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Abstract:

The author presents, against the background of European model legislative concepts and legal doctrine, the concept and juridical construction of the protection of personalities in the draft of the General Provisions of the Civil Code of the Republic of Poland from 1928-1932, which was developed by Ignacy Koschembahr-Lyskowski, Professor of the University of Warsaw, member of the Codification Commission of the Republic of Poland. The author of the paper demonstrates the originality of this project, which rejected the concept of private subjective rights, but nevertheless adopted general personal protection. In this way, the Polish project broke the pattern formed in European continental legal science, which developed essentially two models in this regard: 1) the protection of personal (personhood) rights, based on the concept of harm (material and moral) and ways of compensating it, shaped by French jurisprudence and science, and 2) personal (personhood) rights, when for this protection against moral harm, non-material (immaterial, ideal, psychological) harm, the construction of a subjective right was adopted, as in German legislation, most often in the version of special personal rights (*einzelne Persönlichkeitsrechte, droits de la personnalité*), and less often in the version of a general right of personhood (*das allgemeine Persönlichkeitsrecht, Individualrecht, droit général de la personnalité, droit moral*). In doing so, the author draws attention to a certain peculiarity of Austrian legislation, since the provisions of the Austrian Civil Code, depending on the concept adopted, could be treated as norms regulating the consequences of behaviour

considered prohibited by the law, i.e. as a violation of the subject law or on the contrary, as an expression of the construction of the personal subject law.

The author tries to show that the Polish project stood above these divisions, drawing equally on the achievements of the Romance concept, building a progressively broader understanding of immaterial damage, and on the German concept of personal subjective right. Moreover, the Polish project, following the Swiss model, introduced general protection of personhood into the Civil Code. This was a bold step, given that, with the exception of Switzerland, the doctrine of the time generally accepted only the existence and protection of individual rights of personhood, although there were differences of opinion in this respect and legislations as to which personal rights and to what extent and in what way were to be protected. On the other hand, the idea of general personal protection, as the author demonstrates, provoked strong opposition, based on theoretical arguments, pointing to the differentiation of protection, depending on what good is its object, and to the difficulties of construction. Opponents of general personal protection were also pointing to practical considerations, because it was alleged at the same time that the protection was overly extended, i.e. lacked boundaries and that there was legal uncertainty associated with such protection.