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Relationships between safety and the concept of "legal interest"

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Relationships between safety and the concept of “legal interest”

Abstract:

In the Polish legal order the protection of interests is ensured both by the provisions implementing legal liability (substantive law) and by the provisions that define conditions in which the substantive law may be enforced (provisions concerning the regime, litigation, organisation and order and also technical provisions). They include legal acts from the highest to the lowest level, that is from the Constitution of the Republic of Poland through international agreements, that become elements of internal law after they are ratified, codes and other laws and executive acts with the main or supplementary task to ensure safety.

Key words: *Legal interest, substantive law, safety, environment, legal order.*

Values of individual social and global nature, that are also called interests, often operate in a certain environment and in relation to such environment their existence is constantly threatened. Some of them remain completely untouched, while the others are destroyed or annihilated. And it does not matter if such danger comes from a human being or is caused by natural forces. Since they are interests of social importance, they are subject to care and protection that is often institutionalised, organized and specialized.

In the Polish legal order the protection of interests is ensured both by the provisions implementing legal liability (substantive law) and by the provisions that define conditions in which the substantive law may be enforced (provisions concerning the regime, litigation, organisation and order and also technical provisions). They include legal acts from the highest to the lowest

level, that is from the Constitution of the Republic of Poland through international agreements, that become elements of internal law after they are ratified, codes and other laws and executive acts with the main or supplementary task to ensure safety.

Since sources of violations of the state of safety may include both people – namely their conduct, and situations and events that have not been initiated directly or indirectly by people, a violation of a state of safety not always entails legal liability. Legal liability has been provided in cases when it may be assigned to a specific person that his/her conduct was the only one or one of many factors, links of a chain endangering goods that are protected by law. As far as behaviour violating legal norms expressed by legal provisions is concerned, the most important liability is based on the administration law, civil law or it is a professional responsibility. Penal liability, being related to the most strict in respect to consequences and infringing the sphere of social freedoms, shall be used as a final resort pertaining to the nature of the penal law as the so called law of limits. Moreover, penal law responds only to threats caused by man and not to all possible interests, but interests precisely defined by the norms of the law or selected in the interpretation of the law.

Even if we assume that an exhaustive presentation of legal provisions from different legal disciplines – in respect to ensuring safety and reaction to imposed state of danger, is not necessary for the purpose of this paper, yet it is possible. The paper is confined to a discussion of selected and most important, as it seems, problems of the penal law, and the text is supplemented with references to legal provisions which mention respective issues or include necessary brief explanations and comments.

Thus to focus on safety within the meaning of penal law, one should start from the statement that the central point of this law is taken by legal interest. Aside the term of legal interest there is also a concept of wrong, but since it is not possible to justify ethically the fact of creation, maintenance and protection of a state of wrong, there is no construct of “legal wrong” in the language.

An attack at legal interest is a condition for recognition that an act violates a sanctioned norm ¹ and only if further conditions of penal liability are fulfilled, it may be deemed to be an offence or a petty offence.

Despite the importance of legal interest in the legal system, it has not been defined by means of norms, while in case of the penal law it is most often omitted in the substantive provisions of this law, which will be also discussed later. From lexical perspective it is assumed that the legal interest means “an object of a civil law relationship that is every object to which the contents of such relationship refer (rights and obligations)”. Within this meaning “legal interest may have different form and nature. This category most often includes: items, tangible property that are not items (liquids, gas, minerals, free animals), intangible property (energy, material intellectual rights, personal interests), money and securities, organized property compounds (property, enterprise and farm)².

The penal law emphasizes that the term of legal interest is necessary in order to define more precisely the protective function of this law. The ground of each ordering or prohibiting legal norm is “legislator’s belief that contradictory to law conduct is a threat to values that are recognized as important in social life, important to individuals, society or the state”³. We can also add that also to specified international community or the whole human race. The prohibition included in the legal norm refers to conducts that are unwanted and non-tolerated from individual or social perspective, that are unprofitable in the light of axiological assumptions. In other words, the legislator penalizes behaviour that is socially harmful from the perspective of legislator’s axiological beliefs. The object of protection includes specific interests that are attacked by a perpetrator despite it is forbidden. Every type of acts forbidden by the penal law must have a distinctive object of protection or sometimes more such objects. If there is no object of protection “a prohibition becomes

¹ Wróbel W. Zoll A., *Polskie Prawo Karne, część ogólna – podręcznik*, (Polish Penal Law, General Part, the Manual) 2010, p. 168.

² *vide* definition of legal interest (“dobro prawne”) [in] *Wielka Encyklopedia Prawa* (Great Encyclopaedia of Law), edition 2, ed. Prof. B Hołysz, Warsaw 2005, p. 140.

³ Wróbel W. Zoll A., *Polskie Prawo Karne* (Polish Penal Law) ... , p. 40.

an empty norm and it is not possible to commit a crime.”⁴ On the other hand, a function of an order is to maintain or even improve a state that is beneficial from the perspective of axiological assumptions. When certain interest is assigned the properties of legal interest that is subject to legal protection, when prohibitions of attack at any interest are formulated, an essential role is always played by an accepted system of values important for individuals and groups of individuals. Penal sanction defined in a legal provision serves as information on a rank of a given interests in the hierarchy of interests. Most valuable interests are backed with severe penalties, while less valuable interests by milder consequences defined in the penal law. Since legal interests constitute a certain set and are ranked in a certain hierarchy, they may be distinguished and grouped according to different criteria. When looking from the perspective of an individual, the most important meaning in our penal law is assigned to: human life, human health, freedom in a broad meaning (from personal freedom through freedom of conscience and to sexual freedom and decency-related freedoms), family, property, good name, immunity, privacy, feeling of safety, etc. From the perspective of collective interests, one may enumerate: peace, mankind, the Republic of Poland, defences, uninterrupted functioning of offices, including state and local government institutions, social order, environment, information, documents, money and securities, etc. Legal interests are often important from the perspective of both individual and group interests (computer programmes, IT data, energy, interests of particular importance to the culture, document, and more precisely – safety of legal transactions which is ensured by such a document, and many other aspects. “Protection of individual legal interests serves usually as grounds for classification of individual types of offences (and their grouping into chapters – *authors’ comments*) of the detailed part of the Penal Code”⁵ and the Code of

⁴ W. Wolter, *Nauka o przestępstwie*, (Science on Crime) Warsaw 1973, p. 41. To illustrate such situation the Author presents an interesting example. The French penal code of 1810, that was in force at the time when the example was used, contained a section entitled “Associations and conspiracies against the Emperor and his family”, although since 1870 France has no longer been an empire.

⁵ Wróbel W. Zoll A., *Polskie Prawo Karne* (Polish Penal Law),... p. 40.

Petty Offences. Identification of interest is also important for determination of similarity of offences and petty offences, and a respective decision made on this issue has an impact on repressiveness of reaction under the penal law. Pertaining to article 115 § 3 of the Penal Code⁶ similar offences are for instance “offences of the same type”, and if we include petty offences, article 47 § 2 of the Code of Petty Offences⁷ provides that “similar offences and petty offences are offences and petty offences of the same type ...”. Similarity of offences is one of the conditions of recidivism, and in case of petty offences it is the main condition (besides time). And in case of intentional crime⁸ recidivism entails an aggravation of penalty, while in case of all petty offences it entails judicial aggravation of penalty within the limits of aggravating circumstances and relative exclusion of a possibility of conditional suspension of sentence (article 64 of the Penal Code⁹ and article 33 § 4 of the Code of Petty Offences and article 43 *in fine* in relation to item 1 of the Code of Petty Offences¹⁰). On the other hand, the type and nature of infringed

⁶ **Art. 115 of the Penal Code** - § 3. “Similar offences are offences of the same type; the offences committed with the use of violence or with the threat of its use, or the offences committed with an intent to secure financial or material benefits shall be regarded as similar offences”.

⁷ **Art. 47 of the Code of Petty Offences** - § 2. “Similar offences and petty offences are offences and petty offences of the same type; the offences and petty offences committed with the use of violence or with the threat of its use, or the offences and petty offences committed with an intent to secure financial or material benefits shall be regarded as similar offences and petty offences”.

⁸ Referring to intentionality within the meaning of art. 9 § 1 of the Penal Code.

⁹ **Art. 64 of the Penal Code** - § 1. “If a perpetrator sentenced to the penalty of deprivation of liberty for an offence committed with intent, during the 5 year period after having served at least 6 months of the penalty,

commits an intentional offence similar to the offence for which he had been sentenced, the court may

impose the penalty of deprivation of liberty, prescribed for the offence committed, within the statutory

limits, up to the highest statutory penalty further increased by a half.”

¹⁰ **Art. 33 of the Code of Petty Offences** - § 4. “Aggravating circumstances are deemed to be in particular:...

Perpetrator’s prior sentence for similar offence or petty offence ...”.

interest is one of the criteria taken into account when determining a level of social consequences of an act (article 115 § 2 of the Penal Code¹¹ and article 47 § 6 of the Code of Petty Offences¹²), which is important when a penalty is determined by the court at its discretion (art. 53 § 1 of the Penal Code¹³ and article 33 § 1 of the Code of Petty Offences¹⁴). What is more, pertaining to article 1 § 2 of the Penal Code¹⁵, legality or illegality of a given act is defined by the level of its social consequences. As it has been already mentioned, this level depends partially on a type and nature of infringed interest. If a level of social consequences of an act is not higher than insignificant, in the light

Art. 43 of the Code of Petty Offences– “A suspended sentence shall not be imposed on a perpetrator who during 2 years before the committed petty offence as been sentenced for similar offence or petty offence or ...”

¹¹ **Art. 115 of the Penal Code** - § 2. “In assessing the level of social consequences of an act, the court shall take into account the type and nature of the infringed interest, the dimension of the damage caused or anticipated damage, the method and circumstances of perpetrating the act, the importance of the duties breached by the perpetrator, as well as the form of intent and motivation of the perpetrator, the type of precautionary rules breached and the degree of the transgression”.

¹² **Art. 47 of the Code of Petty Offences** - § 6. “In assessing the level of social consequences of an act, the type and nature of the infringed interest, the dimension of the damage caused or anticipated damage, the method and circumstances of perpetrating the act, the importance of the duties breached by the perpetrator, as well as the form of intent and motivation of the perpetrator, the type of precautionary rules breached and the degree of the transgression are to be taken into consideration.”

¹³ **Art. 53 of the Penal Code** - § 1. “The court shall impose the penalty according to its own discretion, within the limits prescribed by law bearing in mind that its harshness should not exceed the degree of guilt, considering the level of social consequences of the act committed, and taking into account the preventive and educational objectives which the penalty has to attain with regard to the sentenced person, as well as the need to develop a legal conscience among the public”.

¹⁴ **Art. 33 of the Code of Petty Offences** - § 1. „The adjudicating body shall impose the penalty according to its own discretion, within the limits prescribed by law, considering the level of social consequences of the act committed, and taking into account the preventive and educational objectives which the penalty has to attain with regard to the sentenced person...”.

¹⁵ **Art. 1 of the Penal Code**- § 2. “A prohibited act whose social consequences are insignificant shall not constitute an offence”.

of the penal law such act is not an offence (either it is not a fiscal offence or fiscal petty offence – art. 1§ 2 of the Penal Fiscal Code¹⁶). If an act belongs to the category of acts prohibited as petty offences and is not combined with any social consequences, or even is socially positive - it may not be treated as a petty offence.

As you can see, the problem of legal interest in the penal law has not been determined for the purpose of discussions and academic disputes only.

A certain difficulty in the use of the term of legal interest results from the fact that most often the provisions of penal law do not point out directly to the interest(s) protected by them. They should be determined on the basis of contents of a legal norm, while taking account of a place of a provision in a respective group of provisions under a name defined by the legislator (titles of chapters in both codes mentioned above). One should also remember that a name of a chapter does not always help to solve the issue discussed. Sometimes it may often make the solution more difficult due to general meaning of a title and a quite popular phenomenon that a specific norm grants protection to numerous legal interests as interests that have equal rights or are in relationship of main and accessory interests.

For instance, Chapter XIX of the Penal Code was entitled “Offences against Life and Health” although it would be a mistake to think that this chapter gathers all possible types of crimes attacking such interests as life and health. In case of theft with violence (art. 280 of the Penal Code¹⁷) placed in Chapter XXXV of the Code entitled “Offences against Property”, protected interests include both property and freedom from violence, as well as human

¹⁶ **Art. 1 of the Penal Fiscal Code** - § 1. “Only person who commits an act of significant social consequences, that is prohibited under a penalty by an act in force when the act is committed shall bear penal responsibility for fiscal offence or responsibility for fiscal petty offence.

^{§ 2.} A prohibited act whose social consequences are insignificant shall not constitute a fiscal offence or fiscal petty offence”.

¹⁷ **Art., 280 of the Penal Code** - § 1.” Whoever commits theft with the use of violence against a person or through threatening the immediate use of violence or by causing a person to become unconscious or helpless shall be subject to the penalty of deprivation of liberty for a term of between 2 and 12 years”.

life and health. It is also not possible to deny that the provisions of article 177 of the Penal Code¹⁸ that describes a medium or grave traffic accident, protected interests comprise of life and health, although the provision is placed in Chapter XXI entitled “Offences against Safety in Traffic”.

When we talk about offences against public safety (group of offences described in Chapter XX of the Penal Code), the protected interest surely include: human life and health and property in large volumes. Similarly, while offences against safety in traffic are concerned (group of offences described in Chapter XXI of the Penal Code), the specific interest includes human life and health. Furthermore, types of offences described in article 118 § 1-3 of the Penal Code¹⁹ and in the international law called the crime of homicide protect the mankind that is the legal interest, but they also protect human life and health and legal order established by the international law.

There is no doubt, that article 160 of the Penal Code²⁰ placed in Chapter XIX entitled “Offences against Life and Health” protects the interests that

¹⁸ **Art. 177 of the Penal Code** - § 1. “Whoever, unintentionally causes an accident in which another person has suffered a bodily injury specified in Article 157 § 1, by violating, even unintentionally, the safety rules for land, water or air traffic shall be subject to the penalty of deprivation of liberty for up to 3 years”.

§ 2. If the consequence of the accident is the death or a serious bodily injury to another person, the perpetrator shall be subject to the penalty of the deprivation of liberty for a term of between 6 months and 8 years..”

¹⁹ **Art.118 of the Penal Code** - § 1. “Whoever, acting with an intent to destroy in full or in part, any ethnic, racial, political or religious group, or a group with a different perspective on life, commits homicide or causes a serious detriment to the health of a person belonging to such a group, shall be subject to the penalty of the deprivation of liberty for a minimum term of 12 years, the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life.

§ 2. Whoever, with the intent specified under § 1, creates, for persons belonging to such a group, living conditions threatening its biological destruction, applies means aimed at preventing births within this group, or forcibly removes children from the persons constituting it, shall be subject to the penalty of the deprivation of liberty for a minimum term of 5 years or the penalty of deprivation of liberty for 25 years

§ 3. Whoever makes preparation to commit the offence specified under § 1 or 2, shall be subject to the penalty of the deprivation of liberty for a minimum term of 3 years.”

²⁰ **Art. 160 of the Penal Code** - § 1. “Whoever exposes a human being to an immediate danger of loss of life, a serious bodily injury, or a serious impairment of health shall be subject to the penalty of deprivation of liberty for up to 3 years”.

have been listed in the title of the chapter and no other, further and accessory interests that are protected being as if in the background. *Mutatis mutandis* the situation of petty offences determined by types in the Code of Petty Offences and other laws defining penal liability for petty offences is analogical.

It is worth emphasizing, that in a few provisions belonging to the above mentioned groups the legislation uses an expression “exposes to immediate danger”. The legislator does so to distinguish illegal acts aimed at infringement of interests in the description of which there immanently is an unexpressed determination who, in what or another way, causes (kills, takes, destroys, damages, etc.). Types related to the expression “exposes to immediate danger” extend a protection of interest to the stage from before their infringement. Through extended protection of interests, and consequently extension of penalization, offences in form of an exposition to immediate danger are similar to dangers committed within the scope of penalized preparations and attempts. Similarly, an extension of protected interest takes place through an introduction of types of abstractive exposition to danger. Prohibitions referred to *iter delicti* to the stages preceding an infringement of a legal interest and applicable in respect to direct or even abstractive threat to legal interest are justified by accelerating pace of living and huge progress in technical development which cause new and more frequent threats to legal interests. It is one of the ways in which the penal law fulfils the protective functions that were defined for it.

Of course, penal liability becomes reality always when in result of intentional conduct of a person specific legal interest is damaged or annihilated. Undoubtedly, in such situation it is difficult to talk about ensuring safety to such a specific infringed interest protected by law through a reaction under penal law that threatens or even is applied in relation to the violation of a prohibition. Danger relating to the interest is transformed into a more advanced form – a destructive form. It may be only proven that the use of penal law against a perpetrator is a signal for others that they should abstain from similar behaviour if they want to avoid legal consequences, so its nature is preventive only. Generally speaking, preventive function of a legal norm (an

order and a prohibition) within the scope of the penal law and preventive role of imposed penalty and applied an ancillary penalty means an encouragement of addressees of a norm to act in compliance with the norm.

Going back to the issue of legal interests in the penal law, it should be stated that in the light of the foregoing we may observe an issue if the safety specified by the legislator in chapter titles as certain semantic category, uses individual characteristics of prohibited acts in their descriptions such as “exposes to danger”, “brings danger”., “brings immediate danger” (for instance articles 160, 161, 164, 165, 174 of the Penal Code²¹) points out to the fact that the safety as it is, safety as such is the protected interest. *Prima facie* taking into account that safety is recognized as a value in axiology and according to the use of the word in everyday speech, it seems that it is but after a more thorough analysis of the issue the first impression may prove to be wrong.

In the literature on the penal law there is an opinion that the public safety and safety in traffic (Chapters XX and XXI of the Penal Code) have the status of autonomous legally protected interest, if not the main one, while life, health and property – that are unquestionably legal interests – should be

²¹ **Art. 160 of the Penal Code** - § 1. “Whoever exposes a human being to an immediate danger of loss of life, a serious bodily injury, or a serious impairment of health shall be subject to the penalty of deprivation of liberty for up to 3 years”,

Art. 161 of the Penal Code - § 1. “Whoever, knowing that he or she is infected by the HIV virus, directly exposes another person to infection from that disease shall be subject to the penalty of deprivation of liberty for up to 3 years.

§ 2. Whoever, knowing that he or she is afflicted with a venereal or contagious disease, a serious incurable disease or a disease which actually threatens life, directly exposes another person to infection from that disease

shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year ...”

Art. 164 of the Penal Code - § 1. “Whoever causes the immediate possibility of an event mentioned in Article 163 § 1, shall be subject to the penalty of the deprivation of liberty for a term of between 6 months and 8 years”.

Art. 165 of the Penal Code - § 1. “Whoever causes danger to the life or health of many persons or property of a considerable value by ...”

Art. 174 of the Penal Code - § 1.”Whoever causes an immediate danger of a catastrophe on land or water or to air traffic shall be subject to the penalty of the deprivation of liberty for a term of between 6 months and 8 years”.

treated as accessory interests²². Directly on the basis of the chapter titles of the Penal Code some authors claim that public safety and safety in traffic derived from it are generic objects of protection²³, provided that such safety shall be referred to life, health and – if a provision defines so – to property. The supporters of this opinion claim that public safety and safety in traffic are such an interest which is made more specific in individual provisions and believe that it is not reasonable to challenge an attribute of legal interest granted to the public safety and safety in traffic and claim that the object of protection comprises only specific legal interests in form of life, health or property.²⁴ According to others, the titles of both chapters do not create a statutory defined legal interest in form of public safety and safety in traffic, but point out only to the way in which protected interests are attacked by discussed groups of offences, thus safety should be understood as a condition in which values in form of life, health and also property (in specific circumstances) are not threatened with illegal interference.²⁵ It is then claimed that the value of legal interest granted to safety may entail difficulties in interpretation of legal provisions and application of law. An acceptance of general expressions while maintaining specialisations (general and specific interests)²⁶ was an attempt to omit similar discrepancies. Thus we may differentiate general particular (individual) interests, generic (group) interests and main and accessory (incidental, additional) interests. As far as general interest is concerned, it is

²² R.A. Stefański, *Przestępstwa przeciwko bezpieczeństwu powszechnemu i w komunikacji, Rozdział XX i XXI kodeksu karnego. Komentarz*, (Offences against Public Security in Traffic. Chapter XX and XXI of the Penal Code. Comments), Warsaw 2000, p. 123.

²³ When comparing the titles of both chapters with their contents it can be seen clearly that a split into “offences against public safety” and “offences against safety in traffic” is not only dichotomous but also misleading. The first of these chapters does not refer to the full scope of the meaning of “public safety” while “safety in traffic” is included in the term of “public safety”.

²⁴ Yes. E.g. A. Marek, *Komentarz do kodeksu karnego część szczególna*, (Comments to the Penal Code. Detailed Part), Warsaw 2000, p. 91-92.

²⁵ G. Bogdan [in] *Kodeks karny część szczególna – komentarz* (Penal Code. Detailed Part – Comments) ed. Zoll, vol. II, 2nd edition, Krakow 2006, p. 403 and following

²⁶ Compare W. Wolter, *Nauka o przestępstwie ...* (Science on Crime), p. 43

mainly the arrangement of relationships that are satisfactory to the society.²⁷ In case of such a division, the safety as such may be considered to be general legal interest. The safety referred to in titles of chapters XX and XXI of the Penal Code could be classified as generic interests.²⁸ Assuming that the sense of safety is to determine a safe condition for somebody or something, which refers to all legal interests together and each legal interest individually, one should agree that without a specification to whom or to what it refers, the safety in the penal law is such a broad semantic category, that it is slightly useful or even unnecessary in the practice of legislature and enforcement of law. As every general interest it has axiological value, but due to wide meaning it may not constitute a legal interest that is the object of protection in case of a given illegal act. In such a situation it appears only as a linguistic figure.

Danger supplemented by its connection with a group of specific interests related to social relations, situations, events in which the interests participate, plays an informational and ordering role. Under one term, title, name it gathers protection of certain groups of legal interests that are exposed to violation in the same or similar way, or in the same or similar situations, conditions or circumstances, but without fulfilling the role of legal interest within the strict meaning of the word.

A name of legal interests belongs to a single and necessary clearly defined object of legal protection. Only such a defined legal interest has practical meaning. Then it is possible to propose or introduce higher or lower levels of protection of such legal interests to a legal provision. Then it is also possible to make a hierarchy of goods, and in the law enforcement process launched when legal interest is violated by prohibited acts, it is possible, taking account of a type and nature of a given interest, to assess its impact on the assessment of the level of social consequences of an act assigned to a perpetrator with all legal consequences resulting from such assumption.

If safety is assigned with properties of legal interests that must appear

²⁷ J. Warylewski, *Prawo Karne – część ogólna* (Penal Law. General Part), 2nd edition, Warsaw 2005, p. 281.

²⁸ Compare A. Gubiński, *Zasady prawa karnego*, (Principles of Penal Law), Warsaw 1996, p. 49.

in a specific normative context by means of all instruments provided by the penal law, it should be also provided with safety under the same principles under which safety is traditionally ensured to every other similar legal interest. Guaranteeing safety to safety seems to be linguistic acrobatics. Granting the properties of universal legal interest to safety as such, may also be an attempt to introduce it to codification of penal law and reduce individual parts of the Penal Code and the Code of Petty Offences to a one provision that should read more or less like that: “Whoever infringes safety of other persons shall be subject to XXX penalty”, but it would be a faulty and misleading regulation.

Word “safety” plays an important role in an individual and global dimension, it is treated as a general, universal value, it has an autonomous and also contextual meaning in numerous branches of science and there are no reasonable needs to use penal law in order to provide it with additional feature of legal interest for which special place and specific strictly defined functions are assigned by this law.

As we tried to prove, a legal interest (object of legal protection granted by a specific provision of penal law) is not safety as such, even not public safety or safety in traffic, but it is an object that is specifically, strictly and precisely defined, that – taking account of applicable axiological assumptions – requires safety and protection granted by the penal law, since it is an essential value and may be attacked by a perpetrator.

The essence of the penal law is the fact that it deals with safety of specific individualised interests. Therefore, the term of safety used in different forms and styles in the penal law has no significant importance for penal liability if it is not supplemented with specification that points out to a specific interest.

Since it is not the legal interest within the meaning of the penal law, safety is a state in which all legal interests should be considered if they deserve protection, but not only from the side of penal norms. Such state is the ideal that may be more or less approached, but that will never be fully ensured²⁹.

²⁹ Compare Encyklopedia Prawa (Encyclopaedia of Law) 3rd edition, Warsaw 2004 r., p. 48.