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Summary of the doctoral dissertation entitled: "The Impact of Customary changes on the Jurisprudence of the Court of Justice of the European Union" prepared under the supervision of Tomasz Tadeusz Koncewicz, Professor at the University of Gdańsk

This doctoral dissertation examined the limits of the Court of Justice of the European Union case law. The paper analysed and compared the case law of the Court of Justice of the European Union, the European Court of Human Rights, and the national courts of selected countries. Legal provisions regarding registered unions or same-sex marriages, abortion, euthanasia, and assisted suicide, as customary-sensitive institutions, were also analysed - in selected European countries, and comparatively, among others, in the United States of America, Canada, Australia or Switzerland.

The research problem of this paper was the question of whether there is a cause-and-effect relationship between customary changes and the emerging law and what is the role of courts and tribunals, in particular the Court of Justice of the European Union, in this relationship, as well as in the process of reflection and judicial translation of customary changes. The research problem developed is part of a broader problem of mutual relations between the judiciary and society, its needs, and evolving attitudes towards the ongoing changes in customs.

The purpose of the dissertation was to investigate how changes in European society's customs and the jurisprudence of the Court of Justice of the European Union have impacted each other on certain customary sensitive topics. Additionally, the study aimed to demonstrate whether changes in customs were initiated by state authorities in a top-down manner or originated from the bottom-up. This paper also aims to show whether customary-sensitive phenomena require a description by law, or perhaps they should remain outside its rigid framework - including whether customary changes left outside the law get out of control and may act to the detriment of the individual. The aim of this thesis was also to show how the Court of Justice of the European Union has been adjudicating throughout the entire period of this institution's existence. The dynamics of the Tribunal's jurisprudence and its dependence on social moods and political support were highlighted, showcasing the changing trends. The ultimate goal of

the thesis was to provide a guide for the Tribunal's activities - in what direction this institution should go in order to keep up with social needs and expectations; what form of communication to adopt in order to reach the addressee and thus be able to effectively co-shape the reality in which the judgment is given.

The main thesis of this paper concerned the deliberative role of courts, with particular emphasis on the Court of Justice of the European Union, which co-shapes European Union law through its case law. Another thesis was that the judicial power takes into account the changes in customs that are taking place among the citizens of the Member States and also co-shapes public opinion and, therefore, social needs. Consequently, the law introduced by the *dominium* may shape the ongoing customary changes or lead to their normalisation, especially when these changes concern minority rights. The author also hypothesised that the distribution of weight in this relationship is related to the level of respect for democratic values in a given country or other form of social organisation. It was also hypothesised that courts have the legitimacy to co-create law despite the lack of electability of judges, while respecting the boundaries of the courtroom.

The selection of research methods was made considering the specificity of European Union law. The following methods were used in the dissertation: the comparative, formal-dogmatic, critical analysis of the subject literature, case study, historical and, additionally, the statistical method.

The comparative method used in this paper involved not only presenting various regulations and case law in selected countries, but also analysing points of contact in the indicated legal systems and lines of case law. The formal-dogmatic method, which supports the comparative method, was used to analyse the provisions of the selected European and non-European countries' legal acts, as well as the primary and secondary European Union law provisions.

The critical analysis of literature allowed the author to develop their own position on the discussed legal issues after examining the views of the doctrine on the studied areas of law. The author's own conclusions were formulated by comparing different views of the doctrine, often opposing positions and arguments, and by denying unconvincing theses. In turn, the case study method examined the process of changes taking place in the case law of the Court of Justice of the European Union in relation to the ongoing changes in customs.

The historical method was also largely used, including sociological interpretation of historical facts, in terms of the development of the discussed legal institutions in given territories and the changes in customs taking place there. To some extent, the statistical method was also taken into account by analysing the results of public opinion polls when determining the process of consolidation of the European consensus.

This doctoral dissertation contains an introduction and conclusion, and is divided into five main chapters. The first chapter discusses this paper's key issue – customs changes. It was explained how the customs changed in the 20th century, particularly after World War II. These changes had a significant impact on the development of European policy, community institutions, and law. These changes in customs were compared with changes in statutory law. Then, the social functions of courts and their role in the democratic system were presented. Reference was made to the concept of "militant democracy" as a synonym for democracy not only in the formal sense, but also in the material one, with respect for democratic values, including human rights and dignity. This chapter also presents the main models of jurisprudence - the activist, restrained and deliberative models. General considerations on the above-mentioned case-law models constituted a starting point for detailed considerations on the desired case-law model of the Court of Justice of the European Union, made in Chapter V.

The second chapter presents a reflection on customary changes in judicial decisions - mainly in European countries. The ongoing customary changes were limited to three customary problems - same-sex relationships, abortion, euthanasia and assisted suicide. The focus was made on problematic issues due to their axiological nature. The institutions of civil partnerships and same-sex marriages, abortion, euthanasia and assisted suicide were described as examples illustrating the ongoing customary changes in Europe, trends and the need to solve important moral dilemmas at the EU level when their nature affects the respect for the fundamental rights of European Union citizens. The legal systems of Member States in this respect were analysed. The process of shaping the above-mentioned institutions over decades and even centuries was presented. This chapter is comparative - the reflections of the indicated customary changes in various legal orders were compared.

The third chapter of the thesis is devoted to the European consensus, especially the consensus among the European Union Member States. As an expression of consensus, the principles on which European Union law is based were described. Considerations were made on general principles as the foundations for the entire European Union law. The European consensus was

presented as an expression of customary changes taking place in the Member States. Public opinion research and referenda results were used to present the direction and dynamics of customary changes in the studied areas over several decades. Areas where there is no such consensus due to the lack of convergence in the ongoing changes in customs among the Member States were also indicated.

The fourth chapter presents the position of the Court of Justice of the European Union in the European Union legal order. The text describes the evolution of the Tribunal over time, its role in the EU's functional system, and the impact of its precedents on EU law. The Court of Justice of the European Union was described as a court of integration, taking into account its specificity, the judicial environment and audience, as well as the dynamics and temporality of the functions it performs in the European Union legal system. The connections between the Court of Justice of the European Union and politics were presented - the Court is shown as a player on the European political scene, whose tactics change along with changes in its environment and the expectations of Member States and other institutions. Reference was also made to the issue of institutional balance in the European Union, which includes the Tribunal.

The last chapter of the doctoral dissertation presents the development, direction and changes in the jurisprudence of the Court of Justice of the European Union and the impact of customary changes on this jurisprudence and its dynamics. Both groundbreaking judgments that fundamentally changed the European Union legal system were used, as well as less spectacular judgments that consolidated the introduced changes or introduced them incrementally. The role of customary changes in shaping the current line of jurisprudence and European Union law is presented, particularly in respect for individual rights. The case law of the Court of Justice of the European Union, which also affects the legal situation of the Member States, was analysed. An analysis of the changing lines of jurisprudence was made, reflecting the needs of societies and changing conditions in the discussed areas. An important part of the last and, at the same time, key chapter of the dissertation is the definition of the desired judicial model of the Court of Justice of the European Union. The judicial method was reconstructed to include various elements such as precedent and incremental adjudication. It takes into account the intensity and timing of legal disputes, balancing conflicting interests, and applying the principle of proportionality in decision-making. Moreover, it emphasises the use of dialogue with those affected by the judgments and correct interpretation of integration law. Such a reconstructed method was presented in the operation of the Tribunal, i.e. on specific case law examples in the field of the described customary changes - the presented

case law examples were therefore related to the described methods of the selected case law model through the appropriate application of the model and the related method.

Finally, applying the considerations of the previous parts of the dissertation, conclusions were drawn and the theses put forward at the beginning were verified. For this purpose, the results of the analysis of normative elements were used and translated into the actual situation of the activities of the judiciary, reflecting social relations and ongoing customary changes. The doctoral dissertation concludes that despite the democratic system dominating in developed countries, the law still deviates from the needs of the sovereign, who, in fact, does not have much influence on the legislator. The main conclusion of this paper is the fact that the customs of a given society should shape the law, and the institutions before which citizens can assert their rights and co-shape them are courts and tribunals, which is why they become the intermediary link between the legislator and the individual. An important role in the democratic legitimisation of the judge-legislator is played by the sovereign's participation in creating law through precedent resulting from the consideration of a court case initiated by an individual's request. In the European Union, this function is fulfilled by Art. 267 of the Treaty on the Functioning of the European Union, enabling European Union citizens to signal the need for action at the level of a European Union court. The research conducted is comprehensive and is supported by the European added value in the form of a desired case law model presented by the Court of Justice of the European Union. This model outlines its elements and the application of the reconstructed method to selected sensitive customary cases.