The Summary of the Doctoral Thesis

„Polish Law and Totalitarianisms in the Constitution of the Republic of Poland and the Polish Criminal Code”
– Under the supervision of prof. dr hab. Krystyna Chojnicka

The Polish legislator introduced into the legal order a number of regulations that can be described as “anti-totalitarian.”

In this context, the following provisions should be mentioned:

- Art. 13 of the Constitution of the Republic of Poland of April 2, 1997 prohibiting the existence of political parties and other organisations referring to totalitarian methods and practices of Nazism, fascism and communism in their programmes;
- Art. 256 of the Criminal Code of June 6, 1997 prohibiting public promotion of fascist or other totalitarian state systems and dissemination of items covered by this prohibition;
- Art. 55 of the Act of December 18, 1998 on the Institute of National Remembrance prohibiting denial of the Nazi and communist crimes (publicly and against facts);
- Art. 1 and art. 5a of the Act of April 1, 2016 on the ban of promotion of communism or other totalitarian systems by names of buildings, objects, and public utility facilities prohibiting the promotion of communism or other totalitarian system by using names and putting monuments symbolising these systems.

There are three main branches of law that deal with totalitarianisms: constitutional, criminal and administrative law. It is, however, the question that belongs primarily to the domain of political science and history. In this context, there are two aspects to be distinguished:

1) Social-political – the need to protect democratic system against the threat deriving from the organisations which refer in their programmes to totalitarian methods and practices of Nazism, fascism and communism, as well as individuals who publicly promote totalitarian regimes;

2) Historical and symbolic – the need of historic truth on Nazi and communist crimes, as well as elimination from the public sphere any symbols of communism and any other totalitarian regimes.
This dissertation analyse anti-totalitarian provisions scrutinised from the social-political perspective, i.e. Article 13 of the Constitution of the Republic of Poland and Article 256 of the Criminal Code.

There is no doubt that phenomena to which refer these articles are morally unacceptable. However, the question arises whether there is a real need of the existence of these provisions in the current wording. Whether or not the legislator intended it, they interfere into extremely sensitive areas of the democratic state, such as freedom of assembly and freedom of speech.

The aim of this paper is, firstly, to present the origins, evolution and the function of the aforementioned provisions. Secondly, to demonstrate the incorrect wording, which consist in the use of notions that lack any unitary legal, jurisprudential, social scientific or historical definition. Thirdly, to introduce amendments within the legal system. There are two scenarios to be taken into consideration to correct the errors that, in my opinion, exist in the Polish legal system:

1. Deletion of Article 13 in principio of the Constitution and the decriminalisation of the act stipulated in Article 256 of the Criminal Code, as long as it refers to the promotion of the totalitarian regimes

This solution derives from my conviction that the objectives of these regulations can be effectively achieved by applying other provisions that exist in the legal system, i.e.

- The prohibition of parties and other organisations that programmes or activities assume or permit racial or national hatred, the use of violence for the purpose of wielding power or to influence the State policy, or provide for the secrecy of their own structure or membership – contained in the Article 13 in fine of the Constitution;
- Legal provisions dealing with act motivated by hate, such as Article 256, 257 and 119 of the Criminal Code.

This dissertation consists of three chapters. The first one has been devoted to interpretations of totalitarianism, fascism, Nazism, and communism. It constitutes bases for a critical analysis of Article 13 in chapter II and Article 256 in chapter III.

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