

The purpose of the project is to acquire comprehensive, fundamental knowledge on the subject of functioning of legal paternalism and axiological arguments used to justify legal paternalism in the Polish law.

Paternalism as shown in Latin etymology (lat. "pater" means "father") is a feature of a relationship in which one subject restricts the freedom of another one (called paternalism beneficiary), so that his behaviour does not do him any harm. Paternalism can be talked about with reference to a relation between a doctor and patient, an employer and employee, a teacher and student. A specific form of paternalism is legal paternalism, in other words, a situation in which the legislator, by enacting appropriate obligations or prohibitions, protects people against themselves (restricts their liberties), for example in the area of gambling, obligation to fasten seatbelts.

The project provides for a multifaceted analysis of the axiological justification of paternalistic institutions in the Polish legal order. The analysis will cover legislative materials, jurisprudence and views of the doctrine regarding the functioning of a given paternalistic institution.

Paternalism makes a huge exception in the use of freedom by people, but - interestingly - despite the fact that it is perceived as something negative, no one (except for extreme liberals) wants to eliminate it from the legal space. Thus, an interesting contradiction is drawn: paternalism, which is negatively perceived as it interferes in freedom, finds justification for its existence.

Heretofore in science, the subject of analysis, very insightful, was whether paternalism as an interference in freedom could be justified. In the legal theory, several models of such justifications were developed (C. Lanuza, J. Kleinig, J. Feinberg, D. VandeVeer), the most important of which is the theory of protection of interests, the theory of consent (past or future) and the theory of autonomy protection (or integrity). The aforementioned models of justification describe the general relation of paternalism to freedom, which puts them on the metaphor of the discussion on paternalism. A characteristic feature of these models of justifications is their separation from specific regulations. Models emerged from the whole to the part - from formulating a general theory allowing acceptance of paternalism as an interference in freedom to formulating the conclusion that the paternalistic cases present in the law may be justified in this way. Due to the fact that the models of justifications were detached from specific paternalistic institutions, they can be described as theoretical or abstract ones.

Until now, no attempts have been made to confront abstract models of justification with justifications given in the legal doctrine, case law and in legislative materials. Deducing from the whole to the part - that is, examining how the legislator justified in legislative materials the necessity of introducing such and not other regulations, how the doctrine and jurisprudence perceive the institution and how justify its existence was not carried out.

Pilot studies performed by the applicant showed that the justifications used in practice deviate significantly from the abstract models, and the types of axiological arguments presented in relation to individual paternalistic institutions are also different.

Due to the innovative nature of the planned project, its results will have a significant impact on the development of legal theory, especially in terms of deeper understanding of the complexity of paternalistic institutions. The developed conceptual apparatus, in particular the determination of the status of methodological paternalism as a typological concept, will support further development of research into admissible limits of interference in freedom.