Iwona Wrońska

An Axiology of the European Legal Space

Iwona Wrońska

Assistant professor at the Department of Public International Law at the University of Białystok, legal adviser, member of the Council of the District Chamber of Legal Advisers, Honorary Consul of Estonia in Białystok.

wronska@uwb.edu.pl

https://orcid.org/0000-0002-8945-3545

Key words: Hague convention, child abduction, habitual residence

https://doi.org/10.32082/fp.v0i6(62).367

1. Introduction

According to Franciszek Longchamps, law is a dual structure (intended and real), but enriched by a third factor in the form of basic human values; justice, governance, and humanism which are not something from outside the law but, in a certain sense, remain in the law because of it[1]. As indicated by Jan Zimmermann, a norm is always created and applied on the basis of certain values, and even the termination of its binding force also results from certain values[2]. A law cannot arise without values nor can it arise on the basis of false values and this is why addressing the axiology of law is essential[3] in the context of international law. This all leads to a conclusion that studying values and addressing the subject-matter of an axiology of law is necessary for the European legal space in order to specify its special nature, not only through a geographical lens, but primarily through the lens of the values it protects – this being why it was adopted as the fundamental objective of these reflections. Defining the European legal space and the related analysis of its axiological dimension and the context of legal regulations is not often the subject of analysis among legal scholars and commentators, even though an interest of the representatives of the above in the subject-matter of values described on the basis of the law of the European Union or the Council of Europe can be observed. In turn, very rarely does one encounter a context of research falling under a broader perspective of perceiving the values established and protected by the legal achievements of European international organisations, namely the Council of Europe (hereinafter: CoE), the European Union (hereinafter: the EU), and the Organization for Security and Co-operation in Europe (hereinafter: OSCE). Setting out the framework of reflec-

1 F. Longchamps, *Z problemów poznania prawa*, Wrocław 1968, p. 13.

2 J. Zimmermann, "Przedmowa", in: J. Zimmermann (ed.), *Aksjologia prawa administracyjnego*, Warszawa 2017, p. 19.

3 J. Zimmermann, "Przedmowa".

tions, they were narrowed down to the European legal space, recognising it as the normative space of the effect of European international organisations, that is the CoE, the EU, or the OSCE. A number of factors determined this, among which it is worth pointing to the regional diversification of *de facto* normative systems, the differences in the legal characteristics of the legal achievements of regional international organisations or the cultural differences between regions on a global scale. The term "legal space" instead of "legal system" was applied for the needs of this research. The latter, though appropriate for internal law and international law too, does not capture the essence of the issues. This is because it does not take into consideration the fact that the specific nature of legal norms created in Europe by states and international organisations causes these norms to function somehow autonomously while often overlapping.

Given the outlined research area, it was deemed necessary to define the basic terms which will form the core of reflections, namely: the concept of the European legal space, the axiology of law and Europe's legal culture.

2. *The Concept of the European Legal Space*

The concept of the European legal space is not only the attribute of the study of international law[4]. It is a term also used by other disciplines of legal studies, and, following them, other branches of the law, especially in the field of legal comparative studies of national systems against the legal systems formed by international organisations. Contrary to what one may believe, such a general and – it would seem – obvious category like the concept of the "European legal space" is not something about which legal scholars and commentators are in agreement in terms of its definition. It is best evidenced by a multiplicity of terms applied synonymously where it is difficult to find broader analyses in which authors would suggest a similar understanding of and approach to this concept, e.g. general European legal space, European legal order, the European system of the law, European international law, Europe's system of the law or European architecture (in a legal sense – author's note). However, in foreign literature one may encounter the following terms: European legal space, European legal area, European area law, European legal system or European law. Studying the practice of the application of specific terms referring to Europe's legal space, it is difficult not to notice a specific discretion of their application which, additionally, often does not have any justification in the context of defining (naming) the described (national or international) legal systems. The analysed views are based mostly on enumerations which point to entities who create legal norms in Europe, thus shaping the European legal space. Numerous, often contrary statements on the manner of defining the European legal space have been presented for many years within the circles of international law practitioners. This, however, has not resulted in developing a definition for this term. A multitude of approaches to the investigated subject matter has resulted in a diversity of positions. Their review leaves no doubt that in the European legal space there is talk about a narrower and broader meaning. In the narrower meaning, legal scholars and commentators suggest approaching the European legal space as 'national legal orders of European states' or as 'a system of the law of the EU'. In the broader meaning, it is suggested that it is defined as: 1) legal norms created by the EU and the CoE (the so-called European law in a broader meaning); 2) legal systems of European government international organisations in conjunction with legal norms of other international actors operating within Europe – in this approach it is jointly the law of European international organisations, that is the EU, the CoE, the OSCE and other European international structures, namely: the European Economic Area, the European Free Trade Association, and the UN Economic Commission for Europe; 3) another concept of defining

4 A broad analysis of the concept of the "European legal space" was done by the author in the monograph: I. Wrońska, *Pozytywna dyskryminacja kobiet w europejskiej przestrzeni prawnej* [Positive discrimination in favour of women in the European legal space], Białystok 2019, p. 21–36. The reflections presented in this paper were inspired by and based on research conducted in the said monograph. It needs to be noted that the presented classifications were described there in a broader aspect, primarily taking into account the specific nature of the legal international protection of human rights.

the European legal space in a broader meaning may be constructed in a similar way to the one above, where the additional element which forms part of it involves the fact that next to legal orders of European government international organisations and other international structures operating within Europe, the legal systems of European countries are also taken into consideration; 4) the broadest spectrum of definition comprises classifying many different legal orders, and not only international or European ones, namely: national legal orders of European countries, the EU legal order, the system of the CoE, the OSCE and other international structures operating within Europe, as well as international norms adopted by the European countries as part of their membership in other organisations or institutions, e.g. the UN or the World Trade Organization (it is the greatest scope of the legal "mosaic" that is permeating legal systems, national and international, including the strictly international one).

sphere of these organisations. A certain axiological order which is expressed in the values protected under the law of the CoE, the EU and the OSCE seems to provide this ground, outlining directions of the countries' development.

3. An Axiology of Law from the Perspective of the European Legal Space

Europe's identity is extraordinarily rich, both in the social and cultural sense, including in the meaning of the broadly-understood legal culture. The legal culture is a special phenomenon as it encompasses a catalogue of values whose axiological determinants are common on the one hand, while on the other often based on political, social and cultural differences. Against this background there often rises rather a fundamental question; what is value of the law? According to A. Peczenik, a philosopher of law, value is a certain ideal, that is, a criterion for assessment[5]. According to K. Pałecki, value is a social or individual "desired

A search for and analysis of values underpin an applicable law and acts of its application.

In these reflections, the European legal space is understood as legal achievements of European international organisations of the CoE, the EU and the OSCE. An analysis of European legal culture will be performed under this broad framework, where a number of historical, sociological and ideological differences or even contrasts between the countries of this space can be noticed. It needs to be remembered that the OSCE is an international organisation which is also composed of countries not located on the European continent (e.g. the USA or Asian countries, e.g. Mongolia, Uzbekistan, and Armenia). In this dimension, the European legal space from a geographical standpoint therefore has a relative character of the so-called Europeanness. Antecedents of this kind force a search for a common basis other than that of the geographical for the countries of the European legal space, confirmed in the legal and organisational

state" (position, determinants)[6], whereas L. Wittgenstein specifies the concept of value pointing out that value is a "state of affairs", which is either required or desired, pointing here to the following values: e.g. those of a moral, religious, philosophical, cultural, political, social or individual (personal) nature[7]. W. Lang assumes that "value" is an attribute given to a certain entity as a result of a positive assessment of this entity, performed on the basis of a specified assessment stan-

5 A. Peczenik, "Weighing Values", *International Journal for the Semiotics of Law* 5(14), 1992, p. 138.

6 K. Pałecki, "O aksjologicznych zmianach w prawie", in: L. Leszczyński (red.), *Zmiany społeczne a zmiany w prawie. Aksjologia. Konstytucja. Integracja Europejska*, Lublin 1999, p. 16.

7 L. Wittgenstein, *Tractatus Logico-Philosophicus*, Abingdon 2011, p. 5.

dard[8]. Each specific system of the law realises a particular value system meaning that it protects and multiplies these values[9]. A collection of such values rationalises and legitimises the law and is a criterion for its assessment, thus provides an axiological basis of the law[10].

Axiology as a study addresses the theory of values, investigating what is important for important states of affairs (e.g. justice, equality, family, freedom, money, love, etc.) This general study in a narrower meaning transforms into a detailed theory of values which forms part of individual scholarly disciplines, including the law and its individual fields[11]. Therefore, a search for and analysis of values which underpin an applicable law and acts of its application are also considered important for the development of legal studies[12]. With such an approach a field called axiology of law has developed and, in a stricter sense, one can talk about the axiology of individual branches of the law[13] including the European legal space. An axiology of law is a study with values laid down in the law (e.g. on social justice, equality of opportunities, solidarity, freedom, etc.). It is composed of a set of values relativised to evaluative values, included *implicite* or *explicite* in a given system of the law and principles and assessments to which the system of the law refers – such a set is called a moral base of the law[14]. The catalogue of values on which the axiological justification of norms is based is different yet adequately specific for any discipline of the law. Therefore, investigating the European legal space means establishing an axiological justification of legal norms in this system of the law. Therefore, one can suggest an axiological definition of the European legal space indicating that the European legal space is composed of a set of legal norms whose reason of validity involves the implementation of values by state actors and international organisations, the CoE, the EU, and the OSCE, established on the basis of legal norms as an effect of common consensus as to the need to protect these values. A definition adopted in such a way may be referred to the theory of the so-called storeys and mirror presented by J. Zimmermann, according to which a second storey is hung above each discipline of the law – an axiological storey, which should and does affect everything that occurs on the lower storey[15]. Gaining a thorough knowledge on each of the legal disciplines requires observation of these storeys in their mutual relations. Gaining a thorough knowledge on each legal institution, its sense and functioning, also requires looking at it from another side (one can say: "from the other side of the mirror" or "from the other side of the coin"), i.e. the axiological side. Coming not from the normative, but indeed from an axiological point of view, one can even say that the law is a set of values moulded into a normative language[16].

4. An Axiology of the European Legal Space

The European legal space is the result of the legal collaboration of countries in terms of the protection of the most important values of the law, and a common legal culture which is the result of an axiological compromise. Economic processes, the integration of European countries, the development of political, and social and cultural relations created the need to pursue a common firmament of legal axiology which can be specified as an axiology of law of the European legal space. The basis here is composed of common historical experiences, social and cultural values and a political, as a rule, unity of the European continent from the perspective of the objectives of the CoE, the EU and the OSCE.

8 W. Lang, "Aksjologia polskiego systemu prawa w okresie transformacji ustrojowej", in: L. Leszczyński (red.), *Zmiany społeczne a zmiany w prawie…*, p. 47; W. Lang, "Aksjologia prawa", in: B. Czech (ed.), *Filozofia prawa a tworzenie i stosowanie prawa*, Katowice 1992, p. 123–124.

9 J. Skorupka, *O sprawiedliwości procesu karnego*, Warszawa 2013, p. 183.

10 J. Skorupka, *O sprawiedliwości procesu karnego*.

11 J. Zimmermann, "Przedmowa", p. 19.

12 J. Zimmermann, "Przedmowa".

13 S. Fundowicz, "Aksjologia prawa administracyjnego", in: J. Zimmermann (ed.), *Koncepcja systemu prawa administracyjnego*, Warszawa 2007, p. 633ff.

14 Z. Ziembiński, *Teoria prawa*, Warszawa–Poznań 1978, p. 50; J. Skorupka, *O sprawiedliwości procesu karnego*, p. 184; W. Lang, "Aksjologia polskiego systemu prawa w okresie transformacji ustrojowej", in: L. Leszczyński, *Zmiany społeczne a zmiany w prawie…*, p. 47.

15 J. Zimmermann, "Przedmowa", p. 13.

16 J. Zimmermann, "Przedmowa", p. 13–14.

4.1. The European Union

As aptly pointed out by the president of the European Commission, J. C. Juncker, "Rule of law is not one of the possible options in the European Union. It's a duty" [17]. Therefore, it is worth demonstrating first and foremost what place is held by the rule of law in the legal order of the European Union. The preamble of the Treaty on the European Union[18] says that parties to this agreement draw inspiration from "the cultural, religious, and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality, and the rule of law". According to the preamble, the Member States confirm their "attachment to the principles of liberty, democracy, and respect for human rights and fundamental freedoms and of the rule of law". This means that Member States base their constitutions on these values[19]. At the same time, the Treaty recognises that "fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law" (Article 6(3))[20]. European legal order is therefore marked with constitutional pluralism, based on the foundation of respecting the "national identities" of Member States, "inherent in their fundamental structures, political and constitutional" (Article 4(2)). Article 2 TEU enumerates the rule of law next to the most important values on which the Union's system is based, such as respect for human dignity, freedom, democracy, equality, and human rights[21]. The significance of the values of Article 2, including the rule of law, sets the direction of interpretation and application of the law in all fields covered by the European Union's competence[22]. It is also important, as emphasised, for the interpretation and application of the Charter of Fundamental Rights, since any specification of the content of any of fundamental rights must never occur in violation of the values enumerated in Article 2 TEU[23]. In its opinion no. 2/13 of 18th December 2014[24] on the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Court of Justice of the EU states as regards Article 2 of the Treaty "(...) each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the EU is founded, as stated in Article 2 TEU. That premise implies and justifies the existence of mutual trust between the Member States that those values will be recognised and, therefore, that the law of the EU that implements them will be respected" (§ 168)[25]. Legal scholars and commentators point out that "the rule of law" entered in the catalogue included in Article 2 TEU is a necessary premise of the functioning of all the remaining values listed there. Therefore, it is justifiable to say that the risk of a collapse of the rule of law poses a threat to other values protected in the system of EU law. Therefore, such a position supports

> **European legal order is marked with constitutional pluralism.**

17 J.C. Juncker's State of the Union speech to the European Parliament of 13th September, 2017. https://ec.europa.eu/commission/priorities/state-union-speeches/state-union-2017_en (22.03.2020)

18 Treaty on the European Union (consolidated version) OJ C 326, 26.10.2012, p. 13–390.

19 L. Garlicki, "Wprowadzenie", in: W. Staśkiewicz (ed.), *Konstytucje państw Unii Europejskiej*, Warszawa 2011, p. 8ff.

20 Treaty on the European Union (consolidated version) OJ C 326, 26.10.2012, p. 13–390.

21 Ibidem.

22 Ibidem.

23 M. Safjan, "Rządy prawa a przyszłość Europy", *Studia i Analizy Sądu Najwyższego. Materiały Naukowe* 8, 2019, p. 33.

24 Opinion 2/13, EU:C:2014:2454–2475.

25 Ibidem.

a thesis that may be formulated that the values listed in Article 2 TEU (including the idea of the rule of law) cannot be limited due to national identity included in Article 4(2) TEU, the respect of which orders one to take into consideration its relationship with the principal political and constitutional structures of a Member State. In the area specified by Article 2 TEU there is no freedom of assessment on the side of the Member State allowing the opting out of these values under national solutions[26]. Paraphrasing Isaiah Berlin's words about us *inhabiting one common moral world* we can say that in the European Union we live in a space of common values which is indivisible and which may last on the condition that all participants recognise the universal application of these values[27].

4.2. The Council of Europe

The Council of Europe, as the oldest European international organisation, has been carrying out the so-called Idea of Europe the longest, adopting the protection of the most important values from the point of view of the functioning of the rule of law as its fundamental objective. In the preamble of the Statute of the Council of Europe[28], one can find the agreeing countries' unambiguous reaffirmation of "their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy". Pursuant to Article 3 of the Statute, every Member of the CoE must accept the principles of the rule of law and the principles of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms; they must also collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I, such as, in particular; "achieving a greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage" (Article 1(a) of the Statute of the CoE). One also needs to note that all CoE Member States, including Poland, are parties to the Convention for the Protection of Human rights and Fundamental Freedoms, signed in Rome on 4th November, 1950[29]. This preamble also includes a declaration of the Governments of the signatory countries – Members of the Council of Europe, that they agree the content of the agreement "being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration of Human rights of 1948"[30].

4.3. OSCE

The rule of law appears in documents of the Organization for Security and Co-operation in Europe (OSCE), although they are not legally binding. Particular mention should be made here of the Charter of Paris for a New Europe, adopted by the Heads of States and Governments of the then Conference on Security and Cooperation in Europe held on 19th–21st November, 1990. Referring to the ten principles of the Helsinki Final Act (1975), the States of the Conference declared, under the chapter generally entitled "Human Rights, Democracy and the Rule of Law", their commitment to build, consolidate and strengthen democracy as the only system of governance. Noting

26 As pointed out by M. Safjan: "If the European Union is not able to protect the rule of law in any Member State, in consequence it will not be able to protect its values as a whole. The union is a solidary organism based on the principle of mutual trust, loyal cooperation and shared attachment to the same fundamental values. The rule of law is an inalienable premise of the protection and application of all other values. This is why the debate carried out today on the idea of the rule of law is of such fundamental significance for the future of the European Union". M. Safjan, "Rządy prawa a przyszłość Europy", p. 43; See more in: Editorial Comments, "Safeguarding EU values in the Member states – Is something finally happening?", *Common Market Law Review* 52(3), 2015, p. 625ff.

27 Isaiah Berlin's speech at the 3rd Congress: Foundation Européenne de la culture, published as: I. Berlin, "European Unity and its Vicissitudes", in: H. Hardy (ed.), *The Crooked Timber of Humanity*, Oxford 1990, p. 207.

28 Council of Europe, *Statute of the Council of Europe*, 5th May, 1949, ETS No.001.

29 Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4th November 1950, ETS 5.

30 Ibidem.

the importance and significance of human rights they recognised that the protection and promotion of these rights is the fundamental task of governments. Respect for them is the most important safeguard against an all-powerful state, and their observance and full implementation form the basis of freedom, justice, and peace. The democratic form of government is based, as set out in the Charter of Paris, on the will of the people expressed regularly in free and fair elections. The basis of democracy involves respect for the individual and the rule of law. The following section details the specific requirements addressed to the Charter's signatory states, in particular as regards equality before the law and fundamental freedoms and political rights, while guaranteeing effective legal remedies against violations of these rights at both national and international levels[31]. In order to secure the implementation of the Charter's provisions, the Conference states decided to institutionalise their cooperation to date, including the creation of the Office for Free Elections based in Warsaw, two years later renamed the Office for Democratic Institutions and Human Rights (ODIHR). The competences of this OSCE institution include i.a. monitoring the rule of law in the countries associated in the organisation[32].

5. The Legal Culture of Europe versus An Axiology of Law in the European Legal Space

The culture of a given society can be divided into material culture and non-material culture. Material culture is created by all kinds of tangible objects[33]. However, in the sociology of law, non-material culture is more important, i.e. the spiritual creations of society passed on from generation to generation[34]. Non-material culture is created, on the one hand, by a system of social values functioning in society, protected by social norms (legal, moral, unwritten or customary norms) and, on the other hand, by broadly understood social awareness in the form of human views on the surrounding world. The law is part of the non-material culture and therefore legal culture will also be part of a society's culture[35]. The norms of the law are an essential element of all norms binding in the state and shaping social order, and each society functions within a legal culture[36]. The behaviour of the addressees of the law in relation to legal norms is closely related to the state of an individual's legal awareness, and one of the most important elements of legal awareness consists in one's readiness to behave in a specific way in relation to the law, i.e. having the right attitude towards the law. Fundamentally, culture and the law are interrelated[37]. The law unequivocally influences culture, and vice versa; culture influences the law. The law is the most important component of culture and, at the same time, the most important cultural factor. In literature, the concept of legal culture is defined in various ways. A. Kojder describes it as the total normative patterns of behaviour and values related to these norms that are socially accepted, learned, and transmitted by means of conceptual symbols, either within one generation or from generation to generation, thus when this transmission between law and culture has features of certain permanence[38]. In K. Pałecki's definition, the author emphasises a set of socially performed symbolic actions, implementing patterns of symbolic actions contained in the law[39]. In S. Russocki's views,

31 Charter of Paris of 1990, https://www.osce.org/mc/39516 (20.03.2020).

32 According to the document adopted at the 1992 Helsinki Conference, ODIHR is a specialised institution that supports the countries participating in the Organisation to "ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy... and to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society". https://www.osce.org/pl/odihr/13704 (20.03.2020).

33 S. Pilipiec, "Kultura prawna a prawo obywatela do ochrony słusznego interesu", *Studia Iuridica Lublinensia* 15, 2011, p. 146.

34 N. Goodman, *Wstęp do socjologii*, Poznań 1997, p. 39.

35 A. Gryniuk, "Kultura prawna a świadomość prawna", *Państwo i Prawo* 2, 2002, p. 21.

36 S. Pilipiec, "Kultura prawna a prawo obywatela do ochrony słusznego interesu", *Studia Iuridica Lublinensia* 15, 2011, p. 146.

37 S. Pilipiec, "Kultura prawna a prawo obywatela do ochrony słusznego interesu".

38 A. Kojder, "Kultura prawna. Problem demarkacji i użyteczności pojęcia", in: *Kultura prawna i dysfunkcjonalność prawa*, Warszawa 1988, p. 13–37.

39 K. Pałecki, "O użyteczności pojęcia kultura prawna", *Państwo i Prawo* 2, 1974, p. 73–74. See more in: K. Pałecki, "O pojęciu kultury prawnej", *Studia Socjologiczne* 2, 1972.

however, legal culture is a set of intertwined attitudes and behaviours – both individual and collective – as well as their effects in relation to the law, i.e. all obligations, rules and norms imposed, equipped with an appropriate sanction and systematically enforced by the appropriate authority of a given community, and resulting from the system of values shared by that community[40]. In J. Kurczewski's opinion, it has been pointed out that legal culture includes the expectations of individuals regarding the law and the judiciary, their legal intuitions and beliefs about their rights and obligations, as well as patterns of conduct in which their rights and obligations are fulfilled.[41] A broader understanding of legal culture is presented by S. Pilipiec who emphasises that the legal culture consists, on the one hand, of the legal order, which includes the system of binding law, divided into branches of law and, on the other hand, of the legal sense, the most important element of which is legal awareness, i.e. the whole knowledge of the law, a set of affective evaluations of the law, attitudes towards the law and postulates for changes in the existing legal system. Therefore, in the author's opinion, legal culture and the applicable law system will be part of the legal culture within the meaning of the culture of applicable law[42]. Of course, given the diversity of countries in terms of their political systems and forms of their governments, it should be stressed that there is no single global legal culture. As a result of historical development, different legal cultures have developed in different geographical regions.

Legal scholars and commentators indicate in their views that the European legal culture is characterised by three fixed, cumulative elements: personalism, legalism, and intellectualism[43]. The personalism of European legal culture lies in the primacy of the person as a subject, purpose and intellectual reference in the idea of law[44]. The legalism of legal culture, in turn, consists in the legislator's monopoly (legislative authority) to create and change the law and the need to make decisions on social relations and conflicts on the basis of general legal rules[45]. On the other hand, legalism assumes that the behaviour of actors should be strictly subordinated to the law, and relations between actors based on obligations and powers defined by law, understood as a set of rules. Legalism is supposed to implement important assumptions of the rationality of the law, including the postulate of justice, legal certainty or equality, which are to weigh important values that protect the law. Finally, the intellectualism of European legal culture boils down not only to the phenomena of "generalisation and abstraction", i.e. a certain form of "idealism", but above all it means *amor intellectualis*, which has constantly guided European legal thinking in the direction of substantive ordering, conceptualisation and non-contradictory compatibility of empirical legal materials[46]. The intellectualism of the European legal culture is a peculiar way of understanding the phenomenon of law, which is closely related to specific organisational structures

There is no single global legal culture.

40 S. Russocki, "Wokół pojęcia kultury prawnej", *Przegląd Humanistyczny* 11–12, 1986, p. 16ff.

41 J. Kurczewski, "Prawem i lewem. Kultura prawna społeczeństwa polskiego po komunizmie", *Studia Socjologiczne* 2, 2007, p. 34.

42 S. Pilipiec & P. Szreniawski, "Kultura prawna w administracji", *Administracja. Teoria. Dydaktyka. Praktyka* 2(15), 2009, p. 56–57.

43 F. Wieacker, "Foundations of European Legal Culture", *American Journal of Comparative Law* 38(1), 1990, p. 20–29.

44 A. Jabłoński, "Stanisława Kowalczyka personalistyczna koncepcja społeczeństwa", *Roczniki Nauk Społecznych* 4(40), 2012, p. 57–79; K. Guzowski & M. Kosche, "Personalizm jako próba jednoczenia 'zwaśnionych' antropologii", *Horyzonty Polityki* 7(19), 2016, p. 57–77.

45 F. Wieacker, "Foundations of European Legal Culture", p. 23.

46 F. Wieacker, "Foundations of European Legal Culture", p. 25.

of the state and international organisations, resulting from the tradition of European thinking.

The legal order of the European legal space stems both from the culture of law proclaimed in states – i.e. values stemming from their constitutional traditions, civilisation and culture, which are not basically subject to relativisation – and from the culture of law of international organisations that create it, with all the accompanying acquis of international law. These three planes are coherent elements interacting with one another, providing an image of a common European legal space as a result. Such a legal structure in terms of values is reflected in the acquis of European international organisations, to which these states belong, where the fundamental value is the rule of law which generates further important values, i.e. the protection of human rights, democracy, and humanism. As M. Safjan stresses, Europe is essentially a "Union of law" and the rule of law is a paradigm of the European model; the construction of a common Europe from its very beginning[47]. The idea of Europe is older than the oldest written constitutions and is closely linked to the development of the concept of constitutions[48]. After all, the rule of law can be described as a "European project" also in the sense in which Homer contrasts those over whom law "rules" at assemblies with strangers who do not know this power[49]. For more than two millennia, Europe has not only been a geographical concept but, according to Strabon, a space "wonderfully equipped by nature to develop the excellence of people and governments".[50] Herodotus considered Europeans to be the most free of all because, unlike people in Asia, they are subject to the law, not to anyone's individual will[51]. The relationship between Mediterranean culture and democratic institutions remains one of the foundations of Europe's spiritual identity[52]. The idea conceptualising Europe, or – according to the terminology introduced by Richard Dawkins and Susan Blackmore[53] – the memetic category of Europe, is in fact subject to the natural law "inscribed" in the heart of Antigone, who has become a kind of symbol of judging the authority according to rules independent of this authority[54].

The axiology of common values in the European legal area is particularly evident in the protection of human rights as an important element of its legal culture. In the European legal space, the EU, the CoE and the OSCE have created the most sophisticated international legal and institutional framework for human rights in the world, based on equality and personal dignity as fundamental axioms of legal and human protection that coexist with the constitutional, cultural and religious traditions of the Member States. European standards for the protection of human rights bring clarity to the legal nature of various values that are included in the catalogue of axioms of the European legal area – in particular the rule of law and democracy which are a prerequisite for the legal protection of individual rights and freedoms. Although the catalogue of values contained in the acquis of the European legal space should be read in a comprehensive way, one should agree with the proposal presented by legal scholars and commentators that human dignity should always come first. It is to this value that other values mentioned in legal norms are subordinate, although they should be treated as complementary. In this sense, other values have a servile, infernal/inferior/internal position, rather than externalised in relation to the protection of "human dignity"[55].

As mentioned, the European legal space presents values set by the national laws of the States, the CoE,

47 M. Safjan, "Rządy prawa a przyszłość Europy", p. 32; See more in: L. Pech, "The rule of Law as a Constitutional Principle of the European Union", *J. Monnet Working Paper* 04/09, p. 53, https://jeanmonnetprogram.org/paper/the-rule-of-law-as-a-constitutional-principle-of-the-european-union (20.03.2020).

48 See more in: Ch.H. McIllwain, *Constitutionalism. Ancient and Modern*, Ithaca 1940.

49 Homer, *Odyssey, Book IX*, v. 112ff.

50 D. Hay, *Europe. The Emergence of an Idea*, Edinburgh 1957, p. 3; A. Pagden (ed.), *The Idea of Europe*, Cambridge 2002, p. 37.

51 Ibidem.

52 F. Braudel, *Morze Śródziemne. Przestrzeń i historia. Ludzie i dziedzictwo*, Warszawa 1994, p. 241.

53 R. Dawkins, *Samolubny gen*, Warszawa 1996, p. 262ff. See more in: S. Blackmore, *Maszyna memowa*, Warszawa 2001.

54 R. Piotrowski, "Europa a granice władzy ustrojodawczej", in: Ł. Pisarczyk (ed.), *Prawne problemy i wyzwania Unii Europejskiej*, Warszawa 2018, p. 13ff.

55 J. Barcik, "Wielopoziomowy konstytucjonalizm Unii Europejskiej a stosowanie praw podstawowych", *Przegląd Europejski* 2, 2018, p. 37ff.

the EU and the OSCE acquis, as well as the public international law of the States. The axiological foundations of the European legal space, resulting from its legal culture, thus determine the scope of implementation of the so-called postulate of a rational legislator, according to which there should always be a set of values in the background of every legal institution. Taking into account the acquis of the European legal space, it can be concluded that the activity of the EU, the CoE and the OSCE in the field of the promotion of the rule of law, democracy, human rights, and respect for legal and cultural traditions of the countries seems to be complementary due to the different objectives of these organisations, their different membership composition, and the legal nature of the adopted legal norms. A common axiological basis protects these values, leading to an increase in the rationality and functionality of law in the European legal space as a result. Its absence would make the process of law-making incomprehensible, unreasonable and accidental, and would be carried out according to the requirements of changing political conditions and the needs of a given moment[56]. Characterising the European legal space through the lens of values has even greater justification than the geographical (territorial) context. This makes it possible to highlight that the European legal area is a space of values. In this respect, it is not only the geographical, geopolitical or geo-economic space – it is primarily an axiological space, thus Europe is not only geography but, above all, values. Referring to the geographical criterion, however, it should be pointed out that the strict understanding of continental borders is blurred from the perspective of understanding of the European legal space as a space of Europe alone. As a result, there is a wider territorial expansion of its axiological values which it represents and protects, and which are valid geographically extensively outside Europe.

56 J. Skorupka, *O sprawiedliwości procesu karnego*, p. 184.

And although the countries of the European legal area have different interests, resources, capacities, cultural heritage, international influences and other factors, the legal culture of the different European countries is reciprocal and the values of the legal culture of the different European countries are intertwined, a result of which the members of the European legal space are united by a catalogue of common rights and obligations as well as common values.

6. *The Idea of "Good Law" in the European Legal Space*

The axiological values of the European legal space, through the promotion of the rule of law and democracy, pursue the idea of "good law", understood both as a just and efficient tool for regulating relations in society and as the art of applying what is good and fair (*ars boni et equi*), which has guided European legislation since the beginning of Western civilisation[57]. This is evidenced by the fact that among the criteria allowing for the verification of the quality of the law, traditionally, there are those that both demonstrate coherence, stability, efficiency and transparency, as well as those factors that place emphasis on axiological rationale in widely recognised and respected values[58]. The social axiological legitimacy of the law is achieved by reminding the subjects of the law of its social values such as justice and security, the law and its rationality (understood as its legitimacy, and the need for its creation and implementation, i.e. intentionality)[59]. The

Justice as the supreme value determines the form of law.

57 M. Kuryłowicz, *Prawo rzymskie. Historia, tradycja, współczesność*, Lublin 2003, p. 33ff.

58 S. Wronkowska, "Kryteria oceny prawa", in: E. Kustra (ed.), *Przemiany polskiego prawa (lata 1989–1990)*, Toruń 2001, p. 34. See more in: A. Łopatka, "Kryteria jakości prawa", in: *Jakość prawa*, Warszawa 1996.

59 A. Kociołek-Pęksa, "W poszukiwaniu optymalnego i idealnego aksjologicznego modelu regulacji prawnej – idea

concept of 'good law' includes the question of values that positively justify the legal order as just and the law as just[60]. Bearing in mind Radbruch's views and positions on the so-called concept of law in which he referred to the concept of 'good legislation', it can be pointed out that this is primarily linked to the concept of justice in the largo sense[61]. This idea consists of three elements. The first element of this triad is justice in the strict sense, emanating from the principle of equality which takes into account the principle of proportionality for the protection of social groups that require additional legal protection (e.g., women, the disabled, children, etc.). Thus, justice as the supreme value determines the form of law. It is indicated here that "the value of justice should be understood as a formal principle, defining the form of law, which occurs in the form of equal treatment of equal rights and unequal treatment of the unequal"[62]. Another element of the triad is purposefulness, i.e., the element of the idea that determines and creates the content of the law, understood as the expression of its substantive content. Individual values and goals of the law are created and determined both by the will of the legislator and in the ethical, social and cultural values of society[63]. Finally, (and without any hierarchy), the last element of the idea of good law is security. Since an analysis of security in a general sense leads to inevitable ambiguity[64], in this concept security is narrowed down to the category of legal security. Legal security – which is an expression of legal language – is synonymous here with predictability and legal certainty (understood as stability)[65]. Unlike justice, it is not treated as an absolute value, it is a material value for which the formal requirements of legal certainty are not sufficient. It is only the material legal understanding of legal certainty as its axiological acceptability and predictability (stability) of its validity, application, and enforcement that corresponds to the scope of the concept of legal certainty, making these concepts synonymous. Moreover, an important "good" legislation is the requirement of the permanence of the law, which does not mean the immutability of the law, but constitutes an obligation of the institutions creating the law to limit as much as possible the so-called "incidental legislation", calculated as an ad hoc effect in solving the problem[66].

The categories and limits of the values that the European legal space creates and respects are determined by the universal constitutional values of European and non-European countries (in the case of the OSCE), defining – irrespective of the controversy over their interpretation[67] – both the European constitutional identity and the constitutional identity of European countries. Constitutionalism functioning in the states of the European legal space realises the idea of good law regardless of how it is defined – *sensu largo* (a system of rule based on the constitution, the content of which corresponds to the standards applied by modern democratic states), or as or in the *strict sense* (the state in which "the constitution creates a legal framework and establishes guidelines for the activities of a diverse group of state bodies, specifies legal ways of taking over state power, introduces guarantees, and designates the limits of state interference in individual rights and freedoms[68]). The values of the European legal area set the course for the development of legislation, the interpretation of legal provisions and

prawa Gustawa Radbrucha", *Zeszyty Naukowe SGSP* 61(2), 2017, p. 115.

60 J. Oniszczuk, *Filozofia i Teoria Prawa*, Warszawa 2008, p. 323.

61 J. Zajadło, *Dziedzictwo przeszłości. Gustaw Radbruch portret filozofa, prawnika, polityka i humanisty. Współczesna Niemiecka Filozofia Prawa. Tom I*, Gdańsk 2007, p. 101–102.

62 J. Zajadło, *Dziedzictwo przeszłości…*, p. 323–324.

63 R. Tokarczyk, "Sprawiedliwość jako naczelna wartość i zasada prawa", in: M. Szyszkowska (red.), *Powrót do prawa ponadustawowego*, Warszawa 1999, p. 182–200.

64 J. Czapska, *Bezpieczeństwo obywateli, Studium z zakresu polityki prawa*, Kraków 2004, p. 7–8, 9.

65 M. Wojciechowski, "Bezpieczeństwo prawne", in: J. Zajadło (red.), *Leksykon współczesnej teorii i filozofii prawa. 100 podstawowych pojęć*, Warszawa 2007, p. 25–26.

66 L.M. Friedman, *Republika wyboru. Prawo, autorytet, kultura*, Warszawa 1993, p. 67–68.

67 D. Davis, A. Richter & Ch. Saunders, *An Inquiry into the Existence of Global Values*, Oxford–Portland 2015, p. 469ff.

68 M. Pietrzak, *Odpowiedzialność konstytucyjna w Polsce*, Warszawa 1992, p. 20.

the application of the law, thus promoting the development of a coherent legal order.

7. Summary

Europe is, in the general consciousness, much more than a geographical concept when it comes to the economy and politics[69]. After all, it is not only a pluralistic civilisation[70], shaped in a long process of development, and its name, fulfilling the role of the term "Christian world"[71]. Europe – in the light of the axiology of the European legal space – is in fact a kind of axiological category associated with this civilisation, expressing the affirmation of the rule of law, democracy, human rights, and an affirmation of freedom which does not ignore dignity and the common good, while at the same time reflecting the desire to make these values a reality[72]. The European legal space owes its identity to the diversity of international and systemic solutions, reflecting the diversity of historical experiences and traditions, co-creating culture – so captured in Cicero's words – "an inventor of laws, a teacher of good manners and order"[73]. Part of this culture is legal tradition based on the complexity of legal order, which has developed as a result of fundamental transformations, sometimes referred to as revolutions, but which have not destroyed the law but renewed it.[74] And it is just the complexity that "custom and equity are as much a law as codes and court orders"[75], which is a source of legal pluralism, that strengthens the pluralism of political life and co-creates an area of freedom in the European legal space[76]. The democratic identity of the European legal space is not determined by the uniformity of states' systemic solutions, but by their compatibility with the values reflecting the legal tradition legitimising state power in a democratic system. The cornerstone of this system is the principle of separation of powers, consubstantial to the guarantee of human rights that confirm the inherent and inalienable dignity of the individual[77].

> **An important "good" legislation is the requirement of the permanence of the law.**

Bibliography

Barcik J., "Wielopoziomowy konstytucjonalizm Unii Europejskiej a stosowanie praw podstawowych", *Przegląd Europejski* 2, 2018.

Berlin I., "European Unity and its Vicissitudes", in: H. Hardy (ed.), *The Crooked Timber of Humanity*, Oxford 1990.

Berman H.J., *Prawo i rewolucja. Kształtowanie się zachodniej tradycji prawnej*, Warszawa 1995.

Blackmore S., *Maszyna memowa*, Warszawa 2001.

Braudel F., *Morze Śródziemne. Przestrzeń i historia. Ludzie i dziedzictwo*, Warszawa 1994.

Cicero M.T., *Pisma filozoficzne*, Warszawa 1961.

Czapska J., *Bezpieczeństwo obywateli, Studium z zakresu polityki prawa*, Kraków 2004.

Davies N., *Europa*, Kraków 1998.

Davis D., Richter A. & Saunders Ch., *An Inquiry into the Existence of Global Values*, Oxford–Portland 2015.

Dawkins R., *Samolubny gen*, Warszawa 1996.

Editorial Comments, "Safeguarding EU values in the Member states – Is something finally happening?", *Common Market Law Review* 52(3), 2015.

69 R. Piotrowski, *Sędziowie i demokracje europejskie*, Warszawa 2019, p. 60.

70 H. Kissinger, *World Order. Reflections on the Character of Nations and the Course of History*, London 2014, p. 11ff.

71 N. Davies, *Europa*, Kraków 1998, p. 31; A. Pagden (ed.), *The Idea of Europe*, p. 33ff.

72 R. Piotrowski, *Sędziowie i demokracje europejskie…*, p. 61.

73 M.T. Cicero, *Pisma filozoficzne*, Warszawa 1961, vol. III, p. 481.

74 H.J. Berman, *Prawo i rewolucja. Kształtowanie się zachodniej tradycji prawnej*, Warszawa 1995, p. 23ff.

75 H.J. Berman, *Prawo i rewolucja…*, p. 30.

76 R. Piotrowski, *Sędziowie i demokracje europejskie…*, p. 63.

77 R. Piotrowski, "Separation of Powers, Checks and Balances, and the Limits of Popular sovereignty. Rethinking the Polish Experience", *Studia Iuridica* 79, 2019, p. 78ff.

Friedman L.M., *Republika wyboru. Prawo, autorytet, kultura*, Warszawa 1993.

Fundowicz S., "Aksjologia prawa administracyjnego", in: J. Zimmermann (ed.), *Koncepcja systemu prawa administracyjnego*, Warszawa 2007.

Garlicki L., "Wprowadzenie", in: W. Staśkiewicz (ed.), *Konstytucje państw Unii Europejskiej*, Warszawa 2011.

Goodman N., *Wstęp do socjologii*, Poznań 1997.

Gryniuk A., "Kultura prawna a świadomość prawna", *Państwo i Prawo* 2, 2002.

Guzowski K. & Kosche M., "Personalizm jako próba jednoczenia 'zwaśnionych' antropologii", *Horyzonty Polityki* 7(19), 2016.

Hay D., *Europe. The Emergence of an Idea*, Edinburgh 1957.

Jabłoński A., "Stanisława Kowalczyka personalistyczna koncepcja społeczeństwa", *Roczniki Nauk Społecznych* 4(40), 2012.

Kissinger H., *World Order. Reflections on the Character of Nations and the Course of History*, London 2014.

Kociołek-Pęksa A., "W poszukiwaniu optymalnego i idealnego aksjologicznego modelu regulacji prawnej – idea prawa Gustawa Radbrucha", *Zeszyty Naukowe SGSP* 61(2), 2017.

Kojder A., "Kultura prawna. Problem demarkacji i użyteczności pojęcia", in: *Kultura prawna i dysfunkcjonalność prawa*, Warszawa 1988.

Kurczewski J., "Prawem i lewem. Kultura prawna społeczeństwa polskiego po komunizmie", *Studia Socjologiczne* 2, 2007.

Kuryłowicz M., *Prawo rzymskie. Historia, tradycja, współczesność*, Lublin 2003.

Lang W., "Aksjologia polskiego systemu prawa w okresie transformacji ustrojowej", in: L. Leszczyński (red.), *Zmiany społeczne a zmiany w prawie. Aksjologia. Konstytucja. Integracja Europejska*, Lublin 1999.

Lang W., "Aksjologia prawa", in: B. Czech (ed.), *Filozofia prawa a tworzenie i stosowanie prawa*, Katowice 1992.

Longchamps F., *Z problemów poznania prawa*, Wrocław 1968.

Łopatka A., "Kryteria jakości prawa", in: *Jakość prawa*, Warszawa 1996.

McIllwain Ch.H., *Constitutionalism. Ancient and Modern*, Ithaca 1940.

Oniszczuk J., *Filozofia i Teoria Prawa*, Warszawa 2008.

Pagden A. (ed.), *The Idea of Europe*, Cambridge 2002.

Pałecki K., "O aksjologicznych zmianach w prawie", in: L. Leszczyński (red.), *Zmiany społeczne a zmiany w prawie. Aksjologia. Konstytucja. Integracja Europejska*, Lublin 1999.

Pałecki K., "O pojęciu kultury prawnej", *Studia Socjologiczne* 2, 1972.

Pałecki K., "O użyteczności pojęcia kultura prawna", *Państwo i Prawo* 2, 1974.

Pech L., "The rule of Law as a Constitutional Principle of the European Union", *J. Monnet Working Paper* 04/09, https://jeanmonnetprogram.org/paper/the-rule-of-law-as-a-constitutional-principle-of-the-european-union (20.03.2020).

Peczenik A., "Weighing Values", *International Journal for the Semiotics of Law* 5(14), 1992.

Pietrzak M., *Odpowiedzialność konstytucyjna w Polsce*, Warszawa 1992.

Pilipiec S. & Szreniawski P., "Kultura prawna w administracji", *Administracja. Teoria. Dydaktyka. Praktyka* 2(15), 2009.

Pilipiec S., "Kultura prawna a prawo obywatela do ochrony słusznego interesu", *Studia Iuridica Lublinensia* 15, 2011.

Piotrowski R., "Europa a granice władzy ustrojodawczej", in: Ł. Pisarczyk (ed.), *Prawne problemy i wyzwania Unii Europejskiej*, Warszawa 2018.

Piotrowski R., "Separation of Powers, Checks and Balances, and the Limits of Popular sovereignty. Rethinking the Polish Experience", *Studia Iuridica* 79, 2019.

Piotrowski R., *Sędziowie i demokracje europejskie*, Warszawa 2019.

Russocki S., "Wokół pojęcia kultury prawnej", *Przegląd Humanistyczny* 11–12, 1986.

Safjan M., "Rządy prawa a przyszłość Europy", *Studia i Analizy Sądu Najwyższego. Materiały Naukowe* 8, 2019.

Skorupka J., *O sprawiedliwości procesu karnego*, Warszawa 2013.

Tokarczyk R., "Sprawiedliwość jako naczelna wartość i zasada prawa", in: M. Szyszkowska (red.), *Powrót do prawa ponadustawowego*, Warszawa 1999.

Wieacker F., "Foundations of European Legal Culture", *American Journal of Comparative Law* 38(1), 1990

Wittgenstein L., *Tractatus Logico-Philosophicus*, Abingdon 2011.

Wojciechowski M., "Bezpieczeństwo prawne", in: J. Zajadło (red.), *Leksykon współczesnej teorii i filozofii prawa. 100 podstawowych pojęć*, Warszawa 2007.

Wronkowska S., "Kryteria oceny prawa", in: E. Kustra (ed.), *Przemiany polskiego prawa (lata 1989–1990)*, Toruń 2001.

Wrońska I., *Pozytywna dyskryminacja kobiet w europejskiej przestrzeni prawnej* [Positive discrimination in favour of women in the European legal space], Białystok 2019.

Zajadło J., *Dziedzictwo przeszłości. Gustaw Radbruch portret filozofa, prawnika, polityka i humanisty. Współczesna Niemiecka Filozofia Prawa. Tom I*, Gdańsk 2007.

Ziembiński Z., *Teoria prawa*, Warszawa–Poznań 1978.

Zimmermann J., "Przedmowa", in: J. Zimmermann (ed.), *Aksjologia prawa administracyjnego*, Warszawa 2017.