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Abuse of the concept of personality rights' legal protection

ABSTRACT

Nowadays, the topic of personality rights' protection is widely discussed in Polish doctrine and is present in European discourse. At the same time, the instruments of legal protection of personality rights are used more and more often in practice. The purpose of the doctoral thesis is to try to answer the question of whether the concept of personality rights' legal protection is abused with regard to Polish law. The abuse of personality rights' protection is understood as an excessive extension of the institution of personality rights' protection, especially from the perspective of jurisprudence. Within the framework of the thesis, I analyze in particular whether, with regard to Polish law, there can be determined:

1. an excessive expansion of the personality rights' catalogue,
2. an unjustified recognition of the fact of personality rights' violation,
3. an unjustified recognition of the unlawfulness of personality rights' violation,
4. an abuse of available legal remedies.

The dissertation does not have a comprehensive and complete character. It is merely an attempt to actively participate in the already ongoing discussion on the limits of the concept of personality rights' protection. Both the Polish doctrine and jurisprudence indicate a disturbing process of overstepping the limits of personality rights' protection, which may constitute a risk of "decomposition" of the whole personality rights' protection concept.

The thesis is divided into four chapters. The first one contains brief comparative remarks, with the subject of analysis being the legal systems of Germany, France, Italy and the United Kingdom. The second chapter provides an overview of personality rights' protection under Polish law. In this chapter, I summarize the elementary issues and views concerning understanding the concept of personality rights' protection in Poland, including understanding the notion and characteristics of personality rights and the legal construction of their protection. Although the remarks in this chapter are synthetic and aim to organize the issues related to the basic problems of personality rights' protection, they constitute a necessary starting point for further analysis. In the third chapter, I present the relationship between the protection of personality rights and the protection of human rights, placing particular emphasis on the phenomenon of the so-called "constitutionalization of personal rights". The last, fourth chapter is the essential part of the considerations undertaken in the thesis; for this reason, it is the most prolonged and extensive chapter. In this part of the thesis, I attempt to answer the fundamental

question of the dissertation: whether the concept of personality rights' legal protection is abused with regard to Polish law. The analysis is carried out through the prism of the prerequisites of the protection described in the second chapter. It includes an examination of case law and is conducted not through a classic study of typical cases but through an analysis of doubtful (borderline) cases, selected and described as the best illustration of the problem's essence. It is focused on Polish jurisprudence; however, throughout the dissertation, I use considerations from comparing the practice of personality rights' protection in Poland and selected foreign jurisdictions. The thesis concludes with a summary of the previous considerations.

The analysis conducted in the dissertation allows me to conclude that although Polish courts often correctly recognize the need to grant legal protection to universally accepted values and interests, at the same time, in a large number of cases, it seems questionable to apply the concept of personality rights' protection for this purpose.