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The Constitutional Principle of Social Justice and Its Impact on the Understanding of Equity in Civil Law

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Słowa kluczowe: Konstytucja, Kodeks cywilny, sprawiedliwość społeczna, słuszność w stosunkach cywilnoprawnych, klauzule generalne

Abstract

The subject of the article is an analysis of the impact of the constitutional principle of social justice on the understanding of the principle of equity in civil law and, consequently, on the practical application of regulations that contain the general clause governing the principles of social coexistence. Assuming a universal nature of the axiological basis of the legal system in Poland, and the radiation of constitutional principles and values onto statutory law, the author, using a method involving analytical and functional analysis of legal texts and court rulings, comes to the conclusion that adjudication in civil cases should, to some extent, in addition to protection of individual rights and interests, concern the protection of social interests.

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Streszczenie**Konstytucyjna zasada sprawiedliwości społecznej i jej wpływ na rozumienie słuszności w prawie cywilnym**

Przedmiotem artykułu jest analiza wpływu konstytucyjnej zasady sprawiedliwości społecznej na rozumienie zasady słuszności w prawie cywilnym a w konsekwencji na stosowanie w praktyce przepisów zawierających klauzulę generalną zasad współżycia społecznego. Przyjmując założenia: o uniwersalnym charakterze podstaw aksjologicznych systemu prawa w Polsce i o promieniowaniu zasad i wartości konstytucyjnych na prawo ustawowe – autor, stosując metodę analitycznej i funkcjonalnej analizy tekstów prawnych i orzeczeń sądowych – dochodzi do wniosku, że przy rozstrzyganiu spraw cywilnych uwzględniać należy, oprócz ochrony praw i interesów jednostki, także w pewnym stopniu ochronę interesów społecznych.

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I. Preliminary Comments

It should be assumed that the axiological basis of the Constitution of the Republic of Poland of 1997 and the principles governing the system of government contained therein influence, in a certain way, statutory law, including civil law, and thus also the understanding of equity in civil-law relations². Equity, raised in the science of civil law to the rank of a basic principle – the directive principle of respect for equity in private law³, also referred to as the principle of respect for principles of social coexistence⁴ – plays an important role in civil-law relations, which is implemented by court rulings issued on the basis of laws that contain the so-called general equity clauses. In the context of the objective of these deliberations, the constitutional principle of social justice should be juxtaposed with the civil-law principle of equity with

² T. Zieliński, *Klauzule generalne w demokratycznym państwie prawnym*, "Studia Iuridica" 1992, vol. XXIII, p. 195.

³ M. Safjan, [in:] *System Prawa Prywatnego, Prawo cywilne – część ogólna*, vol. 1, ed. M. Safjan, Warsaw 2012, pp. 353.

⁴ M. Kordela, *Zasady prawa. Studium teoretycznoprawne*, Poznań 2012, p. 195.

the general understanding of equity in civil-law relations (Art. 2 of the Polish Constitution).

Such an assumption raises a cognitive problem that implies the question concerning the relationship between social justice as a constitutional element, a factor that influences the regulation of social relations in the spheres of the system of government and of public law, and justice, or private-law equity, as a factor that influences civil-law relations. The resultant question is: What is the difference between such concepts of justice, and how does “constitutional justice” affect the understanding of equity in civil-law relations?

II. Constitutional Principles and Values Relevant to Equity in Civil Law (Outline of the Problem)

The science of law emphasizes that doctrinal concepts and the development of jurisprudence practice are tools for discovering the relationships between statutory law and the Constitution and for reconstructing the influence of the latter on the understanding of institutions and on the interpretation of statutory provisions. From such a point of view, the relationships between statutory law and the Constitution lead to inspiration and to forcing a critical re-evaluation of the established notions of institutions, of the methods of interpretation, and of the traditional understanding of the meaning of the provisions of the body of statutory law⁵.

When considering the general understanding of the civil-law principle of equity, particular attention should be paid to the Art. 2 of the Polish Constitution, which formulates the overarching and comprehensive structure of the system of government of a democratic, law-abiding, and just state. This provision, or actually the rules provided for in it, express values that bind together, both axiologically and praxeologically, the Polish legal system and provide premises for a functional interpretation of the laws that form this system⁶. The reconstruction of the civil-law concept of equity is also influenced

⁵ E. Łętowska, *Wpływ Konstytucji na prawo cywilne*, [in:] *Konstytucyjne podstawy systemu prawa*, ed. M. Wyrzykowski, Warsaw 2001, p. 125.

⁶ M. Wyrzykowski, *Zasada demokratycznego państwa prawnego*, [in:] *Zasady podstawowe polskiej Konstytucji*, ed. W. Sokolewicz, Warsaw 1998, p. 66.

by its axiological foundation expressed in the Preamble to the Constitution, which “constitutionalizes the Constitution”, both in normative terms and in the context of the culture in which the system of Polish law that is based on the Constitution functions⁷. Through the wording of the Preamble and of the constitutional provisions that express the principles of common good, social justice, and social solidarity⁸, the so-called opening of the Constitution and the whole system of positive law to external values and the external axiological order. Consequently, this means that positive law must be interpreted in such a way that its application will be tantamount to “striving for equity”⁹.

The relations between the principles provided for in the Art. 2 of the Constitution in terms of content and functionality make them mutually complementary; in a democratic state, the formally defined legalism is extended by the substantive component, i.e. the principle of justice (a just state), which is reflected in the positive law and in the process of its application¹⁰. Social justice is the objective that must be implemented by a democratic law-abiding state¹¹. The adjective “social” added to the word “justice” indicates that this constitutional principle refers, on the one hand, to relations between social groups and, on the other hand, to relations between such groups and the state, and not to relations between the state and individuals. Thus, the issue in question is not a subjective sense of justice, but justice as a social category¹².

From the standpoint of the philosophy of law, the constitutional principle of social justice contains a conglomerate of justice formulas¹³ and its basis is

⁷ M. Piechowiak, *Aksjologiczne podstawy polskiego prawa*, [in:] *Synteza prawa polskiego od 1989 roku*, eds. T. Guz, J. Głuchowski, M.R. Pałubska, Warsaw 2013, p. 39.

⁸ Art. 1, 2, and 20 of the Constitution.

⁹ W. Dziedziak, *Słuszność jako wartość prawa*, “*Studia Iuridica Lublinensia*” 2011, No. 15, p. 76; idem, *Kilka uwag o prawie słusznym*, “*Studia Iuridica Lublinensia*” 2016, No. 3, p. 281.

¹⁰ W. Sokolewicz, *Art. 2*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. L. Garlicki, vol. V, Warsaw 2007, p. 11; P. Tuleja, *Art. 2*, [in:] *Konstytucja RP. Tom I. Komentarz do art. 1–86*, eds. M. Safjan, L. Bosek, Warsaw 2016, margin ref. No. 1.

¹¹ Judgment of the Constitutional Tribunal of 12 April 2000, K 8/98, OTK 2000, No. 3, item 87; judgment of the Constitutional Tribunal of 17 June 2003, P 24/02, OTK-A 2003, No. 6, item 55. Cf. P. Sut, *Uwagi o sprawiedliwości społecznej jako realizowalnym prawnie celu państwa demokratycznego*, “*Gdańskie Studia Prawnicze*” 2016, vol. XXXV, p. 399.

¹² B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Art. 2, Warsaw 2012, margin ref. No. 12.

¹³ Z. Ziemiński, *O pojmowaniu sprawiedliwości*, Lublin 1992, p. 131.

the Aristotelian approach to justice understood as the totality of human virtues with the principal imperative to respect the rights due to others and not to reap benefits at the cost others¹⁴. The obligation to implement justice in a system of law is considered as a necessary condition of a law-abiding state¹⁵. The principle of social justice is treated in the jurisprudence of the Constitutional Tribunal that refers to the concept of distributive justice¹⁶ and to the principle of equality, not only as a programme norm but also as a binding constitutional principle that determines the way public authorities operate¹⁷. Legal doctrine assumes¹⁸ that the primary object of social justice is a social structure and a way in which major social institutions distribute essential rights and responsibilities and determine the benefits of social cooperation¹⁹.

At the same time, it points to the threats that the possible jurisprudence of the Constitutional Tribunal that leads to undermining of statutory laws on the basis of the rather imprecise notion of social justice may pose to the principle of legal certainty. Generally speaking, the prevailing view is that the principle of social justice, as a value of the system of government and a clause that has no political affiliation today, means that the Polish Constitution refers to traditional values of European culture and does not threaten democracy and stability of the legal order²⁰. The presence of general referencing clauses in the system of positive law does not change the arrangement of the sources of law, while statutory laws play a dominant role. This means, however, that open criteria, especially rules and moral judgments indicated by the so-called general equity clauses, also play a certain role, which is different in different branches of law²¹.

¹⁴ Aristotle, *Etyka nikomachejska*, Warsaw 2000, p. 171.

¹⁵ P. Tuleja, *Art. 2...*, margin ref. No. 72.

¹⁶ W. Sadurski, *Teoria sprawiedliwości. Podstawowe zagadnienia*, Warsaw 1988, p. 46.

¹⁷ Judgment of the Constitutional Tribunal of 11 February 1992, K 14/91, OTK 1992, No. 1, item 7.

¹⁸ P. Tuleja, *Art. 2...*, margin ref. No. 82.

¹⁹ J. Rawls, *Teoria sprawiedliwości*, Warsaw 1994, p. 16.

²⁰ T. Zieliński, *Klauzule generalne w nowym porządku konstytucyjnym*, "Państwo i Prawo" 1997, No. 11–12, pp. 140–142.

²¹ L. Leszczyński, G. Maroń, *Zasady prawa i generalne klauzule odsyłające w operatywnej wykładni prawa*, "Annales Universitatis Mariae Curie-Skłodowska, Sectio G, Ius" 2013, No. 2, p. 148.

The Constitution and its so-called constitutional values are therefore the foundation of the axiology of the entire Polish legal system. Constitutional values are certain conditions of social life or their characteristics that are considered as values (goods) and have been identified as desirable and subject to broadly defined legal protection by the legislator (great goods)²². Constitutional values defined in this way are an important point of reference for interpretation of the concept of equity in civil-law relations, in particular with regard to equity achieved by application of laws that contain the principles of social coexistence clause²³. Therefore, the system of constitutional values has an impact on civil law and on the interpretation of its basic assumptions and functions as private law.

Reference should be made to the judgment of the Constitutional Tribunal of 17 October 2000 which directly concerns an assessment of the constitutionality of the provision of the Art. 5 of the Civil Code on abuse of a subjective right²⁴, the meaning of which, however, is broader. This judgment contains an important general statement on the place of the general clauses in the Polish legal order and on how to interpret them²⁵. The allegations made in the constitutional complaint were that the presence of general clauses in Art. 5 of the Civil Code prevents the addressee of a legal norm from determining, on the basis of objective criteria, whether a given conduct constitutes an abuse of a subjective right. In deciding that the Art. 5 of the Civil Code complies with the Art. 2 and Art. 45(1) of the Constitution and does not violate Art. 32(1) and Art. 64(2) in conjunction with the Art. 20 of the Constitution, the Tribunal concluded that the very institution of abuse of a right and the general social coexistence principles clause are of a universal (general) nature and are significant for the entire system of civil law. Acceptance of the general clauses of the Art. 5 of the Civil Code, as applicable to all rights, *a fortiori* meant acceptance for other clauses²⁶. The judg-

²² M. Piechowiak, *Preamble*, [in:] *Konstytucja RP. Tom I. Komentarz do art. 1–86...*, margin reference No. 37–38.

²³ See, in particular, Art. 5, 56, 58(2), 65(1), 140, 353, 354, and 1008(1) of the Civil Code.

²⁴ Judgment of the Constitutional Tribunal of 7 October 2000, SK 5/99, OTK 2000 No. 7, item 254.

²⁵ I.C. Kamiński, *Slusznosc i prawo. Szkic prawnoporównawczy*, Cracow 2003, p. 73.

²⁶ *Ibidem*, p. 74.

ment emphasizes that the general clauses that relate to the abuse of a right are present in many Western legislations and the content of the principles of social coexistence, which have become the “equivalent” of the general clauses known in the system of law of interwar Poland, has been de-ideologized and can no longer be treated as a tool to subordinate private law to political interest, and should be connected with the constitutional values of a democratic law-abiding state. With reference to the prescription of definiteness of provisions of law²⁷, the Tribunal noted that the general clauses cannot be regarded as one of the manifestations of the legislator’s use of indefinite phrases, as they differ from undefined phrases in that they refer to an evaluation system or to norms of a non-legal nature²⁸. At the same time, the Tribunal emphasized that the use of general clauses should be cautious and prudent and that their interpretation should be uniform and strict in order to ensure objectivity of their content and to lead to predictability of the case law in this area. However, the legal doctrine aptly points out that the content of the general clauses should be understood broadly and linked to the existing social axiology, which after all is not fixed for ever or imposed, and is subject to constant evolution. It is therefore difficult to assume strict objectivity and uniform interpretation of the content of the general clauses. Linking the content of the social coexistence principles clause with the constitutional values of a democratic law-abiding state is, therefore, an important, but not the only axiological reference that serves the purpose of objectification of the evaluation criteria contained therein, which are determined in the process of application of the law²⁹.

It can be added that the nature of the impact of constitutional norms and values on individual branches of law is different in different states; this issue has been addressed in the German doctrine and in the case law of the Federal Constitutional Court, which resulted in the thesis of the so-called “radiation” of the Constitution, according to which constitutional principles pri-

²⁷ Judgment of the Constitutional Tribunal of 19 June 1992, U 6/92, OTK 1992, No. 1, item 13.

²⁸ Judgment of the Constitutional Tribunal of 7 June 1994, K 17/93, OTK 1994, item 11.

²⁹ I.C. Kamiński, op.cit., p. 75; L. Leszczyński, *Konstytucyjność art. 5 Kodeksu cywilnego – tezy Trybunału Konstytucyjnego w świetle teorii prawa*, “Kwartalnik Prawa Prywatnego” 2001, No. 3, p. 473.

marily serve to protect the individual against the state, but at the same time express a general and universal order of values, which radiates to all other branches of law and provides legislative and interpretative guidance. The so-called radiation of the constitution onto civil-law relations caused German private law to evolve from a formal ethic of civil liberty, for which constitutional law is of subordinate importance, to an approach in which its basic assumptions are based on the substantive ethic of social responsibility, which legal shape is determined by the Constitution³⁰.

The concept of radiation of the Constitution onto civil law, which has been adopted in Poland, means that courts are obliged to interpret civil law in the spirit of the principles expressed in the Constitution. Consequently, the provisions of civil law should be interpreted and applied according with the universal system of values defined in the Polish Constitution, which thus represents a specific axiological order³¹. Without entering into a dispute over the concept of direct application of the Polish Constitution and the competence to control the constitutionality of lower-order legal norms by the bodies applying the law, it can be concluded that the constitutional norms that reflect the axiological order affirmed by the legislator should be systematically taken into account when interpreting and applying those provisions of civil law that make references to the notion of equity. This is due to the need for comprehensive respect for constitutionally important values, which is justified by the concept of an objective order of values that expresses the axiological dimension of constitutional freedoms and rights³². As a consequence, the understanding of equity in civil law should correspond with the constitutional values understood in this way, because the principles and axiology of the Constitution of the Republic of Poland permeate the structures of civil law

³⁰ J. Limbach, „Promieniowanie” konstytucji na prawo prywatne, „Kwartalnik Prawa Prywatnego” 1999, No. 3, p. 405; A. Zieliński, *Wpływ praw człowieka na kodeks cywilny*, [in:] *Czterdzieści lat kodeksu cywilnego. Materiały z ogólnopolskiego zjazdu cywilistów w Rzeszowie (8–10 października 2004 r.)*, ed. M. Sawczuk, Warsaw 2006, pp. 36–37.

³¹ Cf. M. Borsiak, „Promieniowanie” konstytucji, „Studia Prawno-Ekonomiczne” 2016, vol. XCVIII, pp. 12–13.

³² P. Radziejewicz, *Pojęcie horyzontalnego skutku norm konstytucyjnych – uwagi wprowadzające z perspektywy prawa konstytucyjnego*, [in:] *Horyzontalne oddziaływanie Konstytucji Rzeczypospolitej Polskiej oraz Konwencji o ochronie praw człowieka i podstawowych wolności*, eds. A. Młynarska-Sobaczewska, P. Radziejewicz, Warsaw 2015, p. 49.

and fill them with new, unique contents³³. In any case, opening of the legal system to non-legal values – moral, social, etc. – surely complies with the constitutional principles of a democratic law-abiding state³⁴.

III. Summary and Conclusions

In conclusion, it should be emphasized that the proposition to take into account the content of the Polish Constitution in the process of interpretation and application of provisions of civil law is correct; in particular, this concerns the need to “pass” normative structures of civil law, especially such as the general social coexistence principles clause, which is the basis of the so-called equitable jurisprudence, through the “axiological filter” that results from the axiology of the constitutional order³⁵.

The concept of equity in civil law, interpreted on the basis of cases of application of law, should be reconstructed in the context of the axiological system of a democratic constitutional system, in the spirit of constitutional principles and values. It serves to objectivize moral values and, in the process of application of law in the sphere of civil-law relations, it is a tool for implementation of the constitutional principles of social justice and social solidarity. Although the civil-law system is strongly oriented toward the protection of private, individualized values and interests, the control function of the equity clause (the social coexistence principles clause), which is based on a social system of moral judgments and rules, i.e. an objectivized system of values, makes it possible in specific cases, in the spirit of constitutional social justice, to determine the necessary balance between private autonomy and the common good (the need for social solidarity).

Especially in the context of the conclusions drawn from the observation of the current state of social, economic, and legal relations in Poland, which,

³³ M. Safjan, *Konstytucja a prawo cywilne*, [in:] *Ecclesia et status. Księga jubileuszowa z okazji 40-lecia pracy naukowej Profesora Józefa Krukowskiego*, eds. A. Dębiński, K. Orzeszyna, M. Sitarz, Lublin 2004, pp. 783, 795.

³⁴ T. Zieliński, *Klauzule generalne w nowym porządku konstytucyjnym...*, p. 144.

³⁵ L. Leszczyński, *Zmiana społeczna a „otwieranie” aksjologii wykładni prawa. Szkic podstawowych zależności*, “*Studia Iuridica Lublinensia*” 2016, No. 3, p. 517; P. Tuleja, *Zasady konstytucyjne*, [in:] *Konstytucjonalizacja zasad i instytucji ustrojowych*, ed. P. Sarnecki, Warsaw 1997, p. 18.

among other things, makes it possible to state that today the primary element of the social structure in the sphere of property relations is attitudes and roles based on egoism and individualism, one should appreciate the fact and emphasize the adjective contained in the phrase “social coexistence principles” which, in the process of application of private law, makes it possible to draw attention to a certain bond that connects all members of the society, which is quite an important value also for civil-law relations³⁶. Such an understanding of civil-law equity will enable rationalization of court decisions, and civil law, thanks to the application of the social coexistence principles clause, understood also in the spirit of compliance with the constitutional principle of social justice, will become closer to the society and to the social sense of justice³⁷.

Thus, in the domain of social relations, when issuing legal decisions based on the general social coexistence principles clause, there is room for considering a wider spectrum of moral values, which also serve to highlight values of a more social nature³⁸. Equity understood in this way “allows to examine interpersonal relations against the background of social and civic relations, asking the general public if, in their opinion, a specific behavior is correct and proper”³⁹. The sphere of social life governed by civil law should therefore be subject to the influence of equity interpreted in a combined sense, that is to say, equity which is primarily concerned with the good of an individual as an entity that has rights (entitlements), but also equity that does not close itself to the consideration of the social good.

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³⁷ A. Bierć, *Zarys prawa prywatnego. Część ogólna*, Warsaw 2012, p. 64.

³⁸ M. Wilejczyk, *op.cit.*, p. 85.

³⁹ B. Janiszewska, *Pojęcie dobrej wiary w rozumieniu obiektywnym a zasady współżycia społecznego*, “Przeгляд Ustawodawstwa Gospodarczego” 2003, No. 9, p. 5.

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