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Title:

Understanding of the „essence” of freedom in the Polish legal system – theoretical and legal analysis

English summary:

The subject of the research work is the analysis of the “essence” of freedom as understood in the philosophy, dogmatics and theory of Polish law and practical applications in the context of the interpretation adopted in the jurisprudence of the Polish Constitutional Court. Due to the ambiguity of the words “essence” and “freedom” detailed legal analyses are preceded by general findings. In order to reconstruct the meaning of the word “freedom”, the work examines etymological and semantic contexts, as well as psychological aspects within the framework of the relationship to “will”. Possible perspectives on “essence” have been analyzed through the lens of theoretical concepts of general philosophy, ontological findings, and historiography—especially with regard to understanding the evolutionary path of freedom related to distinguishing its “idea” (“spirit”) and “essence”. Consequently, the normative approaches of the old Polish constitutions were also studied, mainly in terms of the problem of understanding the limits and possible ways of perceiving the most essential elements of freedom. The directions of scientific inquiry correspond with each other, as they draw attention to the issue of the relationship between freedom and law. The aforementioned perspectives form the background for further legal findings related to the current understandings adopted in the Polish legal system. “Essence” of freedom is used only in the second sentence of article 31 point 3 of the Constitution of the Republic of Poland and is not defined in Polish normative acts. The research carried out in the perspective of the interpretation of the law, theoretical-legal orientations and the perception of the “essence” of freedom in the jurisprudence of the Constitutional Court is not a complete novelty. In the legal literature one can find considerations of the “essence” of freedom (S. Tkacz: 2008; M. Szydło: 2016), however, the vast majority of them are devoted to understandings of “essence” relating to specific types of freedom, among others: economic, building, constitutional, speech, sexual, property rights, human rights, or in the context of the issue of determining the limits of freedom and prohibitions on violating the “essence” of freedom. Therefore, the directions of understanding the autonomous “essence” of freedom have not been fully exploited - on the one hand, they open up the possibility of interdisciplinary analysis, while on the other hand, they show the need to study legal interpretation in the constitutional context: the prohibition against violating the “essence of

freedoms and rights”, the limitation clause and the principle of proportionality. From this angle, the work undertakes an analysis of legal dogmatics and selected case law of the Constitutional Court. Determining the understanding of the “essence” of freedom also takes into account the dependence on how the Constitutional Court views the law - whether the normative “essence” of freedom is solely an implication of its statutory wording of article 31 point 3, sentence 2 of the Constitution of the Republic of Poland (positivist conception of the law), or perhaps its interpretation takes on a different dimension than that implied by the provision of the law, in view of which it is possible to consider what content it carries (non-positivist conception of the law). Analyses of the Constitutional Court's jurisprudence recognized in terms of the ways of interpreting the “essence” of freedom were referred to selected characteristics of the understanding of law. The understandings adopted by the Constitutional Court that determine the shape of the law can be viewed within the framework of theoretical models as: the hierarchical compatibility relationship of legal acts, as rules and principles that are expressed in the Constitution or those that are not expressed in the provisions of the Constitution but can be derived from them, and those that are neither contained in the provisions of the Constitution nor derived from them (are extra-textual). The presented selected theoretical directions and postulates to the official narrative carried out in the jurisprudence of the Constitutional Court allow recognition of previous interpretations and ways of handling the normative “essence” of freedom, also they can be a contribution to the adoption of alternative understandings in the Polish legal system or reflection in the face of existing positions in dogmatics.