

## LEGAL SECURITY – SYNTHETIC PRESENTATION

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**Summary.** The interest in the issue of legal security nowadays is very big and has an upward trend. This issue is also present today in public discourse. However, it turns out that individual participants of this discourse have problems with clear defining the term ‘legal security’. Their understanding of this term is often intuitive or partial. Therefore, there is the importance of presentation of my point of view on the issue of legal security in a synthetic form. The aim of this article is presentation of the definition and structure of the concept of legal security. The worked out concept has its practical usefulness and may be helpful in explanation of numerous problems connected with the functioning of important legal principles and phenomena.

**Key words:** legal principles, legal security, legal certainty, Constitutional Tribunal, democratic rule of law, principle of protection of citizens’ trust in the state and its laws

The issues of legal security nowadays are more and more present in a public discourse. It turns out, however, that individual participants of this discourse have problems with clear defining the term ‘legal security’. Their understanding of this term is often intuitive or partial.

Therefore, I notice the importance of presentation of my point of view on the issue of legal security in a synthetic form. The detailed presentation of this problem, the reader may find in the monograph *Bezpieczeństwo prawne z perspektywy filozofii prawa*<sup>1</sup>.

Legal security as a term used in legal language has been around for a long time in the Polish legal culture. Probably for the popularization of it contributed the pre-war translations of Gustav Radbruch’s works by Czesław Znamierowski in which the translator applied this term as equivalent to the German *Rechtssicherheit*. This German term, however, has no precise equivalent in Polish because it connotes both the safety aspect (*securitas*) and confidence (*certitudo*) of law. Perhaps the influence of German legal literature contributed to the interchangeability of the Polish legal language terms: legal security – legal certainty.

In particular, in the judicature of the Polish Constitutional Tribunal we may notice a lack of consistency in the use of these terms. The Constitutional Tribunal derives the principle of legal security from the democratic rule of law,

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<sup>1</sup> See J. Potrzyszcz, *Bezpieczeństwo prawne z perspektywy filozofii prawa*, Wydawnictwo KUL, Lublin 2013. In this article I present the main conclusions included in this monograph.

out of which is derived a number of other rules related to varying degrees with the principle of legal security. These are namely, among others, principles such as the principle of legal certainty, the protection of citizens' trust in the state and its laws, the principle of acquired rights, the protection of interest in the course, the principle of non-retroactivity and the principle of good legislation. The ranges of meaning of these principles partly overlap and intersect, and their mutual relationship is not clearly defined.

Even if only a cursory review of the problem indicates its high level of complexity. In my view, the key to its arrangement is to answer the question: 'What is the legal security?' The answer to this question was the main objective of the research work *Bezpieczeństwo prawne z perspektywy filozofii prawa (Legal Security from the Point of View of the Philosophy of Law)*.

I have taken this issue, in spite of being aware of numerous difficulties associated with its realization, accompanied by a belief in the need for research in this still not worked, in spite of its undoubted importance, field. Legal security is the issue of fundamental importance in the process of realizing the ideals of a democratic rule of law. Taken in this dissertation attempt to present a comprehensive explanation of the concept of legal security, to clarify the content and separate the different aspects of its meaning is the first one in the Polish legal literature of this type of study. The views of the doctrine of the law, both Polish and in particular the German, were used to construct arguments in favour of the need to clearly distinguish the concept of legal security from the concept of legal certainty.

An interesting distinction between legal security and legal certainty was offered by Jerzy Wróblewski, who developing a category of legal certainty of law enforcement, stated that 'legal security means certainty considered from the point of view of the protection of rights of the individual'<sup>2</sup>. This idea was an inspiration to taken in this dissertation a scientific description of the category of legal security as a distinctive idea of the concept of legal certainty. I argue that the distinction between the concept of legal security and the concept of legal certainty is essential, as it allows more precisely define the important, from the point of view of the protection of human rights, values associated with the operation of positive law.

Legal security is a very important legal and philosophical value. The philosophy of law is searching for answers to the question concerning the nature of law and its importance in human life. The object of its interest are the relationships of man in the relation to positive law and natural law. The philosophy of law is thus closely related to the philosophy of man. Adoption of legal and philosophical perspective on its inseparable connection with the philosophy of man makes it clear that the right to legal security, treated here as an aspect of the

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<sup>2</sup> J. Wróblewski, *Wartości a decyzja sądowa*, Zakład Naukowy im. Ossolińskich, Wrocław–Warszawa–Kraków–Gdańsk 1973, p. 95.

broader right to safety, constitutes the natural right of the individual, which should first of all find its protection in the state (although in our times it is realized also in international forums and also within the European Union) through its existing order of positive law.

In view of the well-established legal doctrine in the Polish tradition of using the concept of legal security, often identified with the concept of legal certainty, and emerging occasionally statements such as: 'Even the most unjust law guarantees legal security', it may seem like a revolutionary the idea presented in this article, that legal security is a typical legal and natural claim. However, if we assume that the need for the creation of positive law stems from the natural law, then the assertion of a legal and natural claim to legal security is something quite obvious. Legal security is an appropriate goal of positive law and justifies the meaning of its existence. The claim for legal security stems from natural law, as it is justified on the basis of natural law, the need for positive law in order to assure people the possibility of peaceful coexistence and the development by means of a legal system. In particular, in a democratic state of law it is reasonable the expectance of individuals that positive law will secure their fundamental goods of life and interests.

Despite its importance, so far legal security was the subject of none major study. It can be observed while the increased interest in issues of legal certainty, as evidenced by some of the titles of doctoral dissertations written in recent times. Although the legal security is mentioned only incidentally, we should appreciate the contribution of the authors of those works in the development of the Polish legal thought concerning important values associated with the creation and application of positive law. Indirectly, it is also a contribution to the development of legal security. Legal certainty constitutes, in my opinion, one of the most important means of the implementation of legal security as the goal and sense of the existence of positive law. Increased recently the interest in the issues of legal certainty<sup>3</sup> should be assessed as a very positive phenomenon, because in this area there has been little scientific research for a long time and it still remains valid a claim of Józef Nowacki, expressed in 1964 and stating that 'the issue of legal certainty in Polish literature, almost no attention has been paid'<sup>4</sup>. The same may have been said about the principle of legal security at the moment of taking of my research focused on the development of this concept, despite several attempts at paying attention to the category of legal security made in the Polish legal literature<sup>5</sup>.

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<sup>3</sup> See e.g. M. Wojciechowski, *Pewność prawa*, Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk 2014.

<sup>4</sup> J. Nowacki, *Pewność prawa a zasada lex retro non agit*, in: J. Nowacki, *Studia z teorii prawa*, Zakamycze, Kraków 2003, p. 85.

<sup>5</sup> See e.g. A. Stelmachowski, *Problem stabilności prawa*, in: *Prawo i ład społeczny. Księga Jubileuszowa dedykowana Profesor Annie Turskiej*, Warszawa 2000, pp. 21–29.

Looking at the issue of legal security from the point of view of philosophy of law, I could not have ignored the problems of properties of human nature, which a natural need for security stems from. The existence of this need is confirmed by researches of sociologists and psychologists. In particular, an important role is played by the theory of American psychologist Abraham Maslow who recognized the need for security as a basic human need to be met in the implementation of other needs<sup>6</sup>. This natural need for security, common to all human beings, justifies the existence of a natural human right to security<sup>7</sup>. This natural human right to security, especially the right to legal security, should be realized mainly in the state and by the state. I argue that the state is primarily the active subject of legal security and every human being is first of all the passive subject of legal security<sup>8</sup>.

The views expressed in the theories of the origin of the state proved to be very useful in the explanation of human safety as the purpose of the state and in the approximation of the notion of legal security. In particular, an important role is played here by the views of Thomas Hobbes<sup>9</sup>, John Locke<sup>10</sup> and Immanuel Kant<sup>11</sup> as a precursor of the rule of law. In a law-governed state human security should be protected in a special way, which is reflected in our times in the rule of law of a democratic state derived from the principle of protection of citizens' trust in the state and its laws. One of the most important means of this protection is positive law. This finding in a natural way directs my attention to the plane of legal order.

Legal security is specified as a function of legal order. The key problem is establishing the relationships between legal security and legal certainty, and the attempt to define and determine the structure of the concept of legal security. The critical analysis of the views of the German legal doctrine<sup>12</sup> used in this work, on the one hand demonstrated that the problems of defining the concept of legal security / legal certainty (*Rechtssicherheit*) and the debate in the doc-

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<sup>6</sup> See A. Maslow, *Motywacja i osobowość*, transl. J. Radzicki, II ed., Wydawnictwo Naukowe PWN, Warszawa 2006, pp. 115–122; see also A. Maslow, *A Theory of Human Motivation*, „Psychological Review” 1943, pp. 370–396.

<sup>7</sup> See J. Potrzebacz, *Bezpieczeństwo i porządek publiczny w ujęciu filozofii prawa*, in: *Bezpieczeństwo państwa. Zagadnienia podstawowe*, ed. W. Lis, Wydawnictwo KUL, Lublin 2014, pp. 25–29.

<sup>8</sup> See J. Potrzebacz, *Podmiot bierny a podmiot czynny bezpieczeństwa prawnego*, „Teki Komisji Prawniczej – Oddział Lubelski PAN” 2015, vol. 8, pp. 76–93.

<sup>9</sup> See T. Hobbes, *Lewiatan, czyli materia, forma i władza państwa kościelnego i świeckiego*, transl. Cz. Znamierowski, Fundacja Aletheia, Warszawa 2009.

<sup>10</sup> See J. Locke, *Dwa traktaty o rządzie*, transl. Z. Rau, Wydawnictwo Naukowe PWN, Warszawa 1992.

<sup>11</sup> See I. Kant, *Metafizyka moralności*, transl. E. Nowak, Wydawnictwo Naukowe PWN, Warszawa 2005.

<sup>12</sup> See e. g. A. von Arnould, *Rechtssicherheit. Perspektivische Annäherungen an eine idée directrice des Recht*, Mohr Siebeck, Tübingen 2006.

trine are present also in the German legal culture, even though the tradition of the rule of law and the related to it the issues of legal security / legal certainty are much better established there than in the Polish legal culture. On the other hand, the aspects of semantic concepts extracted from *Rechtssicherheit* (wide and narrow) may be helpful in determining the Polish legal language concepts, namely the legal security and legal certainty. Particularly worth noting are the views of Franz Scholz, whose understanding of the concept of *Rechtssicherheit* in the broad sense is very appropriate (*mutatis mutandis*) to define the concept of legal security<sup>13</sup>.

In response to the question posed in the article: ‘What is the legal security?’, I claim that legal security is the state achieved by positive law, in which the goods of life and human interests are protected as closely as possible in an entire and effective way.

This brief definition captures the essence of the concept of legal security, however, it requires further investigation and distinguishing aspects of meaning. Therefore, in the structure of the concept of legal security, I distinguished: 1) the idea of legal security resulting from natural law (the law of reason), or – in other words – legal security as a legal and natural claim; and 2) the realization of this idea or this legal and natural claim by legal measures. Of course, this realization will never be perfect, because of the nature of the ideal results only an opportunity to strive for it.

In my attempt to further clarify the understanding of legal security as a state achieved by positive law I distinguished two aspects of this concept, namely: 1) legal security in the objective sense, meaning a state in which substantial goods of human life and his interests are secured by legal measures, and the system ensuring the effectiveness of these measures that runs smoothly; this kind of legal security may arise independently of awareness of individuals protected by it; 2) legal security in the subjective sense, which can be identified with a sense of legal security of man; to build and strengthen this feeling undoubtedly an important role plays awareness of the individual that feels safe under the rule of law.

The reasons for this sense of legal security can be varied. Namely, a sense of legal security may have (a) reasonable grounds stem from reliable knowledge of the content of the law and ways of its interpretation and application, and thus the recipient of the law can have a sense of legal security in the situation described by the Constitutional Tribunal as a full ‘knowledge of the conditions of operation of the state and the legal consequences that the action may entail’<sup>14</sup>. This full knowledge of the law (which is an idealized assumption) allows the recipient conscious and responsible decision-making and planning future actions. However, the sense of legal security can (b) have no such a rational basis,

<sup>13</sup> See F. Scholz, *Die Rechtssicherheit*, Walter de Gruyter & CO., Berlin 1955.

<sup>14</sup> See the judicature of the Constitutional Tribunal of 14<sup>th</sup> June 2000, Ref. P. 3/00, OTK ZU No. 5/2000, pos. 138.

but may be conditioned by individual attitude of a particular recipient of the law towards the products of the activities of the legislative authority, in other words, it can be conditioned by individual degree of trust in the state and its laws. Trust, in accordance with the views of Piotr Sztompka<sup>15</sup>, can take place only in the absence of certainty. This is because it allows you to reduce uncertainty by nourishing the hope that things will turn out well. Thus, the recipient of the law, without having adequate knowledge of the content of the law, its interpretation and application (which actually is most common situation), can – especially if he or she is by nature inclined to trust, not sceptical and suspicious – bestow a credit of trust upon authorities and have a sense of legal security. Of course, in the rule of law this trust (within certain limits) should be protected.

Sometimes, however, the sense of legal security may result (c) from the unconscious risks that certain legislation may generate itself. In particular, if the laws are highly ambiguous, allowing you to hide (e.g. in contracts) any adverse terms. The cause of the unconscious risks stemming from positive law may be the lack of proper understanding of the law (e.g. the terms of the contract) as a result of ignorance of specialist legal language. It can also be, for instance, a carefree behaviour (which often happens) of an acceding contractor to the agreement, who without having carefully read the agreement, signed it having confidence that does not contain any unfavourable terms. Until ‘the whole truth’ concerning the terms of the contract is revealed, the contractor(s) may have a subjective sense of legal security, based solely on trust in the law, however, on non-rational basis. The demand of protection also of interests of individuals, who do not have sufficient insight into the current law and are unaware of the dangers of their own legal actions, seems to be reasonable. First of all, the existing common law should, while respecting the principle of freedom of contract, limit the possibilities of hiding any adverse decisions in texts of agreements or contracts.

I argue that legal security and legal certainty are in a mutual relationship of the purpose and means. Legal security is the goal that can be achieved mainly by positive law, which is characterized by the features referred to as legal certainty. Positive law is the means by which you can realize the idea of legal security and obtain a condition in which people feel safe under the rule of law. On the one hand, good positive law is a landmark by standardizing the various spheres of human life and in this way it constitutes a kind of compensation for deficiencies of instinctive behaviours in human social life. On the other hand, positive law protects the goods of human life and his interests, allowing him to survive and thrive in society. These two aspects taken together – namely: 1) to provide knowledge of how to behave and what behaviour to expect from partners in social interactions, and 2) protection of human life and interests – make that positive law is the right measure to achieve the idea of legal security.

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<sup>15</sup> P. Sztompka, *Zaufanie. Fundament społeczeństwa*, Wydawnictwo Znak, Kraków 2007, pp. 69–70.

Legal certainty is the term encompassing a broad catalogue of specific measures, but it should be highlighted that this directory is not closed. With the development and dynamics of the socio-political and economic functioning of positive law different standards of legal certainty can be formulated. In particular, the catalogue of measures to ensure legal certainty can be extended. However, the possibility of perception resulting from the nature of man always plays an important role. Today, the catalogue of subordinated measures to the concept of legal certainty includes mainly: clarity, transparency, definiteness, visibility, accessibility, predictability, continuity, stability, durability, concentration, codify, positivity, promulgation, social effectiveness, reliability, practicality, consistency, system transparency, the lack of complexity of legislation and the excessive amounts, uniformity of law enforcement or non-retroactivity<sup>16</sup>.

The concept of legal certainty, however, can be understood in two ways, depending on what is meant by the law. Here, it appears useful to use the Latin terms: *lex* and *ius*, in the modern sense. Legal certainty considered, as proposed by Jerzy Wróblewski, from the point of view of the protection of rights of the individual, which corresponds to the concept of legal security, cannot be, in my opinion, understood as only legal certainty in the sense of *ius*. The recipient of the law, formulating a claim to legal security, does not refer to the legal certainty in terms of *lex*, but he demands protection of his rights in terms of *ius*. Legal certainty-*lex* is so important, as long as it constitutes an appropriate means of securing the law-*ius*. It should be emphasized that legal security can only occur in a case of securing the law-*ius*.

The distinction between legal security and legal certainty is very important as it allows to determine the legal security as a value in itself, because it is directly related to the natural human need for security. As such, the value of legal security should always be protected. However, legal certainty is the instrumental value that deserves protection only to the fulfilment of its proper function, which constitutes the realization of legal security of man.

The failure of the difference between legal security and legal certainty may lead to blind to the difference between the value worthy of protection as a value in itself (i.e. legal security) and the value worthy of protection as an instrumental value (i.e. legal certainty). In extreme cases, it may even lead to treatment of legal certainty as a value in itself, regardless of whether it leads to legal security.

It should also be emphasized that legal security is not guaranteed only by the confident wording of the written law. It is, rather, so that all other measures may also serve it, if only these measures strengthen convince of people that their rights will be protected and cast them as what is owed. Thus the recipients of

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<sup>16</sup> See J. Potrzyszcz, *Bezpieczeństwo prawne a pewność prawa – perspektywa filozoficzno-prawna*, in: *Bezpieczeństwo prawne państw demokratycznych w procesie integracji europejskiej: Polska – Słowacja – Ukraina*, eds. J. Krukowski, J. Potrzyszcz, M. Sitarz, Towarzystwo Naukowe Katolickiego Uniwersytetu Lubelskiego Jana Pawła II, Lublin 2016, pp. 292–293.

the law have a sense of legal security, they must be confident in the fact that the law (*ius*) prevails, regardless of whether it is rigidly or flexibly included. Positive law provides a number of measures which may be opposing to the value of formally understood legal certainty (*lex*), or the certainty of law is not for them the most important value, but they may also serve legal security. Such measures may include various rules derived by the Polish Constitutional Tribunal from the democratic rule of law, such as e.g. the principle of acquired rights, the prohibition of retroactive stricter laws, or the obligation to establish the appropriate application period (*vacatio legis*). General clauses reference serve the flexibility of law. They allow to obtain reasonable settlement of the case, taking into account individual circumstances. In certain categories of cases they are the only possible legal means to guarantee of legal security.

A more precise definition of structure of the concept of legal security, in which an important role is played by the distinction between the concept of legal security and its actual implementation by the means of positive law in a particular socio-political and economic situation, finds its fulfilment in determining the relationship of legal security and justice.

Traditionally, mainly due to popularize the ideas of Gustav Radbruch, the thesis of antinomy of legal security and justice as a fundamental value of positive law is accepted. Determination of the relationship of legal security and justice depends on the understanding of both. An important question for understanding of the concept of justice is showing its connection with the operation of practical reason, according to the latest research in the cognitive sciences, leading to the discovery of the so-called universal moral grammar. Understanding the legal security has been established as a legal state in which the goods of human life and his interests are as fully and effectively as possible protected. Justice may, however, act as formal justice and material justice, or in another meaning as a justice in the sense *largo* (which Gustav Radbruch and Arthur Kaufmann identified with the idea of law) and justice in the sense *stricto*, understood as equality.

In the proposed view the concept of legal security is generally not opposed to justice, although it is not identified with it, especially if we have in mind the material justice. In this sense, the difference between justice and legal security lies in the fact that justice ultimately aims to achieve equitable settlement of the case, while the legal security is focused on ensuring confidence in the existence of general equitable law, which only creates the possibility of the realization of justice in particular case. If positive law guarantees legal security, it also provides an important aspect of justice. In the concrete reality of social life legal security and justice are in the relationship of co-operation and consolidation.

Although both the idea of legal security and the idea of justice (understood as a kind of regulative ideas) can be realized in positive law only imperfectly, and only at a certain level which depends on many factors (e.g. the level of socio-political and economic stability), beyond a certain border of evident injus-

tice of law, it ceases to be an adequate means to implement the ideas of legal security, although in certain circumstances it may continue to embody the idea of legal certainty. Thus, confronting the concept of legal security with the meaning resulting from the Latin maxim: *lex iniusta non est lex*, clearly reflects the meaning of the term. Determination of the critical point where increasing level of injustice law and decreases its suitability attribute to guarantee legal security (which is an attribute of a pivotal role in making a compromise and further respecting positive law, if there is no other possibility of the realization of legal security) depends primarily on the decision of practical reason, or in other words, the decision of the human conscience. In a situation of extreme injustice, positive law does not comply with its proper role, which is to protect the goods of human life and his interests, but itself becomes a source of danger. The threat posed by positive law can be caused by either (1) the causes of material nature, namely may arise from the content of the law, in which either some human goods of life and interests are not protected by law, although they should; or when positive law directly through its provision threatens such human goods of life and interests; the threat may also be due to (2) the causes of a formal nature, e.g. when the degree of ambiguity of legislation exposes recipients to material loss or maintaining a state of uncertainty of the recipient of his right, his legal situation or causes mental discomfort<sup>17</sup>.

Often the value of legal security is associated with the positivist conception of law. This led me to consider the relationship, proposed in this dissertation, between the concept of legal security and the concept of law. In particular, in my attempt to answer the question: 'If legal security to a greater degree and in a more perfect way can be realized under the conditions of acceptance of the positivist or non-positivist conception of law?', I definitely point to non-positivist conception of law. Because of its 'declarative' acceptance of the claim to validity of fairness of substance of positive law and the thesis of the need for the relationship of law and morality, the non-positivist conception of law offers better guarantee that positive law will have such features (both formal and material) that are conducive to the implementation of the idea of legal security.

When it comes to the positivist conception of law, we should take into account its radical character and a modern version of the so-called soft positivism of Herbert L. A. Hart<sup>18</sup>. In its radical form legal positivism accepts unlimited omnipotence of the legislature and upholding of the law, regardless of its content<sup>19</sup>. According to this conception of law, positive law can be extremely unfair, and

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<sup>17</sup> See J. Potrzezszcz, *Bezpieczeństwo prawne w demokratycznym państwie prawa*, in: *Demokratyczne państwo prawa. Zagadnienia wybrane*, eds. M. Aleksandrowicz, A. Jamróz, L. Jamróz, Temida2, Białystok 2014, p. 110.

<sup>18</sup> See H.L.A. Hart, *Pojęcie prawa*, transl. J. Woleński, Wydawnictwo Naukowe PWN, Warszawa 1998, pp. 318–369.

<sup>19</sup> See H. Kelsen, *Czysta teoria prawa*, transl. R. Szubert, LexisNexis, Warszawa 2014, p. 140.

this precludes its suitability for implementation of the idea of legal security. At most, it can guarantee legal certainty, but it can also pose a threat to goods of human life and his interests, and thus a threat to its legal security.

The issue looks different in case of soft positivism presented by H.L.A. Hart. Because he postulates the inclusion of the minimum content of natural law in positive law, guided by the assumption that the purpose of people living in the society is to survive, the realization of this postulate ensures that the law cannot be so extremely unfair that will be a threat, on the contrary – it should enable people to peaceful coexistence and development. Hart, remaining a positivist, however, does not accept the assertion of hard positivism that positive law can have any content, as evidenced by his adoption of a minimum content of natural law in the content of positive law<sup>20</sup>. However, his position on the relation of law and morality is not quite clear. Wishing to remain a positivist he claims that there is no necessary conceptual connection between law and morality, but this compound is present in a specific reality, though – according to Hart – it has a contingent nature. Although Hart's concept of law takes into account the need to protect human rights, however, the non-positivist concept of law takes this issue into consideration to a greater extent and treats it more clearly and openly. In this sense, it is more relevant from the point of view of legal security.

Determining mutual relationship between legal security and the democratic rule of law, I argue that although the legal security can be realized in different political regimes, provided that they are not totalitarian or degenerated ones (if we define them according to the classical tradition), in our legal culture, the current level of social development, democratic rule of law provides the best opportunity to realize the idea of legal security. It concerns, of course, materially understood democratic rule of law with a functioning not only the formal rule of law, but first of all the material one.

A democratic rule of law should be loyal to its citizens and all other persons located in its territory. In such a state, therefore, the principle of the protection of citizens' trust in the state and its laws is effectively carried out. Protection of citizens' trust in the state means the state's commitment to act in such a way as not to disappoint the trust placed in it confidence and maintain its credibility. Being credible means, as argued Piotr Sztompka, fulfilment of the granted trust, maintaining one's confidence, continuation of the relationship with the person bestowing confidence. The actions of the state to protect the public trust should be reflected in all its possible activities, but the most significant area of these actions relates to the creation and application of law. In this sense, the democratic rule of law, protecting the trust of its citizens, should guarantee legal security, both in terms of subjective legal security, and so a sense of legal security, as well as in the sense of an objective legal security. In such circumstances, justi-

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<sup>20</sup> See H.L.A. Hart, *Pojęcie prawa, op. cit.*, pp. 261–269.

fied by the law will be to convince recipients that the law 'is protecting them against violation and reaches them with impartial hands'. Only under such conditions can be respected freedom of man, his dignity 'by legal respect for the individual as an autonomous, rational being'<sup>21</sup>.

The concept of legal security presented in this article has its practical aspect that allows to explain precisely many significant philosophical and legal issues connected with the functioning of such principles and phenomena as the protection of acquired rights and interest in the course, the role of intertemporal law, *vacatio legis*, the principle of *lex retro non agit*, general clauses reference, the problem of uniformity in the application of the law.

Moreover, taking into consideration the question what practical problems realization of legal security encounters in the field of application of tax law, it allows me to formulate the general conclusion that the value of legal security is not taken into consideration in due to its extent. The formal notions of legal certainty more often draw our attention, although in this respect our legal system needs to be improved. Legal certainty in terms of the democratic rule of law is in fact essential for legal security, because it is the most important (though not the only) means of realization of this security. A clear differentiation and greater awareness of the difference between the concept of legal certainty and the concept of legal security, in my opinion, allows a more precise formulation of statements concerning the nature and importance of the various rules and legal institutions. Even more important matter is that more aware operating of the concept of legal security would contribute to the most perfect, in the specific socio-political and economic conditions, assurance of legal security for everyone.

Proposed in this article the concept of legal security is by definition an attempt to draw attention to this important aspect of law. Although at first sight it may seem obvious, but after more careful consideration of the practical legal issues arising from the specific realities of life, it appears that much in this field (i.e. both in the improvement of theoretical tools and their practical use) is still to be done. In particular, many of the problems associated with the guarantee of legal security of recipients of law appear on the tax law. The course is presented only as examples of selected cases. A more thorough study requires separate researches, which may also apply to any legal security issues in other areas of law.

The fact that the guarantee of legal security is still not at the right, by the standards of a democratic rule of law, level, we can notice in daily practice. It is worth, however, conducting system oriented at theory and underpinned by the philosophy of law studies in order to improve this state. However, this is not an easy task and it requires the co-operation of many people, not only of theorists and philosophers of law, but also specialists in particular areas of law and legal decision-makers at the stage of creating and applying the law.

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<sup>21</sup> Compare the judicature of the Constitutional Tribunal of 14<sup>th</sup> June 2000, Ref. P 3/00, OTK ZU No. 5/2000, pos. 138.

Looking at the legal security from the point of view of the philosophy of law, I formulated and expressed my views primarily at the normative level. As a result, I created a kind of theoretical tool with which further research may be done in order to examine to what extent the legal security is actually guaranteed in the Polish legal system, and what measures can be proposed for better implementation of the idea of legal security. In this I see the practical value and the possibility to use the results of my research presented in the dissertation *Bezpieczeństwo prawne z perspektywy filozofii prawa (Legal Security from the Point of View of the Philosophy of Law)*.

The concept of legal security presented in this article does not claim to be exhaustive studies. However, as one of the possible proposals – even if largely imperfect – this study may play a positive role by opening the discussion of this neglected area and it may result in further more comprehensive studies. My reflections on legal security presented in this work are therefore only philosophical and legal prelude to further discussion, which – I hope – will continue and result in much more perfect solutions in this field. If the discussion turns in such a direction, everybody will use for this, and perhaps we would feel safer under the rule of law.

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#### BEZPIECZEŃSTWO PRAWNE – UJĘCIE SYNTETYCZNE

**Streszczenie.** Zainteresowanie problematyką bezpieczeństwa prawnego jest obecnie bardzo duże i wykazuje tendencję wzrostową. Problematyka ta jest dzisiaj coraz częściej obecna w dyskursie publicznym. Jednakże uczestnicy tego dyskursu mają kłopoty z jasnym zdefiniowaniem, co rozumieją pod pojęciem bezpieczeństwa prawnego. Ich rozumienie jest często intuicyjne albo ujmujące problem częściowo. Istnieje zatem potrzeba przedstawienia poglądów na temat bezpieczeństwa prawnego w syntetycznej formie. Celem niniejszego artykułu jest przedstawienie definicji i struktury pojęcia bezpieczeństwa prawnego. Wypracowane pojęcie ma swoją praktyczną użyteczność i może być pomocne w wyjaśnianiu wielu problemów związanych z funkcjonowaniem ważnych zasad i zjawisk prawnych.

**Słowa kluczowe:** zasady prawne, bezpieczeństwo prawne, pewność prawa, Trybunał Konstytucyjny, demokratyczne państwo prawa, zasada zaufania obywateli do państwa i do stanowionego przez nie prawa