of people's legal security. Wars, terrorism, migration, refugees are phenomena that generate problems not only of a legal, but also of a social nature. Human rights are becoming of interest to representatives of many scholarly disciplines because they are an interdisciplinary matter. The multifaceted study of human rights both within and outside the legal sciences results in a process of external and internal integration of the legal sciences.

Human rights are a unique area of law, as they have the potential to integrate both the legal system and the legal sciences. This is due to their axiological and inter-branch character. They are of interest not only to legal doctrine scholars, but also to those who study politico-legal doctrines, historians, sociologists and legal theorists. All legal academics can, from their point of view and using methods typical of their fields, analyse the axiology-loaded matter of human rights. Human rights are not just an analysis of individual rights and freedoms. It covers also matters of legislation and decision-making, legal interpretation and adjudication, institutions and systems, both at national and international levels. At the same time, this issue is strongly dependent on economic and social-political factors, therefore sensitive and susceptible to changes. This makes it a source of constantly recurring scientific reflection.

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ABSTRAKT

Celem artykułu jest powiązanie dwóch problemów badawczych. Pierwszy z nich dotyczy określenia relacji między aksjologią prawa a prawami człowieka. Zadaniem drugiego jest przedstawienie tej relacji z perspektywy wewnętrznej integracji nauk prawnych. W artykule wyjaśniono wzajemne relacje między aksjologią prawa a prawami człowieka. Sformułowane zostały następujące tezy. Po pierwsze, prawa człowieka – ze względu na swój aksjologiczny charakter – stanowią integralną część aksjologii całego systemu prawnego. Na poziomie Konstytucji RP są one zawarte w zasadach ustroju państwa. W istocie przyczyniają się one do budowania zintegrowanego systemu wartości. Druga teza materializuje się w stwierdzeniu, że prawa człowieka integrują nie tylko gałęzie prawa, lecz także nauki prawne. Są one obecne w każdej gałęzi prawa, tj. w prawie konstytucyjnym, karnym i cywilnym, prawie pracy, teorii prawa i prawie międzynarodowym. Stają się przedmiotem refleksji naukowej w różnych naukach prawnych. Z tych powodów prawa człowieka pełnią bardzo ważne funkcje w wewnętrznej integracji nauk prawnych. Trzecia teza dotyczy poziomu prawa międzynarodowego. Prawa człowieka poprzez europejski system ochrony integrują europejską przestrzeń prawną. Główną rolę odgrywają standardy ochrony Europejskiego Trybunału Praw Człowieka. Przyczyniają się one do budowania wspólnego europejskiego wymiaru aksjologicznego praw człowieka.

Słowa kluczowe: aksjologia prawa; wartości; prawa człowieka; integracja nauk prawnych