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The Phenomenological Basis of Lawyers' Professional Ethics

Abstract

The thesis of the paper is connected with the statement that the casuistic, quasi-legal model of legal ethics should be abandoned. What should be broadened instead, is individual and collective, namely corporate one, awareness of the specificity of legal experiencing of the values relevant from ethical-professional perspective and based on firm methodological basis. The conception of legal ethics presented in the paper gives up the attempts of describing it from the perspective which is forced by categories connected with legal positivism. This suggestion refers to the following: (1) phenomenological "thinking according to ethical-professional values", (2) the notion of ethical-professional intuition and (3) the concept of a lawyer's and legal corporation's field of axiological awareness. The 20th century phenomenological philosophy and, closely connected with it, informal ethics of values, as presented mainly by M. Scheler and N. Hartmann, serves as the basis of the suggested ethical-professional concept. Phenomenological ethics, relying on individual experience of ethical values, based on individual acts of value preference in case of moral conflict, gives a chance to distance itself from a quasi-legal, casuistic perception of legal ethics. It, then, creates the possibility of necessary methodological independence of legal ethics from law.

1. Introduction

Phenomenological ethics (Greek *phainomenon* – something that appears, reveals itself, a phenomenon + *logos* – a theory, science, a word), developed in the first two decades of the 20th century, constitutes the point of departure for lawyers' professional ethics, which is presented in this article. This trend was the background for working out different theories, like that of personal experience of ethical values, which is to be based – in every situation of moral conflict – on individual acts of value preferences. In the case of legal ethics, the output of phenomenology makes it possible to distance oneself from the quasi-legal and casuistic perception of corporate ethics, which can be observed among lawyers.

What is of utmost importance for the deliberations presented below is the belief in the inadequacy of a positivist (or "juridized") model of ethics of legal professions

in the light of lawyers' moral dilemmas. These should rather be replaced by a model in which the main emphasis is placed on individual and collective, that is corporate, awareness of the specific way in which a lawyer experiences ethical-professional values. As a consequence, the issues that are presented below constitute the basis for an alternative ethical-professional conception, referred to as lawyer's situational ethics. Labelling legal ethics in such way makes it possible, for example, to emphasize the individual and highly specific character of a moral dilemma in the situation of ethical-professional experience of an attorney, legal adviser or notary public.

The conception of lawyers' professional ethics, as presented in this essay, as well as the theory of legal corporations, which supplements it, refers to the output of M. Scheler, N. Hartmann and J. Tischner. M. Scheler, a student of E. Husserl, who was the founder of the school of phenomenology, placed the research on the human moral sphere at the centre of his work. The outcome of his reflection was the so-called personalistic ethics and multifaceted philosophical anthropology. M. Scheler presented his views in his work *Der Formalismus in der Ethik und die materiale Werthetik*¹ (Formalism in ethics and a material ethics of values). M. Scheler's ideas were referred to by N. Hartman, for example in *Ethik*, where he aimed to make the most crucial synthesis of ethical thought carried out in the 20th century, which makes M. Scheler's output more precise, in particular the notion of the intuition of ethical values. N. Hartmann also introduced the original notion of the field of axiological awareness. J. Tischner, in turn, who was a pupil of Polish philosopher and phenomenologist R. Ingarden, one of E. Husserl's colleagues, developed a theory of work ethics as a language of interpersonal communication, as well as a theory of ethical communities of work, connected with it. *Deliberations on the ethics of work* and *Phenomenology and sociology* were two of J. Tischner's essays in which he undertook an ethical reflection on the level of social communication, which created a possibility of outlining the picture of the phenomenological conception of legal corporation based on the criterion of ethical communication. This constitutes a reverse and self-reflexive aspect of the conception of lawyer's situational ethics. The theory of legal corporation as an ethical communicative community, as presented below, refers to J. Tischner's theory of ethical communities of work, to M. Scheler's concept of the collective person and to N. Hartmann's field of axiological awareness.

It should be pointed out that the concept of "thinking according to ethical-professional values", as understood by J. Tischner, allows these European philosophical and legal ethical-professional topics, which both refer to an abstract world of values, such as justice (*iustitia*), honesty (*honestas*) or humanity (*humanitas*), to be interconnected. These values have since Roman times constituted a cultural basis which unifies law and almost every possible European professional legal ethic. The latter is also treated as the core of the 20th century phenomenological ethics of values, which "returns to the beginning of matters", and which has been used in the concept of a lawyer's situational ethics, outlined in this study. It is then the case that the proposed ethical conception, according to E. Husserl's ideas, "returns" to the real and vivid basis of continental legal professional ethics. It also remains in a direct connection with the values which constitute the basis of the ideological unification of the European Union.

¹ This work was published in 1914–1916. See below.

2. The Main Theses of the Phenomenological Conception of Legal Ethics

The line of argumentation that is to follow in the subsequent part of this article will be carried out pursuant to the three following theses:

Thesis 1

The theory of legal ethics should be based on the work of M. Scheler, N. Hartmann and J. Tischner on phenomenological ethics. In such a theory of legal ethics, referred to as the situational ethics of lawyers, the central position is taken by the theory of intuition of ethical-professional values which are "perceived" in significant situations as a lawyer's ethical-professional experience.

Thesis 2

Legal corporations, namely those of attorneys, legal advisers, notaries public, prosecutors or judges, should be characterized on the basis of phenomenological ethics as an ethical communicative community which is equipped with its own axiological awareness.

Thesis 3

An example of professional ethics which is close to the proposed conception of legal ethics is that of medical professions and the ethics of entrepreneurs. It merits pointing out that the ethics of medical professions refers, to a large extent, to personal intuition of such values as life, health and a patient's dignity. The ethics of entrepreneurs, in turn, is based on widely understood communication of ethical-professional matters and has such properties which are close to the presented conception of legal corporations understood as an ethical communicative community.

3. Justification of the First Thesis

As pointed out in the introductory part of this article, one should abandon a casuistic, quasi-legal model of legal ethics and rather deepen the individual and collective, that is corporate, awareness, based on solid methodological premises, of a specific mode in which a lawyer experiences the values which are relevant from the ethical-professional perspective.

3.1. Cognition of the world of a lawyer's ethical-professional values

In the search for a proper theoretical basis M. Scheler's work has been used. It attached great importance in ethics to the personal act of grasping and preferring values.² A similar perspective can be assumed in the case of values which are referred to as ethical-professional ones and intuitively grasped by a lawyer as a result of his/her daily ethical-professional practice. Intuition is understood here as a peculiar cognitive power (this notion will be discussed below).

The act of grasping and preferring ethical-professional values, as well as the outlook on the world of values, is possible, as N. Hartmann writes, due to the fact that a human being is endowed with a special sense, referred to as axiological awareness. This statement can also be referred to every member of the legal professional corporation, namely

² Such terms as intuition of values, axiological awareness, grasping and preferring values etc. are of a strictly epistemological character and are precisely defined on the basis of phenomenological ethics, which will be discussed in the subsequent part of this article.

to attorneys, judges or prosecutors. According to N. Hartmann, axiological awareness can be mastered, similarly to hearing in the case of music. As a consequence, axiological awareness of the members of legal corporations, which concerns such values as justice, legal order, the rule of professional confidentiality, and corporate prestige, can be mastered in the course of ethical-professional education, carried out during legal studies.

It should be repeated that in his ethical theory M. Scheler attaches considerable importance to the act of personally grasping and preferring the values. Values should exist in an aprioric, ideal and non-formal way, creating a universal and unchangeable hierarchy, starting from “the lowest” values, that is utilitarian values, through hedonic, vital and spiritual values, to the values of sanctity. As a consequence, it is sometimes pointed out – according to M. Scheler himself without good reason – that his theory was similar to that of Plato. On the basis of the presented theory, ideal and unchangeable ethical-professional values, such as justice, legal order, impartiality in the case of a judge, and the client’s interest in the case of an attorney, are intuitively grasped by a lawyer in his/her everyday ethical-professional practice. It should be stressed that the theory, which on the one hand emphasizes a lawyer’s individual ethical choice, whilst on the other hand refers to an ideal hierarchy of unchangeable “material” values, can constitute an antidote both to ethical-professional formalism and to the moral relativism of which lawyers are often accused.

How is an individual insight into the world of values undertaken? Let us describe it in brief that M. Scheler differentiated between primeval “emotional functions”, which were the first reaction to a value, and experiences, which built on top of these functions the act of “preferring” (*Vorziehen*) and “placing lower” (*Nachsetzen*), as a higher level of emotional and intentional life. Consequently, he differentiated between the following stages (classes) of intentional emotional life:

1. The class of intentional functions of feeling, which is connected with the intuitive and purely receptive (*aufnehmende*) act of feeling values.
2. “A higher level of emotional and intentional life” – the act of preferring and placing lower.³
3. The highest level of intentional emotional life, that is love and hatred, in which there is always one value given, as opposed to the act of preference.

M. Scheler referred jointly to the second and the third class as “emotional acts”, contrary to intentional functions of feeling.⁴ According to him, the states of feeling are not perceived as mental acts, but rather as conscious emotional acts.⁵ Such intentional emotional experiences, as opposed to pure affection, are, according to M. Scheler, of an objective and subject-oriented character, which means that they are significant acts.

It is beyond doubt that one of the most crucial notions in M. Scheler’s phenomenological ethics is the so-called intentional feeling. This constitutes the background for intuitive cognition of “the realm of values”. It merits pointing out that the different kinds of intuition are, according to the representatives of phenomenological philoso-

³ Cf. M. Scheler, *Z fenomenologii życia emocjonalnego człowieka* [Eng. *Of the Phenomenology of a Person’s Emotional Life*], in: *Der Formalismus in der Ethik und die materiale Werthetik*, Bern-München 1966, pp. 261–267.

⁴ M. Scheler, *Z fenomenologii...*, pp. 261–267.

⁵ B. Trochimska-Kubacka, *Absolutyzm aksjologiczny. Rekonstrukcja oparta na aksjologii Ricketa, Schelera i Hartmanna* [Eng. *Axiological Absolutism. Reconstruction Based on the Axiology of Ricket, Scheler and Hartmann*], Wrocław 1999, p. 45.

phy, both ontological and axiological, a primeval, elementary cognitive power. N. Hartmann differentiates between rational intuition which allows rational-logical cognition and emotional intuition which is based on primeval emotional reaction, the so-called response to a value, due to which the cognition of the world of values becomes possible. According to M. Scheler, the feeling which accompanies such intuition consists in “a primeval rising, in being oriented towards something of an objective character, i.e. at values.” As M. Scheler points out, “this feeling shows exactly the same attitude to its axiological correlate, namely to values (*Wertkorelat*) as ‘manifestation’ to its ‘subject’, namely an intentional relation. Feeling here is not outwardly connected with the subject, neither directly nor by means of any manifestation (...) but it is in a primeval way oriented (*geht*) at a peculiar kind of objects, at ‘values’.”⁶

A mode which leads to the cognition of a given value is the so-called phenomenological reduction, consisting in “leaving aside existential moments”. This act means that intuitive cognition, based on intentional feeling, has the properties of direct experience, which reveals bare facts and consists in a holistic, one-time approach to every object, which is understood in the context at issue as an ethical-professional value. The value is also of a priori character, namely it takes place in essential moments, irrespective of sensual cognition. Let us add that in M. Scheler’s understanding “*a priori*” is treated as an object of cognition, an equivalent of examination, the so-called “axiological a priori”.

3.2. Norm-value relation in a lawyer’s situational ethics. The issue of the code of legal ethics

The problem that should be noted is the issue of the relation between the terms “norm” and “value”, which has a crucial practical significance. J. Tischner expressed the opinion that “a value precedes a norm” and this thesis was common among other representatives of phenomenological ethics. As N. Hartmann writes, a value is a kind of ideal object, and it can be attributed to certain real objects, state of things, humans and their deeds, whilst a norm is a ban on doing something. A norm, then, assumes a value, which it guards, like the norm “do not kill” assumes that life is a value. According to N. Hartmann, then, a norm is always relative to a value.⁷ Norms are not treated as the cause but as the result of value cognition; they can, more or less precisely, manifest an ideal obligation “emitted” by a value. Values are “objects”; norms, on the other hand, are value judgments.⁸ In the light of the premises of the conception of phenomenological ethics, assumed in this article, a conflictual nature of the norms of conduct is a consequence of a primeval conflictual nature of non-formal values, which they represent. As N. Hartmann writes, the conflict between values is a feature of every positive morality, also such morality which is connected with engaging in a particular legal profession. In other words, the norms of ethical-professional conduct are secondary in relation to actually existing relevant values for every legal corporation, namely such values which are present in the so-called corporate field of axiological awareness.

⁶ M. Scheler, *Z fenomenologii...*, pp. 261–267.

⁷ Z. Zwoliński, *Byt i Wartość u Nicolaja Hartmanna* [Eng. *Existence and Value in the Thought of Nicolai Hartmann*], in: *Filozofia i Socjologia* [Eng. *Philosophy and Sociology*], Warszawa 1974, p. 339.

⁸ Z. Zwoliński, *Byt i Wartość...*, p. 283.

As a consequence, we cannot agree with the positivist opinion that the norms expressed in the codes of professional ethics “exist” only due to the fact of having them enacted on the basis of internal corporate rules of conduct. If this were the case, it would mean that, to simplify the problem, there was no other value behind them besides the will of the professional environment. On the basis of the presented conception, I would like to point out the proper meaning of the attempts undertaken by corporations of attorneys, legal advisers or notaries public, which aim at unifying the cognition of ethical-professional values. These attempts are manifested in the process of creating the codes of professional ethics. Codes, as casuistic sets of norms of a high level of particularity, in my belief constitute the outcome of the efforts made by the respective corporations to verify and examine ethical-professional values, previously intuitively and individually grasped, which are assumed in order to work out a corporate field of axiological awareness. In other words, codes are the result of efforts aiming at a unification of the fields of axiological awareness of attorneys, judges or prosecutors from the perspective of their professions. The significance of the codes of legal ethics is manifested in the fact that the lawyers who create ethical communicative community try to grasp the nature of these values which have to be in conflict in their professional practice. Casuistic nature of codes results from the fact that ethical phenomena cannot be defined and the professional environment can only discuss their outward manifestations, which can be intuitively grasped in professional experience. It can be assumed that ethical codes, as sets of ethical “warning signs” of the environment, should enable to grasp these values in the light of professional specificity, by means of axiological awareness of every member of the corporation. Ethical-professional values can be “revealed” each time by referring to the intuitions connected with repeatable situations in corporate practice. From this point of view referring to a lawyer’s phenomenological ethics as practical situational ethics seems justified.

3.3. Is it feasible to create homogeneous ethics for all legal professions?

Although the mechanism of value preference, as suggested by M. Scheler, is the same in the case of a judge, an attorney or a prosecutor, the social role of the people engaged in these professions determines the necessity of making essentially different “actual” “ethical-professional” choices. As far as we can agree that justice, legal order, professional prestige or effectiveness of conduct are the values which are present in every form of legal ethics, in the case of an attorney there is also another self-contained value – his/her client’s interest, which seems to be an opposite value in respect to impartiality, which should be one of the main values for a judge. As a more detailed analysis reveals, the recommendations of lawyers’ professional ethics are opposite, and as a consequence “ethical-professional” good, in the meaning referring to M. Scheler’s procedural conception of moral good, can be something that is quite the opposite in different legal professions. The client’s interest and the client-attorney privilege can collide with the respect for legal order, which is often manifested in a subtle circumvention of court procedure, as attempted by a counsel by means of using procedural tricks, or sometimes by prolonging the proceedings or concealing evidence. However, even in this most drastic case, it is difficult to accuse an attorney or a legal adviser of infringing the principles of professional ethics, providing that they are acting on legal grounds; on the contrary, it can be assumed that as a result of acts of preference, peculiar “ethical-professional”

good has been revealed. A judge, meanwhile, undertaking a similar act of preference, behaves in an utterly bad manner, from the perspective of professional ethics, and lays himself/herself open to a charge of lack of the requisite moral properties to perform his profession. Impartiality in judiciary ethics is a hierarchically higher value than the interest of the defendant. A prosecutor is also burdened with a peculiar duty of “guarding legal order”, which means that he/she should place “the state’s interest” higher than the defendant’s interest. In the light of the abovementioned comments, we can refer to Ija Lazari-Pawłowska and talk about the “high, socially acceptable conflictual nature of social roles in legal professions.”⁹ It is also legitimate to claim that it is impossible to create one common code of ethics for all legal professions. It does not change the fact that situational ethics, which refers to M. Scheler’s ideas, as it has been explained above, is based on an opposition to all kinds of relativisms; therefore, using it for the purpose of ethics of legal corporations can, in a distant perspective, add up to an increase of social trust in law and in the people who apply law.

4. Justification of the Second Thesis

4.1. The second thesis in relation to the first one

If we, whilst outlining the theory of legal ethics, settled for its purely individual level, we would easily lay ourselves open to an accusation that it is non-discursive or even morally “anarchic”. It is therefore important to devote much attention to its complementary conception of legal corporation as a collective person, as understood by M. Scheler, which is created on the basis of acts of ethical-professional communication, in J. Tischner’s understanding.

A failure to discuss the problem of ethical communication as a part of legal corporation might charge situational ethics with the accusation of moral subjectivism, inadequate in relation to the social, interactive character of work in legal professions. Consequently, what merits stressing is that phenomenological ethics provides a set of tools which enables to indicate the place and the role of a lawyer in his/her corporation. M. Scheler claimed that a human beings can realize themselves ethically only in the community which they belongs to, on account of values grasped together with other people. Therefore, it is impossible to treat M. Scheler as a representative of existential philosophy. On the basis of his phenomenological ethics of values it is possible to create *ex definitione* only such a conception of a lawyer’s ethics which takes into account the fact of common grasping of ethical-professional values by the members of attorneys’, judges’ or prosecutors’ corporations. The suggested conception of corporations, the reverse of a lawyer’s individualistic situational ethics, is supported by the conceptions of M. Scheler’s collective person (*Gesamtperson*) and the corporate field of axiological awareness, referring to N. Hartmann.

J. Tischner, in turn, develops his ethical thought on the basis of the philosophy of dialogue; therefore, work in his theory has the character of a language used by people who communicate with one another in a particular “community of work and product”. Due to the latter, the suggested conception of legal ethics is equipped with the theoretical

⁹ I. Lazari-Pawłowska, *Etyka zawodowa jako role społeczne* [Eng. *Professional Ethics as Social Roles*], in: *Etyka zawodowa* [Eng. *Professional Ethics*], Warszawa 1971.

underpinning in order to grasp the nature of the interrelation between attorneys, legal advisers, or notaries public as part of their professional corporation. It is at the same time methodologically uniform with M. Scheler's and N. Hartmann's views.

A natural consequence of individualistic and reflexive ethical theory, as presented in this article, is pointing to a model of legal corporation coherent with it. As a result of the assumed premises, a legal corporation is characterized as an ethical communicative community, based on the feeling of responsibility for the moral quality of one's work.

4.2. Theoretical basis of the conception of legal corporation

4.2.1. The notion of collective person

Let us now move on to a short presentation of the essential notion of collective person (*Gesamtperson*).¹⁰

As stated above, a lawyer's personal professional ethics can be accused of being extremely individualistic and, as a result, relative and inadequate to the corporate character of legal ethics. As mentioned above, M. Scheler realized the possibility of such an objection being raised *vis-à-vis* ethical theory and claimed that human beings may as a Person realize themselves ethically only in a community. Pursuant to this view, I believe that judges, prosecutors, attorneys etc. can ethically and professionally realize themselves only in their corporate communities. M. Scheler worked out a hierarchy of four different models of human community, in which the so-called collective person is placed at the highest position. Its most crucial feature is an interactive act of grasping the spiritual values on which a given collective person is focused. Some examples of collective persons, as presented by M. Scheler, are the nation, church and cultural community. Due to the fact that M. Scheler considers justice and legal order as spiritual values, I also propose applying the conception of a collective person, after necessary modifications, to the description of a legal corporation.

M. Scheler's analyses stem from the simple statement that every person remains in the environment of other people and always experiences himself/herself as a member of an objective and complex personality. M. Scheler characterizes the existence of all people in their mutual interactions. These mutual interactions of individual people are a specific, particular existence. In this way, M. Scheler introduces the notion of collective person (*Gesamtperson*), which is a complex, collective personality. By doing this, M. Scheler uses the abovementioned examples, characteristic of his times, of the "nation", "church" or "cultural community". A "community of people" cannot be reduced to mere mutual interactions between individuals, because this would mean reducing its sum to individuals, and would lead to taking into consideration only individual responsibility, which, in turn, would be detrimental for the feeling of co-responsibility. M. Scheler connected the notion of co-responsibility with the feeling of solidarity between people. His "community of people", grounded on solidarity, does not lead to the act of associating an individual with a community; quite the opposite, he emphasizes the qualitative distinctiveness of every personality. M. Scheler places the feeling of solidarity and co-responsibility in a universal system of values, given

¹⁰ M.S. Frings, *Max Scheler – A Concise Introduction into the World of Great Thinker*, Louvain 1965, p. 139ff.

in phenomenological examination. We can quote after Z. Kuderowicz that M. Scheler, particularly in the later period of his work, attached much importance to the relation of an individual with a moral community, as the basic guarantee of moral conduct. "Moral community" turned out to be an over-individual social whole, expressing universal moral order. In his last works, M. Scheler developed a conception of emotional social bond, based on direct relations between people, on internal involvement, almost on intimacy of experiencing social membership. The consequence of this standpoint was that the role of social institutions in the organization of human co-existence and influence on their behaviour was reduced.¹¹ In this kind of collective sphere, every individual functions as a cooperating (*Mittäter*) member of a community (*Mitmensch*) and a co-responsible being (*Mitverantwortlicher*).

4.2.2. The notion of ethical communication

The reflection concerning a legal corporation, which is indispensable for our deliberations, can be supplemented with J. Tischner's notion of ethical communication. J. Tischner develops the conception of M. Scheler's communicative person when writing about ethical communicative communities of work. He believes that such communities are created on the basis of acts of mutual ethical communication. The transmitter of ethical communication is to be work itself, because the quality of the outcome of work includes information of an ethical character. According to J. Tischner, work has the typical features of language, which is especially significant when taking into consideration the specificity of legal professions and, particularly, the performative function of legal language.

When reversing the abovementioned perspective, it can be stated that communication of ethical-professional issues, as part of a given community of work, influences the increase in the standards of professional ethics and, at the same time, in the quality of the final outcome of work. This process is developing very dynamically within international industrial corporations, which is referred to by the third of the abovementioned theses.

In J. Tischner's theory, ethical self-consciousness, coherence and identity of every legal corporation are based on interactive acts of ethical-professional communication, undertaken in the context of the most crucial ethical-professional values. This is the case because of the fact that, as stated earlier, work itself has the features of language, by means of which people communicate with each other. J. Tischner describes an analogy between a lie, expressed in a language and doing one's job in a non-ethical way, that is pretending to work. In this way the communication of ethical-professional issues constitutes the aspect of "good work" itself. This statement is of utmost importance in the case of a lawyer's work, which is by its very nature carried out by means of language. Increasing ethical self-consciousness of the members of legal corporations is a *sine qua non* condition of being a good judge, attorney or prosecutor. Looking at the issue in question from this perspective, the codes of professional ethics, in spite of reservations, are the outcome of deep ethical self-consciousness of a given legal corporation. The code expresses the general ethical preferences of a given corporation, undertaken in the field of its axiological awareness.

¹¹ Z. Kuderowicz, *Scheler, czyli personalizm etyczny* [Eng. *Scheler, i.e. Ethical Personalism*], Warszawa 1962, pp. 352–353.

4.2.3. The notion of the field of axiological awareness

The notion of axiological awareness and its characteristics is one of the strongest, truly innovative elements of N. Hartmann's theory, justifying its application for the need to describe legal corporate ethics and making it possible to prove their distinctive nature in relation to other professional ethics. This notion provides the possibility to polemize with the views which treat professional ethics as a kind of specific ethics, against the background of general ethics. Taking into consideration N. Hartmann's law of a limited range of axiological awareness it is possible to undermine the legitimacy of using the notion of general ethics, and as a consequence, the differentiation between general ethics and particular ethics loses its sense.

The field of axiological awareness is the widest horizon or field in which a person is able to recognize values. The range of such a sense of values can be compared with the maximum range of the capability of the human eye to perceive colours. As stated above, what appears in the field of a lawyer's axiological awareness are the ethical-professional values typical of a given profession. I suggest assuming that every legal corporation as a whole has a similar field of axiological awareness as that understood by N. Hartmann. The range of this field is limited by the social tasks of a corporation, be it one of attorneys, prosecutors or notaries public, and determines the ethical-professional identity of a given legal professional group.

N. Hartmann writes: "In contrast to the cognition of the existence, axiological awareness has a limited capacity, its content cannot infinitely increase. Its progress does not resemble the progress of cognition. Pursuant to the internal emotional structure, its range is limited. When axiological awareness advances, the more it gets the more it loses. When it is open to new values and gives in to them, it closes itself from the values to which it gave in. He goes on to write that this can be referred to as the law of 'blinker attitude of axiological awareness'. It constitutes the basis of the inevitable one-sidedness of every positive morality; as well as the law of changes in ethos and binding norm. Values are neither created, nor do they elapse in history; what undergoes change is only their axiological awareness. The values that are treated by it as authoritative and binding are always those which are in the centre of its viewpoint, namely those which are most convincing for it at a given moment. In this way the viewpoint of axiological awareness moves, within history, within different values, and this is the core of the modification of its content. The inherent blinkered attitude makes it impossible for its expansion, involving the whole realm of values."¹²

It can be said that narrow axiological awareness "gives in" to the *universum* of values. Its limited character creates an illusion of relative values, historically and culturally changeable.¹³ On the basis of the theory of the limited character, or range, of axiological awareness, it is possible to explain the abovementioned fact of internal differentiation of legal ethics and the more general phenomenon, faced in various professions, of shaping different ethics with opposite features, that is concentrated on opposite values. The fundamental difference between the requirements of the ethics of medical professions, in which a central importance is given to life, health and the patient's dignity, and the ethics of business, which is profit-oriented, can be found in their theoretical bases.

¹² N. Hartmann, *Mysł filozoficzna i jej historia. Systematyczna autoprezentacja* [Eng. *Philosophical Thought and its History. Systematic Self-Presentation*], Toruń 1994, p. 118.

¹³ Cf. N. Hartmann, *Cele i drogi analizy kategorialnej* [Eng. *Aims and Ways of Categorical Analysis*], Toruń 1994, p. 29.

The conception of the field of axiological awareness allows us to adhere to the thesis of the absolute existence of an unchangeable *universum* of values.

Galarowicz enumerates the following reasons for “the movement of an axiological horizon” in the *universum* of values:

Firstly, what influences the changeability of axiological awareness are changeable standards of human living, because a value constitutes an answer to a certain type of situation. In this way, for example, valour is a reaction to danger.

Secondly, there are certain relations between values themselves; therefore, if there is a particular value in the centre of axiological awareness, it entails related values and supplants the opposites. This is a crucial thesis in order to understand the specificity of a lawyer's ethics. The values which are typical of these ethics create a specific “set”, thus shaping the professional personality of a judge or an attorney. In this way, justice or the legal order entail a whole set of values, which influence the change, that is enfeeblement, of experiencing opposite values. Among the abovementioned set of satellite values, in the case of an attorney's ethics, what can be observed are such values, different in respect of their place in value hierarchy and their power, as the client's interest, professional confidentiality, the prestige, profit motive etc.

Thirdly, the axiological awareness of a person can in time become indifferent to “ordinary” values and can start to look for new and more attractive ones. As a consequence, it should be stated that the dynamic nature of legal corporations and the profession of attorneys, legal advisers or judges intensifies or weakens the extent of experiencing ethical-professional values. What is more important – from a practical perspective – than the values declared in the codes of corporate ethics are the values which actually appear in the grasp of a lawyer's axiological awareness, i.e. those which the practice in a given profession actually refers to. The thesis about a movement of the field of axiological awareness in the *universum* of values makes it possible, for example, to understand why an honest judge can sometimes become corrupted, having in mind one of the most fundamental values in his ethics, namely impartiality. The fact of taking a bribe will be a consequence of a judge's axiological awareness losing interest in ethical-professional values and shifting it to more attractive utilitarian values. However, as N. Hartmann writes, “if a man has once grasped a certain value, when he knows that faithfulness, reliability or justice are valuable, then he cannot forget them. If he acts against the latter, he is burdened with guilt and his conscience blames him.”¹⁴

5. Justification of the Third Thesis

5.1. The ethics of medical professions and their significance for the conception of a lawyer's situational ethics

The ethics of medical professions, deeply rooted in ancient times, constitute a good, comparative example of professional ethics, based on the intuition of values. This refers to such values which can easily be intuitively grasped, such as life, health and the patient's dignity. This form of ethics places a heavy emphasis on the duty of an individual choice in an ethically significant situation. None of the quasi-legal codes of medical eth-

¹⁴ J. Galarowicz, *Fenomenologiczna etyka wartości* [Eng. *Phenomenological Ethics of Values*], Kraków 1997, p. 169.

ics is able to dispel the individual responsibility of a doctor or nurse for the acts of preference of certain ethical-professional values. Medical ethics, on account of its personalistic character and reference to the weightiest values, can be regarded in N. Hartmann's understanding at least as a point of reference for the suggested conception of the ethics of legal professions. We can even hazard a guess that on account of "the significance" of the value of life, the ethics of medical professions have a pragmatic character in relation to other professional ethics.

What is of utmost importance in the ethics of medical professions, in the light of the premises of the proposed ethical-professional theory, is the naturally appearing intuition of such values as life, health and the patient's dignity. Another reason to point to the ethics of medical professions is the fact that one hardly ever hears opinions seriously undermining the legitimacy of creating medical ethics. What is more, the issues of euthanasia, orthotanasia, abortion and "organ trade" are subject to a heated social discourse.

The next reason for touching upon the issue of the ethics of medical professions is its *ex definitione* personalistic character. Using the language of M. Scheler's phenomenological ethics, nowhere else do the values so obviously "require to be embodied" than in the ethical-professional situations of a doctor's dilemmas. This also concerns the issue of the value of mercy as an element of axiological awareness of an employee of the health service. Nowhere else do we see M. Scheler's thesis that objectivity of value existence, in this case of life and health, should be sought after in the certainty of another man's existence. Let us recall that M. Scheler emphasized a high rank of vitality values in his hierarchy of values. Vitality values were placed both above utilitarian values and hedonism and below spiritual values and the values of sanctity.

As pointed out earlier, the issue of medical ethics is concentrated on a strictly determined group of problems. As can be inferred from the content of codes of medical ethics, this concerns the types of situations, clearly determined by a professional environment, which the most serious ethical-professional dilemmas are connected with. This picture of medical ethics directly indicates the significance of constructing professional ethics as a phenomenological, that is situational one. In the light of the examples connected with medical ethics, it becomes clear, to use M. Scheler's ideas, what is the essence of every situation of preference and of weighing the values of a patient's life and health. This distinctiveness of medical ethics has, in my view, a model character for legal ethics. In the context of medical ethics, we also understand why a strict casuistic character of codes of professional ethics is a dead end. This is due to the fact that we are constantly being confronted with the necessity, resisting quasi-legal standards, of weighing the value of somebody's life and health, being at the same time directed by our own and corporate, or as M. Scheler understands it, common, ethical-professional experience. It is, therefore, the case that a clear, situational core of medical ethics once more has a model character for the conception of phenomenological legal ethics, as presented in this article. It can be said that the ethics of the legal profession is in this scope of an archetypal character in relation to legal ethics.

Phenomenological ethics can be adequately applied to the issue of ethical dilemmas in medical professions. As a consequence, we obtain, *per analogiam*, an argument in favour of undertaking an attempt to use it for the purpose of the theory of legal ethics.

5.2. N. Hartmann's theory of the axiological square

When touching upon the subject of how significant medical ethics is for the theory of legal ethics, we should invoke N. Hartmann's theory of axiological square. In his theory, N. Hartmann reveals love, or mercy, which is unquestionably one of the most fundamental values in medical professions, in a close and practically irremovable opposition with justice. N. Hartmann's argumentation provides a criterion which allows us to grasp, with the background of medical ethics, the theoretical and crucial, that is practical, specificity of legal professions. The antinomy of positive values of love and justice means that they cannot appear simultaneously in the professional fields of a lawyer's and doctor's awareness. If this is the case, nevertheless, then it leads to a disturbed performance of social roles in these professions. Due to the distinctiveness of values constituting medical ethics, such as life, health or mercy, that is one's neighbourly love, we *a contrario* get the possibility of proving the theoretical distinctiveness of corporate ethics of legal professions. A similar situation takes place in the case of medical ethics and the ethics of business enterprise, because the profit motive cannot be in the centre of a doctor's professional axiological awareness. The medical environment realizes that the laws of the market cannot exhaustively define the principles of performing the profession. On account of the axiological square conception, we can theoretically justify why the paradigm of the ethics of business enterprises in the work of an anesthesiologist or nurse is undermined by the medical environment.

6. Business ethics and its significance for the conception of a lawyer's situational ethics

It seems that the practice of contemporary business ethics is the closest to a communicative model of legal professional ethics as presented in this article. It is based on the ideas of social responsibility and a corporation's assessment as well as on the communication of ethical issues in relation to different categories of stakeholders.

One of the most fundamental conditions for gaining profit in a contemporary business enterprise is following strictly determined ethical standards. These standards are communicated on a global scale and concern, among others, the personal qualifications of managers, working conditions, employees' dignity, the relation of the enterprise to stakeholders, etc. Connected with the fact of abiding by the determined ethical standards is the idea of corporate social responsibility, social accountability and corporate citizenship. These ideas are popularized by organizations and programmes of business ethics, which create a worldwide network. The most crucial initiatives of business ethics are, to give an example, the United Nations Global Compact program and Caux Round Table, and in Poland the Business Ethics Centre (CEBI). The interactive network of ethical information exchange in business could be a model for the communication of ethical issues between legal corporations, on both a local and a global scale.

The practice of huge corporations proves the thesis, in a quite exemplary way, that it pays to undertake worldwide activities with a positive ethical outcome, such as schools or hospitals in third-world countries, and carry out global informative activities connected with them. The result of such a flow of ethical information, also ethical communication, is great ethical communities of work, in J. Tischner's understanding, including various categories of stakeholders, starting from corporate managers, through employees,

rank-and-file suppliers, cooperators, to the competition and the natural environment of the country where a business activity is undertaken. The accuracy of M. Scheler's and J. Tischner's theory is proved by the principle of accountability of industrial corporations for the broadest circle of the work community, namely the society, which is referred to as corporate social responsibility.

M. Scheler's conception, formulated 90 years ago, of a corporate person understood as an interactive community, concentrated on accomplishing particular values, supplemented by J. Tischner's deliberations about work ethics and N. Hartmann's theory of the field of axiological awareness, is being carried out in contemporary times by great industrial corporations. It should be added that ethical communicative communities are also being created beyond the frames of particular enterprises and are brought to life by international business clubs, such as the Caux Round Table, by the initiatives of the United Nations, like Global Compact, and European communities such as CSR Europe and the European Business Ethics Network etc.

The global significance of the exchange of ethical information in business, which influences work quality, makes it possible by analogy to justify the role of communication of ethical-professional issues both in corporations of judges, attorneys, prosecutors, as well as in relation to society, which is interested in their work.

7. Conclusion. Phenomenological ethics in relation to the practice of legal ethics

A reference to M. Scheler's, N. Hartmann's and J. Tischner's ideas gives a new outlook on the issue of a lawyer's ethical-professional experience. Phenomenological ethics offers, among other things, the theory of a lawyer's intuitive contact with a priori values, i.e. with those which are most fundamental for his/her professional ethics, like justice, professional confidentiality, corporate prestige, and a judge's impartiality. The theory of individual preference of values which are relevant from an ethical-professional perspective seems to be a strong point of a lawyer's situational ethics, because it allows emphasis to be placed on the personal responsibility of an attorney, legal adviser or judge for the choices undertaken in the situation of a conflict between ethical-professional values.

The conception suggested in this article is coherent both with common social expectations and with the internal requirements of legal corporate environments. It can be inferred from the content of the codes of legal practice that a high level of personal responsibility is one of the main requirements that the members of legal professions must meet. What is more, it is possible to create, on the basis of phenomenological ethics, a credible theory of legal corporation itself, coherent with the conception of a lawyer's situational ethics, which is manifested in the practice of the most important contemporary corporate ethics. Last but not least, it is hardly possible to overstate the significance that the conception of an absolute and hierarchized *universum* of values has for the model of legal ethics proposed in this article.

It must be noted that, on the one hand, professional ethics, which refers to M. Scheler, is based on individual preference of values in the situation of ethical-professional conflict; on the other hand, it provides a theoretical justification for their ideal hierarchy. A specific value of legal ethics in the suggested phenomenological approach is manifested both in the emphasis placed on the personal ethical-professional decisions of a lawyer and in a clear and systematic structure of referring to the ethicality of his/her conduct. These two elements make an effort to meet wider social expectations

towards the representatives of legal corporations. As far as the latter element is concerned, it should be noted that the certainty of the existence of a systematic value hierarchy as a point of reference for a lawyer's ethical-professional decisions constitutes an indispensable complement to and reinforcement of the certainty of law itself. This is the case because ethical-professional relativism, manifested in the attitudes of attorneys, prosecutors or judges, directly influences a decrease in respect for law in society. A theoretical justification of this phenomenon is provided by M. Scheler's personalistic thesis, pursuant to which all values, including negative ones, can be examined by the prism of the Person who realizes them. Non-ethical instrumentalization of values, namely certainty of law, legal order, justice or professional confidentiality, can be visible in the attitudes of people who apply law in their professional practice. It is therefore justified in the proposed theory of legal ethics to place emphasis on personal and subjective responsibility for adjudicating ethical-professional conflicts.

To sum up, it should be stressed that N. Hartmann attributes peculiar "aggressiveness" to ethical values. These values appeal to a human being, through his/her emotional intuition, for an adequate reaction; they are not, then, passive like material objects.¹⁵ N. Hartmann also mentions an "ontological shortage of ethical values", which cannot make do with pure perfection, but which demand to be included in the sphere of real practice.¹⁶ Values are not mechanically binding on a person. A person is free in relation to their appeal, and can but does not have to answer it. As Zbigniew Zwoliński writes, axiological intuition is not free from the voice of values and must perceive them in a way in which an eye perceives an object that reveals itself. What is free is only human willpower, which cannot be directly forced by values to perform intuitively perceived obligation. Because of freedom a man becomes a mediator (*Vermittler*) between the world of ideal obligations and moral practice, and without his involvement many ethical values could not become principles of social values. N. Hartmann even talks about the "powerlessness of values" (*Ohnmacht der Werte*) in determining a man's behaviour. He also uses the notion of "powerless order" (*machtlose Gebot*).¹⁷ It is therefore possible to refer to a lawyer's ethical-professional values as appealing to his/her ethical intuition, demanding their own manifestation in everyday practice. They, however, remain powerless in the face of a free decision of an attorney, judge or prosecutor in the situation of their moral dilemma.

¹⁵ Z. Zwoliński, *Byt i Wartość...*, p. 283.

¹⁶ Z. Zwoliński, *Byt i Wartość...*, p. 286.

¹⁷ Z. Zwoliński, *Byt i Wartość...*, p. 336.

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