The Choice of a Way of Life and the Consciousness of a Fundamental Rights
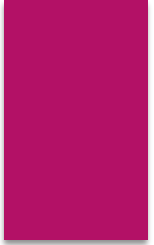
BARTOSZ WOJCIECHOWSKI

Introduction

▶ A crucial question arises of whether the understanding and awareness of fundamental rights and the principle of equality (the non-discrimination requirement) must change at the level of creating and applying the law in the contemporary situation of a pluralism of lifestyles. For without doubt, the widely accepted idea of equality and fundamental rights challenges the constraints that support the dominant group (e.g., the paternalistic vision of reality) and conservative beliefs, and also makes socially desirable relationships the subject of new critical debate and observation.

Pluralism as a characteristic feature of modern democratic states

▶ One element affecting the proper realisation of the rights and dignity of every human being is the awareness of one's identity and the acceptance of the choice of a lifestyle compatible with it, and the impact of this on the understanding of the principle of equality and thus of fundamental rights (and, of course, non-discrimination). In particular, pluralism regarding the way in which the family is conceived socially and individually, and the development of medical assisted reproduction techniques may affect the shape of modern families and thus pose challenges for legislators, state authorities and legal professionals who have to respond to new developments.
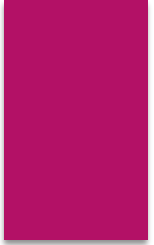
Reflections on the issue of pluralism and the possibilities self-identifying and self-realising exclusively in a pluralistic society are multifaceted and multidimensional. Furthermore, on the one hand, society is undergoing processes of multiculturalisation and decentralisation, resulting in the strengthening of pluralistic lifestyles, while on the other hand, globalisation and integration determine the need to seek solutions to common problems or phenomena. The prediction that "the clash of opposing tendencies: on the one hand a broadening of the horizon of thinking beyond the village, and on the other, a stronger identification with local cultures may have the most revolutionary implications for the future of society" proves to be accurate in this context.

Modus vivendi as a result of the awareness of fundamental rights

▶ Referring to the political philosophy of I. Berlin, Gray notes that systematic reflection on the choice of the best way to live clearly illustrates that deliberations in the field of morality do not lead to a consensus on the choice of the best way to live. Instead, they reveal that the good life can take many and varied forms. This leads one to recognise that the liberal ideal is *modus vivendi*, manifested in the acceptance of the existence of many forms of life through which people can fulfil themselves in equally valuable ways, without claiming universality, taking care only that the differences between them do not lead to open – especially violent – conflict. In other words, the fundamental thesis of value pluralism is that there are many incommensurable ways of human self-realisation, which are equally attractive and acceptable. In view of the previously mentioned elimination of spatial and temporal barriers separating different communities, finding such a *modus vivendi* seems necessary today, in order to reconcile tradition with modernity, regionalism with globalisation, and diversity with universality.

A genuine choice of one's own way of life is not possible without an authentic identity and an awareness of one's rights in this regard. The concept of identity is crucial for defining a person in terms of the two most important relationships: the relationship to oneself, which is embodied in the question "Who am I?", and the relationship to another human being, expressed in the question "Who do they think I am?". From a legal perspective, the most important thing is to recognise that there is a relatively symmetrical interdependence between the individual and society.
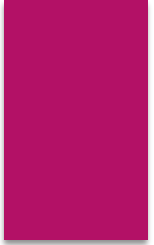
Both individual identity (understood as a psycho-physical unity, manifested by a sense of distinctiveness, rooted in a person's unique biography and experiences) and collective identity (expressed in the shared consciousness of its members' experience of the continuum of time and space that connects them) have a specific structure, formed by fixed and dynamic elements. These elements may enter into conflicting relationships at the level of social axiology.

The competing demands of different lifestyles are a common source of moral conflict. Gray recognises that conflicts between different values (universal to a community) can be resolved in different ways. And yet, at the same time, the fundamental differences between lifestyles arise from the ways in which conflicts over universal values are reconciled. Crucially, it is important to emphasise that conflicts of values do not originate in the diversity of individually held ideals, but rather from conflicting lifestyles.

Acceptance of the diversity of lifestyles and the pluralism of worldviews is the result of recognising the evolving concept of dignity, according to which the recognition of identity, equal value, and freedom should be granted to all individuals. As Francis Fukuyama accurately observes, the extension and universalisation of dignity transforms the search for one's self from a private matter to a political project.

The law should show "special sensitivity" to the dynamically changing social structure, allowing it to be reconstructed and created anew. The differential relationship between "us" and "them" should be of an equal character, free from any signs of discrimination, and be based on positive references. The desire to be recognised is a fundamental element of human life, beginning with the identification and recognition of oneself and culminating in a dialectic that expresses the reciprocal relationship of the need to constantly struggle for recognition and its institutionalisation. In the most general terms, it is primarily a question of granting equal and mutual recognition in interpersonal relations to different subjects coming from a variety of cultures and social groups, belonging to national, racial or ethnic minorities, sexual minorities, those professing a different religion, those situated in more precarious positions due to their material situation.