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Territorial rights in the approach of legal philosophy

SUMMARY

(Prawa terytorialne w ujęciu filozoficznoprawnym)

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The dissertation is an attempt to show that the contemporary concept of territorial rights requires a refreshed perspective, based on key changes that have occurred in the surrounding reality under the influence of various legal and social factors. These factors are understood as selected legal regulations and social events that affect relations between individuals, communities, and states. The essence of the presented work is an interdisciplinary approach to the issue of territorial rights, combining concepts and theories related to the broadly understood field of law, with particular emphasis on the theory and philosophy of law.

The leading thesis of the dissertation is the claim that specific values and beliefs regarding issues such as the state, nation, community, territory, justice, individual position, identity, or citizenship directly affect the interpretation of territorial rights, which then translates into the choice of policies and their implementation. Therefore, the dissertation presents two concepts of territorial rights that can be reconstructed based on the scientific literature in the field: classic and modern. Each of them indicates a different possible subject of these rights, the scope of their rights, the values behind a given concept and the goals that should be achieved based on created regulations. The classic version is built on the concept of the nation-state, whose main task is to protect the interests of the community with its far-reaching rights as a subject of territorial rights. This concept reflects the predominant interpretation of this issue, but at the same time provides insufficient tools to meet nowadays global challenges. In contrast, the modern concept undermines the prevailing views on the state's position on the international arena, which gives an opportunity to search for alternative solutions to contemporary global problems. This notion focuses more on the protection of the individual, as well as on the transfer of rights and obligations in the field of territorial rights to a higher than national level.

The first chapter of the dissertation introduces the concept of territorial rights, for which it is necessary to prior discuss the concept of the state and its elements, i.e., power, territory, population, and sovereignty. In this part, basic definitions are presented, which reoccur in different interpretations of territorial rights as fundamental elements influencing their perception. Next, the very concept of territorial rights and its individual components are presented and discussed, along with an indication of the differences between the definitions provided by various authors (Cara Nine, Allen Buchanan, A. John Simmons, David Miller). Further considerations concern the controversial issue of the subject of territorial rights and their source in the idea of the historical right to land and the social contract. This part of the

work is an attempt to answer the questions: what are territorial rights, who can have them, what concepts do they derive from, and what elements of modern legislation do they influence? Then, the division of territorial rights according to their classic and modern concepts is presented. Additionally, an analysis is carried out of the relation between the concepts of territorial rights and territorial sovereignty and territorial domination, i.e., terms often used in Polish academical publications in the context of issues related to territorial jurisdiction.

The second chapter presents the classic concept of territorial rights, which remains the most widespread view on these rights. Firstly, existing theories of territorial rights are analyzed with particular emphasis on the impact of property law. The overwhelming majority of considerations over territorial rights refers to the views of John Locke and his theory of territory. Then C. Nine's thoughts on the individualistic and collectivist theories of territorial rights are presented, again based on the philosophical views of J. Locke. The next part focuses on the role of the nation and community on which the classic concept is based, considering the ideas of the nation-state, nationalism, and communitarianism. The interpretation of territorial rights also depends on the adopted perspective on sovereignty and the concept of borders, and the classic version refers to the traditional way of understanding them, i.e., Westphalian sovereignty and understanding borders as a specific filter used to regulate population migration. Further on, the chapter shows the view of the classic concept on the position of the individual, mainly in the context of building their identity in relation to the nation and the role of the citizens and their rights. Later the most popular theory that the state is the rightsholder of territorial rights is presented, predominantly based on an analysis presented by Anna Stilz, referring to the views of Kant. This theory is juxtaposed with the nationalist theories of territory, represented by D. Miller. This chapter aims to show not only the views, values, and goals of the classic concept of territorial rights but also its imperfections in relation to contemporary global challenges.

The third chapter introduces the modern concept of territorial rights, which is based on such trends as cosmopolitanism, globalization, liberalism, or the idea of global justice, indicating the need to go beyond the scheme of dividing the world territory into states separated by borders, and the people inhabiting them, in the "us-them" paradigm. This concept shows the state in the perspective of post-sovereignty, the abolition of borders and the need for participation in the broadly understood international community, which must jointly

respond to contemporary challenges on a global scale. According to this concept, a person is perceived as an individual with their own rights, independent of national affiliation, whose identity is built independently from the nation, and often even from the community, and the idea of their citizenship does not have to be restricted by the state. The modern concept proposes to recognize the people as the subject of territorial rights in isolation from the state or nation. The *people* can be understood here as local communities or as an international community, which allows facing global challenges. In the modern perspective, the subject of these rights may also be dispersed, which means that competences resulting from territorial rights do not have to be owned by an individual subject. The aim of the modern concept is to look for alternatives to the traditional perception of territorial rights.

The last chapter focuses on the authority to determine residence, immigration, and citizenship rights regarding the region in the context of shaping migration policies. This issue is an application example of how the interpretation of territorial rights, affects specific legislative solutions and these policies. In this chapter, the scope of competence is presented along with its fundamental limitation related to international standards of access to the asylum procedure. The ideological basis for the manner of exercising the authority to determine the right of residence, immigration and citizenship is the broadly understood attitude towards the Other, which directly affects the attitudes of the entity exercising territorial rights towards people who do not belong to the state community. The next part of this chapter focuses on the relationship between the discussed competence and the migration policy, which may be a form of implementing the selected concept of territorial rights in the field of migration. Afterwards, on the example of Polish governmental documents containing the main directions of planned activities in the field of migration, the elements that indicate their classic or modern determinants will be analysed. The last part of the chapter aims to assign to the concepts of territorial rights solutions applied in practice, which are a response to the current events that increased the number of migrants and refugees in Poland: brutally suppressed protests in Belarus, the humanitarian crisis on the Polish-Belarusian border, and Russia's military invasion of Ukraine.

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