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Human Rights in the Light of the Process of Financialisation

Abstract: The article deals with the challenges resulting from financialisation, in which we observe an increasing impact of the financial sphere in man's everyday life. It also considers the effect of this process on the functioning of societies and concludes that the process of creating and applying financial market law must be redefined and human rights issues taken into account. In addition to the activity of the UN and the European Union in promoting the concept of business and human rights, the experiences of recent years show that combining human rights with financial market regulation is possible. To achieve this, however, many actors must be involved and a specific understanding of human rights and values must be adopted, and their protection should constitute the core of the legislator's activity.

Keywords: common good, dignity, financialisation, financial market, human rights

Introduction

Financialisation, which is a process where everyday life is influenced by the increasing impact of the financial sphere, prompts one to reflect on the need for and ways of creating mechanisms that would effectively safeguard the interests of the weaker parties, and particularly the interests of the customers of the financial market, as they often become victims of unethical actions of entities operating in it. Looking at this issue from the perspective of legal science, it seems worth considering the use of hard or soft forms of pressure exercised on financial institutions. While the former category includes legislative measures taken by law-makers and financial market regulators, among the soft forms of pressure there are all kinds of recommendations and standards, as well as initiatives, from the self-regulatory area. Particularly noteworthy are the activities of the United Nations concerning

the promotion and implementation by Member States of the concept of business and human rights, through which both governments and private entities (including financial institutions) are recommended to integrate into their activities also aspects related to human rights. Although a question may be asked about the possibility of combining these two seemingly contradictory elements – human rights and financial markets – this objective is nevertheless feasible and achievable. What is more, in the author's opinion such a combination is particularly important nowadays, when the financialisation of everyday life has become a reality and, while sometimes stigmatised, it may, when based on ethical principles and respecting the dignity of the human being, serve development rather than destruction.

The aim of this article is to initiate a discussion on financialisation seen through the prism of the concept of human rights, with particular emphasis on aspects related to the functioning and regulation of contemporary financial markets. The deliberations will focus on three extremely broad areas: the process of financialisation, human rights and financial markets. Aware of the challenges faced by this kind of research, which implies a variety of concepts, data and sources as well as an interdisciplinary character of the research, the author will limit his considerations to one aspect only and will highlight the essence of dependencies that arise in the relationship between financialisation and human rights.

These challenges should not, in the author's opinion, prevent this kind of research from being undertaken. Even more so since the literature so far has not dealt with the issue of the relationship between human rights and financial markets on a larger scale. This might be due to the fact that both areas are characterised by a multitude of concepts, theories and ways in which they may be understood. What is more, bearing in mind the universality related to this problem, there is a concern about the formulation of conclusions that will be applicable internationally. Therefore, in order to keep the argumentation clear, human rights will be presented here in the perspective of the international legal paradigm which also constituted the source of the concept of business and human rights, a concept that is crucial from the point of view of this article. Its aim was to create a specific set of standards embedded in the idea of human rights which understandably, due to their complex nature, cannot be studied in detail here. However, it should be noted that the common element that constructs human rights, and a kind of golden rule present in all societies, cultures and religions, is the principle of doing no evil to another human being. A human being possesses natural and inalienable dignity, and respect for this dignity means, to quote Immanuel Kant, first of all, treating man as an end and not as a means to achieve the ends of others. This statement is still valid today, especially if we relate it to the activities of the financial market and the relationship between the stronger (financial institutions) and the weaker (consumers). This phenomenon is also seen in other areas of the economic sector, especially in the employer–employee relationship, or the relationship between multinational corporations and local communities.

What is important, however, is that its existence has become a catalyst for change, resulting in the aforementioned concept of business and human rights. At this point, it is worth recalling a frequently cited example of the violation of human rights prompted by greed and the desire to gain wealth. This example is all the more important because it concerns practically every person reading these words, who is certainly using technological achievements such as computers or cellular phones on a daily basis. Their production requires coltan, which is an ore of tantalum and niobium, i.e. metals that are essential for the production of, among others, electronic capacitors present in every mobile phone.¹ What is worth noting is that 70% of the world's reserves of this precious ore (and many other rare minerals) are found in the Democratic Republic of Congo, a country that has for many years now been plagued by conflicts that have claimed millions of lives. The wars in this part of the world are financed with means generated by the extraction of these deposits, the exploitation of which is accompanied by violence and the violation of human rights. UN reports confirm all this, pointing to the network of Western corporations that derive enormous profits from the trade in these metals. Similar examples could be presented and, what is important, because of the network of connections (or supplies), they indirectly concern each of us, both in the commercial (using products manufactured in violation of human rights) as well as the financial aspect. It is, after all, financial markets which are a source of credit for companies that multiply capital through investments. But what is the purpose of these investments and do they not violate human rights? Is it not the case that although commercial activities create new jobs and are a source of income for employees, they are carried out in violation of the freedom, dignity, opportunities for development, or access to education of those workers, taking advantage of the weaker position of the other party? Everyday life confirms these concerns, and the process of financialisation that is not based on values may only foster further violations. Knowing these threats, it is necessary to warn against them, but above all to recommend remedies and feasible solutions. Hence, later in this article it will be proposed that human rights have a potential to be used for shaping the architecture of financial markets. This architecture should, on the one hand, ensure the performance of the functions ascribed to financial markets and on the other hand secure the rights and freedoms of entities that directly or indirectly make use of financial services which these markets offer. Human rights in the financial markets must be seen in the traditional, vertical dimension (the relationship between the state and the financial institutions) as well as in the horizontal dimension (the financial institutions and their clients), whereas the right to financial security should become an element of the package of the economic, social and cultural rights achieved by ensuring the stability and security of the financial

1 Values Added. The Challenge of Integrating Human Rights into the Financial Sector, The Danish Institute for Human Rights, pp. 17–18.

market and the protection of its weaker users. Stability and security are determined by investments which are financed by the financial sector, and which, it should be stressed, draws its capital from clients. Therefore, the financial sector must analyse in its decisions the risks of these investments. We should also seek to develop legal solutions that would in the future allow the creation of a system for the assessment of the reputation risk, which could be measured by the scale of activities violating human rights. However, in order to achieve this, it will be necessary to understand certain interdependencies between human rights and the financial market. These issues will be the subject of further analysis presented in this article.

1. The Essence of Financialisation

In 2021, when this article is being published, the world is facing new challenges of political, economic and social nature. The reality around us is becoming increasingly diverse and multifaceted, and its understanding requires narrowing specialisation and an interdisciplinary approach. It is not different in the case of economic phenomena which, measurable and logical as a rule, are more and more frequently interfering in the life of an average person, either directly (e.g. through credit institutions) or indirectly (e.g. affecting the prices of specific consumer goods through sophisticated forms of derivative financial instruments). The advancing economisation of life is primarily the result of the growing strength of financial markets, which, despite sometimes being stigmatised, play an important role in the functioning of the social systems of individual countries, regions and, as the crisis of 2008 showed, also worldwide. Their importance is primarily linked to the functions ascribed to them, and the most frequently mentioned ones are the function of intermediation, the function of accumulation of capital, the function of asset and liability management, and the clearing function. They differ in importance depending on particular sectors of the financial market, and these sectors, through financial innovations, cover still newer areas of activity, eventually becoming of interest to legislators, including EU lawmakers. Examples include shadow banking, algorithmic trading, or financial technologies collectively referred to as 'fintech'. These phenomena increasingly affect the functioning of the real world, contributing to the deepening of the phenomenon that was identified several years ago and termed 'financialisation'. Before an attempt is made at the definition of the term, it should be noted that although it first of all falls within the scope of interest of economic researchers, it should also be reflected in the research conducted in another important discipline of social sciences, namely law. This assertion stems from the conviction about the progressing economisation of law, which involves attributing legal forms to certain economic categories.² M. Weralski

2 N. Gajl, *Instrumenty finansowe w zarządzaniu gospodarką narodową*, Warsaw 1988, p. 27.

identifies it as a process of expansion of economic premises underlying legal and financial regulations.³ The norms that result from this process shape economic relations using objective economic forces – economic laws and regularities.⁴ Pointing to the relations between legal institutions (defined as abstract notions reproduced on the basis of specific legal norms) and economic categories, Weralski identifies the latter and emphasises three characteristics connected with them. One is connected with the fact that economic categories mirror the actual economic relations, and while not being merely the effect of speculative thoughts detached from reality must also take into account the social aspect. Secondly, economic categories must also be seen in their historical context. And thirdly, the categories described are a generalisation of objective economic phenomena, which results from human social practice.⁵ Although these economic phenomena as well as objective interdependencies between them exist, the regularities which govern them do not prevent us from shaping their economic reality in a conscious manner. Knowing these phenomena, the interdependencies existing between them and the economic regularities, we are able to utilise them to achieve our goals, and do it with the help of law for example. This in turn leads to the formation and existence side by side of economic categories and legal institutions that at times sound or seem identical.⁶ Whether legal or economic, they are most certainly abstract notions, the product of a thought process of a human being who, learning about the surrounding reality and the principles governing it, tries, as Weralski writes, to generalise this reality using legal regulations developed specifically for this purpose.⁷ In the case of a financial market, these regulations are created and applied within the framework of the financial market law, which is a relatively young part of financial law. In a broad sense they regulate both private and public law sectors of the financial market. This market is a part of a larger whole, which is a social system composed of the economic and financial system and the financial market. This interdependence is of significance when we consider, for example, the consequences of a crisis which, originating in the financial sector, affects subsequent elements of the system, and thus, at the final stage, also society. These relations may also be found in the relationship between financialisation and human rights implemented in the financial market regulation, which is the subject of analysis in this publication.

3 M. Weralski, Pojęcie instytucji prawno-finansowych i ich systematyka, (in:) M. Weralski (ed.), System instytucji prawno-finansowych PRL, vol. I, Wrocław 1982, p. 43.

4 *Ibidem*, p. 40.

5 M. Weralski, Instytucje prawno-finansowe a kategorie ekonomiczne, (in:) M. Weralski (ed.), System instytucji prawnofinansowych PRL, vol. I, Wrocław 1982, p. 55.

6 T. Nieborak, Tworzenie i stosowanie prawa rynku finansowego a proces ekonomizacji prawa, Poznań 2016, p. 91.

7 M. Weralski, Pojęcie..., *op. cit.*, p. 56.

Key to its understanding is the proper identification of the phenomenon of financialisation.⁸ Based on the analysis of literature, financialisation has several common elements, related to its definition, causes, effects and consequences. Its most frequently quoted definition is the one proposed by G. A. Epstein, who describes it broadly in terms of the growing role of financial motives, financial markets, their participants and financial institutions in the functioning of the international economy and the economies of individual countries.⁹

This process clearly affects many aspects of daily life, such as education, social protection, the right to housing, or migration.¹⁰

One particularly interesting element of the above concept is the category of financial motives, i.e. the sources of specific behaviours on the (financial) market. This category requires, as A. Sibińska rightly believes, identification of the psychological factors that determine general directions and goals in life, shape attitudes towards money and wealth, and affect, directly or indirectly, the decisions taken.¹¹ This also confirms the thesis on the interdisciplinary nature of financialisation, the thorough understanding of which requires economic and legal as well as sociological and psychological knowledge. The inclusion of psychological elements also directs us towards axiological considerations, taking into account behavioural factors. It is worth mentioning here the works of P. H. Dembinski, whose research also includes financialisation and the role which financial markets played in its emergence. If not properly controlled, these markets may become a source of economic crises. The one of 2008, as Dembinski correctly noted, would not have been possible if it had not been for the accompanying crisis of values and a selfish pursuit of profit maximisation at any price,¹² which led to an unprecedented crisis of confidence that undermined creative thinking and sowed fears about building the future. This, in the long term, affects the dignity of human beings who are losing jobs and life savings and the stability of their daily lives. And it is dignity on the foundation of which the idea of human rights is built. Similarly, the common good, considered in terms of the good as the sum of the well-being of individuals rather than the artificial perspective of *Homo oeconomicus*,

8 A. Adamska, Finansjalizacja a zmiana matrycy instytucjonalnej, "Finanse: czasopismo Komitetu Nauk o Finansach PAN" 2017, no. 1, pp. 45–46.

9 G.A. Epstein, Financialization and the World Economy, UK and Northampton, MA, USA, 2005, pp. 3–5.

10 M. Sawey, What Is Financialization?, "International Journal of Political Economy" 2013, vol. 42, no. 4, pp. 5–18; T.I. Palley, Financialization: What It Is and Why It Matters, Working Paper no. 525 by The Levy Economics Institute and Economics for Democratic and Open Societies Washington, D.C. December 2007, *passim*; M.B. Aalbers, The Variegated Financialization of Housing, "International Journal of Urban and Regional Research" 2017, vol. 41, no. 4, pp. 542–554.

11 A. Sibińska, Charakterystyka zachowań finansowych ludzi młodych, (in:) W. Grzegorzczak (ed.), Marketing w obliczu nowych wyzwań rynkowych. Księga jubileuszowa z okazji 70-lecia Profesora Bogdana Gregora, Łódź 2013, p. 32.

12 P.H. Dembinski, S. Beretta, Kryzys ekonomiczny i kryzys wartości, Crakow 2014, pp. 107–113.

will be replaced by a realistic anthropological perspective of a human being seen in the egocentric, but also relational dimension, as being self-oriented, but also open to others, to the community.¹³ The anthropological perspective is an element of further considerations conducted by Dembinski, who analysing the perception of the surrounding reality points to either the perspective of an effective balance, or the common good. In his opinion, the anthropological reference to the former is 'provided by the classical *Homo oeconomicus* – or its grandson *Homo financierius*. The anthropological foundations of the common good are fundamentally different: the common good refers to a human being, not an individual, and a human being becomes a person through its relations with other human beings. Thus, although an autonomous subject, no one is independent of others. The self develops by constantly entering into relationships with others.'¹⁴ Such an anthropological perspective should also be taken into account in the process of creating and applying financial market law. The lack of reflection in this regard and the creation of regulations that often fail to grasp the existing reality, or are even detached from it, have already resulted in the adoption of norms that ignored its specificity, complexity and sometimes behavioural aspects. According to R. H. Thaler and C. R. Sunstein, the lawmaker should indeed be like the architect of choice, whose duty is not only to organise the context in which people make their decisions, but to give them a nudge towards certain behaviours.¹⁵ In the case of the financial market, this behaviour should concern 'both sides of the barricade', i.e. managers of financial institutions and clients of these institutions. Moreover, this context must take into account the external conditions, including progressive financialisation and its impact on human attitudes. It is rightly believed that the abundance of financial impulses (motives) has turned man into a consumer, while ethical norms have started to be replaced by financial indicators.¹⁶ In the social sphere, attention is also drawn to the growing social stratification that gives rise to numerous conflicts, to crisis of moral values, and to the shallowing of relationships between people, which are now coming to be based on the culture of money and which generate plunderers' forces, as is sometimes seen among representatives of the plutocratic class.¹⁷ Certainly, among the negative effects of financialisation are social change and the associated crises. And yet, this does not mean that there are no positives. One is without any doubt the continual innovative solutions, such as

13 A. Glapiński, Przedmowa, (in:) P.H. Dembinski, S. Beretta, Kryzys..., *op. cit.*, pp. 9–10.

14 P.H. Dembinski, S. Beretta, Kryzys..., *op. cit.*, p. 99.

15 R.H. Thaler, C.R. Sunstein, Nudge: Improving decisions about health, wealth and happiness, London 2009, *passim*.

16 A. Gemzik-Salwach, K. Opolski, Finansjalizacja w świetle wyzwań współczesnej gospodarki, (in:) A. Gemzik-Salwach, K. Opolski (eds.), Finansjalizacja. Wpływ na gospodarkę i społeczeństwo, Warsaw 2016, p. 13.

17 M. Ratajczak, Ekonomia instytucjonalna i jej współczesny podział, "Współczesne Problemy Ekonomiczne" 2012, no. 4, pp. 93–101.

the payment of debts using modern and often safer forms of settlement. Numerous examples can be found in the payment services market, which, for many years, has also been the subject of particular interest of the EU legislator, with the result that regulations are now in place. These include the Payment Services Directive (PSD2), which is based on the philosophy of consumer protection on the one hand and the technological neutrality of new legal regulations on the other. The latter should take into account market innovation and allow the implementation of new technological solutions. What is noteworthy is that this type of innovation is marking its presence not only on developed markets but in the developing world, too. An excellent example are the African countries and their enormous and still untapped growth potential. And it is in Africa that modern and well-functioning micropayment systems exist and are doing very well. On the other hand, however, it is also in Africa where we encounter frequent cases of rogue exploitation of resources by large multinational concerns, which is possible only because their ventures are financed not elsewhere, but on the global financial markets. This situation gave rise to a discussion that led to the creation of the concept of business and human rights, aimed at proposing a platform for potential cooperation that would combine economic activity with the simultaneous implementation of human rights.

2. Human Rights – their Essence

Studying the idea of human rights in a synthetic way is not an easy task because there are many concepts that are related to them, and only when these concepts are taken into account does it become possible to understand their essence. Among the examples of theoretical foundations which shape the study of human rights, there are those of a religious, moral, ethical, biological, sociological, psychological as well as anthropological nature.¹⁸ They are defined as subjective rights to which every human being is entitled, i.e. rights which a given legal subject enjoys in relations with other legal subjects. This means that other subjects must respect these rights, which also implies that they have to refrain from actions which might lead to obstructing the exercise of these rights.¹⁹ If we relate this definition to particular concepts of human rights, we may then distinguish two basic approaches to them: the natural law approach and the deliberative approach.

The first states that human rights accrue to every human being by virtue of being human, without any need for further justification of the fact. Human rights can neither be granted nor taken away. Nor can they be renounced or relinquished. At the source of human rights understood in this way is the inalienable dignity of the human being, which is also the source of all individual rights and freedoms. The essence of

18 D. Shelton (ed.), *The Oxford Handbook of International Human Rights Law*, Oxford 2012, *passim*.

19 W. Brzozowski, A. Krzywoń, M. Wiącek, *Prawa człowieka*, Warsaw 2018, pp. 22–27.

dignity is crucial in the transfer of the concept of human rights to the regulation of the financial market, which, in turn, is the main protagonist of the process of financialisation. Dignity and the financial markets have one thing in common: it is difficult to define them. However, to attempt to take up this challenge, and resorting in doing so to the previous achievements of the pursuit of the concept of dignity as the source of all human rights and dignities, first of all their characteristic features must be identified. They are: the inherent nature, inalienability and inviolability.²⁰ It must also be stressed that dignity should be understood in two ways.²¹ Firstly, in its basic meaning (Latin: *dignitas hominis*), which is the most important from the point of view of human rights, of which dignity is considered to be the source, as inherent to every human being entitled to it just by virtue of the fact of being a human being. Thanks to it, man is a person different from other beings. And in the other sense, involving self-worth and self-respect, in which dignity refers to human personality and the development of an individual's potential, which consequently increases this individual's value and worth among others. Human dignity, lying at the root of human rights, is a good of particular importance that reflects the essence of humanity and is an inalienable characteristic inherent in every human being. And while human dignity in the first sense is inalienable, in its other understanding, relating to moral excellence, it may be gained or lost depending on the decisions (or choices) of a given person.²²

Ensuring its protection and respect is a duty and responsibility of the state. This state responsibility has been pointed to recently, as the social dimension is increasingly frequently emphasised. As A. Krzywoń rightly observes, particular attention is given to the conditions in which human beings live. Thus the state, when protecting human dignity, should on the one hand ensure everyone a minimum level of existence, and on the other hand implement measures preventing social exclusion.²³

Transferring these assumptions to the subject matter of this publication, it should be noted that nowadays the level of existence, as well as one's position in society, are greatly influenced, directly and indirectly, by the financial sphere, which affects the world of real life. An example may be the pricing of certain commodities which are at the same time the underlying assets and components of instruments (e.g.

20 *Ibidem*, pp. 116–119.

21 M. Piechowiak, *Filozofia praw człowieka. Prawa człowieka w świetle ich międzynarodowej ochrony*, Lublin 1999, pp. 343–344.

22 A. Kojder, *Godność*, (in:) M. Boguni-Borowska (ed.), *Fundamenty dobrego społeczeństwa. Wartości*, Crakow 2015, p. 50; See P. G. Carozza, *Human Dignity*, (in:) D. Shelton (ed.), *The Oxford Handbook...*, *op. cit.*, pp. 345–359.

23 W. Brzozowski, A. Krzywoń, M. Wiącek, *Prawa człowieka ...*, *op. cit.*, p. 119. See: R. Sroka, *Etyka i prawa człowieka w biznesie. W poszukiwaniu metody*, Warsaw 2016, pp. 54–61.

derivatives), which sometimes are in practice primary commodities, such as cereals (rice) on commodity exchange markets.²⁴

The transactions on the commodity exchange as well as the speculation which sometimes accompanies them, through the 'butterfly effect' have an impact on the existence of people who work and live from the cultivation of these commodities. 'Playing' with the price of these commodities and pushing it down must obviously affect the income and therefore the living conditions and the very existence of certain people. The whole world heard about the dramatic situation of Indian farmers who had been forced to take out loans to continue their increasingly unprofitable agricultural production, and the subsequent inability to meet financial obligations eventually pushed many to suicide. On the other hand, an example of the direct influence of the financial sphere on the financial (and therefore social) situation of a human being and the person's dignity is when the financial system offers support such as a loan based on transparent and fair principles. It is obvious that such an instrument should not be offered to people with uncertain creditworthiness and frequently without adequate knowledge of financial matters. It is therefore essential that the state takes measures to create financial awareness among the public and ensures that there are legal solutions which safeguard the interests of the clients of financial market services. These actions also have positive effects on the financial sector, reinforcing in the long term confidence in it.²⁵

The other approach to human rights, i.e. the deliberative approach, is critical of the natural law approach and recognises that the idea of human rights is not self-evident in itself, but is subject to evolution, fostered by increasing social and political awareness. It asserts that all human rights can be grounded in the claim that their source is human dignity. Moreover, supporters of this concept draw attention to the differences in the perception of human rights depending on factors such as geographical location, religion and culture.

This universal character of human rights derived from human dignity should not be identified with the protection of the daily existence of the individual reduced merely to a guarantee of safety of a person's everyday life. Human rights should be seen in a broader context, also referring to the position of an individual in a confrontation with large and often more organised structures, such as the state or the financial market, which may limit these rights through their actions. These entities must recognise the human element (dignity) in man, and not treat him

24 See: Center for Human Rights and Global Justice, *Every Thirty Minutes: Farmer Suicides, Human Rights, and the Agrarian Crisis in India*, NYU School of Law, New York 2011; C. Golay, *Legal analysis on the rights of peasants and other people working in rural areas. The Right to Seeds and Intellectual Property Rights*, Geneva Academy of International Humanitarian Law and Human Rights, Geneva 2016, *passim*.

25 T. Nieborak, *Creation and enforcement of financial market law in the light of the economisation of law*, Poznań 2016, pp. 95–99.

purely instrumentally as an element of a game aimed at maximising profit. Such an approach however will require a change in the way of thinking about human rights in a broader, horizontal sense, and as W. Osiatyński writes, as a relative principle that applies to specific relationships between private parties. The idea accompanying this way of viewing human rights was one rooted in economic and social rights that are supposed to provide a minimum of economic security, without which an individual cannot participate in social life or claim his or her rights in a dignified manner.

An important element favouring the acceptance of these rights is consensuality and thus their validity is determined by common consent. Thus, as long as they are based on consensus, the expression of which is a certain right, they should be observed and respected. This kind of approach implies another important element, namely that the catalogue of human rights is not closed.²⁶

This evolutionary character of human rights is also reflected in the theory of the generation of human rights, proposed in the 1970s by French lawyer K. Vašák, who distinguished their three generations. The first one covers fundamental, collective rights that result from human nature and are independent of legal regulations of a particular state. Examples of these are the right to life, to personal freedom, to information, but also equality before the law. The second generation of human rights includes economic, social and cultural rights, by means of which the individual is ensured physical and spiritual development or social security. In this catalogue we find the right to work, to social security, and to remuneration. Finally, the third generation of human rights includes collective, solidarity rights, such as the right to a healthy natural environment, the right to personal data protection, or the right to development. The analysis of the rights that make up the different generations of rights leads to the conclusion that all of them are present in the financial market, which is part of a larger whole, namely the social system.²⁷ In spite of the widespread popularity of this concept, there are voices which recognise its organisational and didactic qualities, but at the same time question its validity and applicability. Creating categories, classes or generations of human rights implies a belief in their gradation, and thus differentiates their validity. However, human rights are indivisible and interdependent, and their integrity means that one cannot ensure only selected ones. Here we must fully agree with the thesis formulated by W. Brzozowski that all human rights are mutually reinforcing and conducive to a fuller realisation of human dignity.²⁸ Human rights are universal and belong to all people living in society, and their fundamental nature means that they should not be justified by reference to

26 W. Brzozowski, A. Krzywoń, M. Wiącek, *Prawa człowieka ...*, *op. cit.*, p. 28.

27 M. Piechowiak, *Filozofia praw człowieka. Prawa człowieka ...*, *op. cit.*, p. 65 et seq. Also see K. Vašák, A 30-year struggle. The sustained efforts to give force of law to the Universal Declaration of Human Rights, "UNESCO Courier" November 1977, pp. 29–33.

28 W. Brzozowski, A. Krzywoń, M. Wiącek, *Prawa człowieka ...*, *op. cit.*, p. 30.

any other rights.²⁹ When considering their relation to the financial market, it seems reasonable to base them on the natural law approach rooted in human dignity and constituting a universal paradigm of human rights. At the same time, one should agree with the concerns formulated by M. Piechowiak about the progressing changes in the underlying basis of understanding human rights, particularly with regards the inherent nature and objective character of dignity as the basis of human rights, which today is being replaced by the grounding of human rights in culture. Piechowiak rightly believes that a 'change in the very foundations modifies everything that is based on them, and even a small change can have very far-reaching consequences'.³⁰ The same is true about issues related to the functioning of financial markets and their impact on people's daily lives. The consequence of moving away from justifying human rights that arise from natural law (which emphasises the dignity of a human being) and favouring new concepts of these rights resulting from a specific cultural and social environment creates a potential danger that this narrative will be used by more powerful entities such as financial institutions, for example. This in turn prompted a discussion on the necessity of incorporating human rights in the regulation of economic activity and this activity itself, and led to the creation of the concept of business and human rights, some elements of which may also be used on financial markets.

3. Is there a Place on the Financial Market for Human Rights?

The answer to the above question should be preceded by a determination of the role the financial markets play in modern man's life. Apart from their normal functions indicated above, the role of these markets should be viewed from a broader perspective, through the prism of ethics and morality. The reason behind this proposal is the fact that financial markets constitute a natural environment that is conducive to the abuse of rights granted to financial institutions by virtue of the specificity of this segment of the economy. It should also be stressed that financial markets are a part of a larger whole and, as a part of the financial system, they are naturally embedded in the social system. This is of fundamental importance in practice, since any turbulence in the financial sector ultimately affects, to a greater or lesser extent, the whole society, an effect known as contagion.³¹ Cyclical crises have been frequent in the history of

29 W. Osiatyński, *Prawa człowieka i ich granice*, Crakow 2011, p. 1.

30 M. Piechowiak, *Godność w Karcie Praw Podstawowych Unii Europejskiej – destrukcja uniwersalnego paradygmatu ujęcia podstaw praw człowieka*, "Themis Polska Nova" 2012, vol. 2, no. 1, pp. 126–146.

31 R.W. Kolb, *What Is Financial Contagion?*, (in:) R.W. Kolb (ed.), *Financial Contagion. The Viral Threat to the Wealth of Nations*, New Jersey 2011, pp. 3–9.

the financial markets, with examples including 2008, 1929 and the sixteenth-century Tulipmania.³²

Therefore, keeping in mind the impact of modern financial markets on people's lives, it is necessary to see these markets in a broader, axiological dimension, especially when looking at them from a legal point of view. They should always be analysed in a manner similar to that in which human rights are studied. The common elements appearing in this kind of approach include the common good and related human dignity as well as the possibility of discussing these issues within the realms of financial market law, where the process of the creation and application of law should also take into account the observance of human rights. The protection of certain values should constitute the determinant for the legislator who creates the architecture of financial markets, and who should treat the market as a common good. This thesis finds its justification in the events of the last few years and the specifics of the changing world. As R. Balakrishnan rightly observes, the recent crises have highlighted the gap, particularly seen between the economic policy and the idea of human rights.³³ The reason for that has been the focus put on building the market's value, increasing efficiency, and generating profits, with a mistaken belief that economic growth would provide the tools for the more effective enforcement of human rights, and would lead to the elimination of poverty and limitation of the exploitation of certain poorer regions, and thus improve people's lives or curb their exclusion. However, if we look at the current situation, where the rich are getting richer, the poor regions continue to stagnate, and where economic operators are becoming increasingly profit-driven, it is clear that recalling the common good (including the global good) has not lost any of its relevance.³⁴

The common good, although intuitively understood universally, proves to be a challenge when an attempt is made to define it precisely. The encyclopaedic meaning of the common good reduces it to a collective value achieved by human communities in connection with the development of the natural potential of their

32 The history of financial markets proves that crises similar to that of 2008 occurred in the past as well. They have been frequently analysed and described in the literature. The most spectacular crises include the one of 1929 and the South Sea Bubble scandal, or Tulipmania. More in: T. Nieborak, *Historyczne aspekty wykorzystywania instrumentów pochodnych na przykładzie Tulipanomanii*, "Rynek Terminowy" 2004, no. 2, pp. 100–110; P.M. Garber, Tulipmania, "Journal of Political Economy" 1989, vol. 97, no. 3, p. 543 et seq. R.P. Flood, P.M. Garber, *Speculative Bubbles, Speculative Attacks, and Policy Switching*, Cambridge 1994, p. 59 et seq.; C. Mackay, *Extraordinary Popular Delusions and the Madness of Crowds* & J. de la Vega, *Confusión de Confusiones*, New York 1996, *passim*.

33 R. Balakrishnan, D. Elson, *Economic policies and human rights obligations: An introduction*, (in:) R. Balakrishnan, D. Elson (eds.), *Economic Policy and Human Rights. Holding Governments to Account*, London 2011, pp. 1–27.

34 D.G. Arnold, *Human rights and business: an ethical analysis*, (in:) R. Sullivan (ed.), *Business and Human Rights. Dilemmas and Solutions*, London 2003, pp. 69–81.

members, the satisfaction of their individual interests, or respect for their individual rights. At the same time it seeks to bring the whole community closer to its proper goals.³⁵ In the discussion on the concept of the 'common good' there are reflections on the differences resulting from the arrangement of the phrases 'common good' and 'shared good', and are manifested in the words 'common' and 'shared'. When these concepts are analysed, the underlying reasons which drive a person to pursue them should be considered. While in the case of the common good the accent is placed on the universal objective aspect (so that the actions undertaken are for the benefit of a wider group of people), in the case of the shared good it is believed that actions are taken primarily to improve one's own (and possibly several other subjects') situation.³⁶ In the 'common good' the optics focuses on the state – its welfare – and the actions of the members of the community constituting it are to serve the state. The situation in the case of the concept of the 'common good' is different when related to the classical tradition. In that tradition, according to Piechowiak, in order to know what this good is, it is necessary to have knowledge of what serves human development. Hence it is necessary to know who that person is, to look at the person through the prism of extra-legal reality, and to make laws based on this observation. Thus law and the state are meant to serve man.³⁷ This concept is particularly important for the law that regulates the financial market, which, when viewed instrumentally and therefore a complex phenomenon, must take into account various factors. It is after all the financial market which is a source of capital in the broadest sense of the term, and capital is necessary to ensure certain human needs (housing, subsistence etc.) as well as investment, both of which are interrelated. Without investment there is no work, without work there is no pay, and without pay there is no decent life. This is why it is so important to include ethical (moral) elements in the construction of regulations relating to the economic or business activity. In the case of legal and financial regulations, they should be related to human rights which do not result from political will, but from their natural existence and inscription in the dignity of the human person, being an element of the instrumental aspect of the common

35 The entry "common good", (in:) *Wielka Encyklopedia PWN*, vol. VII, Warsaw 2002, p. 233; also see M.T. Cynceron, *O państwie, o prawach, Kęty 1999*, p. 74; M.A. Krapiec, *Struktura bytu. Charakterystyczne elementy systemu Arystotelesa i Tomasza z Akwinu*, Lublin 1963, p. 285.

36 Z. Stawrowski, *Dobro wspólne a filozofia polityki*, (in:) W. Arndt, F. Longchamps de Bériér, K. Szczucki (eds.), *Dobro wspólne. Teoria i praktyka*, Warsaw 2013, pp. 14–15.

37 M. Piechowiak, *Prawne a pozaprawne pojęcia dobra prawnego*, (in:) W. Arndt, F. Longchamps de Bériér, K. Szczucki (eds.), *Dobro wspólne. Teoria i praktyka*, Warsaw 2013, p. 25; Compare: M. Piechowiak, *Dobro wspólne jako fundament polskiego porządku konstytucyjnego*, Warsaw 2012, p. 28 et seq.; W. Brzozowski, *Konstytucyjna zasada dobra wspólnego*, "Państwo i Prawo" 2006, vol. 11, pp. 19–20.

good.³⁸ This is the good which, when ensured, will contribute to the protection of the human person's dignity and development, and will ensure public order.³⁹

The common good may be regarded as the common denominator of human rights and financial markets. Without ensuring compliance with the former, it will be impossible to ensure the development of the community for which the capital derived from the financial market is essential. Therefore both elements should be viewed 'structurally' and not separately. Together they create the social conditions for the development of society, contributing to its common good. However, we must also be aware of situations in which their influence on each other is destructive. This happens when the financial markets, through their actions, violate human rights, for example by taking advantage of their dominant position and by creating and imposing disadvantageous conditions on individuals, often affecting their dignity. This was the case during the financial crisis of 2008, at the root of which was the greed and dishonesty of financial institutions, hitherto perceived as institutions of public trust. Their irresponsible actions, granting credit to individuals who lacked creditworthiness or trading risks by way of derivatives, led thousands of people to the brink of poverty and homelessness. These experiences should constitute an element of reflection on the current perception of human rights, dominated by their vertical aspect, which sadly, in this case, failed. States should have protected their citizens because the states had sufficient supervisory instruments to do so, but they did not react properly. What is more, as it turned out later, the states provided aid to the financial sector and rescued it, also with the taxes of citizens, many of whom were abandoned by their state when in need. Therefore it is necessary to consolidate efforts to incorporate human rights into the sphere of financial markets. First, by adding to the list of economic, social and cultural rights the right to financial security. And second, by promoting the protection of this right by ensuring it by legal regulations both vertically (the state and the financial market) and horizontally (an individual and a financial institution).

In the case of the financial sector, this concept may be transposed to three levels: macro (the state–the financial market), mezo (self-regulation of financial institutions) and micro (the financial institution–consumer relationship). At each, the common denominator currently supported by the EU legislator will be security and stability and a reduction of the negative aspects of the financial risk, all these leading to a greater confidence in the financial market. At this point, a doubt may arise as to whether the presented construction is at all possible. Certainly it is, but it must be accompanied by a reflection on the nature of financial markets, their role and the values that they should respect.

38 F. J. Mazurek, *Godność osoby ludzkiej podstawą praw człowieka*, Lublin 2001, p. 106.

39 R. Sroka, *Etyka ...*, *op. cit.*, pp. 58–60.

It is therefore reassuring that issues of human rights seen in the light of business activity are within the interests of the EU legislator. In the Communication of the European Parliament and the Council on The Human Rights and Democracy Agenda (2015–2019) ‘Keeping human rights at the core of the EU agenda’⁴⁰ (hereinafter: the Joint Communiqué) there is a direct reference to the idea of human rights, and more specifically to the United Nations document ‘The UN Guiding Principles on Business and Human Rights – Implementing the United Nations “Protect, Respect and Remedy” Framework’⁴¹ contemporarily recognised as the source of the ‘business and human rights’ conceptions.⁴² In their Joint Communiqué, the Commission and the Council emphasise the need to promote and spread the awareness of human rights in the EU economic and social space, as well as in individual Member States, which should strive to develop and implement national action plans through which the idea of human rights will permeate the economic sphere, and thus the financial market. The understanding of ‘human rights’ is not defined, being rightly assumed that in the European space they constitute a universal value, commonly accepted (although not always respected), and their sources go back to the European tradition.

This contributes to financial awareness, which should be considered an important step towards the protection of human rights, which, in turn and as has been shown above, are believed to be a necessary element of financial markets and markets in general. As a matter of fact, this is already happening, an example being Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services.⁴³

40 Joint Communication to the European Parliament and the Council, Action Plan on Human Rights and Democracy (2015–2019) “Keeping human rights at the heart of the EU agenda,” at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/action-plan-on-human-rights-and-democracy-2015-2019_en.pdf (14.07.2021).

41 Published at: https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf; the document has received an unofficial Polish translation thanks to the initiative of the Polish Institute of Human Rights and Business, which is available at: http://pihrb.org/wp-content/uploads/2014/10/Wytyczne-ONZ-UNGPs-BHR-PL_web_PiHRB.pdf (14.07.2021).

42 J.G. Ruggie, The social construction of the UN Guiding Principles on Business and Human Rights, (in:) S. Deva, D. Birchall (eds.), *Research Handbook on Human Rights and Business*, Cheltenham 2020, pp. 63–87.

43 Regulation of the European Parliament and the Council (EU) 2019/2088 of 27 November 2019 on disclosure of information related to sustainable development in the financial services sector (OJ L 317, 9.12.2019, pp. 1–16).

4. Business and Human Rights Concept

In recent years, the concept of business and human rights has received increasing attention in the human rights literature.⁴⁴ Among the many examples that have given rise to its development, many point to the tragic events at the root of which was the profit motive of multinational corporations pursued at the expense of adequate safety measures that took place in the 1980s. The most frequently cited include Bhopal (the explosion at the Union Carbide pesticide plant, India, 1984), Deepwater Horizon (the oil rig explosion in the Gulf of Mexico, 2010) or Rana Plaza (the construction disaster in Shabhar, Bangladesh, 2013). It is estimated that in the case of the first of the above disasters, the leakage of about 80 tons of methyl isocyanate was responsible for the deaths of about 20,000 people, while a further 500,000 victims suffered from after-effects. These data indicate that the explosion in Bhopal was much more deadly in terms of victims than the accident at the Chernobyl nuclear power plant,⁴⁵ although it certainly received less media coverage. In both instances, a technical fault was the cause of the incident, but the Indian disaster would not have occurred if earlier warnings had not been ignored and excessive savings made to increase the company's profits.

These and other similar incidents (including Shell in the Ivory Coast, BP in Colombia or Nike in Vietnam)⁴⁶ contributed to the initiation of a discussion on the responsibility of business and its duty to respect and protect human rights and related to it 'corporate social responsibility', which sees companies as important participants in society. This discussion continues to this day and is constantly accompanied by the same dilemmas and questions about this social responsibility of individual market participants. According to M. Robinson, the most frequent questions that arise in this context are:⁴⁷

How far should companies be expected to go in defining and promoting global standards in areas such as corporate governance, financial accounting and reporting, ethics, environmental impacts, consumer rights, labour conditions and human rights?

44 S. Deva, D. Birchall (eds.), *Research Handbook on Human Rights and Business*, Cheltenham 2020, *passim*.

45 D. Augenstein, *The Crisis of International Human Rights Law in the Global Market Economy*, EUI Working Paper, RSCAS 2014/118, pp. 5–8. Also see S. Deva, *Bhopal: the saga continues 31 years on*, (in:) D. Baumann-Pauly, J. Nolan (eds.), *Business and Human Rights. From Principles to Practice*, London 2016, pp. 22–27.

46 See for example O. Amano, *Human rights, ethics and international business: the case of Nigeria*, (in:) A. Voiuculescu, H. Yanacopulos (eds.), *The Business of Human Rights. An Evolving Agenda for Corporate Responsibility*, London 2020, pp. 188–213.

47 M. Robinson, *Foreword*, (in:) R. Sullivan (ed.), *Business and Human Rights. Dilemmas and Solutions*, London 2003, p. 11.

Is legal compliance sufficient in countries where governments are administratively weak or deemed to be corrupt or illegitimate by their citizens?

Does business have any business in poverty alleviation? If so, how does it tackle this change in an innovative and profitable manner?

How do companies avoid 'letting governments off the hook' or substituting the government with the company in terms of meeting people's needs and aspirations?

They also accompanied the formation of the business and human rights concept, which is now commonly identified with a document developed within the United Nations, entitled 'The UN Guiding Principles on Business and Human Rights – Implementing the United Nations "Protect, Respect, Remedy" Framework' (hereinafter: UNGPs). The introduction to the UNGPs describes the process of arriving at their final version, which was unanimously endorsed by the UN Human Rights Council in 2011. Before that, however, the recognition of the need to integrate business and human rights into global policy frameworks prompted an expert subsidiary body of the UN Commission on Human Rights to produce a document in 2005 called 'Norms on Transnational Corporations and Other Business Enterprises.' The purpose of this document was to force business entities to comply directly, under international law, with the human rights obligations to which states that had ratified international treaties committed themselves. This initiative resulted in a heated debate and strong opposition, ultimately leading to its abandonment. Despite this, the UN Commission on Human Rights decided to continue its efforts to integrate the concept of human rights into business and in the same year established a mandate, subsequently extended in 2007, for a Special Representative of the UN Secretary-General for Human Rights and Business, and appointed John Ruggie to the function.

Years of effort and painstaking work by Ruggie and his team, covering hundreds of meetings, dozens of conferences, and incorporating views of thousands of stakeholders, ultimately led to the development and endorsement on 16 June 2011 of the UNGPs referred to above. Its 31 principles created global standards for preventing the risk of human rights violations in business activities and rest on three pillars:

- I. State duty to protect against human rights abuses.
- II. Corporate responsibility to respect human rights.
- III. Need of greater access by victims of corporate abuse to effective remedies.

What is important though is that from a legal point of view, the UNGPs should not be regarded as a source of law (e.g. treaty law). Rather, their normative contribution stems from the clarification of existing standards and practices for states and businesses, and the integration of these into a single logically coherent and comprehensive model allowing the shortcomings of the current system to be

identified and addressed.⁴⁸ As we read in the UNGPs, ‘The Guiding Principles are not intended as a tool kit, simply to be taken off the shelf and plugged in. While the Principles themselves are universally applicable, the means by which they are realised will reflect the fact that we live in a world of 192 United Nations Member States, 80,000 transnational enterprises, 10 times as many subsidiaries and countless millions of national firms, most of which are small and medium-sized enterprises. When it comes to means for implementation, therefore, one size does not fit all.’⁴⁹

It would be pointless to analyse all 31 principles of the UNGPs at this point. However, referring to the previously mentioned regulatory aspects of human rights, it is worth pointing out two of them. Principle 3 refers to the implementation of human rights protection duties by the state, which should, among other things, ensure that other laws and policies governing the creation and ongoing operation of business enterprises such as corporate law or banking regulations do not constrain respect for human rights. As if to complement this principle, Principle 8 points to the need that states should ensure that governmental departments, agencies and other state-based institutions that shape business practices are aware of and observe the state’s human rights obligations when fulfilling their respective mandates, also by providing them with relevant information, training and support.

These principles may certainly be applied to the financial market and its regulation, and the role of the state in this respect. An example of their realisation is the inclusion of the ethical quality criteria discussed earlier in the banking regulations, as well as the promotion of the concept of responsible lending that accounts for the ethical and human rights elements in the credit assessment of business entities. This approach is prompted not least by the concept of corporate social responsibility (CSR) that the EU has been advancing for some time already and which is also reflected in the accounting regulations. The role of states in promoting the UNGPs should also be exercised through the development of national action plans, which the European Union Member States are encouraged by the European Commission to produce.⁵⁰

Therefore, when it comes to implementing the business and human rights concept in the area of financial market operations, it is reasonable to assume that there are three levels of interaction between the financial system and human rights:⁵¹

48 Wytyczne dotyczące praw człowieka i biznesu. Wdrażanie Dokumentu Ramowego ONZ ‘Chronić, Szanować i Naprawiać’, Polski Instytut Praw Człowieka i Biznesu, Częstochowa 2014, p. 15.

49 *Ibidem*.

50 Also see B. Faracik, Implementation of the UN Guiding Principles on Business and Human Rights, European Parliament, Policy Department, 2017.

51 Human Rights and Sustainable Finance. Exploring the Relationship, Institute for Human Rights and Business, UNEP, 2016, Inquiry Working Paper, pp. 7–8. Also see P. Drahn, Adoption of EU Business and Human Rights Policy. The Use of Discretion in the National Transposition of the EU Directives, Cham 2020, *passim*.

1. The systemic level – focusing, inter alia, on the need to ensure stability of the financial system both at the macro (the role of the central bank) and micro levels complementing each other in the implementation of the stabilisation tasks.
2. The client level – meaning that financial institutions should identify the risk of human rights violations caused by their investments, and to this end, at the stage of the feasibility study they should implement the concept of the ESG triumvirate (environment, society and governance). This is because often the principles of corporate governance, intentionally or not, ignore the consequences which business activities have on the environment and society, and thus in a broader sense on human rights.
3. The consumer level – in this concept, consumer protection is considered broadly and is related to financial inclusion. The financial system has an important developmental role that should be exercised through financing innovations that contribute to the development of societies, but also allow their members to take out micro-loans or micro-insurance. Moreover, the participants of the financial market should strive to raise ethical standards and prevent practices such as mis-selling or unfair lending.

These three levels and their inclusion in the process of implementing business and human rights in the financial market will certainly require a change in the current perception of human rights and relating them solely to the vertical dimension, i.e. connected with relations between the state and private entities (financial institutions). Initiating a horizontal enforcement of human rights involving a new approach of financial institutions towards their clients will certainly require time and a change in thinking, particularly of their managers. This may be achieved in two ways: hard and soft. The hard way could be for example incorporating properly defined human rights into regulations in, say, the field of accounting or, more specifically, reporting, or prudential regulations on risk assessment, which in this case would be reputational risk. As Benjamin Franklin said: ‘It takes many good deeds to build a good reputation, and only one bad one to lose it.’ The necessity to report investments that violate human rights would certainly not remain without any impact on managerial decisions. A soft implementation of the business and human rights idea on the other hand might involve self-regulatory initiatives taken directly by financial institutions.⁵² A certain analogy can be found nowadays in activities aimed at environmental protection and the promotion of low-emission solutions, in which successive entities boast about their zero CO₂ emission achievements. While respect for human rights should obviously be natural and not subject to promotion, it seems

52 See for example N. Bernaz, *Business and Human Rights. History, law and policy – Bridging the accountability gap*, New York 2017, pp. 209–228.

that in the world of financialisation, the soft forms will prove to be effective. This is especially so if supported by the awarding of certificates to financial institutions, as practised in the fair trade movement. Such certificates could be issued by financial supervision entities or non-governmental organisations.

Conclusions

Modern times are characterised by an unprecedented speed of development in all areas of activity, bringing many innovations which certainly make our life easier, but at the same time pose various challenges, particularly in the economic sphere. This materialises in the course of financialisation, giving rise to certain types of risk, including a potential infringement of individual rights (human rights). Therefore, it is essential that human rights are always kept in mind and promoted when conducting responsible (ethical) business,⁵³ as has recently been reflected in the business and human rights movement. This concept of business and human rights cannot just be a slogan used by companies in their marketing activities, but ought to be an element of everyday reality, allowing consumers to make informed choices of (ethical) services offered by the financial sector. Unethical or immoral activity undermines customers' dignity and the common good, and weakens customers' confidence and trust in the financial market, its stability and its security. This, in turn, may lead to a crisis, the effects of which, as experience shows, are borne by society, particularly by the most vulnerable individuals, who are often deprived of the protection of their rights in the first place.

As it has been shown, such a possibility exists, and may have a significant influence on the implementation of the concept of business and human rights in the architecture of contemporary financial markets, both locally and globally. The presence of human rights on financial markets must be seen both in the traditional vertical dimension and in the horizontal one, which in this case refers to the relationship between financial institutions and their clients. These relationships must be built through legal requirements as well as self-regulatory activities of financial institutions. Furthermore, the extension of the catalogue of economic, social and cultural rights should be proposed to include the right to financial security, achieved by ensuring the stability and security of the financial market and the protection of weaker participants in the market. Additionally, ethical investments that do not violate for example the dignity of individuals performing certain types of work should be promoted. This philosophy is consistent with that of human rights, which takes into account not only individual interests but also the community interests that

53 J. Kacprzak, Odpowiedzialny biznes a prawa człowieka, (in:) XI Seminarium Warszawskie. Prawo do godnego życia w świetle Europejskiej Konwencji Praw Człowieka i innych standardów międzynarodowych, MSZ, Warsaw 2018, pp. 56–59.

materialise in many individual interests, including those protected by the common good.⁵⁴ It should be remembered that the development of the world today is based on capital, raised in financial markets and coming from their clients. In this way, financial institutions have an enormous power and can contribute to the change of the modern world while improving at the same time their own reputation and image. Is this an idealistic approach? Perhaps it is. But it might be worth taking the trouble to implement some changes.⁵⁵ For, as J. Donnelly wrote: 'Human rights are the best – I would say, the only effective – political instrument that human ingenuity has invented to protect the dignity of the individual from the omnipresent perils of contemporary society [including the financial market –TN]'.⁵⁶

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54 W. Osiatyński, *Prawa ...*, *op. cit.*, p. 268.

55 See K. Byttebier, *The Unfree Market and the Law. On the Immorality of Making Capitalism Unbridle Again*. Cham 2018, pp. 213–283.

56 Quoted after W. Osiatyński, *Prawa ...*, *op. cit.*, p. 234.

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