

Streszczenie pracy doktorskiej

mgra Piotra Korca pt. „Sąd wartościujący jako przedmiot ochrony wolności wypowiedzi a ograniczenia związane z ochroną dobrego imienia w orzecznictwie Europejskiego Trybunału Praw Człowieka”

The subject of this dissertation is the value judgment (opinion) as the object of protection of freedom of expression under the limitations related to the protection of reputation in the jurisprudence of the European Court of Human Rights ("ECtHR"). The value judgment in the ECtHR's jurisprudence is a legal construct in that it gives concrete expression to Article 10 ECHR. This is due to the fact that the qualification of statements for protection as value judgements relates to defamatory and insulting statements. The study is part of the discussion concerning the question of the extent to which such opinions are protected.

The research problem was formulated on the basis of examination of the way in which the principles governing the qualification of statements for protection as value judgments were articulated in the reasoning of the Grand Chamber judgment of April 23, 2015 in the case of *Morice v. France*. The main research question was whether it is possible to identify a ECtHR judgment that could be considered as a precedent that provides for the protecting statements as value judgments on the very basis that the value judgment is communicated with a clear indication of its factual basis ("factually coextensive value judgments"). According to the work's findings, such a precedent can be found in the judgment of February 24, 1997 in the case of *De Haes and Gijssels v. Belgium*.

According to the work's hypothesis, the ECtHR's jurisprudence is complemented by the *De Haes and Gijssels v. Belgium* judgment in that it goes beyond the model restricted to protecting value judgments conveyed by manifestly unverifiable statements. With this judgment, the ECtHR expands the protection of value judgments by acknowledging that statements can be protected as factually coextensive value judgments. This is a sound approach that is justified by the fact that by providing an articulation of the factual basis of the value judgment the author enables the recipient of the message to relate to the value judgment being conveyed and critically acclaim the message. The auxiliary hypothesis of the work includes the proposal to introduce the concept of the "factual matrix of the statement" to denote the factual content communicated with the statement qualified for protection as a value judgment.

The factual matrix consists of statements indicated as the basis for the value judgment formulated (direct factual matrix) and other factual information that may be relevant to characterizing the statement as a value judgment (indirect factual matrix).

The analysis carried out in the dissertation makes it possible to formalize and better understand the development of ECtHR jurisprudence providing for the protection of communicating value judgments, taking into account not only the fact that the very theory of protecting communication of such judgments can be based on a variety of theories of the types of speech communicating opinions, but also on the fact that adjudicating defamation and insult cases is "fact-sensitive." In comparative law, there are many theoretical and legal-positive approaches to regulating the conflict between the freedom to communicate opinions and the protection of reputation. At the same time, the method of balancing the freedom to communicate factually coextensive opinions and the protection of reputation is considered a basic way of regulating this conflict in the Anglo-Saxon literature (viz. fair comment, honest opinion and pure opinion). Taking up the issue of the protection of factually coextensive opinions, I aimed to restore and situate this classical concept in the context of Strasbourg case-law. This 'classic' is currently being developed, for example, in Canadian or Australian law. This shows that the analysis fits not only into the issue of the development of jurisprudence of the ECtHR, but also into the current problems of comparative law.