Summary of doctoral thesis of Marcin A. Wagner „Intertemporal law in the judicial adjudication proces”

The topic of the doctoral dissertation directly refers to theoretical considerations in the field of intertemporal law related to the issues of procedural constitutional law, administrative law, the science of civil proceedings, civil law, trial and criminal law, and indirectly includes considerations related to the axiology of law, technology and legislative policy.

From the point of view of physics, time is the fourth dimension, but we can only perceive three-dimensional space - describe an object by giving its height, width, length. As Albert Einstein proved, time and space interact. It is assumed that in this way they create one thing - space-time. In James Clerk Maxwell's equations, time exists separately from space. From the point of view of philosophy, regardless of whether we consider the categories of time and space as attributes of reality (Aristotle), as a priori categories of the mind (Kant), or as theoretical constructs, they remain basic ontological assumptions. Although it is impossible to create a complete list of categories, the work is based on important distinctions regarding the categories of being. It is worth distinguishing things, i.e. substances (things lasting in time), processes (things taking place in time), events (things occurring only in time). The institutionalization of time and space occurring in all systems of norms leads to the fact that in the system of legal norms , unlike natural sciences, uses the concepts of time and space separately.

Time is the amount of movement in terms of what came before and what comes after. Social time is constantly under the pressure of opposing trends: stabilization and normative changes. Recognizing time as an elementary dimension of human experiences and the basic principle organizing practical action, the law uses and orders human behavior in time.

There is a close link between the harm of making laws retroactively and that of changing them frequently. Both result from what can be called the legislator's instability.

Frequent changes in law paradoxically give practical meaning to the presented topic of intertemporal law. The introduced changes often resulted in a lack of complementarity of legal solutions and terminological non-uniformity of the texts of normative acts. Amendments to the law are necessary, but too far-reaching changes may result in a violation of the coherence of individual sections and institutions of the law, which is not beneficial from the point of view of its transparency. Old and new law should constitute a continuum

The topic of the doctoral dissertation directly refers to theoretical considerations in the field of intertemporal law directly related to the issues of judgments of the Constitutional Tribunal, the practice and science of administrative law, civil law, criminal law and process. Indirectly, it covers considerations related to the axiology of law, technology and legislative policy. Previous works on similar topics concerned the consequences of decisions to apply the law, but they mainly described the actual consequences of the decision, not the legal consequences.

Meanwhile, the entry into force of the Constitution of April 2, 1997 resulted in changes in the axiological basis of the entire legal system. They are the result of the transformation of the legal system. The formulation of a new axiological basis and the coherence of this basis required a complete change of the current functional order.

Firstly, it depends on the political culture of the legislator whether a previously established subjective law should continue to be applied. Secondly, does the overall result of legal culture make sense in the present?

Unfortunately, the current legal culture means that the legal qualification of human behavior needed to resolve disputes does not keep pace with changes in the law. Interpretation doubts, most often arising in the context of subsequent versions of a legal text (and sometimes subsequent legal texts), are related to the fact that the legislator amends the law so often that an almost standard situation is for the court to interpret a legal text that is no longer in force on the date of the ruling. When applying the principle of tempus regit actum when determining the legal status, the judge often knows a later version of the legal text. It then happens that the court attributes to the old version of the text content that was explicitly articulated in it after the change. This raises the question whether such an interpretation does not lead to a circumvention of the above-mentioned principle and, at the same time, a violation of the prohibition of retroactivity of the law.

A particularly important example of unsuccessful changes are the reforms of the Code of Civil Procedure and the Criminal Code. In the case of the Code of Civil Procedure, the following solutions should be considered particularly unfavorable: the restoration of proceedings in commercial matters, the possibility of returning a lawsuit under the conditions of art. 186^1 of the Code of Civil Procedure, or the dismissal of the action pursuant to 191^1 of the Code of Civil Procedure. As regards the Penal Code, the solutions are defective

The scope of the doctoral dissertation includes the analysis of the following systems of intertemporal law by: Friedrich Carl von Savigny, Friedrich Xaver Affolter, Josef Kohler, Gerhard Dannecker, and last but not least Józafat Zielonacki.

The following research methods were used in the dissertation: the historical and legal method, including historical and doctrinal research, the formal and dogmatic method and the modeling method. There is no empirical research in the dissertation, only the author's reference to the practice of applying law.

The interdisciplinarity of the research conducted allows for the development of appropriate conceptual equipment that enables effective solving of legal problems. In this sense, the dissertation meets the demands of the integration of legal sciences, uses the achievements of legal theory in the field of constitutional justice and civil process science, taking into account the specificity of these fields.

The basic assumption of the work is the thesis that legal theory is a type of legal metadogmatics that analyzes individual detailed legal sciences.

The composition of the dissertation consists of three chapters. Due to the need for a more comprehensive treatment of the topic of intertemporal law, as well as to emphasize the complexity of intertemporal issues, it is advisable to present a historical presentation of the development of the understanding of the concept of intertemporal law. This will be presented in the first chapter of this dissertation. However, due to the main subject of the dissertation, the analysis of the historical development of the understanding of the concept of intertemporal law can only be presented briefly.

Next, I will analyze the views of the doctrine and the judiciary's positions regarding intertemporal law, examining them through the prism of legal theory (chapter two of the dissertation). In this way, the necessary instruments will be developed to examine intertemporal law in the context of the principles of sentencing, and therefore the principles regarding specific and individual norms, i.e. judgments (chapter three of the dissertation).

The workshop side of the dissertation includes Polish and German, as well as English and French literature. It is not a scientific work in the field of law, work that is limited to only one system of law or one method. The highest value should be given to the usefulness of research that combines the historical (historical and legal) perspective with other perspectives: systemic, comparative and theoretical.

Among the primary literature relating to these issues, the works of Professor Jerzy Wróblewski and Professor Wiesław Lang should be mentioned (J. Wróblewski, Judicial application of law. Warsaw 1972; J. Wróblewski, Material and procedural aspects of law in legal theory. Studia Prawno - Ekonomiczne 1990 No. 45; W. Lang, Procedural law and substantive law in: Law in the 21st century, commemorative book of the 50th anniversary of the Institute of Legal Sciences of the Polish Academy of Sciences, edited by W Czapliński,

Warsaw 2006,) Mr. Professor Józef Mokry (J. Mokry, Procedural activities of entities seeking protection of rights in civil proceedings, Wrocław 1993). Understanding these issues allows for a complete understanding of the theoretical, historical-legal, comparative, dogmatic and axiological context of intertemporal law related to the issue of applying law.

The substantive content of the dissertation concerns the issues of intertemporal law related to substantive law and procedural law. Previous studies lacked in-depth theoretical reflection on the issues of intertemporal substantive law and procedural law.

The considerations contained in the dissertation are based on five main research theses. The first thesis concerns the rule against retroaction. Unlike substantive law, in procedural sciences the lex retro non agit rule is not sufficient to determine the scope of application of new procedural regulations over time. Therefore, it should be stated that more detailed (sophisticated) directives such as rules and principles of intertemporal law are necessary.

The issues presented in the individual chapters of the dissertation regarding the concept of intertemporal law and the related analyzes of validation and exegetical problems allow us to formulate several general conclusions.

A civil process is a complex set of legal norms. Specifies, among others: actions of the court, parties and other entities of the proceedings. These activities should be undertaken within the time specified by the legislator. This means that a civil trial extends over time, which in turn means that changes in factual or legal circumstances are inevitable during the ongoing trial. Therefore, the questions seem to be justified as to whether and to what extent the change in factual or legal circumstances should be taken into account by the court when issuing a decision in the case, as well as what point in the process should be considered as authoritative for the assessment of the surroundings.

The semantic analysis carried out in this way, aimed at organizing the conceptual network, confirms the thesis that in the case of intertemporal law we are dealing with a collision or conflict of legal provisions in time, and not with the qualification of a given legal fact due to the rule of applicable law that is appropriate for its assessment. . There are various typologies of norm confluence in the literature: real, apparent exclusive, elective, alternative, cumulative, successive and subsidiary.

In the case of rules of intertemporal law, we are dealing with factual situations to which more than one legal metanorm can be applied. However, due to the logical dependencies occurring between intertemporal rules, it seems that the result of the confluence of two intertemporal metanorms can be one, namely, that one of the intertemporal rules excludes the application of the other (exclusive confluence).

Moreover, it is worth presenting the research results obtained in the field of intertemporal public law. According to the agenda of the lecture, it is assumed that there is dispositive public law and imperative public law. In the accepted division of norms into absolutely binding and relatively binding norms, the vast majority of intertemporal law norms belong to the category of absolutely binding norms. It is also possible to notice the regularity that absolutely binding norms are norms of public law. Therefore, in accordance with the following rules - ius publicum privatorum pactis mutari non potest and nemo ius publicum remittere potest, any contractual provisions abolishing the provisions of intertemporal law will be invalid. Such contracts are invalid by law and have no effect. From the point of view of the law applicable de lege lata, the norms of intertemporal law belong to the category of norms of imperative public law. This is another manifestation of the blurring of the boundaries between branches of law.

In addition, the theory of metanorms was presented, which is a theoretical and legal concept, universal for the entire legal system. In legal theory, competence is understood broadly, as the ability to act that is available to both the state and an individual (non-state entity). Although the theory of dispositive law (Theorie des dispositiven Rechts) by Oskar Bülow is not reflected in the Polish theory of law, in which the concepts of competence can be divided into two concepts: predictive and non-predictive concepts, but the theory he developed is still valid today.

Moreover, from the point of view of formal logic, it should be stated that there is dispositive public law and imperative public law. In the accepted division of norms into absolutely binding and relatively binding norms, the vast majority of intertemporal law norms belong to the category of absolutely binding norms. It is also possible to notice the regularity that absolutely binding norms are norms of public law. From the point of view of formal logic, a dispositive norm consists of three elements: the first element is the norm that constructs a given social relationship; the second element is a norm allowing to regulate this social relationship differently than the legislator; the third element is a norm repealing statutory regulation if the parties use the creation of a social relationship differently than the legislator. The division into public and private law is not mutually exclusive, because all branches of law accept the dignity of the human person as the most important basis for regulation. The agenda of the lecture clearly distinguishes between vacatio legis and intertemporal law, and an in-depth analysis of the criteria differentiating these institutions and clear statutory regulations was carried out.

Moreover, the work established that the sanction of interim law is the invalidity of the proceedings within the meaning of art. 379 of the Code of Civil Procedure, and not invalidity under art. 58 civil code adopted in substantive law for substantive legal transactions is proof that all interim law is only procedural law. This thesis was formulated as a result of an in-depth analysis of the structure of intertemporal law, and therefore by referring to substantive norms (norms of substantive civil law), which are related in terms of content (static), and to metanorms, which in turn are related by a bond of competence (dynamic).). In relation to metanorms, it is only possible to define a hypothesis, because the sanction is procedural in nature. The sanction of intertemporal law is the invalidity of the proceedings, not the invalidity accepted in substantive law for substantive legal transactions. Invalidity applies only to the court's actions in civil proceedings and means they are subject to appeal; the actions of the parties and participants in the proceedings are exclusively ineffective.

At the end of the dissertation, it is regrettable that the Polish doctrine has not assimilated the results of the Western doctrine, because in the German-language literature a distinction is made between, among others, the scope of temporal application on the temporal scope.

Key words: the prohibition of retroactivity of the law, the axiology of law, technology and legislative policy, the science of civil proceedings, civil law, trial and criminal law