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Tolerance in law

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Introduction

This article discusses the controversy surrounding same-sex civil partnerships. The key concept in this debate will be tolerance – current practice demonstrates that analyses of legal regulations relating to same-sex partnerships should focus on the problem of discrimination. Discrimination is one of the principal arguments used by the proponents of same-sex partnerships to defend their case. For this reason, tolerance, a concept that is asymmetrical to discrimination, should be examined in greater detail to establish a clear and objective background for discussion. Contrary to appearances, the notion of tolerance supports a debate in broader perspective which is determined by social, political and legal norms that are the building blocks of liberal democracy. If the concept of discrimination were the pivotal point of this discussion, the main focus would be automatically shifted to legal aspects of the problem, thus – at least from the point of view of those who oppose same-sex partnerships – prejudging the content of social and political norms. The second remark relates to the way tolerance is understood in this article. Various definitions of the concept will be discussed, but its lexical definitions will be disregarded¹. As regards dictionary definitions of tolerance, it should be noted that tolerance took on a specific meaning which extends beyond the realm of religion and manifests our attitudes towards different philosophical views, customs, lifestyles, interests, esthetic preferences, etc.²

There are several reasons why dictionary definitions of the concept should be abandoned in this debate. Above all, our understanding of tolerance

¹ T. Grabińska, *U źródeł dyskusji o tolerancji*, „Archeus” 2005, no. 6, p. 48–49.

² A. Podsiadło, Z. Więckowski, *Mały słownik terminów i pojęć filozoficznych dla studiujących filozofię chrześcijańską*, Instytut Wydawniczy PAX, Warszawa 1983, p. 399; T. Grabińska, op. cit., p. 49.

has changed dynamically over the years. Professor Legutko rightly notes that tolerance has a growing demand for itself. The above observation relates to negative connotations of tolerance (risk of absolutization), but it adequately illustrates this dynamic change process which is manifested by a simultaneous increase in tolerant practices as well as intolerant behaviors. When the meaning of tolerance is thus narrowed down, it escapes dictionary definition. It should also be noted that the dynamics of the discussed concept does not have an unambiguous definition. According to Legutko, its justification can be a source of negative evaluations of social behaviors. In other words, this negative evaluation emanates from the justification of the dynamic nature of tolerance rather than from the concept itself. Legutko adds that contemporary societies demand tolerance for every idea, doctrine or belief. Proponents of a given view are released from the obligation to present their arguments because every demand for justification is regarded as a manifestation of intolerance on behalf of those who put forward such demands. According to Legutko, such attitudes imply ignorance of intellectual and moral costs associated with this curious hegemony of categorization³. The above author argues that ignorance can give rise to a mechanism which he describes as growing demand for self-tolerance. This phenomenon is manifested by a simultaneous increase in tolerant practices as well as intolerant behaviors⁴.

The preceding section explains the limitations that apply to the presented arguments. The objective of the discussion remains to be specified in greater detail. The concept of tolerance will be the springboard for the debate on legal regulations applicable to same-sex civil partnerships. Attempts will be made to demonstrate that an existential and axiological approach more effectively identifies social controversies. In other words, an existential and axiological approach brings the definition of tolerance closer to the nature of tolerance-related conflicts.

1. Preliminary remarks about an existential and axiological approach

Let me begin with several remarks that characterize the existential and axiological approach. References will be made to the previous remarks about the concept of tolerance. As mentioned earlier, social practices relating to tolerance change dynamically. For this reason, the lexical nucleus of the concept should be identified based on the fundamental tenets of liberal democracy. Basic principles can be reconstructed from liberal ideology, but

³ R. Legutko, *Etyka absolutna i społeczeństwo otwarte*, Arcana, Kraków 1994, 2005, p. 156.

⁴ Ibidem.

this practice may be questioned by its opponents. The use of ideological fundamentals of liberalism would probably also defy the dynamic nature of social practices relating to tolerance. It should be noted that the opponents of same-sex civil unions refer to the definition of tolerance which is rooted in liberal ideology. For those reasons, a different interpretation key should be found. Ideally, the proposed approach should support a debate that is not confined to the realm of liberal ideology. Such a possibility is offered by the existential and axiological approach which underpins liberal democracies – from the point of view of those systems' real-life fundamentals. They cannot be assigned to liberal ideology or questioned without negating the reality of liberal democratic states.

2. Two justifications for tolerance

Let me begin with an observation relating to justification of tolerance. Two models are possible. The first justifies tolerance by describing the actual situation. This approach was proposed by Locke. The actual situation is described by facts such as variable goals (goods) pursued by people and different opinions about the truths preached by religion. The resulting tension contributes to the risk of social conflict (war), therefore the postulate of tolerance may be seen as a war deterrent⁵. Marcin Król, who formulated the above observations, argues that in this approach, tolerance is a conflict resolution tool. Tolerance prevents violence (coercion). According to the above author, this definition of tolerance is strongly rooted in liberal theory and practice⁶. The second justification makes a reference to the idea of freedom. Mill's formula which postulates individual freedom without harming others is a negative approach to freedom which denotes the freedom "from". Interestingly, this negative concept of freedom corresponds to tolerance in a positive sense. In other words, freedom from oppression and freedom from the dominant role of public opinion breeds tolerance for all social norms, values and behaviors. According to Król, the above mechanism implies that the more we focus on protecting our individual freedoms against external intervention, the more we empower others to do the same, and consequently, we tolerate their behavior⁷. Therefore, we tolerate different points of view in fear of the consequences of intolerance, which implies that the significance of individual freedom logically leads to tolerance⁸.

⁵ M. Król, *Tolerancja w teorii i praktyce liberalizmu*, [in:] I. Jakubowska-Branicka (ed.), *O tolerancji we współczesnej demokracji liberalnej*, TRIO, Warszawa 2010, p. 42.

⁶ Ibidem.

⁷ Ibidem, p. 44.

⁸ Ibidem.

In the above context, Król examines the tolerance of homosexuality in a negative and positive sense. In the first approach, tolerance stems from fears surrounding the possibility of debate about the nature of homosexuality (natural laws, religious norms) which cannot be unambiguously resolved. The same approach is used to interpret opposition to homophobia. This line of argument (negative tolerance, justification of tolerance by making a reference to anticipated facts) is adopted by the opponents of same-sex civil partnerships. In a parliamentary debate, the opponents argued that same-sex partnerships defy the laws of nature (Krystyna Pawłowicz, MP). Similar slogans were used during street protests, including "Not secular, not rainbow colored, but Catholic Poland", "Poland free of deviant behavior", "Man is born normal, not homosexual", and in official statements made by "public" opponents of same-sex civil partnerships. The organizer of the protest march held on 5 May 2013, Anna Kołakowska of the Rosary Crusade for Poland, told the Polish Press Agency: "Normal behavior is prosecuted in contemporary Poland. We are not allowed to live like our ancestors, we are forced to be modern. Modern implies being open to all sorts of deviances, it means rejecting all values or concluding that all values are relative"⁹.

The correspondence between justification of negative tolerance and the arguments put forward by opponents of same-sex civil partnerships is broken when we delve into their interpretation of Locke's logic. The logic based on arguments that justify tolerance is also interpreted as an argument against classifying tolerance as a key social and legal principle¹⁰. Legutko searches for clues in Locke's proclamation of tolerance that would restore the concept's original significance. The above author observes that for Locke, the need for tolerance was justified by the need to humbly succumb to the truth. Locke challenged the king, who was empowered to prosecute false religions and protect the only true religion, to display tolerance in his actions. Deprived of the ability to arrive at positive solutions or resolve religious conflicts in a rational manner, the king had to turn the antagonists' attention to the fact that seemingly righteous views, judgments, norms and ideas can be transformed into political instruments. The king should not give preferential treatment to any of the conflicted parties¹¹. Similarly to Król, Legutko recognizes that the above concept exemplifies negative tolerance. It is negative not because tolerance can prevent social tension, but because this approach does not expound or promote the truth, nor does it contribute intellectually to its achievement¹². The place of tolerance is determined by the so called

⁹ Zob. [online] <www.tvn24.pl/maszerowali-w-obromie-rodziny-i-wartosci-katolickich-stop-homodyktatowi,323413,s.html>.

¹⁰ R. Legutko, *Etyka absolutna...*, p. 155.

¹¹ Ibidem, p. 160.

¹² Ibidem.

“ultimate standards” (the truth). On account of those standards, views, opinions or ideas should not be transformed into political instruments. Tolerance ends when those views are confronted with the “ultimate standards”. The essence of those standards, however, is not explained. We can only infer that they imply traditions, customs and religious beliefs which, without a ban on the politicization of new ideas, would be regarded as detrimental to social development¹³. Legutko quotes Locke who drew a parallel between tolerance and the belief in the legitimacy of his religion, as well as Voltaire whose concept of tolerance, identified as depreciation of the sacred status of certain beliefs and opinions, could be reconciled with the fact that some societies are dominated by one religion¹⁴.

In the cited interpretations, tolerance implies a ban on transforming views, judgments, norms and ideas that differ from the “ultimate standards” into political tools. Although Locke advocated impartial treatment of parties to the conflict, he was convinced of the validity of only one religion. Therefore, the only “true” argument in this approach to tolerance is the fear that cognitive functions of faith could be negated. In this context, to tolerate means to accept the epistemological value of religion and to protect religion by prohibiting the politicization of ideas or norms which are inconsistent with religious tenets. In simple terms, to tolerate means to protect the veracity of faith by banning the transfer of discordant views, norms and ideas to public life. The above interpretation gives rise to oversimplified beliefs about the proponents of tolerance. According to this line of thought, in their deep regard for reason and rationality, the proponents of tolerance allegedly claim that social and political life would become safer if reason replaced faith as the basic cognitive tool, becoming the source of our knowledge¹⁵.

Interpretations of Locke’s philosophy that rely on the belief in religious righteousness also explain the meaning of arguments based on the opposing concepts of normality and deviance. The knowledge of norms and deviations from the norm underpins arguments where the concept of natural law is based on the perceived conformity of knowledge and revelation. Reason is only a medium for discovering the revealed truth. It could seem that the above would limit traditional religious claims to the extent which is acceptable by the opponents of same-sex civil partnerships, and minimize the dissonance between knowledge and faith¹⁶. This is not the case, however. Even if the domains of reason and faith are interrelated on the assumption that

¹³ Ibidem.

¹⁴ Ibidem.

¹⁵ R. Legutko, *Tolerancja. Rzecz o surowym państwie, prawie natury, miłości i sumieniu*, Kraków 1997, p. 63.

¹⁶ Ibidem, p. 66.

certain fragments of the revealed truth can be subjected to rational, discursive cognition, this approach fails to explain the laws of nature, and it does not distinguish between good and evil¹⁷. Any measures that allow for discursive cognition are classified as anti-religious in nature.

In the negative approach towards tolerance, the discussed concept is degraded to a non-intrinsic value. In this sense, tolerance is associated with attributes, attitudes and emotions that have been named in contemporary culture. A tolerant approach implies generosity, gentility, good will, good manners, knowledge, sense of justice, openness and respect for others. Tolerance aggregates all of those features, but when evaluated separately from those attitudes, attributes and emotions, it becomes an empty concept¹⁸. In the author's opinion, the advancement of tolerance without the promotion of other forms of moral behavior is harmful. At best, it is an ethical speculation, and at worst, the propagation of pure tolerance jeopardizes the rules of social conduct. Tolerance becomes an abstract, arbitrary social principle which is unrelated to experience and which is imposed on others on the assumption that it will contribute to social harmony and peace¹⁹.

The concept of positive tolerance has been mentioned in previous sections of this paper. The arguments raised by the opponents of same-sex civil partnerships invalidate the justification that makes a reference to greater individual freedoms because the cited postulates rely on or are rooted in the "ultimate standards". The proponents of negative tolerance do not put forward arguments regarding same-sex parenting. In a sense, they are doomed to the arguments justifying positive tolerance. Those arguments play a very important role in the debate on the legalization of same-sex civil partnerships and same-sex couples' rights to adopt children. The arguments raised in the positive approach oppose same-sex parenting. The proponents of positive tolerance maintain that homosexual practices do not limit other people's freedoms and that positive tolerance of homosexuality expands civil liberties. When it comes to adoption, those freedoms are restricted on account of public reactions²⁰. This is an important point. The arguments formulated by protesters who rallied against the legalization of same-sex partnerships on 5 May 2013 also concerned children raised by homosexual couples: "Don't harm our children" or "Fighting for our children"²¹. Paradoxically, the arguments raised by the opponents of same-sex civil partnerships can be defended from the point of view of one of the discussed justifications of tolerance.

¹⁷ Ibidem, p. 65.

¹⁸ R. Legutko, *Etyka absolutna...*, p. 157.

¹⁹ Ibidem.

²⁰ M. Król, op. cit., p. 46.

²¹ Zob. [online] <www.tvn24.pl/maszerowali-w-obronie-rodziny-i-wartosci-katolickich-stop-homodyktatowi,323413,s.html>.

3. Problematic arguments in Polish debate

The argument promoted by, among others, Krystyna Pawłowicz, MP, is most problematic. In a parliamentary debate, Pawłowicz stated that the draft act legalizing same-sex civil unions is harmful and unjust and that it violates the Polish Constitution, the principle of equality and the right to intimacy. It supports exhibitionistic manifestations of sexual preferences in the public arena which violates the esthetic and moral principles of most Polish people.

Two issues should be examined in greater detail. The first concerns the values that are protected under the law. The question arises as to whether conflicts surrounding tolerance can be resolved through reference to core values such as justice and equality. The opponents of same-sex partnerships seem to think that this is possible. A similar approach has been adopted by Professor Legutko who quotes the case of Jean Calas, a Protestant who was sentenced to death for killing his Catholic son. Legutko asks rhetorically whether Calas was sentenced to death because the French legal system had been ineffective (France was not a law-abiding country) or because French Catholics were intolerant²². This question will be discussed in further sections of this paper. According to Legutko, the enforcement of legally protected values is a true measure of tolerance. The logic adopted by the cited member of the Polish parliament defies the above, even we when account for the fact that the argument backed by the case of Jean Calas concerns punishment for murder, whereas the purported violation of justice and equality claimed by Krystyna Pawłowicz relates to the legalization of same-sex partnerships. In the case of Jean Calas, his discriminating feature, namely religious denomination, should not be taken into account in jurisdiction because the law protects equality and justice. In the argument put forward by Pawłowicz, same-sex attraction is not an obstacle that deprives a person of legal protection. A guarantee of protection modeled on the institution of marriage is unjust and inconsistent with the principle of equality. Legislators have observed on numerous occasions that the proposed level of protection offered to same-sex civil partnerships is by far more limited than that which is statutorily granted to heterosexual marriages.

The above problem will be discussed at greater length in successive parts of this article. Let me first analyze the alleged violation of esthetic and moral principles. This is a difficult argument because it addresses the need for a reliable measure in a discussion about the infringement of individual liberties. According to Marcin Król, there are no reliable measures for identifying violations of personal freedoms. He exemplifies his argument with

²² R. Legutko, *Etyka absolutna...*, p. 156–157.

esthetic judgments and notes that whereas judgments and opinions change over time, the principal tenets of human esthetics remain constant.

The resulting dilemma can be narrowed down to a case in which freedom of expression does not infringe upon other people's freedoms, but violates their dignity. The above is the central crux of the statement that a same-sex couple is an "esthetically unpleasant" sight. I will disregard the fact that this is a weak argument in a debate on the legalization of same-sex civil partnerships. I will also ignore potential conflicts of interest because I find such conflicts difficult to identify in the discussed context (in the Netherlands, protests initiated against same-sex couples living in the neighborhood are expressions of personal freedom, they are staged to maintain a sense of security and well-being, and they are not manifestations of intolerance. Protests which are devoid of such objectives are indicators of intolerant attitudes). Conflicts between individual rights vs. collective rights will not be discussed either. Arguments of the type are difficult to identify in Krystyna Pawłowicz's highly emotional speech, even if we assume that she spoke on behalf of the majority.

The problem with the discussed MP's argument is that everyone has the right to dignity and freedom in the public arena. Personal dignity is violated by creating stimuli which are targeted against sensitive areas such as faith, sacred values and beliefs. A violation of personal freedom may involve a breach of the freedom to choose an environment in which sacred values and dignity remain intact. The discussed problem most commonly surfaces in conflicts surrounding the freedom of artistic expression, but not only. Manifestations of personal beliefs can also be problematic because they lead to potential conflicts between one party's personal freedom and another party's personal dignity²³.

4. Existential and axiological reflection

The above observations of personal dignity, freedom of expression in the public domain and possible conflicts have been formulated by Professor Hanna Świda-Ziemba. The presented approach to the problem extends beyond the discussed justification of negative and positive tolerance. It is derived from a deeper reflection that has been formulated in the introduction together with the existential and axiological reflection which will be discussed in the final section of the article.

²³ H. Świda-Ziemba, *Dylematy między wolnością wspólnotą w demokracji liberalnej*, [in:] I. Jakubowska-Branicka (ed.), *O tolerancji we współczesnej demokracji liberalnej*, TRIO, Warszawa 2010, p. 121–122.

In a personal reflection on the subject of tolerance, Świda-Ziemba argues that the status of tolerance cannot be clarified without analyzing axiological and existential assumptions that lie at the heart of liberal democracy. According to the cited author, liberal democracy is built upon existential truths about the nature of the human world and the world created by man²⁴. Her theory relies on the fundamental premise that an individual is the source of everything in the world²⁵. Everything begins with an individual life process, whereas ideas, “binding universals”, are unreal objects, hypostases, human imaginations whose existence can be attributed to the fact that humans have the need and the ability to communicate and share insights, and that this exchange creates abstract ideas and common beliefs²⁶. The individual is the source of everything, but some people believe in hypostases as manifestations of a supreme existence²⁷.

According to the principles of liberal democracy, everyone has equal rights to freedom, dignity and expression. A violation of personal freedom on account of an individual’s discordant views and opinions would be an antithesis of the above²⁸. Świda-Ziemba emphasizes the significance of citizens’ “axiological attitudes”. The concern for the tenets of liberal democracy is thus manifested by the conviction that not only my freedom and dignity, but also the freedom and dignity of every individual are the most important values. The above reflection is rooted in the generally acknowledged and undisputable observation that man is a social being. The very need for social coexistence is what makes this conviction difficult to embody. Our freedom of expression needs to be curtailed to guarantee the freedom and dignity of others²⁹. The above consideration puts a lid on personal freedom. The sources of individual expression can lead to disagreement. People harbor different notions about the world, their own lives or the community. Świda-Ziemba relies on the above examples to illustrate differences in expression and argues that freedom of expression implies more than subjective needs and self-beliefs. Inter-individual differences extend beyond a narrow list of sources of expression, and they are also manifested in the public sphere of life³⁰. In the public arena, unlimited expression can lead to conflicts and unresolvable disputes over the legitimacy of different notions about the world and the community. People who have fixed perceptions about the “appropriate norms” that determine the behavior of all community members

²⁴ Ibidem, p. 107.

²⁵ Ibidem, p. 108.

²⁶ Ibidem.

²⁷ Ibidem, p. 109.

²⁸ Ibidem.

²⁹ Ibidem, p. 110.

³⁰ Ibidem, p. 111–112.

will look to different lifestyle choices as factors that limit their personal expression, inhibit their natural reactions, distort the meaning of their lives, their drive for self-fulfillment, lead to subjugation and enslavement³¹. According to Świda-Ziemba, those individuals expect that their values and norms, which may be shared by many others, should be observed by all members of the community³². The discussed problem also surfaces when different but legitimate lifestyles coexist, and individuals hope to promote the preferred lifestyle model which will compete against other models³³. The above author exemplifies her argument by juxtaposing the models of a liberated woman and a housewife. The competition between opposing models, provided that they are supported by selected social groups, can lead to attempts to impose a given lifestyle on others, it breeds conflict and prevents individuals from consciously choosing the most appropriate lifestyle³⁴.

The question of whose personal freedoms should be limited and when to avoid a breach of other people's sovereignty is, therefore, of essence. Świda-Ziemba argues that certain limitations should be imposed on the legislator. In a liberal democracy, the legislator abides by the supreme principle of respect for personal autonomy³⁵. A democratically chosen legislator is a guarantor of personal freedom and dignity. He is not allowed to enforce his own ideas if their implementation could violate personal freedom, dignity and the right to self-realization³⁶. The legislator is under obligation to regulate the social life of diverse communities even if the adopted rules were to limit an individual's right to uninhibited self-expression. The legislator merely represents citizens who do not entertain identical beliefs about life, the community or the world. The law should be construed in a way that does not infringe on individual rights, but also protects personal freedoms and creates an objective environment for the pursuit of different lifestyles³⁷. The law should be characterized by tolerance of different individual lifestyles.

According to Świda-Ziemba, tolerance in law should not imply that the legislator is passive or indifferent to alternative lifestyles³⁸. Even if this definition of tolerance runs parallel with popular social belief, tolerance does not imply indifference. This is emphasized by the cited author in a discussion about the principle of respect for personal sovereignty and the resulting limitations for the legislator. The legislator's proactive stance is limited by the axiological neutrality of law. Świda-Ziemba argues that the concept of

³¹ Ibidem, p. 113.

³² Ibidem.

³³ Ibidem, p. 115.

³⁴ Ibidem, p. 114.

³⁵ Ibidem, p. 115.

³⁶ Ibidem, p. 116.

³⁷ Ibidem, p. 115.

³⁸ Ibidem, p. 117–118.

liberal democracy is sustained when everyone has equal right to pursue different lifestyles³⁹.

In conclusion, I will list the minimum tolerance requirements formulated by Świda-Ziemba in the realm of social practice rather than law. Nevertheless, they correspond to the requirements of the axiological neutrality of law, namely the legal ban on preferential treatment towards a specific lifestyle. Those requirements are:

- Firstly, physical coercion in any shape or form may not be applied to defend one's lifestyle.
- Secondly, all attempts to legitimize a given set of beliefs which limit an individual's freedom to choose the preferred lifestyle should be legally banned. Those restrictions should also apply when those beliefs are shared by the majority.
- Thirdly, isolated individuals may not be subjected to public discrimination by which the majority subjects a weaker minority to psychological coercion⁴⁰.

The above requirements extend beyond the need to enforce and protect liberal values such as equality and justice. Contrary assumptions were made by Professor Legutko and Krystyna Pawłowicz. The dissonance between the above views and the requirements formulated by Świda-Ziemba, including the resulting postulates of axiological neutrality of law (tolerance in law), stems from the fact that the proposed requirements draw upon individual rights to equality, justice, freedom and dignity. The need for tolerance in law, a pragmatic value represented by the axiological neutrality of law, is revealed only when the above postulates are combined in the process of existential and axiological reflection. In this context, an additional factor should be taken into consideration in the discussion about tolerance. My previous claim that existential and axiological reflection can define tolerance without the need for further ideological debate was asserted. Opponents of tolerance will not subscribe to this opinion and will argue that in the contemporary world, tolerance has acquired the status of a nearly "sacred" concept. This argument is rooted in the premise that tolerance enjoys widespread social support, and it is more than approved in contemporary lifestyle. Tolerance aspires to the rank of a concept that embodies the liberal philosophy. In this philosophy, tolerance is an important or the exclusive criterion for moral evaluation⁴¹. This limitation should be taken into consideration in an approach that is based on axiological and existential reflection. Opponents of tolerance will always favor epistemological and ethical reflection where the truth about man and the criteria for moral evaluation have a single, external

³⁹ Ibidem.

⁴⁰ Ibidem, p. 121.

⁴¹ R. Legutko, *Etyka absolutna...,* p. 155.

source (truth of divine revelation). The reflection formulated by Świda-Ziemba touches upon the nature of the contemporary man, and it is criticized for this very reason. It does not extend beyond the absolute measure of acceptance for approaches other than epistemological and ethical reflection, namely the conviction that tolerance is a criterion for moral evaluation. In Świda-Ziemba's approach, this criterion can be represented by a variety of other values, such as dignity. The protection of dignity lies at the very heart of the previously discussed argument on esthetic preferences. The cited author concludes that mutual limitations on individual freedoms have to be negotiated to achieve a compromise (gay parades, including for opponents of positive discrimination, elimination of obscene content which does not interfere with the protection of individual rights)⁴².

Resumen

La tolerancia en el deseo

Palabras clave: tolerancia, Derecho, uniones civiles del mismo sexo.

Este artículo aborda la polémica en torno a las uniones civiles del mismo sexo. El concepto clave en este debate será la tolerancia desde la base de la justificación tradicional de la tolerancia. En particular, el primer lugar se justifica la tolerancia mediante la descripción de la situación real, este enfoque fue propuesto por Locke; en segundo lugar, la justificación viene de la mano de la idea de libertad, en particular, se usa la fórmula de Mill que postula la libertad individual sin perjudicar a los demás es una actitud negativa hacia la denominada “libertad de”. Ambos conceptos de tolerancia serán el punto de partida para el debate sobre las normas legales aplicables a las personas del mismo sexo en el caso de uniones civiles. Se intentará demostrar que un enfoque existencial y axiológico identifica las controversias sociales de manera más efectiva.

⁴² H. Świda-Ziemba, op. cit., p. 121–122.

Streszczenie

Tolerancja w prawie

Słowa kluczowe: tolerancja, prawo, związki jednopłciowe.

Autor artykułu omawia kontrowersje towarzyszące jednopłciowym związkom partnerskim. Opisuje dwa tradycyjne uzasadnienia dla tolerancji. Pierwsze z nich, zaproponowane przez Johna Locke'a, uzasadnia tolerancję przez pryzmat obecnej sytuacji. Drugie odnosi się do idei wolności. Formuła J.S. Milla – postulująca wolność osobistą bez krzywdzenia innych – jest bliska wolności negatywnej. Obie koncepcje tolerancji mogą być punktem wyjścia w debacie na temat prawnych regulacji dotyczących związków partnerskich osób tej samej płci. Autor próbuje wykazać, że egzystencjalne i aksjologiczne podejście do problemu jest bardziej efektywne w identyfikowaniu społecznych kontrowersji.