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Summary of the doctoral dissertation entitled:

“Freedom of artistic expression. International and comparative law study”

This doctoral dissertation is devoted to the subject of freedom of expression, which is one of the most important conditions of a democratic society and state and the foundation of its development. Among the forms of expression, the author chose art and freedom of artistic expression, which, despite their widespread presence in society and many years of development, were not protected for a long time by the laws of individual countries. For the first time, the freedom of artistic creation was expressed in the Constitution of the Weimar Republic in 1919, while in Polish legislation by the currently applicable Constitution of April 2, 1997. Currently, freedom of artistic creation is one of the most important human rights in the sphere of culture. The right to freedom of art is included in the catalog of human rights in many constitutions and is recognized in court jurisprudence. The document of greatest importance for freedom and human rights is the European Convention on Human Rights.

One of the aims of the work was to determine whether, in the context of European regulations, the Convention sets a standard for the protection of artistic expression and whether the parties - states apply these regulations.

The regulations contained in the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICCPR), and the Universal Declaration of Human Rights (UDHR) also have significant regulations for the discussed issue. The discussion of these legal acts in the dissertation was aimed at strengthening the scope of protection enjoyed by freedom of artistic expression.

The dissertation mainly uses a methodology based on the exegesis of the text of legal acts, such as the comparative legal method and the dogmatic-legal method.

The analysis included legal provisions, case law of national courts and the Tribunal, as well as the achievements of the doctrine. The dissertation aimed to determine whether the standard of protection of freedom of expression developed by the ECtHR is sufficient and

whether Polish law uses this standard. Additionally, it was examined whether the scope of protected cultural rights and freedom of artistic expression in the Republic of Poland is consistent with the Constitution of the Republic of Poland, human rights guarantees, and national law. The Tribunal's rulings were compared to countries whose political situation is unstable and whose laws guarantee the protection of human rights and cultural rights.

The research problems of the dissertation are included in the introduction, five chapters, and the conclusion.

The introductory considerations of the dissertation focused on terminological problems and the theoretical and legal analysis of freedom of expression and freedom of artistic expression as a narrower right within freedom of expression. Concepts and definitions of freedom of creativity and artistic expression were presented. Moreover, the author attempted to present the concept and approaches to freedom, recalling the vision of J. Locke, who reduced freedom to independence from coercion and violence from others. Emphasizing that being free means making free decisions, managing one's own person in accordance with one's conscience, with the consent of the law to which one is subject, without any obstacles, based solely on one's own will. The justification for such a wide scope of protection of human rights and freedoms is the view that freedom is primary to law, which appears from the outside and has a regulating function. Therefore, it should not be limited in any way.

Freedom of speech involves expressing one's views and obtaining and disseminating information. Freedom of expression as a *lex specialis* must take into account all guarantees, but also limitations that result from the *lex generalis* 1 . Freedom of expression in democratic countries is one of the basic human freedoms of natural law origin. Therefore, it has inviolable and inherent value. Freedom of artistic expression is subject to the same protection as freedom of expression.

Freedom in art is one of the fundamental rights of democratic countries, its essence is communicating and expressing views externally in front of other people, using various means and techniques. This means that the statement is two-sided - someone is the author and someone is the recipient of the statement. Artistic statements do not have to be a form of transmitting information or ideas; the creator's intention may only be to express his or her sensitivity.

Despite recognizing art as an important and inseparable element of life, it is difficult to define the boundaries of art and clearly define what it actually is. It is certainly necessary to recognize it as "creative". Therefore, it has a creative character and bears the marks of "personality", and "originality", which means that it is a synonym of the individual character. Jurisprudence indicates that the personal element makes a given statement creative.

The second chapter analyzes the normative concept of freedom of artistic expression and the scope of its protection in acts of international law, taking into account the Universal Declaration of Human Rights (Article 27), the International Covenant of Rights 1 A. Biłgorajski, *Borders of freedom...*, p. 59. Civil and Political Rights (Article 19) and the International Covenant on Economic, Social, and Cultural Rights (Article 15). These are legal acts that consider freedom of opinion and expression to be among fundamental civil rights. An important part of the chapter is devoted to the importance of the content of the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights for European legislation in the field of protection of freedom of artistic expression. The attention was focused on the formal and dogmatic analysis of the content of Art. 10 of the Convention, scope of protection, and limits of protection.

The conflict between freedom of artistic expression and other human rights subject to legal protection, in particular freedom of conscience and religion, was exposed. It was noticed that, according to the case law of the ECtHR, the widest limits of freedom of expression concern public debate, and limiting this freedom in the field of political speech could lead to serious threats: such as undermining the democratic political system or even depriving society of the real ability to control power. The interference with the right to freedom of expression and the forms of its violation has been supported by examples, in particular by the analysis of all ECtHR judgments in which the Court ruled that freedom was limited. This part of the considerations provides not only knowledge about the legal status of the topic discussed by the author but also contains references to specific court decisions.

The third chapter of the dissertation discusses freedom of expression in the United States of America. The approximate historical background of freedom of expression in the American doctrine and the main fields of protection of freedom of expression based on the First Amendment to the American Constitution were described. In opposition to the USA, as a country where freedom of speech enjoys the broadest possible protection, in contrast, important issues of freedom of expression in selected politically unstable regions of the world, such as: China, Middle Eastern countries including Israel, selected African countries, the Federation of Russian and Ukraine, where there is currently a war going on. Describing the issues of contemporary freedom of expression in politically unstable regions of the world shows the gap and difference in the perception of this problem in countries where human rights are not respected and legal rules only seem to apply.

The fourth chapter of the dissertation presents the approach to freedom of artistic expression in the Polish legal system, on the basis of Art. 73 of the Constitution of the Republic

of Poland and art. 23 and 24 of the Civil Code and the conflict of this law with freedom of thought, conscience, and religion. The highest act of the Republic of Poland grants the mentioned freedom and the right of access to culture to all people, i.e. both Polish citizens, foreigners, and stateless persons, but this does not mean that the legislator has granted absolute character to this freedom by introducing instruments of repressive control. Restricting freedom through the use of criminal liability raises the question of whether it is an adequate and proportionate tool. One of the most controversial art clashes is the one between art and pornography when artists expose themselves to criminal liability.

The last fifth chapter of the dissertation presents issues related to social, cultural, political, and legal freedom of artistic expression. Chapter four contains a cross-section of topics that have a direct impact on defining the concept of art freedom and the problems encountered in it. The author tried to present the issue of freedom of artistic expression in relation to pornography and the treatment of LGBT people, which nowadays cause numerous social and legal conflicts.

In the final conclusions, the author notes that in the public space, freedom of artistic expression clashes with other human rights and freedoms that have been recognized in national and international legal acts. On the one hand, there is a need to protect personal and public rights, such as morality, security, and territorial integrity. On the other hand, it is emphasized that some controversial artistic statements, such as satire and caricature, are necessary for the proper functioning of a democratic society.

The author sees the need for much broader protection of the freedom of artistic creation. This requires a change in social awareness of art and its reception, openness to otherness, and also the fact that aesthetics can be difficult to perceive and does not mean the same to everyone. Taking into account the above and the need to take care of art and the people who create it, one can postulate *de lege ferenda* the creation of legal solutions aimed at protecting artists and the works they create.

When issuing judgments, the Tribunal verifies whether freedom of expression has been limited. It introduced a three-element test that: checks whether the restriction is provided for by national law; assumes that the state has the right to interfere only if it serves to protect the goods listed in Art. 10 Section 2 Convention; and examines whether there was a need to limit freedom or rights in a democratic society. However, first of all, the authorities of the Polish justice system should demonstrate knowledge of the above-mentioned tests. Strasbourg jurisprudence is evolving, which is directly influenced by human migration, technological progress, and changes taking place in society. This contributes to the creation of a wider margin of

appreciation by a common European standard, accompanied by the constant need to maintain a balance between the protection of democratic society and individual rights, which is structurally built into the Strasbourg system.