

Abstract of the doctoral dissertation entitled:

Lex mitior retro agit as a principle of criminal law in a democratic state of law

The rationale for addressing the issue of the principle of *lex mitior retro agit* was the need to embed it in constitutional principles better than hitherto, including establishing what axiological basis lies behind the retrospective application of a law that is more relative. This topic has not yet been described in a comprehensive manner.

The work is divided into six sections, each analysing a different research area. The first chapter decodes the content of the rule of law, in particular by highlighting the values underpinning it. Indeed, some of the values indicated provide justification for the functioning of the principle of *lex severior retro agit* in the constitutional order, and some of them should, according to the assumptions of this thesis, provide justification for the functioning of the principle of *lex mitior retro agit* as a constitutional principle.

The second chapter is devoted to the axiology of intertemporal law. It was shown that the creation of legal norms cannot remain in isolation from socially accepted values. This is because their content is determined by the needs of a person living in society, who acts on the basis of an accepted moral and ethical model. In this context, the problem of normative change, assessed from the point of view of the citizen, is outlined. The counterbalance to the considerations made was the analysis of lawmaking as an expression of the legislator's intention. Analysing the issue of the impact of the legislator's intention, it was pointed out that changes in the law are caused by the identification of a specific problem that the legislator wants to solve. Thus, the created legal norms are intended to be a tool for achieving a specific goal. Thus, the proposed law is always related to the reasons that motivated the legislator to make legislative changes. In the course of the analyses, it has been recognised that a change in the law created in isolation from socially accepted values may lead to a situation in which, despite a formal change in the law, there is no real change in the way individuals belonging to a given community act. In order to avoid this, the new norm should allow for the identification of particular axiological premises that define the values realised by the norm. The effectiveness of the changes made depends not only on the awareness of the members of the community as

to the correct attitudes expected by the legislator, but also, or perhaps even primarily, on the extent to which the vision of the legislator coincides with that of the citizens.

The third chapter is devoted entirely to the title principle of *lex mitior retro agit*. Due to the lack of direct inclusion of this principle in the Constitution of the Republic of Poland, it was reasonable to reach for supra-statutory regulations of international law - the European Convention on Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights developed in the context of its Article 7, as well as the International Covenant on Civil and Political Rights, which in Article 15, paragraph 1, sentence 3 has a directly expressed guarantee of retroactive effect of a more relative law. Underlying the conclusions of the dissertation is an analysis of the numerous judgments of the European Court of Human Rights, but also of all the positions taken by the States Parties to the Covenant with regard to Article 15 of the ICCPR, which is reflected in the indication in the body of the dissertation of which State has made reservations and what was the object of those reservations. In view of the fact that the position of the United States has also been analysed in this regard, this work includes an indication of which of the various States take into account the principle of *lex mitior retro agit*, which reject this principle, and those which have changed their position in this regard.

The fourth chapter covers the subject of intertemporal code regulation. As regards Article 4 § 1 of the Penal Code, this regulation is presented in a manner appropriate for commentary studies. The considerations undertaken concern the understanding of the notion of "change of the law" in the light of intertemporal rules, mechanisms of changing the law, definitions of the old law and the new law, as well as the notion of a more relative law. Furthermore, the paper attempts to indicate axiological solutions underlying the said provision and to outline model ways of excluding Article 4 § 1 of the Penal Code in accordance with the principles of correct legislation.

In the fifth chapter entitled: "Lex mitior retro agit and specific solutions", considerations have been undertaken concerning the order to apply a more relative law in the context of the institution of joint punishment, the statute of limitations of criminality and the functioning of the principle of *lex mitior retro agit* in executive criminal law. As regards the latter, the analysis was conducted against the background of conditional suspension of sentence execution. The paper indicates the need to construct intertemporal norms of the executive penal law separate

from the intertemporal norms of the substantive and procedural criminal law, due to a different understanding of the norms of the executive penal law against the background of the norms of the substantive criminal law and procedural criminal law. Thus, those intertemporal solutions applied by the ordinary legislator, which remain in contradiction with the axiology of a democratic state of law, were subjected to criticism.

The last part of the work refers to the principle of *lex mitior retro agit* in the context of criminal procedural law. The paper draws attention to the importance of intertemporal norms in criminal proceedings and the nature of these norms. It is recognised that procedural criminal law conceives of the issue of the conflict of laws in time differently and gives it a different significance. The reason for this is the distinct function of procedural rules vis-à-vis criminal-material rules, which, unlike the former, treat the guarantee function as fundamental to substantive criminal law.

In the conclusion, a synthetic summary of the considerations carried out has been made, including the place and role of the principle *lex mitior retro agit* in a democratic state of law. It has been shown that it is possible to give this principle a constitutional rank on the basis of Article 2 of the Constitution of the Republic of Poland, and more precisely on the basis of the sub-principles derived from the rule of law clause.

The above considerations were carried out using the formal-dogmatic method, which made use of systemic, functional and purposive interpretation. The present study also made use of the comparative method. The analyses made have been based on numerous views of the representatives of the Polish and foreign doctrine of criminal law and confronted with my own view on the subject matter in question. The jurisprudence of the Constitutional Tribunal, the Supreme Court and common courts was equally important for the considerations made. Due to the reference to international solutions, as well as the solutions of individual European countries, the work contains numerous references to the judgments of the European Court of Human Rights and the Court of Justice of the EU. A sociological method was also used in the context of the axiological dimension of intertemporal law.

Keywords:

intertemporal law, legal principle, the time of an offense, validity, intertemporal solutions, amendment to the law, conflict - of - law rules, democratic state of law.