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On Legal Judgments and Subversiveness: Remarks Against the Backdrop of Andrea Baldini’s Theory of Street Art²

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Abstract

The subversiveness of the work is a criterion of street art according to the theory of A. Baldini. This view, undoubtedly, represents a novelty in the understanding of this category of art; as such, it remains a contribution to aesthetics. Nevertheless, within the framework of the presented theory, subversiveness is combined with legal judgment and violation of the law. These circumstances situate the theory within the field of interest of legal studies; and from this perspective, it deserves criticism. This is because the theory does not contain precise determinants of the difference between legal and aesthetic judgments, nor does it equip the constructed criterion of street art with the ability to resolve conflicts between norms relevant to subversiveness; and it is the demonstration of these gaps, as well as proposals to fill them in the context of legal science that are the subject of this article.

Keywords: street art, subversiveness, violation of the law, legal judgment.

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O sądach prawniczych i subwersywności – uwagi na tle Andrei Baldiniego teorii street artu³

Streszczenie

Zgodnie z teorią sformułowaną przez A. Baldiniego subwersywność dzieła jest kryterium sztuki ulicznej. Pogląd ten, bez wątpienia, stanowi novum w rozumieniu tej kategorii sztuki; jako taki pozostaje zaś przyczynkiem do estetyki. W ramach prezentowanego stanowiska wywrotowość łączy się jednak z sądem prawnym oraz z naruszeniem prawa. Te okoliczności sytuują tę teorię w polu zainteresowań prawoznawstwa. Z tej perspektywy zasługuje ona jednak na krytykę. Teoria skonstruowana przez A. Baldiniego nie zawiera bowiem precyzyjnych wyznaczników różnicy między sądami prawniczymi i sądami estetycznymi, jak również nie wyposaża skonstruowanego kryterium street artu w instrument rozstrzygania konfliktów między normami istotnymi dla subwersywności; i właśnie wykazanie tych luk, a także propozycje ich wypełnienia w kontekście nauk prawnych, są przedmiotem niniejszego artykułu.

Słowa kluczowe: street art, subwersywność, naruszenie prawa, sąd prawniczy.

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Introduction

The following inquiry is part of the aesthetics of law. It includes a presentation of the theory of street art as “essentially subversive artistic practices.”⁴ Since street art constitutes essentially subversive practices, “by means of which artists express their dissent against what they consider dysfunctional and unjust rules, norms, and regulations,”⁵ art in *pro tanto* is in collision with legal norms. Yet, the relationship between art and law is the subject of legal aesthetics.⁶ To be more precise, in the following paragraphs, I will present an excerpt from Andrea Baldini’s theory of street art, focusing on two of its theses, namely: 1) “legal and aesthetic judgments are structurally different” and 2) “violating the law is (...) a ‘prototypical and paradigmatic’ feature of street art, grounding its subversiveness.”⁷

However, I will not limit myself to a report of what these claims (and their justifications) express, but I will try to present a *critique*. This is because I will first demonstrate that the difference pointed out by A. Baldini between the legal judgment and the aesthetic judgment is not explicit and is a consequence, so to speak, of the legal norm’s mode of being, not accounted for in the presented theory. Next, concerning the second thesis, I will reconstruct the answer to the question of whether violation of the law constitutes a *condicio sine qua non* of subversiveness of a work of street art. In doing so, I will outline a certain deficiency (gap) to which A. Baldini’s claims lead. I will also propose filling this gap, possible on the basis of the theory presented and rooted in the achievements of jurisprudence.

⁴ A. Baldini, *Beauty and the Behest: Distinguishing Legal Judgment and Aesthetic Judgment in the Context of 21st Century Street Art and Graffiti*, “Rivista di estetica” 2017, 65, p. 97. For the reference to A. Baldini’s theory of street art, see also: A. Baldini, *What Is Street Art?*, “Estetika: The European Journal of Aesthetics” 2022, 1, pp. 1–21; idem, *Street Art: A Reply to Riggle*, “The Journal of Aesthetics and Art Criticism” 2016, 74(2), pp. 187–191; idem, *Quand les murs de béton muets se transforment en un carnaval de couleur. Le street art comme stratégie de résistance sociale contre le modèle commercial de la visibilité*, “Cahiers de Narratologie. Analyse et théorie narratives” 2016, 30, pp. 1–16.

⁵ A. Baldini, *Beauty and the Behest...*, p. 97.

⁶ For the subject of the aesthetics of law, see K. Zeidler, *Estetyka prawa*, Gdańsk–Warszawa 2018, pp. 38–45; J. Zajadło, *Estetyka – zapomniany piąty człon filozofii prawa*, “Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2016, 4, pp. 17–30.

⁷ A. Baldini, *What Is Street Art...*, p. 12.

Legal Judgments vs. Aesthetic Judgments

According to A. Baldini, aesthetic judgments and legal judgments are structurally different (i.e., they have a different degree of formalization) due to two circumstances. First, there are no recognized judges in the aesthetic field. Although there are “experts in aesthetic or artistic matters: among others, art critics, art historians, philosophers of art, and curators”⁸ who can collectively be classified as “aesthetic experts,” however, “we do not find a suitable counterpart to the figure of the law judge.”⁹ Second, “in the aesthetic domain (...) we cannot find laws in a proper sense.”¹⁰ Thus, in contrast to judges adjudicating under the law, “aesthetic experts – or, more generally, individuals appreciating art – do not formulate judgments according to a preexisting and well defined body of norms and rules.”¹¹

The theory presented notes two differences between judges and aesthetic experts. Namely, the actions of judges and aesthetic experts are different: “When comparing the activity of judges of art or law, one is merely drawing a loose analogy.”¹² Furthermore, the asymmetry between judges and aesthetic experts “has to do with the absence of procedures in selecting aesthetic experts. Though education surely enhances one’s aesthetic expertise, a degree in a relevant field is by no means a necessary or sufficient condition for being an aesthetic expert.”¹³ In turn, “judges are professionalized figures. They undergo specialized forms of training and they obtain their professional qualification through a series of standardized examinations. In general, formalized procedures of selection guarantee the competence and aptness of law judges.”¹⁴

Let us first consider the question of the various competencies and professionalism of law judges and aesthetic experts. Thus, it cannot be overlooked that the one who forms legal judgments is not always a professional with competencies formally confirmed by training and examinations. The judiciary is commonly (although differently in different legal systems) entrusted to private actors

⁸ Idem, *Beauty and the Behest...*, p. 94.

⁹ Ibidem.

¹⁰ Ibidem. It is worth noting that the direct inspiration for the thesis referred to is the following statement by R. Wollheim: “It would (...) be quite alien to his [= artist] purposes if there were rules in art that could be unambiguously correlated with a ‘meaning’” (R. Wollheim, *Art and Its Objects*, Cambridge 1980, p. 139).

¹¹ A. Baldini, *Beauty and the Behest...*, p. 95.

¹² Ibidem, p. 94.

¹³ Ibidem.

¹⁴ Ibidem.

(e.g., arbitration¹⁵), as well as people without legal know-how are often engaged to administer it in a state capacity (e.g., as justices of the peace, juries¹⁶); and the judgments of non-professional adjudicator are often as qualifiable in terms of effectiveness and equity as those of professional judges. What is more, there is also a tendency in the contemporary legislature to entrust the administration of justice to entities other than professional judges. As for the competence of a “true aesthetic judge,” it is worth noting that there are formal courses and schools for acquiring knowledge of art and the skills to create it. We are also inclined to affirm the aesthetic judgments of people formally trained in the arts, rather than the aesthetic judgments made by people who have not undergone formal studies in the field.

As for the “loose analogy” in the activities of judges and aesthetic experts, A. Baldini does not directly characterize this term. We can, however, find examples of actions inherent to “real aesthetic judges” in the theory in question. Such experts come to grips with issues such as “whether street art is more valuable than graffiti[?]”¹⁷ and apply “aesthetic predicate[s] such as ‘beautiful’ to (...) artifact[s].”¹⁸ Nevertheless, the point is that such issues must also be faced by legal adjudicators. After all, if Judge Maria is to adjudicate whether John violated the legal norm “It is forbidden to produce or present for the purpose of dissemination what is a carrier of fascist symbolism, unless this is done in the framework of artistic activity” (i.e. the norm derived from Article 256 § 2 and 3 of the Polish Criminal Code) because he painted an isosceles cross with arms bent at 90° on the door of the building of the embassy of country C (and explained at the hearing that this was part of a performance he was presenting), then Judge Maria must also pass judgment on the aesthetic value of John’s action. In other words, she is forced to apply an aesthetic predicate of the same kind as the word “beautiful”. Judge Maria’s action in this regard is rather no different from that of an aesthetics expert; and we are not dealing with a mere loose analogy here.

The above issues provide an introduction for A. Baldini to zoom in on the deeper structural cause of the difference between aesthetic and legal judgments. Thus, aesthetic experts do not undergo specialized training or official examinations

¹⁵ State courts do not normally have jurisdiction to review the merits of decisions made in the private justice system. However, it is the “state courts frame the boundaries within which matters of disclosure, independence and impartiality [of arbitration] are finally decided” (H.-L. Yu, L. Shore, *Independence, Impartiality, and Immunity of Arbitrators: US and English Perspectives*, “The International and Comparative Law Quarterly” 2003, 4, p. 942).

¹⁶ The lack of substantive preparation of jurors for adjudication obviously implies numerous problems. See, e.g.: J. Koehler, *Train Our Jurors*, [in:] G. Gigerenzer, C. Engel (eds.), *Heuristics and the Law*, Cambridge 2006, pp. 303–325.

¹⁷ A. Baldini, *Beauty and the Behest...*, p. 94.

¹⁸ *Ibidem*, p. 95.

and their adjudication is at best loosely analogous to the judgments made by judges because there are no laws in the aesthetic field in the proper sense. Aesthetic norms, on the basis of which “individuals appreciating art (...) form judgments,” precisely in contrast to legal norms, are not “well-defined” or “complete, definitive and general.”¹⁹ It is the difference in the criteria for making judgments that primarily determines the difference between aesthetic judgments and legal judgments.

Referring to this view of the matter, it should be said that the situation does not look so good in the legal sphere and so bad in the aesthetic field. Namely, in relation to a particular legal judgment, there are well-defined sources of law and not legal norms that are reconstructed from the sources by means of rules of legal interpretation; and the rules of legal interpretation themselves remain general indications with intersecting scopes of application. To visualize this, let us first use the examples from Article 439.4. of the Polish Code of Criminal Procedure and from Article 73 of the Constitution of the Republic of Poland. The first provision states that “[t]he judgment is reversed or changed if it is found that a penalty is egregiously disproportionate,” while the second has the form “[t]he freedom of artistic creation shall be ensured to everyone.” However, no one will consider these formulations as “complete” and “definitive” norms. In order to “extract” complete and definitive norms from these provisions, they must be subjected to legal interpretation. In turn, with regard to the properties of such interpretation, let us use the norm with which A. Baldini illustrates the completeness, definiteness and generality of laws in the proper sense, namely the norm of “no writing on the wall.”²⁰ Thus, one may ask whether, under the “no writing on the wall” legal norm, is the door of a building a “wall”? The semantics of the word *wall* would seem to preclude a positive answer; pragmatic reasons, in turn, suggest that a negative answer is not correct. As for aesthetic norms, let us simply note that the vast majority of the audience will judge Michelangelo’s *Pietà* to be beautiful and anyone with a slight understanding of art will define Verdi’s *Traviata* as an opera. Thus, there is a certain, easily cognitively accessible and uncontested set of aesthetic canons (norms).

In making the above disclaimer, I do not intend to imply that legal norms and aesthetic norms are not different. I am merely pointing out that the difference in the degree of completeness, definiteness and generality of these two types of norms is not essential to serve as a criterion for distinguishing between legal and aesthetic judgments. Completeness, definiteness and generality, insofar as these properties can be attributed to legal norms at all, are a consequence of the fact that any such norm meets the threshold of systemic validity of law; a norm is, after all, a legal

¹⁹ Ibidem.

²⁰ Ibidem.

norm insofar as it is part of the legal system.²¹ Aesthetic norms, on the other hand, are not systemically valid (and thus are not perceived as complete, definitive and general).

The systemic validity of a legal norm boils down to the fulfillment of a number of conditions by the norm and by its source; and although the various legal systems differ more or less on the conditions of validity (on the rules defining these conditions, respectively), they always contain requirements whose consequence is the transparency and accessibility of the source of the norm to its subjects. The set of such conditions includes such requirements as:

- a) promulgation of the source;
- b) formulation of the source by means of the language used by the addressees;
- c) construction of the source from unambiguous and unambiguous statements;
- d) establishment of the source by means of a transparent procedure;
- e) absence of abrogation of the source;
- f) reconstruction of the norm primarily according to the linguistic rules of legal interpretation.

Thus, if a legal norm meets the requirements of systemic validity, then the source of its reconstruction is transparent and publicly accessible. Moreover, the expressions that construct the norm itself remain for the most part the same as the text of the source; and it is these circumstances that make the legal norm appear complete, definitive, and general. For its addressee (or the authority applying it) always has, unlike the addressee (or user) of an aesthetic norm, a specific, easily accessible and *prima facie* clear point of reference for the norm itself and for the judgment based on it. So, returning to the above case, Judge Maria has as a reference point for her work, which will culminate in a legal judgment in the form of "John violated the law" or in the form of "John did not violate the law," a source that is easy to find and reconstruct from it the correct (for that judgment) legal norm: the text of Article 256 § 2 and 3 of the Penal Code. In turn, it is easy for Maria to find and decode this source because it meets the requirements of systemic validity; in particular, this is due to the fact that the Penal Code was constructed in the language through which Maria adjudicated, and then published in the relevant and widely available official journal.

²¹ W. Waluchow, *Four Concepts of Validity: Reflections on Inclusive and Exclusive Positivism*, [in:] M. Adler, K.E. Himma (eds.), *The Rule of Recognition and the U.S. Constitution*, New York 2009, pp. 138–141; J. Raz, *Legal Validity*, "Archives for Philosophy of Law and Social Philosophy" 1977, 3, pp. 343–346; A. Grabowski, *Prawnicze pojęcie obowiązywania prawa stanowionego. Krytyka niepozytywistycznej koncepcji prawa*, Kraków 2009, pp. 288–332.

Subversiveness, Violating Laws, and Illegality

The legal judgment performs a crucial function in the street art theory in question. With the help of legal judgment, we adjudicate such predicates as 'illegal,' 'unauthorized,' 'violating the law' to particular actions and their outcomes.²² In turn, "violating the law is (...) a 'prototypical and paradigmatic' feature of street art, grounding its subversiveness." Thus, what will be classified as violating the law is a good candidate for being subversive; and "x is a work of street art = x is subversive..."²³ Moreover, as Judge Maria's case suggests, in some situations, the content of the aesthetic judgment determines the content of the legal judgment.²⁴

With the indicated dependencies in mind, let us complete the above case. Suppose that Judge Maria ruled: "John, by painting a swastika on the door of the building, did not violate the prohibition of Article 256 § 2 and 3 of the Criminal Code." This is because Maria, as an empowered authority, found that this behavior was an artistic activity. The question then arises: Does the judge Maria's legal judgment (and the aesthetic judgment that preceded it) preclude John's work from qualifying as street art, due to the lack of subversiveness of the work? In other words (and limiting the scope of the issue), does a violation of a legal norm constitute a *condicio sine qua non* of subversiveness of a work of street art?

To address the above problem, the concept of subversiveness needs to be put forward. Thus, in the presented view, subversiveness "is a capacity to challenge the distribution of the sensible, primarily the corporate regime."²⁵ More precisely, subversiveness is two-level.²⁶ It already occurs when a work "carr[ies] an explicit message of political protest," meaning that it constitutes "a tool of protest against governments, institutions, policies, and behaviours that are deemed unjust."²⁷ In contrast, a "subversive value in a deeper sense" refers to challenging or questioning

²² A. Baldini, *Beauty and the Behest...*, p. 95.

²³ Idem, *What Is Street Art...*, p. 3.

²⁴ The law whose violation is supposed to constitute the "prototypical and paradigmatic feature of street art, grounding its subversiveness" is legal norms, i.e., "laws in a proper sense" (A. Baldini, *Beauty and the Behest...*, p. 94). Thus, laws in a proper sense are an instrument (criterion) for the formulation of (some) judgments about street art; and as such, laws in a proper sense seem to enter the domain of aesthetics. Nevertheless, among the theses of the presented theory is also the following: "[I]n the aesthetic domain (...) we cannot find laws in a proper sense." This claim suggests the incoherence of the theory presented. We should, however, emphasize that this incoherence is to some extent abolished if, as suggested in the previous section of the inquiry, the difference between legal norms and aesthetic norms is not sharp. Moreover, the inconsistency in question is also discharged if the subversiveness of the street artwork does not necessarily consist in a violation of the law in the proper sense; and this theme is explored in the present section of the article.

²⁵ A. Baldini, *What Is Street Art...*, p. 6.

²⁶ Idem, *Street Art: A Reply...*, p. 188.

²⁷ Idem, *What Is Street Art...*, p. 3.

“the distribution of the sensible.”²⁸ In turn, each distribution of the sensible involves social norms that determine “what can be visible in the public spaces of a given society.”²⁹ Thus, the distribution of the sensible consists of norms, by which “groups distinguish between those peculiar forms of expression and contents that are and those that are not acceptable for public display.”³⁰

Three comments are now worth noting. First of all, such norms currently and “primarily (though not necessarily)”³¹ grant “a monopoly over uses of perceivable urban surfaces to commercial communication.”³² In consequence, they transform urban public space into either a sphere of advertising or a commodity reserved for the one who pays the price.³³ In this, so to speak, economically-oppressive function, the norms that construct the distribution of the sensible become a “corporate regime.”³⁴ The second comment is as follows: a particular distribution of the sensible can be made up of norms different in nature; they may be “positive laws, habits, customs, and so on.”³⁵ Nevertheless, and this is the third point, since subversiveness is oriented towards challenging or questioning the distribution of the sensible, subversiveness concerns “hijacking” the space and creating “a temporary free zone where accepted rules do not apply.”³⁶

Subversiveness, therefore, boils down to organizing a sphere free of any social norms that construct the distribution of the sensible (or on liberation from such norms). In turn, one can think of a situation where in a given place and time the set of social rules questioned due to artwork *x* will not include legal norms. Moreover, one can also imagine a situation where a given distribution of the sensible will include “positive laws, habits, customs, and so on,” and *x* will interfere only with its components that are not legal norms. Each of these possibilities, in light of the above characterization of subversiveness, justifies the following conclusion: *x* is subversive if 1) *x* violates a legal norm of distribution of the sensible; 2) *x* does not violate a legal norm of distribution of the sensible, but *x* violates another norm belonging to this set; 3) *x* does not violate any norm of distribution of the sensible,

²⁸ The concept of *distribution of the sensible* comes from the work by Jacques Rancière. However, J. Baldini gives it a different meaning. See A. Baldini, *Quand les murs...*, pp. 4–5; J. Rancière, *The Politics of Aesthetics: The Distribution of the Sensible*, trans. G. Lockhill, London 2004.

²⁹ A. Baldini, *What Is Street Art...*, p. 5.

³⁰ *Ibidem*.

³¹ *Ibidem*, pp. 6, 10–11.

³² *Ibidem*, p. 5.

³³ The concept of the relationship between advertising and urban public space, to which the presented street art theory alludes, was formulated [in:] K. Iveson, *Branded cities: Outdoor advertising, urban governance, and the outdoor media landscape*, “Antipode” 2012, 44, pp. 151–174.

³⁴ A. Baldini, *Quand les murs...*, p. 5.

³⁵ *Idem*, *What Is Street Art...*, pp. 5–7.

³⁶ *Ibidem*, p. 14; *idem*, *Street Art: A Reply...*, pp. 188–189.

but x carries a clear message of political protest. A preliminary answer to the question of the relationship between violating a legal norm and subversiveness of a work of street art is therefore the following: violating a legal norm does not constitute a *conditio sine qua non* of subversiveness of a work of street art.

This answer generates problems whose solutions are not explicitly predicted by the theory of A. Baldini. Let us then note that there are different distributions of the sensible.³⁷ What is more, it seems that every “visible urban surface” has its catalog of social norms (positive laws, habits, customs, etc.)³⁸; and it can be assumed that almost every such catalog is made up of at least some legal norms and other social norms, as well as that the scopes of application of at least some of its elements intersect. In this context, one may ask whether x is subversive if x violates a legal norm of a given distribution of the sensible, but at the same time x implements another norm of that very distribution of the sensible, or x realizes a political protest (which is indifferent according to the norms of that distribution of the sensible)?

The above question assumes that what justifies x can be: (a) a social norm other than the law or a political protest, or (b) a legal norm. If it goes to variant (a), i.e., the situation that x violates a certain legal norm of the distribution of the sensible, but x also implements a norm other than the law of that very distribution of the sensible or x realizes a political protest, then it seems that x is subversive. The expression *it seems* is used here because the presented street art theory does not contain direct information in this regard. Nevertheless, it is precisely the thesis that “violating the law is (...) a ‘prototypical and paradigmatic’ feature of street art, grounding its subversiveness” that can be interpreted to justify the solution adopted. The word *grounding*, which builds this thesis, will then mean ‘not necessary, but determining and prevailing.’ In turn, this meaning is acceptable based on everyday language.³⁹

Thereby, the preliminary answer to the question “Does the violation of a legal norm constitute a *conditio sine qua non* of subversiveness of a work of street art?” requires the following addition: violating a legal norm does not constitute a necessary component of the subversiveness of x (as a work of street art). However, when x violates the legal norm of the distribution of the sensible, then x is subversive even if x implements a norm other than the law of that very distribution of the sensible, or x realizes a political protest. This is because the violation of a legal norm by x grounds its subversiveness, prevailing over the consequences for x derived from social norms other than the law or from the fact that x is an explicit vehicle for

³⁷ Idem, *What Is Street Art...*, pp. 10–11.

³⁸ Idem, *Beauty and the Behest...*, p. 97; idem, *Street Art: A Reply...*, pp. 188–189.

³⁹ *The Oxford English Dictionary*. Vol. 6, prep. J.A. Simpson, E. S. C. Weiner, Oxford–New York, p. 884.

political protest; as such, the violation of a legal norm funds or establishes the existence of the subversiveness of x .

Let us now consider option (b). Namely, is x subversive if x violates one legal norm of the distribution of the sensible, but x implements another legal norm of that very distribution of the sensible. This problem is more difficult to solve. The theory formulated by A. Baldini does not contain assertions regarding contradictions (incompatibilities) occurring between legal norms belonging to the same distribution of the sensible. Moreover, the expressions *violating laws*, *violating the law*, *violating (...) norm* and *illegality* that build this theory are not defined in it; and the way A. Baldini uses these expressions does not allow a better definition of their meanings beyond the conclusion that they are treated as synonyms.⁴⁰

However, a violation of a particular legal norm (particular law) by x does not always make x illegal. The expressions *violation of a legal norm* and *illegality* do not mean exactly the same situations; and jurisprudence has developed several instruments to ensure that illegality does not occur when a legal norm is violated. In short, a violation of legal norm n_1 is not illegal when it is justified by legal norm n_2 , which prevails in a given situation. This prevalence, in turn, may result in particular from the fact that (a) n_2 has a higher binding force than n_1 , (b) n_2 was established later than n_1 , (c) n_2 is *lex specialis* with respect to n_1 , or (d) n_2 is more lenient than n_1 .⁴¹ What is important here is that the result of such relations between n_1 and n_2 is that violation n_1 (as not illegal due to n_2) does not entail legal liability. Illegality, on the other hand, occurs when the violation of a given legal norm is not justified by any other legal norm. As such, illegality is a precondition for legal liability.

If the expressions *violating the law* and *illegality* are not defined in the presented theory, the above distinction can be adopted for its purposes. In turn, since, based on this theory, the expressions *violating the law* and *illegality* are synonymous, it is necessary to opt for one of the two meanings indicated as the universal meaning for both expressions. This choice is facilitated by the statements of street artists cited by A. Baldini to explicate the concept of subversiveness. Namely, “[i]n an interview, internationally acclaimed graffiti writer Fra32 told me that ‘graffiti is a practice of resistance: for this reason is illegal. (...) If graffiti were accepted, I wouldn’t do it.’”⁴²; “UTAH and ETHER, a legendary couple of graffiti writers, say: (...) ‘With

⁴⁰ A. Baldini, *Beauty and the Behest...*, pp. 38, 10, 21, 33, 37; idem, *What Is Street Art...*, pp. 8, 12.

⁴¹ See, e.g.: R. Guastini, *Lex superior: Pour une théorie des hiérarchies normatives*, “Revus” 2013, 21, pp. 47–55; L. Renck, *Zum Anwendungsbereich des Satzes „lex posterior derogat legi priori”*, “JuristenZeitung” 1970, 23–24, pp. 770–771; D. Martinez-Zorrilla, *The Structure of Conflicts of Fundamental Legal Rights*, “Law and Philosophy” 2011, 6, pp. 730–732; E. Hancox, *Judicial Approaches to Norm Overlaps in EU Law: A Case Study on the Free Movement of Workers*, “Common Market Law Review” 2021, 4, pp. 1057–1096.

⁴² Idem, *Beauty and the Behest...*, p. 98.

our art, we hope to create a dialogue with our audience and to challenge (...) the blurred lines of what constitutes as legal and illegal."⁴³

One can now venture the following statement: under the theory in question, the subversiveness of x as a street artwork is not so much about the mere violation of a particular legal norm (particular law) by x , but about the illegality of x . In other words, *violating the law* and *illegality* mean a situation in which the existence and content of x are no longer justified by any legal norm. If x is to challenge the blurred boundary between what is legal and what is illegal, and be a practice of resistance, then x violating legal norm n_1 cannot be justified by legal norm n_2 ; for then resistance is already only illusory, and the boundary between what is legal and what is illegal remains complicated. Thus, x ceases to be subversive if, while remaining in conflict with one legal norm, it fulfills another legal norm.

The question can still be asked: why is resistance through x not illusory when violating the legal norm of the distribution of the sensible by x is justified by a norm other than the law belonging to the same distribution of the sensible, or by the fact that x is a vehicle for political protest? Here, the answer will be that violating a legal norm (as the one stating that x is illegal) is "a 'prototypical and paradigmatic' feature of street art, grounding its subversiveness." As such, the violation of a legal norm determines and prevails over the consequences of non-legal norms belonging to the same distribution of the sensible, as well as over the consequences of the fact of expressing political protest; and this is the solution that corresponds to everyday experience. People usually recognize that if x is illegal, then the question of correlations of x with other-than-legal social norms or political protest is irrelevant to the legal responsibility for x . The correlations of x with social norms other than the law do not weaken resistance and the subversiveness of illegal x caused by it.

Conclusion

Andrea Baldini introduces a criterion for street art that is open to discussion and corresponds to everyday life intuitions: the subversiveness of the work. For this reason, the theory of street art he constructs is a contribution from the field of philosophy of art. The author, moreover, connects the subversiveness with violating a legal norm (violation of the law is conceived here as a prototypical and paradigmatic feature of street art, grounding its subversiveness) and with the concept of a legal judgment (it is an instrument for establishing the violation of a legal norm). These circumstances place the presented theory in the area of interest to jurispru-

⁴³ Ibidem.

dence, particularly legal aesthetics. From this perspective, the theory deserves criticism. Andrea Baldini does not apply a sharp and precise delineation of legal and aesthetic judgments. He also does not equip the constructed criterion of street art with solutions for the collision between the norms relevant to determining subversiveness; and it is precisely the supplementation of these deficiencies, remaining in accordance with the state of legal science, that has been proposed in the above paragraphs.

It is not that legal judgments differ from aesthetic judgments in that the former (unlike the latter) must necessarily have officially specialized professionals as perpetrators; a judge's professionalism does not necessarily determine the uniqueness of his adjudication. Indeed, it happens that effective legal judgments are issued by laymen in the legal craft. In turn, the activity of a legal judge in a particular case may require the making of aesthetic judgments (that are no different from those coming from "true aesthetic experts"). Moreover, objections are raised to the thesis that legal judgments differ from aesthetic judgments in that only the former have "complete, definitive and general" norms as criteria. Rather, it is that legal norms appear more or less complete, definitive and general; and this is caused by the peculiar manner in which they exist in society. We are inclined to attribute these qualities to legal norms because each such norm exists systemically; and it is in the systemic validity that the difference between legal norms and aesthetic norms rests, determining the difference between legal and aesthetic judgments.

The very concept of subversiveness contains a gap. According to the theory of A. Baldini, subversiveness is related to the distribution of the sensible. This is because any distribution of the sensible consists of a set of "positive laws, habits, customs, and so on"; and a violation by a work of art of a norm belonging to the distribution of the sensible makes the work subversive. The point, however, is that in the outlined theory there are no claims as to whether a work of art is subversive when it violates one legal norm of the distribution of the sensible, but at the same time realizes another norm of that very distribution of the sensible (or is a vehicle for political protest). Nevertheless, thanks to the achievements of jurisprudence, it is possible to bridge this gap. Namely, if we refer to the concepts developed for resolving conflicts between legal norms, and if we distinguish between violating the law and illegality, it becomes possible to supplement the presented theory with the following elements (conclusions): violation by a work of a legal norm belonging to the distribution of the sensible does not determine the subversive value of this work, when such violation is justified by another legal norm also belonging to this set. However, if a work violates a legal norm belonging to the distribution of the sensible and at the same time is not justified by another legal norm from this set (i.e., it is illegal), it remains subversive regardless of its relationship to other social norms and regar-

dless of whether it is an expression of political protest (and is, in effect, a work of street art).

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