„HUMAN RIGHTS IN THE FACE OF SOCIAL REALITIES”

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Review “Human Rights in the Face of Social Realities”

The book ‘Human Rights in the Face of Social Realities’ offers a varied overview of topics of great topicality and relevance to contemporary society. Each article presents an in-depth look at crucial issues, approached from different but complementary disciplinary perspectives. This collection of writings stands out for its ability to range between law, economics, neuroethics, pedagogy and social issues, highlighting how these areas are closely interconnected in the modern world.

Anna Kanarek-Równicka’s article, in particular, deals precisely with the importance of economic information in business transactions. Here, knowledge of the payment capabilities of contracting parties can protect entrepreneurs from the risks of default: however, a public system is needed to guarantee access to such data. This analysis is particularly relevant in the age of digitalisation, where transparency and reliability are the basis of global trade relations.

In parallel, Katarzyna Chałubińska-Jentkiewicz’s article explores an extremely sensitive and topical issue: the balance between security and freedom in the digital age, in the light of the European Union’s new Digital Services Act. The debate on how to protect users without compromising their fundamental rights, such as freedom of expression, is well articulated and is part of a broader reflection on how digital regulations can influence modern democracies. Thus, the need to balance security and freedom while ensuring the protection of network users and their fundamental rights emerges. Transparency, judicial control and protection mechanisms against possible abuses are key elements to ensure that domain blocking is applied in a proportionate and democratic manner.

The contribution by Iwona Florek and Susran Erkan Eroglu also brings an original and innovative reflection, addressing the impact of neurotechnologies on human rights. The concept of ‘cognitive freedom’, along with privacy and mental integrity, raises fundamental questions about the autonomy of the individual in the face of scientific advances. The article not only outlines the problematic contours, but proposes the expansion of the legal framework to include new neurospecific rights, making clear the urgency of adapting legal systems to emerging technological challenges. The contribution is particularly valuable in exploring the ethical and legal implications of cognitive enhancement, raising questions on how to integrate these new rights within existing legal and social frameworks. The article stands out for its rigorous and well-documented approach, drawing on current literature to support its arguments.

Another interesting contribution is Iwona Klonowska’s original review of the role of the police. The author proposes a new pedagogical approach, in which the Police is not only a reactive, but also an educational and preventive institution within local communities. This innovative vision makes it possible to concretely translate the proposed model in difficult contexts, such as areas of high social tension. The central objective is to introduce a new

pedagogical framework for the police, which can serve as a strategy to promote security and cultivate desirable social behaviour. In this view, a progressive and promising vision for the future of policing is appreciated, through a pathway that combines prevention, education and community collaboration. This new pedagogical model could represent a significant shift in the way the police interact with communities, promoting not only security but also a culture of mutual respect and cooperation.

Moving on to a different topic, Jacek Sobczak's article offers a solid examination of children's rights, with a focus on parental abduction cases. The normative analysis is well documented and characterised by originality and methodological rigour. The balance between the protection of children's rights and respect for cultural traditions, especially in the context of international migration, is interesting. The author offers a detailed and well-documented overview of international regulations and children's rights, combining a sound legal basis with an analysis of contemporary social issues, such as the dissolution of migrant families.

Also noteworthy is the article by Monika Kotowska, who addresses the topic of organised crime as a threat to democratic institutions. The topic is particularly relevant and the treatment is characterised by methodological rigour. Although the topic is widely covered, the way in which the activities of organised crime undermine democratic principles and political institutions is specifically explored. The structure of the article is clear and the objective is stated from the outset: to present the threats that organised crime poses to democracy. In this view, the control exercised by criminal organisations over certain sectors of the economy and politics can lead to an erosion of the power of public institutions, resulting in a weakening of public trust in democracies.

Aleksandra Lukasek and Wioletta Zalewska in their article explore the use of art therapy for children with autism spectrum disorders, a form of therapy that is gaining increasing popularity as a supportive method to improve the functioning of people with autism. Through the use of the individual case method, the effectiveness of art therapy and related therapeutic techniques is explored, offering an interesting and promising framework for this approach. The article is notable for its emphasis on creativity as a therapeutic tool.

Magdalena Sitek's article explores the multifunctional role of media, with a particular focus on their educational and training function, especially for children. While recognising the importance of the informational role, it highlights how media have a fundamental impact in the process of education and transmission of values, helping to shape the way young people understand the world and interact with society. However, the growing link between media, politics and economics raises critical questions about media freedom and its instrumentalisation by political or economic interests.

Monika Nowikowska's article offers an interesting reflection on the importance of digital identity in promoting sustainable economic development. The author warns against risks related to privacy and identity theft, crucial issues in an increasingly digitised world. One of the most significant aspects is the reflection on the benefits and challenges associated with the use of digital identity. These issues are crucial to ensure that the implementation of digital identity not only promotes economic development, but does so in a way that respects the rights and dignity of individuals.

Ryszard Pankiewicz's article examines a patient's right to receive information about their state of health in the Polish legal system, focusing on a sensitive issue: the limitation of this right in exceptional situations, particularly when the prognosis is unfavourable.

The analysis conducted is detailed and provides a clear overview of the legal provisions governing this matter. A particularly interesting aspect is the reflection on the physician's autonomy in deciding not only what information to provide, but also in what form and in what detail. The delicacy of this responsibility, which must take into account both ethical obligations and the patient's clinical situation, is emphasised.

Rosa Indellicato's article addresses a central and always topical issue: the need to protect and promote human rights, emphasising the urgency of an ethical and educational commitment to ensure the respect and dissemination of these fundamental values. Despite progress, these rights continue to be systematically violated in various parts of the world. This finding reinforces the importance of education that not only conveys the universal, indivisible and interdependent value of human rights, but also helps to develop a culture of respect and social justice. One of the most relevant aspects of the article is the focus on the historical figure of Olympe de Gouges, a pioneer in the struggle for women's rights and social equality in the 18th century. Her relevance to contemporary human rights education is well argued, as the battles de Gouges led, particularly for social justice and the recognition of women's rights, remain highly topical issues. The reference to this historical figure helps underline the need for an educational approach that not only values human rights in the abstract, but also addresses specific issues of gender equity and social justice in practice.

Dariusz Sarzała's article examines the concept of sustainable development as a balance between economic growth, social development and protection of the natural environment, with the aim of highlighting the role pedagogy can play in its implementation. Through the analysis of specialised literature and international regulations, the author explores how pedagogy, as an educational science, can significantly contribute to achieving the goals of sustainable development. One of the merits of the article is its emphasis on the educational potential of pedagogy to promote ecological awareness and more responsible behaviour towards the environment.

Anna Szyszka's article addresses the application of the principle of proportionality by administrative authorities in proceedings aimed at imposing fines. It is emphasised that the principle of proportionality is a fundamental guideline for the actions of public administrations and a pillar of conduct in a democratic rule of law. The in-depth study of the legislation and regulations governing the principle of proportionality in the administrative context demonstrates a sound knowledge of the subject and clarifies its importance in maintaining a balance between public order and the rights of the individuals involved.

In conclusion, the volume is a valuable resource for anyone wishing to explore in depth contemporary challenges related to rights, security, technology and social development. Each article brings a contribution of high scientific value, which is appreciated for its originality and methodological rigour, and could be the starting point for further in-depth studies and future research.

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The role of information in the entrepreneur's business activity

INTRODUCTION

Economic activity based on constitutional economic freedom is a convenient form of earning money for society. An entrepreneur, as a rule, may organize the work of his business at his own discretion, which is permitted by the Polish Constitution. However, this freedom is not absolute. It cannot limit the rights and freedom of other people, including, above all, other business entities. However, many of them, disregarding the rights of entrepreneurs, only care about their own interests. This standard of conduct may expose other entrepreneurs to material damage and may even affect their current solvency. As a rule, however, an entrepreneur should be guided not only by his own interests, but by the interests of the company he runs, taking into account the interests of other entrepreneurs. Such behavior can be ensured by caring for the market in which they conduct business and the trust of their contractors. The high percentage of these unreliable entities causes entrepreneurs to look for new ways to secure the performance of the contract, which may cause dissatisfaction of their reliable partners.

Entrepreneurs also point out the lack of knowledge about the situation of their contractor. There are also many cases where entrepreneurs, trying to recover payable receivables, discover that the debtor had problems with timely payment already at the stage of concluding the contract. Lack of awareness in this respect resulted in concluding an agreement with the debtor by the creditor using the principle of full trust, while the other entity knew that it would not be able to fulfill the agreement on time. If the creditor had known the contractor's ability to pay at the stage of concluding the contract, he would not have agreed to the conditions adopted therein. The high percentage of unreliable contractors made information extremely important in running a business. Lack of information or mismanagement of it may cause financial problems for an entrepreneur. Lack of payment for goods or services may have irreversible consequences for the entrepreneur, as it may even lead to his current insolvency. This position is confirmed by statistical data from the Central Statistical Office, showing increasingly higher rates of short-term liabilities[1].

It is worth considering the issue of information regarding the property and financial situation of the contractor in business transactions, both from the point of view of the interests of the creditor and the debtor himself. The subject of this study is to show the availability of information

[1] *Mały rocznik statystyczny Polski 2024,* Główny Urząd Statystyczny, Warszawa 2024, p. 330, https://stat.gov.pl/obszary-tematyczne/roczniki-statystyczne/roczniki-statystyczne/maly-rocznik-statystyczny-polski-2024,1,26.html [access: 19.07.2024]

in commercial transactions. The purpose of the arguments is to make an assessment whether it is possible to obtain full information about the contractor's payment situation at the stage of concluding the contract and whether the obtained knowledge can provide the entrepreneur with effective protection of his business against failure to fulfill the payment obligation of the other party to the contract. The thesis of the article is based on the claim that available sources of obtaining knowledge about the contractor's financial situation remain ineffective if the contractor is not willing to fulfill the provisions of the contract.

When attempting to verify the validity of the thesis, first of all, the scope and source of obtaining objective information about the contractor should be presented. Then, the issue of the usefulness of the information obtained in business transactions will be discussed. The entrepreneur's knowledge about the contractor's payment capabilities acquired before concluding the contract will allow drawing conclusions that will be articulated in the final part of the study.

Information about payment capacity in business transactions

The concept of information has a wide meaning and various origins. This term should be understood as notification about something, communication of something, message or instruction[2]. Information features such as credibility, timeliness, accuracy, completeness, usefulness, understandability, completeness, consistency and comparability determine its value[3], which is important for a specific recipient. Therefore, appropriate information characteristics should be taken into account in the process of creating, collecting and processing information for a specific purpose[4]. Having the expected information is the basis for tactical and strategic decisions made as part of the entrepreneur's business activity.

Market information plays an important role in an entrepreneur's activity. It allows to manage effectively the business and strengthens company's position[5]. Genowefa Sobczyk defines market information as "a special type of information of an economic and managerial nature, used to analyze and assess the current and prospective situation on the market, including the behavior of its participants"[6]. It also treats market information as a carrier of economic knowledge about the market and the enterprise[7]. The source of information may be the entrepreneur's own experience and observations, contacts with suppliers and customers, and his own records and reports[8]. The Internet is of great importance in obtaining market knowledge, as it provides a fast, efficient and convenient way to search for scattered information from rich data resources without high costs of obtaining it[9]. The most valuable information for an entrepreneur is that which will allow him to secure the execution of the concluded contract.

When making market decisions, an entrepreneur should recognize the financial situation of his

[2] *Słownik języka polskiego* pod red. W. Doroszewskiego, Warszawa 1958-1969, https://sjp.pwn.pl/doroszewski/informacja;5434715.html [access: 17.07.2024]

[3] See: B. Sojkin, *Informacyjne podstawy decyzji marketingowych,* Warszawa 2009, p. 15; R. Pieczykolan, *Informacja marketingowa,* Warszawa 2005, p. 24

[4] See: G. Sobczyk, *Rola i źródła informacji rynkowych w działalności przedsiębiorstw – wyniki badania,* Annales Universitatis Mariae Curie-Skłodowska Lublin. Sectio H (Oeconomia), Vol. L, No 3 (2016), p. 174

[5] See: Ibidem

[6] See: Ibidem, p. 175

[7] See: Ibidem

[8] See: Ibidem, p. 179

[9] See: Ibidem

contractor. The sale of goods or services with deferred payment requires a thorough examination of the contractor's financial situation, which may even significantly reduce commercial risk and, above all, ensure an appropriate level of security of timely payment for the delivered goods or services. Entrepreneurs, as a rule, do not publicly disclose information regarding their debts for deliveries and services or other liabilities. The nature of payment information does not allow the entrepreneur to rely on public sources of information verification, the method of obtaining which cannot be objectively verified. Moreover, the entrepreneur, focusing on current business activities, does not have time or possibilities to search for information about the contractor in a vague public space. He has specific information needs that require reliable and objective data, on which cooperation with the contractor depends. All the more so because determining the level of financial liquidity as the entity's ability to timely meet its due obligations is a significant problem for entrepreneurs[10].

The entrepreneur may verify the contractor in publicly available business registers, i.e. the Central Registration and Information on Economic Activity and the National Court Register, but these registers only cover entrepreneurs and do not contain data on the contractor's payment capacity. Knowledge about disclosed bankruptcy, restructuring, banning and enforcement proceedings can be obtained from the public National Register of Debtors[11], but the scope of data disclosed in this register does not give the entrepreneur a complete picture of the financial condition of his contractor[12].

Access to information on the contractor's payment capacity is provided to a wider extent by the economic information exchange system, operating on the basis of the Act of 9 April 2010 on the provision of economic information and the exchange of economic data[13]. The Act distinguished the concepts of economic information, which included exhaustively the elements specified in Article 2 of the Act 1 constituting the subject scope of information, considering the characteristics of the monetary obligation and data regarding the use of a counterfeit or someone else's document. The principles of disclosing economic information regarding the contractor's payment credibility were also specified and the right to disclose this information was granted to the exclusive competence of the economic information office (hereinafter referred to as the office).

Sharing economic information involves the office disclosing to third parties information that was provided to it by the creditor (Article 2(2)(6) and Article 1(2) of the Act). This entity may submit economic information to the office for disclosure, as a rule, if it has concluded an agreement with the office on the disclosure of economic information (Article 12(1) of the Act)[14] and has met all the conditions regarding the debt itself, as to its basis, amount debt, the period of delay in payment, as well as the obligation of the creditor himself, which are specified in Article 15 of Act 1 or in Article 14 of Act 1 in the case of a debtor who is a consumer, or in

[10] See: D. Lahutta, *Zapotrzebowanie na informację finansową i jej rola w zarządzaniu mikro i małym przedsiębiorstwem,* Studia Ekonomiczne. Zeszyty Naukowe Uniwersytetu Ekonomicznego w Katowicach, Nr 357 (2018), Zarządzanie 15, p. 71

[11] Act from December 6, 2018 on the National Register of Debtors, Journal of Laws of 2021, item 1909

[12] See more: A. Ćwiąkała-Małys, I. Piotrowska, *Rola publicznych rejestrów jawnoźródłowych w procesie weryfikacji kontrahenta a zachowanie należytej staranności,* Przegląd Ustawodawstwa Gospodarczego t. LXXVI, nr 8/2023 (902), p. 22

[13] Act from 2023. Item 2160

[14] The obligation to conclude an agreement on the provision of economic information with the office does not apply to creditors specified in Article 12 of the Act on the Provision of Economic Information and the Exchange of Economic Data.

Article 16 of the Act 1. in the case of other obligations of the debtor. It should be emphasized that the provisions of the Act do not, in principle, apply to sharing of the data from publicly available registers or files (Article 1(3) of the Act), which burdens the entrepreneur with the obligation to verify the contractor's data also in other public registers. Moreover, if the information provided by the creditor does not meet the conditions specified in the Act or exceeds the scope of information defined in Article 2 of the Act 1, the office will not accept such information into its resources.

The content of economic information provides the entrepreneur with knowledge that allows him to assess the payment credibility of the contractor. It should be emphasized that access to economic information about consumers is only possible for the entity that has concluded an agreement with the office on the disclosure of economic information and at its request. Moreover, this access is additionally limited by the obligation of the creditor to obtain the consumer's authorization to apply to the office for disclosure of this information, valid no longer than 60 days from the date of granting it (Article 24, Act 1). However, regardless of the conditions for obtaining economic information, the entrepreneur has the opportunity to obtain it in an appropriate time.

Assessment of payment credibility in connection with a commercial transaction

Many entrepreneurs, focusing on the development of their business and expanding to a new market, do not notice that certain issues are beginning to be beyond their control[15], especially those related to the fulfillment of the contractor's obligations on time. In such a situation, it is necessary to have knowledge about its financial condition and implement appropriate information and communication tools. Information provided by entities in the entrepreneur's market environment, relevant records and registers regarding the payment capacity of potential contractors will allow the entrepreneur to make the right decisions regarding entering into commercial transactions or undertaking debt collection activities at a later stage. Access to information about payment capacity at the stage of concluding a contract supports the entrepreneur's decision-making process. The information plays a cognitive role and provides the basis for making appropriate decisions, as well as enabling the assessment of the payment credibility of a potential contractor. Current information about the entity at the stage of contract implementation will allow the entrepreneur to take effective legal steps depending on the content of the information, which will support the debt recovery process. Knowledge about the contractor's debts will affect his image in the opinion of entrepreneurs operating on a given market and will protect other economic participants from cooperating with such an entity, which will discipline the debtor to behave in accordance with the principles of business conduct, including timely payment for incurred liabilities, or exclude him from economic turnover.

The demand for information appears not only in large commercial companies, but also in smaller enterprises, especially those run by individuals, regardless of the form of their operation. Small entrepreneurs usually do not use verification procedures and therefore do not practice obtaining information about the payment capacity of their contractors, often concluding contracts only on the basis of experience gained from previous cooperation and

[15] See more: M.K. Wyrwicka, D. Jaźwińska, *Percepcja uwarunkowań rozwoju przedsiębiorstw,* Ekonomia i Zarządzanie nr 2(6)/2014, p. 259-269

without any verification of the recipient. They do not foresee the risk of default of the contract by the contractor, or they are simply not aware of such a risk. They thus take responsibility of high risk, which may even lead to the failure to satisfy their receivables, despite the use of available legal instruments aimed at compulsory enforcement of receivables.

The high percentage of unreliable contractors and the consequences of their actions have made information an important factor for enterprises. An example are manufacturing or service companies that sell the product they produce with deferred payment. Using this payment method is a typical way of payment in business transactions. Statistical data from the Central Statistical Office show that short-term liabilities of enterprises for the supply of goods and services amount to 42.85% of all short-term liabilities[16]. The lack of important information about the financial condition of the contractor or its improper management may be the reason for such a high percentage of liabilities for the supply of goods and services, and even for economic problems of the entrepreneur selling its products. Failure to pay for the delivered goods or services may have irreversible consequences for such an entrepreneur and even lead to his insolvency. Statistical data from the Central Statistical Office do not provide the basis for indicating the reasons for payment arrears in business transactions. However, the amount of liabilities incurred in this respect means that entrepreneurs who obtain economic information in a timely manner and use it properly in each commercial transaction gain a market advantage. This informational pattern of behavior, however, requires the entrepreneur to engage in obtaining information and the so-called listening to the surrounding. A contrario, one of the significant threats to the security of business transactions is the lack of knowledge about the contractor's payment capacity. An entrepreneur, guided by the principle of trust in his contractor, ignores the rules of information security in commercial transactions, which may result in serious property damage.

Economic information therefore plays an increasingly important role in the functioning of business activities, because knowledge about the contractor is an expression of transaction security. It should be emphasized that it may have different origins, e.g. it may come from business partners, from observations of the contractor and its environment, or made available by public administration authorities, and may even come from registers and records. However, it is important that the information is reliable, otherwise it will not provide the entrepreneur with a guarantee of payment. It is also important to maintain the repeatability and continuity of the process of obtaining information and its application, which may support the ongoing assessment of transaction risk. Determining the risk is necessary to ensure payment guarantee.

Entrepreneurs focus their attention on the development of their business and usually do not assume any bad will among the recipients of their products. By focusing their attention on production and finding a market for the manufactured products, they forget about the risk associated with deferred payment, which may result in financial losses. Many contractors also deceive entrepreneurs regarding their good will. The contemporary occurrence of an unfair contractor is not an isolated phenomenon. Court practice shows that debtors take active measures to protect themselves from paying the due and undisputed obligations of their creditors, using various methods, even those devoid of ethical behavior.

The entrepreneur should define standards regarding transaction security and take actions that allow him to protect his own interests as fully as possible. The application of these standards

[16] *Mały rocznik statystyczny Polski 2024,* Główny Urząd Statystyczny, Warszawa 2024, p. 330, https://stat.gov.pl/obszary-tematyczne/roczniki-statystyczne/roczniki-statystyczne/maly-rocznik-statystyczny-polski-2024,1,26.html [access: 19.07.2024]

constitutes the entrepreneur's involvement in monitoring the implementation of the contract. These activities are sometimes hardly visible to the contractor. The key to involvement in the transaction monitoring and protection process is to show the counterparty the potential consequences in case of failure to pay on time for the goods or services received[17]. Entrepreneurs may apply restrictions on the wide use of deferred payments. This usually happens with negative experiences. Entrepreneurs wanting to maintain business relations also prefer to offer a lower price or their own transport for cash or prepayment. However, when providing tools enabling an entrepreneur to ensure transaction security, they must take into account the specificity of his or her business.

Quite often, entrepreneurs associate payment monitoring with the need to conduct unnecessary bureaucracy. However, this assumption remains incorrect. The development of ICT technologies allows us to create appropriate tools and adapt them to the needs of a specific entrepreneur. This could enable a quick and, above all, more efficient response to payment delays. Technological solutions allows to quickly and effectively obtain knowledge about the contractor, which remains extremely important when deciding whether to conclude a contract, although they force the entrepreneur to incur additional costs. Access to economic information is a clear example of the functioning of an instrument forcing the entrepreneur's response. Economic information is made available by the office in electronic form, which is a desirable way of using access to the official list to check the financial condition of the contractor. This is important in terms of reducing the business risk of the conducted business, as it will determine the level of the contractor's ability to meet the most due obligations on time[18]. The economic information collected by the office should provide the entrepreneur with a basis for verifying whether a given contractor has properly fulfilled his obligations. The lack of data in the office on the debt resulting from a contract related to the conduct of business activity (or from contracts relating to consumers) in the amount of at least PLN 500 (or PLN 200 in the case of a debtor who is a consumer) exceeding 30 days[19] gives rise to the assumption that a given contractor is not in arrears in payment for goods or services exceeding 30 days, which allows for a positive assessment of his payment credibility. The entrepreneur will decide on this basis whether the entity guarantees transaction trust or not, which will allow concluding a contract on standard terms.

However, the entrepreneur should be aware that the data available to the office comes from entrepreneurs and only covers liabilities in the amount of at least PLN 500 (or PLN 200 in the case of a debtor who is a consumer), which have not been paid within one month of sending by the creditor by registered mail or hand delivery to the debtor, to the address for service indicated by the debtor, and if he has not indicated such an address, to the address of the debtor's registered office or place of business or to the address of residence of the debtor who is a consumer or to the address for electronic delivery entered in the electronic addresses, requests for payment , containing a warning about the intention to transfer data to the office,

[17] See also: N. Dubey, *Corporate Responsibility, Retaining Top Management Commitment,* ISACA Journal 2013 vol. 2, p. 38; J. Sobczak, *Znaczenie informacji dla bezpieczeństwa przedsiębiorstwa,* Securitologia Nr 2/2014, p. 77

[18] See: W. Janik, A. Paździor, *Zarządzanie finansowe w przedsiębiorstwie,* Lublin 2011, p. 29; T. Jachna, *Ocena przedsiębiorstwa według standardów światowych,* Warszawa 2016, p. 38

[19] Article 14 of Act 1 and 15 of the First Act of April 9, 2010 on the provision of economic information and the exchange of economic data

specifying the company name and address of the office[20]. Economic information does not include information on public law receivables. Nowadays, however, a wide group of debtors are those who have public-law liabilities, i.e. taxes, social security contributions, administrative fees, court fees, and even fines, etc. In such a case, the contractor's creditor may be a public administration body, the Social Insurance Institution or the Agricultural Social Insurance Fund, or a judicial authority. It should be emphasized that tax liabilities benefit from the priority of satisfaction of receivables[21], which in the absence of the debtor's assets allowing the satisfaction of all his obligations may lead to non-payment to the entrepreneur having a private pay obligation. This leads to the conclusion that the system of providing economic information, despite many advantages, does not provide full knowledge of the contractor's financial condition. There are voices in the literature to clarify its functionality and even to create an integrated economic information exchange system, which also takes into account the possibility of transmitting information on public-law receivables. This would increase the level of security of economic transactions in Poland[22].

SUMMARY

Nowadays, the proper functioning of an entrepreneur in economic exchange depends not so much on the quality of the goods or services he produces, but on the failure to maintain adequate financial liquidity[23]. Moreover, the entrepreneur's late response or lack thereof may even lead to the creditor's insolvency. Having information about the contractor's payment liquidity remains an important factor in running a business. Not only does it support the entrepreneur's decision-making processes, but it can also provide him with a competitive advantage on the market.

Access to information showing the contractor's financial capabilities will make the payment system more efficient. It will allow the entrepreneur to determine the terms of the contract or take actions in the right time aimed at forcing the debtor to pay in the event of default. It is common knowledge that in the case of debt collection, the creditor's response time plays an extremely important role. Importantly, access to the contractor's financial capabilities will also affect the contractor's attitude. He will not be able to act freely in business transactions to the detriment of creditors. In order to maintain payment credibility, he will discipline himself to conduct business in accordance with its rules. Otherwise, the company is exposed to a negative opinion on the market, which may ultimately result in its exclusion from economic cycle. The prospect of exclusion from the market may be a sufficient factor to force such an entity to behave appropriately.

To achieve this effect, the entrepreneur must have access to full information about the obligations of his contractor. An entrepreneur's objective knowledge about the contractor can only come from the public register. This value can be fulfilled by a business information office. However, the system for providing economic information should be clarified. Economic

[20] Article 14 of the Act 1 point 3 and Article 15 of the Act 1 point 3 of the Act of April 9, 2010 on the provision of economic information and the exchange of economic data

[21] Article 1025 and Article 1026 of the Act of November 17, 1964, Code of Civil Procedure, Journal of Laws of 2023, item 1550

[22] See more: T. Ostrowski, *Ustawa o udostępnianiu informacji gospodarczych i wymianie danych gospodarczych. Komentarz,* edition 1, Legalis/el. 2012, art. 1

[23] See more: D. Lahutta, *Zapotrzebowanie ...,* op. cit., p. 71

information should include not only private obligations, but also public ones. Thanks to this, the entrepreneur will have access to broader knowledge about the obligations of his contractor, which will allow him to make an effective decision regarding the terms of cooperation with such an entity.

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Internet domain blocking versus AI solutions. Between freedom and security

INTRODUCTION

Examples of applications of so-called artificial intelligence (AI) programmes are numerous and, in many respects, are becoming increasingly worrying. An example of this is the processing of personal data, i.e. information that can be used to distinguish or track an individual's identity (this includes data such as name, national insurance numbers, tax identification numbers and biometric data, linked to other personal or identifying data such as date and place of birth and mother's maiden name). Personal data collected from consumers and end-users of a digital service has become a valuable resource for technology providers focusing on the operation of artificial intelligence. AI technology solutions also include various types of solutions that may indirectly affect human rights and freedoms. This relates in certain situations to freedom of expression on the one hand, on the other hand to information security issues and the fight against so-called illegal content.

Human rights and new technologies

The use of automated data processing solutions always has to do with human activity. It must be emphasised that behind *techne* there is a human being - responsible for its development and activity. However, the required scope of rights and responsibilities strictly related to issues of AI application goes far beyond the contemporary orientations of the normalisation of cyberspace and new technologies, which mistakenly took the position that only regulation from the real world is to be reflected in the regulation of new technologies and the digital world. This way of thinking is changing. In the area of human action that controls AI, we can speak of three key situations that need to be taken into account in the future: regulation relating to the question of responsibility for the actions of AI, regulation relating to the legal status of humans vis-à-vis the actions of AI (but which is, after all, controlled by and under the control of another human being), and regulation relating to the powers of AI itself (e.g. in terms of its creation and thus its intellectual property). AI cannot process those data resources that cannot be processed under any other conditions of human use. AI's responsibility is that of a human being to another human being. After the time of colonisation of cyberspace, comes the time of determining what is the relationship of human beings to the new technologies. In what relationship they should remain. This is not only a matter of ethics but also of law. However, it should be noted that new technologies can also change the scope of personal data as new forms of information are created. For example, fitness monitors create information about individuals that did not previously exist, but which can now be considered personal data. The emergence of artificial intelligence is likely to lead to an environment where all information generated by or related to an individual can be identified. As things stand, determining what is and what is not legally protected under the definition of personal data is unlikely to be technically or legally relevant or particularly helpful as an effective means of protecting the privacy of individuals. There is a need here to turn the focus away from a binary understanding of personal data so that privacy law continues to protect the privacy of individuals' information, including in an artificial intelligence environment.

For example, in the context of determining the status of an individual subject to automated solutions, Article 22 of the RODO introduces the right of an individual, linked to the use of automated solutions, not to be "subject to a decision which is based solely on automated processing, including profiling, and which produces legal effects concerning that person or significantly affects him or her in a similar manner". The right not to be subject to a decision based solely on automated processing is a manifestation of the right to the protection of personal data in a broad sense. It is about preventing problematic situations arising from the automation of data processing where there is a risk to the persons whose data has been used in this way and the decision has affected the legal status of such a person. While the provisions of the Regulation allow for automated processing, they grant additional rights to the data subject in the form of the right to object, the right not to be subject to decisions based solely on profiling, where such decisions produce legal effects on the person or similarly significantly affect the person. Furthermore, such processing includes 'profiling' - which consists of any automated processing of personal data which makes it possible to evaluate personal factors of an individual and, in particular, to analyse or predict aspects relating to the work performance, economic situation, health, personal preferences or interests, reliability or behaviour, location or movements of the data subject - insofar as it produces legal effects in relation to the data subject or similarly significantly affects the data subject.

The EU legislator stressed that decision-making on the basis of such processing should be allowed where it is expressly authorised by Union law or the law of the Member State to which the controller is subject. This applies to the monitoring and prevention of fraud and tax evasion and to ensuring the security and reliability of the services provided by the controller, or where it is necessary for the conclusion or performance of a contract between the data subject and the controller, or where the data subject has given his or her consent. Such processing should be secure and the data subject has the right to be informed about it, as well as about the right to obtain human intervention, the right of one's own opinion or to obtain an explanation of the decision and, above all, the right to contest the decision. Additional requirements are foreseen for the issuing of automated decisions based on a special category of personal data, i.e. so-called sensitive (sensitive) data concerning, for example, health status, sexual orientation, political opinions or religion. Automated solutions may be used for criminal activities, criminal acts, but they are still a means, a tool, for which a person is responsible. With the development of so-called new techniques in practically every area of human life, in particular in medicine and biotechnology, problems arise concerning the ethical and legal regulations related to the rules of modern intelligent computers. Questions about future regulation in this area relate to the responsibility of humans for actions against algorithms, or using algorithms, but also responsibility for actions towards another human being. Generative artificial intelligence systems (including ChatGPT) that use large language

models (LLMs) in creative activities are subject to transparency obligations. Providers must disclose that content has been generated by artificial intelligence and not by humans, prevent the generation of illegal content, and publish information on data usage. The controversy is about allowing authorities to use artificial intelligence systems to identify people to prevent terrorist attacks, among other things.

In various positions of legal theorists, such as U. Pagallo, author of The Law of Robots, it is argued that we should distinguish between the behaviour of robots as tools for human interaction and the behaviour of robots as subjects in the legal sphere. The recognition of an AI-driven computer as an entity responsible for the harm caused seems a matter of time. The legal doctrine of cyber liability will be particularly relevant as life changes with the development of artificial intelligence. The design of artificial intelligence and cyborg technology or techniques will be important in creating a future in which artificial intelligence will loyally and ethically work for humans[24] . Of course, it is always possible for the law to regulate criminal or civil liability for misconduct, wrongful acts, but the dynamics of cyberspace, artificial intelligence and robotics far outstrip the capacity of regulators and legislators. The increased use of AI may require a revision of the legal status of the protection and scope of fundamental human rights. One important factor in the use of AI is that it provides the basis for a new framework for making ethical choices about how to use new technologies.

New technologies and the right to human intervention

Considering the ethics of technology and addressing the challenges of the new human right to human intervention will be central to how we function in a world of automated processing. The balance between technological innovation and human rights issues will promote the development of a new responsibility. It seems that the choice between freedom and development is a very difficult one. This is all the more so because overreaction by the state can also be considered a threat. It is important that democratic societies manage to create mechanisms for the use of AI while preserving their principles of freedom on which they were built. The state's confinement of the citizen in a well-guarded fortress, with ever newer systems of monitoring, surveillance and control, is no basis for development. For cyber security, it is necessary to take an acceptable risk approach and think about it in an innovative way, seeing it as a multi-stage and interdisciplinary process, including legal and organisational solutions. It is important to realise that the development of AI is not only about technology and the new organisation of life, but also about challenges of a moral nature. When considering moral issues, it is important to keep in mind the fundamental values that are central to the development of humanity and our civilisation. Considering the ethics of the technology and addressing privacy concerns will be crucial to the long-term success of AI. A balance between technological innovation and privacy considerations will foster the development of socially responsible AI, which in the long term can help create public and individual value with respect for human rights, especially the right to human intervention, which is key here.

New technologies in the information space

In an era of intense civilisational progress, with the rise of data media and cyber threats, national public interest objectives continue to determine regulatory conditions and national security has become the justification for limitations on fundamental rights. It is the national

[24] K.Chałubińska-Jentkiewicz, Cyberodpowiedzialność Wydawnictwo Adam Marszałek, Toruń 2023, pp. 23-24.

legislator who determines the limits of individual rights. The media system is the simplest reflection of the social and political situation. The media are also relevant to state policy. This is all the more important because in the media market, huge changes are taking place that lead from deregulation to re-regulation. This creates the conditions for the development of an alternative media system, based on strict rules of operation. These include the filtering and blocking of digital content, including the blocking of the Internet domain, where automated data processing solutions are crucial. In the digital age, the open and global nature of the internet is both its greatest strength and weakness. In order to protect users and ensure national security, public authorities often opt for Internet domain blocking. However, domain blocking, which is dictated by decisions stemming from the use of AI and digital content filtering, is controversial, balancing the need to ensure security with the protection of users' freedom of expression and privacy. On the one hand, the issue of ensuring security is crucial; on the other hand, the freedom aspect - freedom of speech - comes to the fore.

Security as an argument for blocking domains

Security is an important consideration associated with regulations that restrict rights and freedoms, including freedom of expression. However, such restrictions must not contradict and nullify the very essence of the right contained in Article 19 of the ICCPR[25] . Restrictions permissible under Article 19(3) of the ICCPR must not be a rationale for restricting democracy and human rights, must not lead to physical attacks, arbitrary detentions, and must not conflict with the provisions of the Covenant. Any restrictions on the exercise of the right to freedom of expression must be provided for by law and be reflected in its provisions or in customary law norms (General Comment No. 34 of 2011, CCPR/C/GC/34, para. 21). In doing so, the restrictions applied must be proportionate in their severity to the purpose they are intended to serve[26] .

Protection against cyber attacks

On the one hand, domain blocking is becoming an effective tool in the fight against cybercrime. Examples include malicious websites that spread viruses, malware or phishing. As security expert Bruce Schneier notes: "The internet is inherently insecure. Blocking malicious websites is a necessary step in protecting users from cyber threats."[27] Ensuring cyber-security is becoming the main focus of regulations restricting the right to communicate. This includes combating the manipulation of information and interference with the information environment, especially through disinformation.

Combating terrorism and extremism

Blocking websites that promote terrorism, extremism or hatred is standard in current legislation. The Council of Europe report reads: "Blocking extremist content online is a crucial element in preventing the spread of radical ideologies"[28] .

[25] International Covenant on Civil and Political Rights opened for signature in New York on 19 December 1966 OJ. 1977 no. 38 item 167.

[26] Robert Faurisson v France, Application no. 550/1993, decision of 8.11.1996

[27] Bruce Schneier, "The internet is inherently insecure. Blocking malicious websites is a necessary step in protecting users from cyber threats," [Bruce Schneier on Security](https://www.schneier.com/) accessed 30.07.2024

[28] Council of Europe, "Blocking extremist content online is a crucial element in preventing the spread of radical ideologies," [Council of Europe Report](https://www.coe.int/) accessed 30.07.2024.

Protection of children and young people

Blocking domains with illegal content, e.g. pornographic, violent or harmful content, is often justified on the grounds of protecting the youngest internet users. As UNICEF emphasises: "Protecting children from harmful online content is essential for their safety and development."29

Freedom of speech as an argument against domain blocking

On the other hand, the freedom of the internet remains important. The documents of the Conference on Security and Cooperation in Europe should be included in the international system of regulation of freedom of expression - with some hesitation, as they are in fact regulations that are binding on European states. While noting their existence, it must not be forgotten that they were an attempt to inculcate certain freedom standards in Central and Eastern European states. In the Final Act of the CSCE[30] of 1.8.1975, the participating States undertook to respect human rights and fundamental freedoms, including freedom of thought, conscience, religion and belief. What was not formulated in the Final Act was a declaration on the need to respect freedom of expression and freedom of the press. It was only in the so-called third basket, by establishing cooperation in the humanitarian sphere, that the intention was expressed to improve the circulation, access and exchange of information: oral, printed, film and radio, cooperation in the information sphere and to strive to improve working conditions for journalists. The subsequent CSCE meetings in Belgrade in 1977 and 1978 and in Madrid in 1980-1983 did not bring about any significant changes in terms of setting standards for press freedom. It was not until the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE of 29.6.1990 that the right of everyone to freedom of expression was reaffirmed, linking it to the right to freedom of expression and to receive and give information without interference by public authorities and regardless of borders. It was also noted that the exercise of this right may only be subject to such restrictions as are provided by law and are in conformity with international standards. It was also stated that no restriction may be imposed on access to the use of means of reproduction of documents of any kind. Similarly, the Paris Charter of the New Europe of 21.11.1990 affirms that every individual has the right to freedom of thought, conscience, religion or belief and expression. It extends these guarantees to the Document of the Meeting of the Moscow Conference on the Human Dimension of the CSCE of 3.10.1991, which reaffirms, once again, the right to freedom of expression, including the right to collect, comment on and disseminate information, news and views. It recognised that restrictions on the exercise of these freedoms could only be provided for by law and in accordance with international standards. It was also recognised that the media should enjoy unrestricted access to foreign news and information services without hindrance from public authorities. The states participating in the conference pledged not to take measures that impede the legitimate exercise of the journalistic profession and to protect journalists engaged in dangerous professional missions, especially reports of armed conflicts[31] . The CSCE documents did not formulate any new standards of freedom, repeating

[29] UNICEF, "Protecting children from harmful online content is essential for their safety and development," [UNICEF Report](https://www.unicef.org/) accessed 30.07.2024.

[30] The Conference on Security and Cooperation in Europe (CSCE).

[31] For texts of CSCE documents see: B. Gronowska, T. Jasudowicz, C. Mik, Human Rights. International Documents, Toruń 1993, pp. 200-255; A.D. Rotfeld (ed.), From Helsinki to Madrid. Documents of the Conference on Security and Cooperation in Europe 1973-1983, Warsaw 1983.

the solutions contained in the PDPCz[32] and the ICCPR. Analysing the CSCE documents, it is easy to see that the contents of the PDPC and the ICCPR were very slowly and with great resistance adopted by some European states. Far more relevant to freedom of expression are the acts of the RE legal system and the EU documents. Legal systems: The RE (Council of Europe), an autonomous organisation of European states independent of the EU, of which Poland has been a member since 1991, and the European Council (European Council), appearing in Polish academic literature under the name of the Council of the European Communities or the Council of the European Union, are completely independent of each other, although they flow from similar axiological assumptions. Both the Council and the related ECHR (European Court of Human Rights) in Strasbourg, established on the basis of Article 19 of the ECHR[33] , as well as the European Council and the Court of Justice of the European Union (in Luxembourg) have developed independent systems of standards of freedom of expression in the course of their activities. However, they are not of a competitive nature, but are fully compatible with each other. It should be emphasised at this point that in developing standards for freedom of expression, speech and press and the right to information, the ECtHR interpreted the ECHR. On the other hand, the much poorer acquis of the CJ in this area was based, on the one hand, on its own interpretation of the said ECHR and the CFR[34] . This is the result of the position taken in the preamble of the CFR, where it states that it affirms: "with due regard to the powers and tasks of the Community and the Union and to the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations and common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and the Council of Europe and the case law of the Court of Justice of the EU and the European Court of Human Rights". The above statement is also confirmed by Article 52(3) of the CFR.[35]

Censorship and abuse of power

In opposition to security solutions, domain blocking can lead to censorship and abuse of public power and online platforms (so-called Big Tech). Examples such as China and Iran show that domain blocking technology can be used to suppress free speech and control information, restricting access to independent news sources or social media platforms.

[32] Universal Declaration of Human Rights, i.e. Dz.U. 1989 No. 29 item 155.

[33] European Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on 4 November 1950, subsequently amended by Protocols Nos. 3, 5 and 8 and supplemented by Protocol No. 2 OJ 1993.61.284.

[34] Charter of Fundamental Rights of the European Union (OJ C 202, 7.6.2016, pp. 389-405).

[35] Article 52
Scope of guaranteed rights
Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.
(3) In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

Edward Snowden, a former NSA employee, stated: "The internet should be a place of freedom and expression, not a tool for censorship and control.[36] Currently, press publication activities are subject to judicial review. It should be noted that what is illegal in one Member State may be legal in another, and this should be reflected in regulatory proposals by introducing only the minimum protection.

Restriction of access to information

Blocking websites can restrict access to important information and impede research. Particularly when sites with legitimate and valuable content that could be useful to society are blocked. Tim Berners-Lee, founder of the World Wide Web, said: "The web is a vital tool for accessing information. Blocking websites can limit knowledge and hinder progress."[37] It should be pointed out here that the unification of the rules of cyberspace, has become a reality and this means the end of the hitherto understood freedom on the Internet. In this area, it is desirable to create completely new solutions for the exchange of experiences and the preservation of basic requirements, related to fundamental rights and security. Balance, proportionality and prudence are needed here.

Risk of abuse by private companies

Private technology companies (internet platforms and search engines and social networks) that have domain blocking tools can abuse their position by deciding on the availability of information according to their own criteria. This can lead to a situation where some information is promoted and other information is suppressed due to corporate interests. Shoshana Zuboff, author of The Age of Surveillance Capitalism, points out: "The power of private companies to control information online is unprecedented and poses significant risks to democracy.[38]

The new data media, are also depending more on users as data providers. The former distinction between sender and receiver is being blurred, thus introducing the category of the user as both provider and consumer of information. Under these conditions, attempts are being made to regulate those areas of online activity that have hitherto enjoyed full freedom. These acts include: DSA[39] , Directive on Copyright and Related Rights in the Digital Single Market[40] , EMFA[41] .

A dangerous system of filtering sites and blocking access to accounts - even when blocking a domain that contains legal content in addition to illegal content - will have unpredictable

[36] Edward Snowden, "The internet should be a place of freedom and expression, not a tool for censorship and control," [Edward Snowden's Interviews](https://www.snowden.com/) accessed 30.07.2024.

[37] Tim Berners-Lee, "The web is a vital tool for accessing information. Blocking websites can limit knowledge and hinder progress," [World Wide Web Foundation](https://webfoundation.org/) accessed 30.07.2024.

[38] Shoshana Zuboff, "The power of private companies to control information online is unprecedented and poses significant risks to democracy," [The Age of Surveillance Capitalism](https://www.shoshanazuboff.com/) accessed 30.07.2024.

[39] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (Text with EEA relevance) PE/30/2022/REV/1 OJ L 277, 27.10.2022, p. 1-102.

[40] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (Text with EEA relevance.) PE/51/2019/REV/1 OJ L 130, 17.5.2019, p. 92-125.

[41] Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act)Text with EEA relevance. PE/4/2024/REV/1 OJ L, 2024/1083, 17.4.2024.

negative consequences for democracy and freedom of expression throughout Europe. Such surveillance of content providers may affect the freedom of the press and journalists.

High technology and human rights in the world

China and the Great Firewall

China uses sophisticated technology to block access to many foreign websites, including Google, Facebook and Twitter. These restrictions are part of a broader strategy to control information and communication in the country. As Nicholas Bequelin, Amnesty International's director for the East Asia region, puts it: "China's Great Firewall is a tool of political control, designed to limit access to information and suppress dissent.[42]

Blocking extremist websites in Europe

In response to terrorist threats, many European countries have introduced legislation to quickly block terrorist-related websites. While the purpose is understandable, this raises concerns about abuse and undue restrictions on freedom. As the Human Rights Watch report notes: "While combating terrorism is essential, it is crucial that measures taken do not infringe upon fundamental human rights, including freedom of expression.[43]

Russia and control of the internet

In the Russian Federation, the government has introduced legislation allowing websites to be blocked without a court decision, raising concerns about censorship and restrictions on freedom of speech. As Alexei Navalny, a Russian political activist, said: 'The Russian government's control over the internet is a direct attack on freedom of speech and a tool to silence dissent. [44]

SUMMARY

According to the new EU DSA regulation, intermediary service providers and especially hosting providers must react proactively under the take down and action rule to situations involving illegal content. This also applies to orders for domain name registries as mere conduit intermediaries. Domain blocking is a tool that can be used both to protect security and to suppress freedom. It is crucial to strike a balance between the two to ensure the security of internet users while protecting their rights to freedom of expression and access to information. Transparency, judicial review and abuse protection mechanisms are needed to ensure that domain blocking is applied in a proportionate and democratic manner, which does not exclude the use of AI solutions in the digital content analysis process, and which will require redefining concepts and values such as freedom of expression and the right to privacy. The example of the blocking of Internet domains fully reflects the problematic application of new technologies, so intensely encroaching on every aspect of human life, without so far excluding key values in a democratic state. As David Kaye, former UN Special Rapporteur on freedom of expression, points out: "Finding a balance between security and freedom online is critical to maintaining a free and open internet."[45]

[42] Nicholas Bequelin, "China's Great Firewall is a tool of political control, designed to limit access to information and suppress dissent," [Amnesty International](https://www.amnesty.org/) accessed 30.07.2024.

[43] Human Rights Watch, "While combating terrorism is essential, it is crucial that measures taken do not infringe upon fundamental human rights, including freedom of expression," [Human Rights Watch Report](https://www.hrw.org/) accessed 30.07.2024.

[44] Alexei Navalny, "The Russian government's control over the internet is a direct attack on freedom of speech and a tool to silence dissent," [Navalny's Blog](https://www.navalny.com/) accessed 30.07.2024.

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Neurological Rights and Cognitive Freedom

INTRODUCTION

The rapid advancement of neurotechnology in recent years has introduced a paradigm shift in how we understand and interact with the human mind. These technologies, ranging from brain-computer interfaces to neuroenhancement drugs, hold transformative potential for both individual and societal development. However, they also pose significant ethical, legal, and social challenges. Cognitive liberty, as defined by Sententia (2004), is the fundamental right of individuals to control their own mental states and processes, free from external coercion or interference. This right is particularly critical in an era where neurotechnology can potentially alter, enhance, or even decode cognitive functions. The notion of cognitive liberty is not merely a philosophical ideal; it is a necessary legal and ethical construct that must evolve in tandem with technological progress. Without such a framework, the very essence of human autonomy—the ability to think freely and govern one's own mind—may be at risk (Bublitz & Merkel, 2014).

One of the primary concerns in this context is the ethical use of neuroenhancement technologies. These interventions, which include drugs, brain stimulation devices, and other techniques designed to improve cognitive performance, offer significant benefits for individuals suffering from neurological disorders. However, their use among healthy individuals raises complex ethical questions. For instance, the potential for "academic doping," where neuroenhancement drugs are used to boost cognitive performance in competitive environments, could exacerbate social inequalities and challenge the notion of meritocracy (Sahakian & Morein-Zamir, 2010). Furthermore, the long-term effects of these interventions on human identity and psychological continuity remain largely unexplored, posing risks to mental integrity (Ienca & Andorno, 2017).

The right to mental privacy is another critical aspect of cognitive liberty. In a world increasingly dominated by digital technology, the potential for neurotechnological tools to access and manipulate brain data introduces unprecedented privacy concerns. The ability to decode thoughts or intentions through neuroimaging or other techniques could lead to intrusive practices by employers, governments, or other entities, infringing on an individual's right to mental privacy (Farahany, 2012). The lack of specific legal protections for brain data,

comparable to those governing other forms of personal information, underscores the need for new regulatory frameworks that address these unique challenges.

Moreover, the right to psychological continuity and integrity must be considered when discussing the ethical implications of neurotechnology. Psychological continuity refers to the preservation of an individual's sense of identity over time, a concept that could be threatened by neurointerventions that alter memory, personality, or other core aspects of the self (Ienca & Andorno, 2017). As neurotechnologies become more sophisticated, the potential for such alterations raises profound questions about personal identity and the stability of psychological states. The European Union's Charter of Fundamental Rights, which includes protections for physical and psychological integrity, must be reinterpreted to address these emerging concerns in the context of neurotechnology (Bublitz & Merkel, 2014).

In addition to these ethical considerations, there is a pressing need for interdisciplinary dialogue to ensure that the development and application of neurotechnology align with principles of social justice and human dignity. The unequal access to neuroenhancement technologies, for example, could deepen existing socio-economic disparities, leading to new forms of discrimination and social stratification (Sahakian & Morein-Zamir, 2010). Ensuring that these technologies are developed and deployed in ways that promote fairness and equity is crucial for fostering a just society.

As we move further into the age of neurotechnology, the urgency to establish new neurological rights becomes ever more apparent. Current human rights frameworks, though robust in many areas, are insufficient to address the specific challenges posed by the manipulation and enhancement of cognitive functions. The recognition of new rights—such as the right to cognitive freedom, mental privacy, psychological integrity, and psychological continuity—is essential for protecting individuals from the potential harms of neurotechnology while enabling the benefits of these innovations to be realized responsibly (Ienca & Andorno, 2017).

In recent years, the convergence of neurotechnology and human rights has given rise to the discourse on "cognitive liberty," a term that encapsulates the right of individuals to control their own mental states and the use of neurological tools. As neurotechnology advances, the urgency to recognize new human rights related to neurology has become increasingly apparent. This article aims to provide a comprehensive exploration of these issues, drawing upon existing literature and empirical research to argue for the necessity of a new legal and ethical framework that prioritizes cognitive liberty. By grounding this discussion in both theoretical and practical perspectives, we hope to contribute to a broader understanding of how neurotechnology can be harnessed to enhance human well-being while safeguarding fundamental human rights.

Cognitive Liberty: A New Dimension of Human Rights

Cognitive liberty, often referred to as "mental self-determination," is emerging as a critical issue at the intersection of neurotechnology and human rights. This concept encompasses two closely related dimensions: the right of individuals to utilize neurotechnologies to alter their cognitive states and the protection against coercive or non-consensual use of these technologies. Bublitz (2013) succinctly defines cognitive liberty as encompassing "the right to alter one's mental states using neurological tools and the right to refuse such alteration." This principle is not just a theoretical construct but a practical necessity in an age where neurotechnological interventions are becoming increasingly sophisticated and potentially intrusive.

The ethical implications of cognitive liberty are profound, particularly when considering the

potential for neurotechnologies to be used in ways that could fundamentally alter an individual's cognitive processes. For example, the use of neurological castration or other forms of cognitive inhibition as part of criminal sentencing is a scenario that raises significant ethical and legal concerns. The idea that the state could offer reduced sentences in exchange for undergoing such procedures challenges the very foundations of free will and personal responsibility. It forces us to confront difficult questions about the extent to which an individual's cognitive processes should be subject to state intervention, even in the context of criminal behavior.

This issue becomes even more complex when we consider the potential development of technologies that could create what might be termed an "artificial conscience." The prospect of using neurotechnological tools to instill a sense of morality or inhibit violent impulses raises questions about the nature of moral responsibility and the authenticity of actions taken under the influence of such modifications. If an individual's cognitive processes are significantly altered by an external intervention, to what extent can they be held morally or legally responsible for their actions? This is not merely a hypothetical concern; as neurotechnologies become more advanced, the potential for their use in such ways becomes increasingly realistic.

Moreover, the use of neurotechnologies to enforce behavioral changes or moral enhancements could lead to a slippery slope of state control over individual cognition. Such interventions could be justified on the grounds of public safety or moral improvement, but they risk infringing on individual autonomy in ways that are deeply problematic. The coercive use of neurotechnologies, even with the individual's consent under duress (such as in the context of a plea bargain), raises the specter of a dystopian future where cognitive liberty is eroded in the name of societal good.

In this context, the principle of cognitive liberty must be robustly defended. It is not enough to simply assert the right to cognitive self-determination; legal frameworks must be developed to protect this right in the face of emerging neurotechnological capabilities. Existing human rights instruments, such as those enshrined in the European Convention on Human Rights, provide some protection for mental integrity and autonomy, but they are not fully equipped to address the specific challenges posed by neurotechnology (Ienca & Andorno, 2017). New legal and ethical standards must be developed to ensure that cognitive liberty is preserved in an era of unprecedented technological advancement.

In parallel with the development of legal protections, there is a need for ongoing ethical reflection and public discourse on the implications of neurotechnological interventions. As these technologies evolve, society must engage in a careful consideration of their potential benefits and risks. This includes not only the potential for enhancement and treatment but also the darker possibilities of coercion, manipulation, and control. Ethical guidelines must be established to govern the use of neurotechnologies in ways that respect individual autonomy and promote justice.

The discourse on cognitive liberty is thus not just an academic exercise but a pressing ethical and legal challenge. As neurotechnologies continue to develop, the need for clear and robust protections for cognitive self-determination becomes increasingly urgent. By recognizing and defending cognitive liberty as a fundamental human right, we can ensure that the benefits of neurotechnological advancements are realized without compromising the autonomy and dignity of individuals. The concept of cognitive liberty is inherently tied to the potential development of neurotechnologies that can modify brain function. For instance, the possibility of neurological castration or other forms of cognitive inhibition as a means of criminal sentencing raises profound ethical concerns. If the state were to offer criminals the option of undergoing such procedures in exchange for reduced sentences, it would fundamentally challenge our

understanding of free will and personal responsibility. Moreover, the development of an "artificial conscience" through neurotechnological means could complicate the legal and moral responsibility for actions taken under the influence of such modifications.

Emerging Neurological Rights

The emergence of neurotechnology has prompted a reevaluation of existing human rights frameworks, leading to the proposition of new, neurospecific rights that address the unique challenges posed by advancements in this field. Among these, the work of Ienca and Andorno (2017) stands out, particularly their identification of four critical rights: the right to cognitive freedom, the right to mental privacy, the right to psychological integrity, and the right to psychological continuity. These rights are not merely theoretical constructs; they represent essential protections in an era where the boundaries between human cognition and technological intervention are increasingly blurred.

The right to cognitive freedom is perhaps the most fundamental of these neurospecific rights. It is rooted in the principle that individuals should have the autonomy to govern their own mental states without external interference. This right is vital in the context of neurotechnology, where the potential for both enhancement and manipulation of cognitive functions is growing. Neurotechnologies, such as brain-computer interfaces and neuroenhancement tools, offer unprecedented opportunities for personal development and mental health treatment (Yuste et al., 2017). However, they also pose significant risks if used coercively or without informed consent. Cognitive freedom, therefore, must be rigorously protected to ensure that individuals retain control over their own minds (Bublitz, 2013).

Mental privacy is another critical right in this context. In a world increasingly dominated by digital technologies, the concept of privacy has been extended beyond the physical realm to include our mental processes. Neurotechnologies, particularly those capable of reading or influencing brain activity, threaten to invade this most intimate of spaces. The collection, analysis, and potential exploitation of neural data raise profound ethical concerns. Ienca and Andorno (2017) emphasize that mental privacy would protect individuals from unauthorized access to their cognitive processes, ensuring that brain data remains private unless willingly shared. This protection is essential to prevent abuses by employers, governments, or other entities that might seek to exploit such data for their own purposes (Mendelsohn et al., 2020).

The right to psychological integrity is closely related to the rights of cognitive freedom and mental privacy but focuses specifically on the protection of an individual's psychological state from harm. Neurotechnological interventions, while potentially beneficial, carry the risk of unintended consequences that could damage an individual's psychological well-being. This right ensures that any use of neurotechnology must be conducted with the utmost care, preserving the mental health and overall well-being of the individual (Lavazza, 2018). The ethical implications of violating psychological integrity are profound, as any harm to an individual's cognitive or emotional state can have lasting and potentially irreversible effects (Giordano, 2015).

Lastly, the right to psychological continuity addresses the need to protect the integrity of an individual's personal identity over time. Neurotechnological interventions that alter cognitive processes have the potential to disrupt an individual's sense of self, leading to a disjunction between their past and present psychological states (Clausen, 2010). This continuity is crucial for maintaining a coherent sense of identity, which is foundational to personal autonomy and moral responsibility. Without this right, there is a risk that individuals could be subjected to

interventions that fundamentally alter their personality or cognitive functioning, leading to a loss of personal identity (Fuchs, 2006).

These four neurospecific rights—cognitive freedom, mental privacy, psychological integrity, and psychological continuity—are essential in safeguarding individuals from the potential risks posed by neurotechnological advancements. As the field of neurotechnology continues to evolve, the recognition and protection of these rights will become increasingly important. Existing human rights frameworks, while comprehensive in many respects, are not fully equipped to address the unique challenges posed by neurotechnology. Thus, there is a pressing need for legal scholars, ethicists, and policymakers to work together in developing robust protections that ensure these rights are respected and upheld (Bostrom & Sandberg, 2009).

Incorporating these neurospecific rights into legal frameworks is not just a theoretical exercise; it is a practical necessity in a world where neurotechnology is rapidly advancing. The potential benefits of neurotechnology are immense, from treating neurological disorders to enhancing cognitive abilities. However, without adequate safeguards, these technologies could also be used to undermine individual autonomy, infringe on privacy, and disrupt the continuity of personal identity. By recognizing and enshrining these rights, we can ensure that the development and application of neurotechnology are guided by principles that prioritize human dignity and autonomy (Sententia, 2004).

The Right to Cognitive Freedom

The right to cognitive freedom, which encompasses the ability to control one's consciousness and mental processes, is not merely an abstract philosophical concept but a foundational human right. This right safeguards individual sovereignty over the mind, ensuring that each person has the autonomy to govern their own mental states free from coercion or manipulation. As Bublitz (2014) emphasizes, cognitive freedom should be recognized as a core human right, particularly in the context of non-therapeutic mental interventions where the potential for abuse is significant. This right is not only essential for personal autonomy but also for the preservation of human dignity in an era where neurotechnology is rapidly advancing.

Cognitive freedom is multidimensional, involving several key aspects that are crucial for maintaining individual autonomy. First, it includes the freedom to change one's mind, a concept that underscores the dynamic nature of human thought. The ability to reconsider, re-evaluate, and revise one's beliefs or decisions is a fundamental aspect of cognitive liberty (Lavazza, 2018). This freedom is essential not just for personal growth but also for moral and ethical development, as individuals must have the ability to reflect on and alter their mental states to adapt to new information or experiences.

Second, cognitive freedom entails protection from external interventions. This aspect is particularly relevant in the context of neurotechnological advancements that have the potential to manipulate or alter cognitive processes without an individual's consent. The use of brain stimulation technologies, for instance, raises profound ethical concerns about the possibility of coercion or undue influence on a person's mental state (Clausen, 2010). As neurotechnologies become more sophisticated, the risk of such interventions being used for purposes other than therapeutic treatment—such as in criminal justice, employment, or even political contexts—grows. The right to cognitive freedom must, therefore, include robust protections against any form of non-consensual mental manipulation (Ienca & Andorno, 2017).

Finally, there is an ethical obligation to promote cognitive freedom, ensuring that it is not only protected but also actively fostered within society. This involves creating environments

where individuals are free to explore and develop their mental capacities without fear of external interference. Educational systems, for instance, should be designed to encourage critical thinking and intellectual exploration, thereby supporting the development of cognitive freedom from an early age (Yuste et al., 2017). Additionally, legal and ethical frameworks must evolve to keep pace with technological advancements, ensuring that cognitive freedom is preserved even as new neurotechnologies emerge (Sententia, 2004).

The recognition of cognitive freedom as a fundamental human right is particularly urgent given the rapid development of neurotechnologies. As these technologies continue to advance, they hold the promise of significant benefits, such as improved mental health treatments and enhanced cognitive abilities. However, without adequate safeguards, they also pose significant risks to individual autonomy and mental integrity. Bublitz (2014) argues that cognitive freedom should be central to any ethical or legal discussions about neurotechnology, as it represents a critical aspect of what it means to be human in a technologically advanced society. Furthermore, cognitive freedom intersects with other fundamental rights, such as the right to privacy and the right to psychological integrity. These rights collectively ensure that individuals maintain control over their own minds and are protected from external forces that might seek to influence or undermine their cognitive processes (Giordano, 2015). As we navigate the complex ethical landscape of neurotechnology, it is essential that cognitive freedom is recognized, protected, and promoted as a core human right, integral to the preservation of human dignity and autonomy.

The Right to Mental Privacy

The increasing penetration of neurotechnologies into everyday life has underscored the critical importance of mental privacy, a concept that is becoming increasingly vital as brain-computer interfaces (BCIs) and other neurotechnological tools gain prevalence. These technologies, which offer unprecedented insights into brain activity, simultaneously present significant risks related to the misuse of brain data by third parties, including employers, insurance companies, and governments.

The potential for such misuse is not a mere hypothetical concern. Farahany (2012) emphasizes the absence of comprehensive legal safeguards against involuntary mind-reading, highlighting the vulnerabilities individuals face in having their cognitive processes exposed without consent. This gap in legal protection is particularly alarming given the rapid development of neurotechnologies capable of decoding and interpreting neural signals with growing precision. As these technologies advance, the potential for intrusive monitoring and exploitation of brain data escalates, raising profound ethical and legal questions.

The sensitivity of brain data distinguishes it from other types of personal information, such as financial or medical records. Brain data provides a direct reflection of an individual's thoughts, emotions, and intentions, making unauthorized access particularly invasive. This level of intrusion could lead to exploitation, where individuals' cognitive processes are manipulated for purposes ranging from targeted advertising to more harmful forms of control. As Yuste et al. (2017) argue, the manipulation of brain activity by external agents represents a fundamental threat to individual autonomy and mental privacy.

Given these risks, mental privacy must be recognized as a fundamental human right, warranting the same level of protection as other rights related to personal privacy and autonomy. The incorporation of mental privacy within legal frameworks is not merely an extension of existing privacy protections but necessitates the development of new legal concepts and safeguards specifically tailored to the unique challenges posed by neurotechnology.

The ethical implications of not addressing these challenges are far-reaching. Consider the potential outcomes in a society where brain data is routinely collected and analyzed without sufficient legal protections. Employers might exploit neural data to evaluate job candidates or monitor employees' cognitive states, leading to discriminatory practices based on factors such as stress levels or susceptibility to mental health issues. As Greely (2011) points out, such practices could lead to unprecedented forms of discrimination that current employment laws are ill-equipped to address. Similarly, insurance companies could demand access to brain data as part of their underwriting processes, potentially penalizing individuals for perceived cognitive risks—a concern echoed by Bublitz and Merkel (2014), who discuss the ethical dilemmas of neurodata in insurance underwriting. Governments might also leverage brain data for surveillance or social control, further eroding individual freedoms in ways that are difficult to detect and resist, as highlighted by Ienca and Andorno (2017).

The recognition of mental privacy as a fundamental right must therefore be accompanied by concrete legal and regulatory measures designed to protect this right in practice. This includes establishing clear guidelines for the collection, storage, and use of brain data, as well as creating mechanisms for individuals to seek redress in cases where their mental privacy has been violated. As Pardo and Patterson (2013) discuss, the legal landscape must evolve to accommodate the unique risks posed by neurotechnology, ensuring that individual rights are adequately protected.

In conclusion, the right to mental privacy is a crucial element in the broader discussion of human rights in the context of neurotechnology. As this field continues to advance, the need for robust protections against the misuse of brain data will only become more urgent. By recognizing and enshrining this right in law, we can ensure that the benefits of neurotechnology are realized without compromising the fundamental dignity and autonomy of individuals.

The Right to Psychological Integrity

The right to psychological integrity, traditionally rooted in human rights law, has gained renewed importance in the context of neurotechnology. The Charter of Fundamental Rights of the European Union (Article 3) explicitly protects both physical and psychological integrity, underlining the necessity of free and informed consent, the prohibition of eugenic practices, and the non-commercialization of body parts. This legal foundation, however, has not yet been fully extended to cover the implications of neurotechnological interventions.

As neurotechnologies advance, they pose new risks to psychological integrity. For instance, deep brain stimulation (DBS), a neurotechnology initially developed for treating conditions like Parkinson's disease, has been shown to cause personality changes in some patients (Schermer, 2013). While these interventions can offer significant therapeutic benefits, they can also lead to unintended psychological harm, altering a person's mood, behavior, or identity. This underscores the need to extend the protection of psychological integrity to encompass the effects of neurotechnological interventions, ensuring that individuals are safeguarded from psychological harm that might arise from these advancements.

Moreover, the ethical principle of "do no harm," a cornerstone of medical ethics, must be rigorously applied to the development and use of neurotechnologies. As Bublitz and Merkel (2014) discuss, any intervention that could alter an individual's mental state, even with therapeutic intent, should be subject to stringent ethical scrutiny. This includes ensuring that individuals are fully informed about potential psychological risks and that their consent is genuinely voluntary, without coercion or undue influence.

The protection of psychological integrity also demands a broader societal conversation about the goals of neurotechnology. While these technologies have the potential to enhance human capabilities, they must not do so at the cost of compromising psychological well-being. Ethical oversight, informed by both medical and psychological expertise, is essential to prevent the misuse of neurotechnologies and to ensure that they contribute positively to human flourishing.

The Right to Psychological Continuity

The right to psychological continuity is particularly relevant in an era where neurotechnological interventions can profoundly alter an individual's cognitive functions, potentially disrupting their sense of self. This right is concerned with preserving an individual's identity over time, ensuring that their core psychological characteristics remain stable despite interventions that may alter their cognition or behavior.

Emerging neurotechnologies, such as memory modification techniques, pose a significant threat to psychological continuity. Technologies like optogenetics and transcranial magnetic stimulation (TMS) are being explored for their potential to alter or erase specific memories (Sahakian & LaBuzetta, 2013). While these interventions could be used therapeutically to treat conditions like PTSD, they also raise concerns about the potential for erasing or altering memories in ways that could disrupt an individual's identity. The preservation of psychological continuity is essential for maintaining a coherent sense of self, which is foundational to personal autonomy and moral responsibility (Petersen, 2016).

The legal recognition of the right to psychological continuity is still in its infancy, but it is a necessary evolution in human rights law as neurotechnologies continue to develop. Without legal protections, individuals could be subjected to interventions that fundamentally alter their personality or cognitive functioning, leading to a loss of personal identity. As Ienca and Andorno (2017) argue, the right to psychological continuity must be integrated into existing human rights frameworks to ensure that individuals are protected from such disruptions.

Ethical Considerations in Neuroenhancement

Neuroenhancement, the use of drugs or other interventions to improve cognitive functions in healthy individuals, has become a significant area of ethical concern. Originally developed to treat cognitive deficits, these interventions are increasingly used by individuals seeking to enhance their cognitive abilities beyond what is considered normal.

One of the primary ethical issues with neuroenhancement is its impact on the human experience. The use of neuroenhancers, such as modafinil or methylphenidate, can alter an individual's emotional landscape, potentially diminishing their ability to experience a full range of emotions (Vrecko, 2013). While these drugs can improve focus and productivity, they may also create an artificial sense of well-being that does not reflect the complexities of human life. This raises questions about whether such enhancements truly contribute to human flourishing or merely create a superficial sense of improvement.

Another significant concern is the issue of fairness and equity in access to neuroenhancements. As with many advanced technologies, neuroenhancements are likely to be more accessible to those with financial means, exacerbating existing social and economic inequalities. For example, in academic and professional settings, access to cognitive enhancers could create an uneven playing field, where those who can afford these enhancements gain an unfair advantage over those who cannot (Greely et al., 2008). This raises profound ethical questions about the social consequences of widespread neuroenhancement and the potential for deepening societal divides.

Moreover, the use of neuroenhancements often rests on normative assumptions about what constitutes an "optimal" human being. This can lead to unintended consequences, such as increased stress and anxiety, as individuals strive to meet increasingly high cognitive standards (Sahakian & Morein-Zamir, 2011). The ethical implications of these assumptions must be carefully considered, particularly in light of the fact that enhanced cognitive abilities do not necessarily correlate with greater happiness or life satisfaction.

Legal and Social Implications

The development and implementation of neurotechnologies present significant legal and social challenges, particularly in terms of their potential use for surveillance and control. Neurotechnologies like BCIs and brain-monitoring devices could be used to monitor individuals in ways that infringe on their privacy and autonomy (Yuste et al., 2017). This is particularly concerning for vulnerable populations, such as individuals with disabilities, who may be subjected to increased surveillance under the guise of health monitoring.

To address these challenges, it is crucial to develop legal frameworks that protect individuals from the misuse of neurotechnologies. This includes establishing clear regulations around the collection and use of brain data, ensuring that individuals retain control over their own cognitive processes (Farahany, 2012). Additionally, these frameworks must promote autonomy for all individuals, including those with disabilities, ensuring that neurotechnologies are used to enhance, rather than undermine, personal freedom and dignity.

The social implications of neurotechnologies are also significant. As these technologies become more widespread, there is a risk that they will be used to reinforce existing power structures, further marginalizing vulnerable populations. It is essential that the development and deployment of neurotechnologies be guided by ethical principles that prioritize equity, justice, and respect for human dignity.

In conclusion, the ethical, legal, and social implications of neurotechnology must be carefully considered as these technologies continue to develop. By recognizing and protecting the rights to psychological integrity and continuity, and by addressing the ethical challenges posed by neuroenhancement, we can ensure that neurotechnologies are used in ways that promote human flourishing and protect individual autonomy.

CONCLUSION

The rapid evolution of neurotechnology is reshaping our understanding of cognitive processes and mental health, presenting both significant opportunities and complex challenges. As these technologies advance, they offer unprecedented potential for cognitive enhancement and therapeutic intervention, yet they also introduce substantial ethical, legal, and social dilemmas. Given the transformative impact of neurotechnology, the existing human rights framework must be adapted to address these emerging concerns effectively.

Current human rights paradigms are increasingly inadequate for addressing the novel issues presented by neurotechnological advancements. While traditional rights such as privacy and autonomy provide a foundational framework, they fall short when applied to the nuanced and direct interaction with cognitive processes that neurotechnology facilitates. This gap necessitates the development of new, neurospecific rights tailored to protect against the unique risks posed by these technologies.

Cognitive freedom is a central right that must be robustly defended. This right encompasses the autonomy to control one's mental processes and resist involuntary alterations. As Bublitz (2014) emphasizes, the recognition of cognitive freedom as a fundamental human right is crucial, especially in the context of non-therapeutic mental interventions. This right not only protects against external manipulation but also supports the ethical imperative to allow individuals to choose their cognitive enhancements or resist them without coercion.

Psychological integrity further extends the protection of individual mental health beyond physical interventions. The Charter of Fundamental Rights of the European Union (Article 3) highlights the need for safeguarding both physical and psychological integrity. However, the application of this principle to neurotechnology remains underdeveloped. Neurotechnologies, such as deep brain stimulation (Schermer, 2013), have the potential to alter cognitive and emotional states significantly. Thus, ensuring that these interventions do not compromise an individual's psychological well-being is paramount.

Mental privacy is increasingly critical as brain-computer interfaces (BCIs) and other neurotechnologies advance. Farahany (2012) discusses the urgent need for legal safeguards against unauthorized access to brain data, which could otherwise be exploited by third parties such as employers or insurers. Protecting mental privacy ensures that individuals' cognitive data remains confidential and is used only with informed consent, thus upholding personal autonomy and preventing misuse.

Psychological continuity addresses the preservation of personal identity despite neurotechnological interventions. Technologies that alter memory or cognitive functions could disrupt an individual's sense of self. As Ienca and Andorno (2017) argue, ensuring psychological continuity is essential for maintaining a coherent personal identity. This right protects individuals from interventions that could create disjunctions in their psychological experience, preserving the integrity of their self-concept.

The ethical implications of neuroenhancement further underscore the need for these rights. Neuroenhancements, initially designed to treat cognitive impairments, are increasingly used by individuals seeking to improve their cognitive functions without medical necessity. This trend raises concerns about the impact on human experience and equity. Greely et al. (2008) highlight the risk of exacerbating socio-economic disparities, as access to cognitive enhancers may be limited to the privileged, further entrenching existing inequalities.

The potential for neurotechnologies to be used for surveillance and control introduces additional legal and social challenges. Ensuring that these technologies are employed ethically and do not infringe upon individuals' rights is crucial. The principles of equity and autonomy must guide the development and application of neurotechnologies to ensure they benefit all members of society, including marginalized and vulnerable populations (Sahakian & LaBuzetta, 2013).

In conclusion, as neurotechnology continues to advance, it is imperative to develop and implement new neurological rights that address cognitive freedom, psychological integrity, mental privacy, and psychological continuity. These rights will safeguard individual autonomy and dignity, ensuring that the benefits of neurotechnology are realized without compromising fundamental human rights. By proactively addressing these issues, we can harness the potential of neurotechnology while protecting against its risks, fostering a future where technological progress aligns with the respect for human rights.

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The Police Officer as a Streetworker: An Original Pedagogical Concept of Law Enforcement. Cultivating Community Bonds and Enhancing Well-Being within Local Populations

INTRODUCTION

The Police is an organization of over one hundred thousand members, whose primary task is the protection of citizens and the safeguarding of their security. Article 1.1 of the Police Act states: "The Police is established as a uniformed and armed formation serving society and designated to protect human safety and maintain public security and order."[46]

Among the fundamental duties of the Police, the legislator has highlighted, alongside the protection of life, health, and property, and the maintenance of public security and order, an aspect particularly pertinent to the theme of this article: "initiating and organizing activities aimed at preventing the commission of crimes and misdemeanors, as well as criminogenic phenomena, and cooperating in this regard with state, local government bodies, and social organizations."[47]

Although the Police have preventive actions within their remit, their scope is relatively narrow and does not fully align with the educational-pedagogical concept of the Police articulated in the title of this article. Social prevention, after all, is "an activity aimed at preventing the emergence or development of adverse phenomena. It is also one of the ways of responding to various social phenomena that are evaluated as harmful and undesirable."[48]

As M. Śmiałek asserts, drawing on L. Pytka, "In education, as in other areas of life, there should effectively function an appropriate system of activities known as educational prevention. Educational prevention is a system of rational actions aimed at preventing the occurrence and spread of social pathology phenomena, identified as the social maladjustment or deviation of youth."[49]

The activities undertaken by the Police as part of their preventive efforts are primarily

[46] Ustawa z dnia 6 kwietnia 1990 r. o Policji, Dz. U. 1990 Nr 30 poz. 179. [Act of April 6, 1990 on the Police, Journal of Laws 1990 No. 30 item 179]. Ustawa z dnia 6 kwietnia 1990 r. o Policji, Akt prawny (sejm.gov.pl). [Act of April 6, 1990 on the Police, Legal Act (sejm.gov.pl)].

[47] Dz. U. 1990 Nr 30 poz. 179 Ustawa z dnia 6 kwietnia 1990 r. o Policji, Akt prawny (sejm.gov.pl), Rozdział 1 Przepisy ogólne Art. 1. 2.pkt 3. [Journal of Laws 1990 No. 30 item 179 Act of April 6, 1990 on the Police, Legal Act (sejm.gov.pl), Chapter 1 General Provisions Art. 1. 2 point 3].

[48] D. Macander, Profilaktyki uzależnień w szkole (e-poradnik), Ośrodek Rozwoju Edukacji, Warszawa 2009, s. 4. [D. Macander, Addiction Prevention in Schools (e-guide), Center for Education Development, Warsaw 2009, p. 4].

[49] (M. Śmiałek Działalność profilaktyczna Zakładu Służby Prewencyjnej Centrum Szkolenia Policji w latach 1013-2016, Kwartalnik Policyjny CSP 3/2017 s. 48-52, L. Pytka, Profilaktyka wykolejenia społecznego, w: Encyklopedia pedagogiczna, red. W. Pomykało, Warszawa 1993, s. 630.) [(M. Śmiałek, Preventive Activity of the Preventive Service Department of the Police Training Center in the years 1013-2016, Police Quarterly CSP 3/2017 pp. 48-52, L. Pytka, Prevention of Social Maladjustment, in: Encyclopedia of Pedagogy, ed. W. Pomykało, Warsaw 1993, p. 630.)]

confined to curbing the spread of pathological phenomena through short-term preventive actions, usually carried out within the framework of specific preventive campaigns or periodic talks in schools or senior clubs. However, there is a lack of a systemic approach to the issue and the creation of a comprehensive educational system in which the Police would play a pivotal role, aimed at instilling values and principles, adherence to which would lead to a reduction in undesirable behaviors.

Currently, the Police operate reactively. When a specific problem is identified—such as the gathering of juveniles in certain locations and the consumption of alcohol—the Police respond by focusing their attention on the area and deploying officers to intervene, with the longer-term goal of educating through school talks. This type of action, beyond the immediate response to the incident, proves ineffective as it fails to bring about a lasting change in the attitudes of young people, which should ideally be rooted in an internalized value system.

Such ad-hoc actions by the Police do not contribute to building the moral framework of young people, nor do they foster changes in their behavior. Meaningful change could only be achieved by instilling in young people a sense of the value of alternative behavior, leading by example through the conduct of police officers, and actively participating in the lives of young people within local communities to model and cultivate desirable social attitudes—serving as role models.

It is within local communities, the so-called "small homelands"—neighborhoods, courtyards, parks, where residents gather daily—that the police officer as a streetworker should be present, actively participating in the life of the local community, influencing, and co-creating desired social attitudes.

The Community Police Officer as the First Point of Contact

Within the Police, community police officers occupy a profession of particular importance, tasked with operating within their designated area and maintaining contact with the local community. Unfortunately, the current framework of their work and the way their service is conducted remains largely reactive, as previously mentioned, and falls short of the desired standard. The manner in which community officers perform their duties, given the current staffing and social conditions, necessitates the abandonment of systemic influence on residents within their designated areas in favor of short-term activities that are burdened with additional, often tangential, duties far removed from the intended objectives.

As noted by M. Konopczyński, the community officer is "a figurehead who leads by example, initiates actions, shows the way forward, considers the needs of others, maintains contact with district residents, fosters a unique atmosphere of trust, and acts as an animator of educational and preventive initiatives."[50]

Fulfilling such a vision of the community officer's mission requires both time and a sustained presence within the local environment. Its effectiveness hinges on the acceptance of the community officer by the local population and their assimilation as a member of the community.

[50] M. Konopczyński, Misja społeczno-pedagogiczna dzielnicowych w społeczeństwie obywatelskim, „Policja 997" 2016, nr 5, wydanie specjalne - Dzielnicowi, s. 8-9, http://www.gazeta.policja.pl//997numery-specjalne/specjalne-policja-997/128085,POLICJA-997-nr-5.html, dostęp: 28.05.2018. (M. Konopczyński, The Socio-Pedagogical Mission of Community Police Officers in a Civil Society, "Policja 997" 2016, No. 5, Special Issue - Community Police Officers, pp. 8-9, http://www.gazeta.policja.pl//997numery-specjalne/specjalne-policja-997/128085,POLICJA-997-nr-5.html, accessed: 28.05.2018.)

Only this approach—one that embeds the community officer within the environment—offers a genuine opportunity for successful educational, preventive, and pedagogical efforts. Selective and sporadic actions consign the community officer's activities to minimal effectiveness, devoid of the potential to instill enduring, desirable behaviors among community members.

This understanding of a systemic approach to the work of community officers is corroborated by numerous studies conducted by the author of this article in collaboration with J. Stawnicka, encompassing the entire population of community officers. These studies have unequivocally demonstrated the willingness among community officers to engage in such activities, recognizing the educational and pedagogical domain as crucial to effectively fulfilling their assigned mission. Unfortunately, these studies simultaneously highlight a range of obstacles and conditions that render educational and pedagogical activities either impossible to implement or severely restricted.[51]

The second professional group within the Police, alongside community officers, for whom preventive activities are a primary responsibility, are specialists in juvenile affairs. For example, the Social Prevention, Juvenile, and Pathology Unit of the Warsaw Metropolitan Police encompasses a range of activities, including but not limited to: "(...) co-developing preventive programs based on safety analyses aimed at reducing crime in so-called socially burdensome categories, supporting officers from the Metropolitan Police units in implementing preventive programs, and preparing educational materials related to the prevention and combatting of juvenile delinquency and social pathologies."[52]

An analysis of the tasks assigned to police officers specializing in juvenile affairs across all organizational units nationwide reveals that their primary focus is on preventive activities and supporting other Police units in their preventive efforts. Similar to community officers, there is a lack of systemic engagement with local environments aimed at providing educational influence that shapes desirable attitudes and contributes to the actual enhancement of safety. Both of these distinct professional groups within the Police underscore the need for a shift in their approach to their assigned duties. However, this shift requires a change in their service

[51] I. Klonowska, J. Stawnicka, Partnerstwo służb dzielnicowych ze społecznością lokalną na rzecz bezpieczeństwa wewnętrznego z perspektywy działań społeczno–wychowawczych, KGP, Wydział Wydawnictw i Poligrafii CSP w Legionowie 2017. (I. Klonowska, J. Stawnicka, The Partnership of Community Police Services with the Local Community for Internal Security from the Perspective of Socio-Educational Activities, KGP, Department of Publications and Printing of the CSP in Legionowo 2017.) J. Stawnicka, I. Klonowska, Rola dzielnicowego w nowoczesnej formacji policyjnej z perspektywy działań edukacyjno-wychowawczych i profilaktycznych w społecznościach lokalnych, Wyd. CSP 2017. (J. Stawnicka, I. Klonowska, The Role of the Community Police Officer in a Modern Police Formation from the Perspective of Educational, Pedagogical, and Preventive Actions in Local Communities, CSP Publications 2017.) J. Stawnicka, I. Klonowska, Rola dzielnicowego w działaniach profilaktycznych Policji. Analiza badań krzyżowych. Perspektywa społeczno-pedagogiczno-psychologiczna, Wyd. WSPol.2018 r. (J. Stawnicka, I. Klonowska, The Role of the Community Police Officer in Police Preventive Actions. Cross-Research Analysis. Socio-Pedagogical and Psychological Perspective, WSPol. Publications 2018.) I. Klonowska, J. Stawnicka, Płeć determinantem różnicującym pracę dzielnicowego. Analiza badań krzyżowych. Ujęcie społeczno-pedagogiczno-psychologiczne, Wyd. WSPol. 2018 r. (I. Klonowska, J. Stawnicka, Gender as a Differentiating Factor in the Work of the Community Police Officer. Cross-Research Analysis. Socio-Pedagogical and Psychological Perspective, WSPol. Publications 2018.) I. Klonowska, J. Stawnicka, Dzielnicowy edukatorem w społecznościach lokalnych, Wyd. Akademia Policji w Szczytnie 2023. (I. Klonowska, J. Stawnicka, The Community Police Officer as an Educator in Local Communities, Police Academy in Szczytno Publications 2023.)

[52] Zespół do spraw profilaktyki społecznej, nieletnich i patologii - Wydział Prewencji KSP (policja.gov.pl), dostęp 01.08.2024. (Team for Social Prevention, Juveniles, and Pathology - Prevention Department of the Metropolitan Police Headquarters (policja.gov.pl), accessed 01.08.2024.)

model, moving away from a "desk-bound, office-hours" system focused on the production of statistical documentation, toward field-based activities that prioritize supporting society and participating in their social spaces without time restrictions.

The Role of Local Communities in Scientific Theories (Communitarian Theories)

The role and significance of local communities have been extensively discussed in the literature. Scholars of this subject point to the processes occurring within these communities and their influence on shaping attitudes in the context of upbringing, as well as in the realms of rehabilitation and social reintegration.

Among the concepts related to this topic, one can mention W. Ambrozik's[53] Concept of the Socialization of the Rehabilitation System, the Multi-Lane Concept of Rehabilitation with Societal Participation[54], the Concept of Creative Rehabilitation and Fluid Identity by M. Konopczyński[55], the Core Identity Pedagogy Concept by Z. Melosik,[56] and the Concept of Resilience[57].

Each of these authors emphasizes the crucial role of local communities both in the processes of upbringing and in rehabilitation and reintegration. What undeniably connects all the aforementioned theories is the authors' emphasis on implementing interventions within local communities as the natural environment where individuals are formed and function, or have functioned, within a group. It is within these communities that the educational and corrective processes of individuals should take place, as they represent the natural environment grounded in interpersonal bonds and relationships.

W. Ambrozik notes that "it is precisely within local communities that the fundamental socialization processes occur, where individuals or groups deviate, and therefore, it is also within these communities that the core part of the rehabilitation process must take place, culminating in the full reintegration of former offenders into social participation within the given community."[58] Like other theorists who emphasize the importance of local communities in the process of socialization, rehabilitation, and reintegration, Ambrozik advocates for

[53] W. Ambrozik, Społeczność lokalna jako płaszczyzna funkcjonowania systemu profilaktyczno-resocjalizacyjnego, Resocjalizacja Polska 2010, nr 1, s. 157-173. (W. Ambrozik, The Local Community as a Platform for the Functioning of the Preventive and Resocialization System, Resocjalizacja Polska 2010, No. 1, pp. 157-173.)

[54] A. Bałandynowicz, Wielopasmowa teoria resocjalizacji z udziałem społeczeństwa, „Resocjalizacja Polska „ 2010, nr 1, s. 125. (A. Bałandynowicz, The Multilane Theory of Resocialization with Society's Participation, "Resocjalizacja Polska" 2010, No. 1, p. 125.)

[55] M. Konopczyński, Twórcza resocjalizacja. Wybrane metody pomocy dzieciom i młodzieży, MEN-Editions Spotkania, Warszawa 1996, s. 165. (M. Konopczyński, Creative Resocialization. Selected Methods of Helping Children and Youth, MEN- Editions Spotkania, Warsaw 1996, p. 165.)

[56] Z. Melosik, Pedagogika i konstrukcje tożsamości młodzieży w „kulturze kontroli" i „kulturze rozproszenia", „Studia Edukacyjne" 2014, nr 31, s. 7-23. (Z. Melosik, Pedagogy and Identity Constructions of Youth in the "Culture of Control" and "Culture of Dispersion", "Educational Studies" 2014, No. 31, pp. 7-23.)

[57] B. Urban, Zachowania dewiacyjne młodzieży, 2000; B. Urban, Kognitywno-interakcyjne postawy współczesnej resocjalizacji (w:) M. Konopczyński, B.M. Nowak (red.), Resocjalizacja. Ciągłość i zmiana, Wyd. Pedagogium WSPR, Warszawa 2008, s. 33. (B. Urban, Deviant Behaviors of Youth, 2000; B. Urban, Cognitive-Interactive Attitudes of Contemporary Resocialization (in:) M. Konopczyński, B.M. Nowak (eds.), Resocialization. Continuity and Change, Pedagogium WSPR Publications, Warsaw 2008, p. 33.)

[58] W. Ambrozik, Reorganizacja społeczności lokalnej a reintegracja społeczna byłych przestępców (w:) A. Kieszkowska (red), Tożsamość osobowa dewiantów a ich reintegracja społeczna. Cz.1., Impuls, Kraków 2011, s. 65-70. (W. Ambrozik, Reorganization of the Local Community and Social Reintegration of Former Offenders (in:) A. Kieszkowska (ed.), Personal Identity of Deviants and Their Social Reintegration. Part 1., Impuls, Krakow 2011, pp. 65-70.)

"integrated and coordinated actions at the level of individual institutions, local and regional communities, and the state."[59]

In his proposed Multi-Lane Theory, A. Bałandynowicz draws attention to the subjectivity of the individual, which is an end in itself. According to the author, "an individual can learn to function in society, which is natural as opposed to the artificial, institutionalized environment detached from the realities of life." The author argues that achieving the goal of the corrective process in one's native environment allows for the preservation of family ties, integration into a familiar setting, and the maintenance of relationships with friends.[60]

In this view of the educational-developmental, but also corrective, reality, there is space and a significant role for the Police in its newly proposed framework. The author of this article, in developing her original model of socialization-preventive change, highlights the potential for the Police to co-create systemic solutions within local communities. In such a community, the police officer would be an integral part.[61]

The concept of the Police's new function, expanded to include systemic proactive actions rather than just reactive ones, aligns with the notion of civil society, which encompasses two main areas of social phenomena: group activity and civic awareness.

Civil Society and the Role of the Police

Although E. Wnuk-Lipiński, who describes the phenomenon of civil society, defines it as "the totality of non-state institutions, organizations, and social associations operating in the public sphere (...) that arise from grassroots initiatives and whose participation is voluntary,"[62] this, in the author's view, is not an exhaustive list.

When we think of the Police today, we do not perceive them as an element co-creating the local community, but rather as an institution that intervenes in the community's space in situations of security threats or when preventive actions are being taken. This new, broader perspective on the Police proposes seeing them as an element co-creating the local reality. Such an approach would permanently integrate representatives of the Police, such as community officers or juvenile specialists, into the fabric of the community, co-creating and contributing to it.

Community Policing as a Method of Collaboration with the Local Community

A key aspect of the Police's coexistence within local communities is the idea of Community Policing, which focuses on meeting the social need for safety. J. Czapska lists the constitutive features of Community Policing as consultation, adaptation, mobilization, and problem-solving.[63]

[59] W. Ambrozik, Społeczność lokalna jako płaszczyzna funkcjonowania systemu profilaktyczno-resocjalizacyjnego, Resocjalizacja Polska 2010, nr 1, s. 168. (W. Ambrozik, The Local Community as a Platform for the Functioning of the Preventive and Resocialization System, Resocjalizacja Polska 2010, No. 1, p. 168.)

[60] A. Bałandynowicz, Wielopasmowa teoria resocjalizacji z udziałem społeczeństwa, „Resocjalizacja Polska" 2010, nr 1, s. 125. (A. Bałandynowicz, The Multilane Theory of Resocialization with Society's Participation, "Resocjalizacja Polska" 2010, No. 1, p. 125.)

[61] I. Klonowska, Uspołeczniające, profilaktyczne i resocjalizacyjne funkcje Policji w perspektywie pedagogiki resocjalizacyjnej, s. 28. Impuls 2018. (I. Klonowska, Socializing, Preventive, and Resocialization Functions of the Police from the Perspective of Resocialization Pedagogy, p. 28. Impuls 2018.)

[62] E. Wnuk-Lipiński, Słowo wstępne (w:) M. Szyszkowska (red.), Człowiek jako obywatel, ISP PAN, Warszawa 1995, s. 5. (E. Wnuk-Lipiński, Foreword (in:) M. Szyszkowska (ed.), The Human as Citizen, ISP PAN, Warsaw 1995, p. 5.)

[63] J. Czapska, J. Wójcikiewicz, Policja w społeczeństwie obywatelskim, Zakamycze, Kraków 1999, s. 138-139. (J. Czapska, J. Wójcikiewicz, The Police in Civil Society, Zakamycze, Kraków 1999, pp. 138-139.)

These areas, as enumerated by Czapska, provide an opportunity to activate greater Police involvement and redirect its focus from a repressive function to a service-oriented, supportive role.

Beyond the currently conducted activities, such as community consultations aimed at assessing the safety needs and expectations of residents and promoting community-based collaboration, preventive meetings, and preemptive actions, the Police should, in line with the idea of Community Policing, cooperate with local communities and engage them in creating safe spaces together.

Much has been written about the role of local communities in promoting safety, citing examples from the United States, where the role of local law enforcement, represented for instance by the sheriff, aligns with the concept proposed by the author for the idealized role of the community officer.

A police officer who is a constant participant in the social life of a small local community, who feels like a resident of that community, would simultaneously be a "guardian of the law" concerned with the safety of its residents, internalizing the surrounding space and its problems by taking an interest in and reflecting upon them.[64]

In emphasizing the role of the process of interiorization, one can refer to D. A. Kowalewska, who in her text recalls the words of Karol Wojtyła: "Man does not only enter the world of objects cognitively and even finds himself in this world as one of those objects, but also has this entire world reflected in his consciousness, which he lives most internally and personally. For consciousness not only reflects but also, in a special way, internalizes or interiorizes what it reflects, giving it a place within the person's 'self'."[65]

A police officer who identifies with the local environment where they carry out their assigned tasks, caring for the safety of the local community in a new pedagogical-educational framework, would be safeguarding the security of their home, their loved ones, neighbors, and friends. Such a presence within the environment would be invaluable.

The National Safety Threat Map

Building bridges based on cooperation with society, in addition to preventive activities, includes available applications that "invite" collaboration with the Police for the sake of safety. One such application is the National Safety Threat Map (NSTM).

"The sense of security is a fundamental, existential, and undeniably the most important need of every human being. The Police, as one of the key institutions responsible for ensuring safety and public order in Poland, have developed a tool to co-create with local communities a map that identifies the scale and types of threats, as identified by both the institutions co-responsible for safety and public order and by the society."[66]

The NSTM project was created with the intention of actively involving society in building safety. The application's target users are residents of local communities, who, by identifying dangerous or improper activities of others, can inform and engage the Police about these issues. The idea behind NSTM is to co-create safety with residents who wish for their neighborhoods to be clean and safe, and who feel engaged in maintaining these qualities.

NSTM is undoubtedly an interesting and valuable application, serving as a unique communication channel with society, aimed at maintaining public order. The creators assumed that by encouraging residents to report the problems faced by their local communities, they would provide the option of remaining anonymous and submitting information online.

This form of contact arises from the citizens' declared reluctance to interact with the Police. In the public consciousness, the Police are still perceived as an entity that appears only when the law has been broken or when a citizen is summoned to clarify matters or is punished for their actions.

This perspective has been confirmed by a series of studies conducted annually by the Public Opinion Research Center (CBOS), which, although they have shown an improvement in the perception of the Police in recent years and increasing citizen satisfaction, "who feel safe in their place of residence after dark" or know their community officer, these contacts remain sporadic, and societal expectations still concern the Police's presence and problem-solving without involving citizens.[67]

NSTM represents an undeniable step towards joint efforts to ensure public safety and order, but it is still far from building activities that co-create an educational-pedagogical system within local communities, where the Police representative would be an active participant alongside residents in undertaking various initiatives for the common good.

Social Research on the Police – Towards Systemic Cooperation

The aforementioned public opinion surveys are an extremely important source of information for the Police, based on which the Police design subsequent actions and activities aimed at bringing them closer to society. Social research within the Police began in the 1990s and was commissioned by the Public Opinion Research Center.[68]

The evolution of research, which has become a permanent fixture in the Police space, has allowed and continues to allow for ongoing adjustments to activities and the Police's response to societal needs and expectations. Initially, the declared lack of public trust in the Police gradually improved as the Police's actions became more socially oriented, directed at local communities. In 1992, the majority of respondents claimed that the Police were ineffective, and the image of the Police in the eyes of society was unfavorable. Citizens declared a lack of support from the institution responsible for their safety, and their actions were described as oppressive and restrictive. These data evolved and reflected the socio-political-economic landscape of the country over the years. A notable change in the perception of the Police was documented in studies from 2002, where society declared a 72% trust level in the Police.[69]

[64] Słownik Języka Polskiego 2023 (Dictionary of the Polish Language 2023)

[65] K. Wojtyła, Osoba i czyn, Wyd. KUL, 2011, s. 83 za D. A. Kowalewska, OSA, s. 161. (K. Wojtyła, The Acting Person, KUL Publishing, 2011, p. 83 in D. A. Kowalewska, OSA, p. 161.)

[66] J. Stawnicka, I. Klonowska, Krajowa Mapa Zagrożeń Bezpieczeństwa nową formą dialogu polskiej policji ze społecznością lokalną. Na rzecz bezpieczeństwa wewnętrznego. Aspekt społeczno-pedagogiczny, s. 7., Wyd. Humanitas, Sosnowiec 2018. (J. Stawnicka, I. Klonowska, The National Safety Threats Map as a New Form of Dialogue Between the Polish Police and the Local Community. For Internal Security. Socio-Pedagogical Aspect, p. 7., Humanitas Publishing, Sosnowiec 2018.)

[67] Badania CBOS na zlecenie KGP w latach 1994-2017 r. (cyt. za I. Klonowska, Uspołeczniające, profilaktyczne i resocjalizacyjne funkcje Policji w perspektywie współczesnej pedagogiki resocjalizacyjnej, Wyd. Impuls 2018, s. 99-128) CBOS research commissioned by the National Police Headquarters in the years 1994-2017 (cited in I. Klonowska, Socializing, Preventive, and Resocialization Functions of the Police from the Perspective of Contemporary Resocialization Pedagogy, Impuls Publishing 2018, pp. 99-128).)

[68] Państwowa jednostka organizacyjna. „Polskie Radio i Telewizja", OBOP, Badanie ofiar przestępstw, dokument 2/630, marzec 1992., za I. Klonowska, Uspołeczniające, profilaktyczne i resocjalizacyjne funkcje Policji w perspektywie współczesnej pedagogiki resocjalizacyjnej, Wyd. Impuls, s. 100-101. (State Organizational Unit. "Polish Radio and Television," OBOP, Crime Victim Survey, document 2/630, March 1992., cited in I. Klonowska, Socializing, Preventive, and Resocialization Functions of the Police from the Perspective of Contemporary Resocialization Pedagogy, Impuls Publishing, pp. 100-101.)

[69] Opinia Publiczna na temat działalności Policji i poczucia bezpieczeństwa. Raport zbiorczy z badań TNS OBOP dla Komendy Głównej Policji, Warszawa październik 2002., za I. Klonowska, Uspołeczniające, profilaktyczne i resocjalizacyjne funkcje Policji w perspektywie współczesnej pedagogiki resocjalizacyjnej, Wyd. Impuls, s. 100-128. (Public Opinion on the Activities of the Police and the Sense of Security. Summary Report from TNS OBOP Research for the National Police Headquarters, Warsaw, October 2002., cited in I. Klonowska, Socializing, Preventive, and Resocialization Functions of the Police from the Perspective of Contemporary Resocialization Pedagogy, Impuls Publishing, pp. 100-128.)

The 2002 report also unfortunately highlighted that 66% of respondents did not know their community officer, indicating a general change in the perception of the Police but not translating into direct positive contacts with Police representatives. From the perspective of building the Police as a pro-social institution with educational responsibilities, the 2012 studies were significant, as they for the first time posed a question about citizens' expectations of the Police. The responses unequivocally indicated that citizens want easy contact with the Police via emergency numbers and rely on the Police's quick arrival when needed.[70]

Over 70% of respondents at that time indicated a lack of direct contact with the Police, and although they expected their activity in times of danger, they still did not associate interactions with the Police with ongoing cooperation.

In subsequent studies, citizens began expressing interest in greater Police involvement in the functioning of local communities, pointing out that Police officers should organize meetings with residents concerning their safety (as noted in the 2013 survey), and by 2015, when asked whether the Police should undertake educational actions for safety, over 72% of respondents agreed.

Respondents indicated that the Police should encourage community members to engage in pro-social activities to combat crime in their area. Additionally, 72% of respondents pointed out that the Police play a significant role in preventive activities.[71]

In subsequent years, respondents had the opportunity to comment on new applications designed to facilitate contact with the Police, such as "My Command" or the "National Safety Threat Map." Both initiatives were met with considerable interest, which could not be said about cooperation with community officers. There was still no increase in the space for collaboration between community officers and the local communities under their jurisdiction, where they perform their duties.

Although only selected editions of the annual studies were referenced for this article, they clearly indicate the significant changes in the public's perception of the Police over the years, as well as the growing awareness among respondents that only by cooperating with the Police can the goal of ensuring safety and shaping pro-social attitudes based on desirable models be achieved.

Police representatives should be an integral part of the local community they help to create through active participation and the aforementioned interiorization with the environment.

Campaigns and Activities of the Police

The Police, in undertaking a series of actions aimed at building relationships with society at both the local and global levels, carry out hundreds of preventive and educational initiatives each year. The primary goal of these initiatives is to reach out to society and promote pro-social behavior, desirable attitudes, and the idea of shared responsibility for safety. It is impossible to list all of them due to their sheer number. Some are conducted under the auspices of the Ministry of the Interior and Administration (MSWiA), some by the Chief of Police, and others

[70] Polskie badanie przestępczości. Profil obszarów działania komend wojewódzkich i Komendy Stołecznej Policji, zrealizowane na zlecenie KGP, KGP Warszawa, 2012. (Polish Crime Survey. Profile of the Areas of Activity of the Voivodeship Police Headquarters and the Metropolitan Police Headquarters, conducted on behalf of the National Police Headquarters, National Police Headquarters, Warsaw, 2012.)

[71] Polskie badanie Przestępczości 2015 r., zrealizowane na zlecenie KGP na przełomie stycznia i lutego 2015 r.(Polish Crime Survey 2015, conducted on behalf of the National Police Headquarters in January and February 2015.)

by subordinate Provincial or District Commanders in the field. These are undoubtedly excellent initiatives that contribute to raising social awareness and a better understanding of the need for cooperation for safety. However, they do not fulfill the proposed systemic approach to the Police's activities as an educational-social institution.

The occasional and short-term nature of these actions makes them ad-hoc, whereas the preventive-educational-social activities promoted by the author require, in addition to short-term actions, continuous cooperation and the coexistence of the Police within local communities, addressing their daily problems and challenges.

The Police Officer as a Streetworker – Co-Creator of Local Community Safety

An opportunity to build a common ground for safe local spaces and shape desirable pro-social attitudes lies in the permanent involvement of Police officers in the daily lives of local communities, fulfilling the role of a streetworker—a street pedagogue. This form of participation in local community activities offers the chance to demonstrate correct solutions, desirable attitudes, set a good example, model behaviors, initiate sports activities, and foster a sense of community.

"The work of a street pedagogue takes place outside the institution. It is a special form of cooperation with young people in need of support."[72] J. Stawnicka wrote that "social expectations unequivocally indicate that this should also be an animator of educational-preventive activities, possessing special personal qualities, experience, knowledge, and exceptional communication skills, which are necessary because the community officer is in constant contact with residents to undertake joint actions for safety and public order."

"The task of a street pedagogue is to provide acceptance and help. In the initial phases, they offer support and show possible solutions to problems, and later become a companion and assistant in performing various tasks."[73]

A police officer functioning as a street pedagogue could be a kind of link between citizens and the Police in fulfilling their duties. The range of activities, beyond the currently implemented preventive campaigns and strictly police-related actions aimed at combating crime, could include co-creating local communities through active and ongoing participation. A police streetworker (most often a community officer) could inspire, encourage proactive actions, serve as a role model, and above all, build a common "small homeland," which would be their space not only professionally but personally as well.

Such an initiative is both possible and worthy of attention. The direction should be towards

[72] I. Klonowska, Uspołeczniająca, profilaktyczna i resocjalizacyjna funkcje Policji w perspektywie współczesnej pedagogiki resocjalizacyjnej, Impuls 2018, s. 226. (I. Klonowska, The Socializing, Preventive, and Resocialization Functions of the Police from the Perspective of Contemporary Resocialization Pedagogy, Impuls 2018, p. 226.)

[73] I. Klonowska, Uspołeczniająca, profilaktyczna i resocjalizacyjna funkcje Policji w perspektywie współczesnej pedagogiki resocjalizacyjnej, s. 230, za The International Network of Social Street Workers, International Guide on the Methodology of Street Work Throughout the World, Dynamo International, Bruxelles, 2008. (I. Klonowska, The Socializing, Preventive, and Resocialization Functions of the Police from the Perspective of Contemporary Resocialization Pedagogy, p. 230, cited in The International Network of Social Street Workers, International Guide on the Methodology of Street Work Throughout the World, Dynamo International, Brussels, 2008.)

the cooperation of the Police and society on all levels, making safety the foundational bond that unites. Undoubtedly, the Police have been undertaking various actions for many years to co-create safety, but it is necessary to support the initiatives described in the article by building real systemic activity within the local environment with the ongoing involvement of first-contact police officers. Only co-creation and care for safety can yield satisfactory results.

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The right to respect for family life and the rights of the child. Parental child abduction from the perspective of legislative acts and jurisprudence

The right of parents to bring up their children has been guaranteed in both universal international law and the regional legal systems of both the European Union and the Council of Europe, as well as in the domestic law of the Republic. In light of the research question, an analysis of the normative solutions of the aforementioned legal systems would appear to be superfluous. It is nevertheless pertinent to recall the Convention on the Rights of the Child, which was adopted by the General Assembly of the United Nations on 20 November 1989[74]. Article 9 of the Convention states that States Parties shall ensure that a child shall not be separated from their parents against their will, unless a competent authority, subject to judicial control, decides, in accordance with applicable law and due process, that such separation is necessary in the best interests of the child. It has also been established that such a decision may be necessary, particularly in cases of parental abuse or neglect where each parent resides separately and a decision must be made regarding the whereabouts or residence of the child. The wording of Article 10(2) of the Convention indicates that a child whose parents reside in different countries has the right to maintain regular personal relations and direct contact with both parents. In this regard, States Parties are obliged to respect the right of the child and their parents to leave any country, including their own, and to return to their country of origin. This right shall be subject only to such limitations as are prescribed by law and are necessary for the protection of national security, public order, health or public morals, or the rights and freedoms of others. However, such limitations must be consistent with the other rights recognised in the Convention.

In accordance with the Universal Declaration of Human Rights, the child has the right to grow up in the family, which is defined as the natural and fundamental cell of society. Consequently, the family is entitled to the protection of society and the state. Furthermore, the International Covenant on Civil and Political Rights (ICCPR)[75] states in Article 23(1) that the family is the natural and fundamental unit of society and is entitled to protection by society and the state. Concurrently, Article 24(1) asserts that every child, irrespective of any distinctions such as race, colour, sex, language, religion, national or social origin, property or birth, is entitled to the safeguards afforded to minors by the family, society and the state[76].

While the European Convention for the Protection of Human Rights and Fundamental

[74] Dz. U. 1991, no. 120, item 526.

[75] Dz. U. 1977, no. 38, item 167.

[76] K. Sękowska-Kozłowska, Komentarz do art. 23 i art. 24, w: R. Wieruszewski (red.), „Międzynarodowy Pakt Praw Obywatelskich (Osobistych) i Politycznych", Warszawa 2012, s. 567 – 615.

Freedoms[77] does not explicitly mention the rights of the child, Article 8, which safeguards respect for private and family life, can be interpreted as providing adequate protection for the rights of the child. This interpretation is supported by numerous judgments of the European Court of Human Rights in Strasbourg[78].

The Charter of Fundamental Rights of the European Union[79] adopts a more expansive perspective on the rights of the child, as evidenced by Article 24(3), which asserts that every child is entitled to maintain a relationship with both parents and to have direct contact with them on a regular basis, unless this is contrary to the child's best interests[80]. The existing literature emphasises that the family, and in particular the parents, are the first people with whom a child comes into contact at birth and on whom the child is completely dependent. Parents are under a legal obligation to care for and have custody of their child. In principle, this obligation persists until the child attains the age of majority.[81].

It is incumbent upon states parties to the Convention on the Rights of the Child to respect the rights and duties of parents and extended family members in accordance with local custom. The wording of this provision indicates that parents and legal guardians are responsible for facilitating the child's ability to orient themselves in a manner that aligns with their evolving capabilities. The right to a personal upbringing, including direct contact with the child, is explicitly stated in Article 9 of the Convention on the Rights of the Child. The aforementioned bond with the parents, particularly the mother during the early childhood years, was explicitly emphasised in the Sixth Declaration of the Rights of the Child.

In the context of this issue, it is of the utmost importance to define the concept of the best interests of the child[82]. This is determined by issues relating to the determination of the habitual residence of the child and the return of the child in the case of abduction. It is noteworthy that the term "best interests of the child," as utilized in the Convention on the Rights of the Child, has on occasion been supplanted by the term "best interests of the child," both at the normative level and in case law.

Nevertheless, one of the principal risks to which a child is exposed in instances of separation or divorce is the abduction of the child by a parent from the country of the child's habitual residence. The adverse consequences of one-parent abduction on the child and on the parent from whom the child has been abducted are so profound that they have given rise to legal action under both general (universal) international law and EU law. It is important to note

[77] Dz. U. 1993, no. 61, item 284.

[78] Zob. L. Garlicki, Komentarz do art. 8, w: L. Garlicki (red.), „Konwencja o ochronie praw człowieka i podstawowych wolności. Komentarz", Warszawa 2010, s. 479 – 550, szczególnie s. 524-534.

[79] OJ C 2010 no. 83, item 389

[80] For further information on the rights of the child as set out in the Charter of Fundamental Rights of the European Union, refer to S. Majkowska-Szulc, M. Tomaszewska, Komentarz do art. 24, w: A. Wróbel (red.), „Karta Praw Podstawowych w Unii Europejskiej. Komentarz", 2. Wyd., Warszawa 2020, s. 770-778.

[81] Zob. T. Smyczyński, Ochrona Praw Dziecka, w: R. Wieruszewski (red.), „Prawa człowieka. Model prawny", Wrocław-Warszawa-Kraków 1991, s. 111-140.

[82] For further information on this topic, refer to the following sources:. Z. Kubicka-Grupa, Miejsce zwykłego pobytu dziecka jako podstawa jurysdykcji krajowej w rozporządzeniu Bruksela II ter Warszawa 2024, s. 217-270. W kwestii pojęcia „dobro dziecka" por. także W. Stojanowska, Dobro dziecka w aspekcie sprawowanej nad nim władzy rodzicielskiej, „Studia nad Rodziną" 2000, nr 1 (6), s. 58; Z. Radwański, Dobro dziecka, w: A. Łopatka, „Konwencja o Prawach Dziecka a prawo polskie" Warszawa 1991, s. 50 i n.; R. Łukasiewicz, Dobro dziecka a interesy innych podmiotów w polskiej regulacji prawnej przysposobienia, Warszawa 2019 s. 67 i n.; M. Arczewska, Dobro dziecka jako przedmiot troski społecznej, Kraków 2017, s. 210 i n.

that although the phenomenon of one-parent child abduction had been observed much earlier, both in the nineteenth and twentieth centuries, it was not until the 1980s that attempts were made to regulate the phenomenon through the establishment of legal norms.

Nevertheless, one of the principal risks to which a child is exposed in instances of separation or divorce is the abduction of the child by a parent from the country of the child's habitual residence. The adverse consequences of one-parent abduction on the child and on the parent from whom the child has been abducted are so profound that they have given rise to legal action under both general (universal) international law and EU law. It is important to note that although the phenomenon of one-parent child abduction had been observed much earlier, both in the nineteenth and twentieth centuries, it was not until the 1980s that attempts were made to regulate the phenomenon through the establishment of legal norms.

International child abduction is a relatively common and virtually global phenomenon. These factors are associated with the perceived mobility of individuals from diverse countries who relocate in pursuit of employment opportunities and enhanced living standards, often driven by the pursuit of higher education. This phenomenon frequently appears to be motivated by a simple curiosity and desire to gain knowledge about regions beyond one's own. It is challenging to ascertain the underlying causes of the dissolution of partnerships or marriages between these migrants and the residents of their destination areas, where they have established themselves through residence, employment, or education. It can be reasonably surmised that the dissolution of such relationships is attributable to a combination of cultural, religious, and financial factors. It is also important to note that there are instances where partnerships or marriages between individuals from the same cultural background may also experience dissolution when they find themselves in circumstances that are far removed from their usual environment.

Addressing International Child Abduction in a System of Universal (Universal)Public International Law

The phenomenon of international child abduction by one parent has become increasingly prevalent in recent decades[83]. The undeniable gravity of such circumstances for the other parent and, most notably, for the child, particularly when the child is compelled to relocate to another country, has prompted the formulation of the Convention on the Civil Aspects of International Child Abduction, which was drafted in The Hague on October 25, 1980[84]. Without undertaking an analysis of the provisions of the Convention, it is nevertheless important to emphasise that the provisions of the Convention apply to any child who has his or her habitual residence[85] in a State party to the Convention, provided that the child has not attained the age of 16[86]. The

[83] As M. H. Weiner has observed, there has been a notable surge in instances of parental child abduction since the year 2000. For further information, please see M. H. Weiner, Uprooting Children in the Name of Equity, "Fordham International Law Journa"l, 2009, pp. 409-486. The author presents a detailed analysis of a significant number of child abduction cases, with a particular emphasis on those decided in US courts.

[84] Dz. U. 1995, no. 108, item 528.

[85] The doctrine has highlighted that the Hague Convention does not supersede the established definition of the concept of "habitual residence." This is defined as the territory of the state in which the child's actual place of habitual residence is situated. It was emphasised that the determination of habitual residence should be made on the basis of objective criteria, independent of the subjective intentions of the child or their guardian. For further details, refer to T. Świerczyński, Podstawowe zagadnienia Konwencji haskiej o cywilnych aspektach uprowadzenia dziecka za granicę, „Transformacje Prawa Prywatnego", 2000, no. 1-2, pp. 87-98

[86] Refer to Article 4 of the Hague Convention

Convention makes a distinction between rights of custody and rights of access[87]. The wording of Article 11 of the 1980 Hague Convention indicates that, in cases of child abduction, the judicial or administrative authorities of each Contracting State should act promptly to return the child. In the event that the judicial or administrative authority in question fails to issue a decision within a period of six weeks from the date of receipt of the request, the applicant or the Central Authority of the requested State may, at their own discretion or at the request of the Central Authority of the requesting State, request that reasons be provided for the delay. In the event that the Central Authority of the requested State receives a reply, it shall transmit it to the Central Authority of the requesting State or, where appropriate, to the applicant. It is important to note that the fundamental premise of the 1980 Hague Convention is to guarantee the expeditious return of the abducted child to their habitual residence.

The 1980 Hague Convention is supplemented by the provisions of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, done at The Hague on 19 October 1996 (hereinafter: the 1996 Hague Convention) [88]. It is important to note that the European Convention on the Recognition and Enforcement of Decisions Relating to Custody of Children and on the Restoration of Custody of Children (hereinafter: the Luxembourg Convention) forms part of the legal system of the Council of Europe and is not part of the system of public international (universal) law[89]. The provisions of the Luxembourg Convention comprise a comprehensive and self-contained regulatory framework governing the conditions and procedures for the recognition and enforcement of decisions on child custody within each Contracting State[90]. The provisions of Part II of the Luxembourg Convention (Articles 7 to 12) set out a comprehensive framework for determining the grounds on which a judgment rendered by a foreign court in a State party to the Convention may be refused recognition.

Normative provisions in the law of the European Union

In the system of EU law, the issue of child abduction or parental retention has been regulated by a series of increasingly detailed Council Regulations. The initial legislation was the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters, which was drafted in accordance with Article K.3 of the EU Treaty[91]. This was followed by Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses[92]. This was subsequently amended by Council

[87] In accordance with the stipulations set forth in the Convention, the term "rights of custody" encompasses those pertaining to the care and supervision of the child, particularly the authority to determine the child's whereabouts. Conversely, the term "rights of access" signifies the entitlement to take the child for a specified duration to a location other than the child's habitual residence (Article 5)..

[88] Dz. U. 2010, no. 172, item 1158. The Convention was ratified on 8 June 2010, with reservations pertaining to Article 55(1)(a) and (b), and declarations concerning Articles 29(1), 34(2), 23, 26 and 52 of the Convention.

[89] The Convention was drafted in Luxembourg on 20 May 1980 and ratified by Poland on 7 August 1995, subject to the proviso that, in accordance with Article 17 of the Convention, Poland reserved the right to refuse to recognise or enforce judgments referred to in Articles 8 and 9 of the Convention concerning wrongful deprivation of custody of a child. Furthermore, Poland stated that, in the event of refusal to recognise or enforce the judgments, it would invoke the grounds set out in Article 10 of the Convention.

[90] Order of the Supreme Court of 5.07.2000, ref. no. I CKN 123/00, LEX no. 51336.

[91] OJ C 1998, no. 221, p. 1

[92] OJ L 2000, no. 160, p. 1

Regulation (EC) No 2116/2004 of 2 December 2004[93]. Subsequently, Council Regulation (EC) No 2201/2003[94], colloquially termed the Brussels II bis Regulation, pertains to the jurisdiction and recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility. It supersedes Regulation (EC) No 1347/2000[95]. The repeal of Regulation 2201/2003 was enacted by Article 104(1) of Council Regulation (EU) 2019/11, which pertains to jurisdiction, the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility, as well as international child abduction[96].

The measures were explicitly designed with the objective of preventing child abduction and protecting children from the adverse consequences of such an act. The objective was to guarantee the expeditious return of the child to the Member State in which he or she was habitually resident prior to the abduction. This was to be achieved by progressively enhancing the procedural details pertinent to the matter. The successive Regulations were intended to supplement the 1980 Hague Convention by elucidating and delineating certain aspects of the issues encompassed by the Convention.

A significant challenge for the ECtHR was to establish the relationship between the ECHR and the 1980 Hague Convention. In its judgment in Neulinger and Shuruk v. Switzerland[97], the ECtHR stated that it was not within the Court's remit to assume the role of the competent national authorities in regulating custody and access to children. Rather, the Court's function was to review the decisions taken by those authorities in the exercise of their discretion, with a view to determining whether they were consistent with the requirements of the Convention. In this regard, the Court is tasked with determining whether the rationale provided to justify the measures taken in relation to the applicant's right to respect for family life is pertinent and sufficient in light of Article 8 of the ECHR. In determining this issue, it is pertinent to note that Article 8 of the ECHR encompasses the right of parents to a measure that would facilitate their reunification with their children, and the obligation of national authorities to implement such measures. It is important to note that the primary objective of Article 8 ECHR is to safeguard individuals against arbitrary interference by public authorities and to ensure effective respect for family life. This provision encompasses the right of parents to measures that facilitate their reunification with their children, as well as the obligation of national authorities to implement such measures. Nevertheless, this latter obligation is not absolute. The nature and extent of the measures to be taken depend on the circumstances of each case and on the cooperation of all concerned parties. It is not possible to interpret the ECHR in isolation; rather, it must be considered in the context of relevant norms of international law.

In light of the Convention on the Rights of the Child of 20 November 1989 and the Hague Convention of 1980, the positive obligations imposed by Article 8 ECHR on states with regard to the reunification of parents with their children must be interpreted in a manner that is consistent with the aforementioned conventions. Since the adoption of the Convention on the Rights of the Child on 20 November 1989. Since the adoption of the Convention on the Rights of the Child of 20 November 1989, the "best interests of the child" have been the paramount consideration in child protection. This is in order to ensure the

[93] OJ L 2004, no. 367, p. 1

[94] OJ L 2003, no. 338, p. 1

[95] OJ L 2000, no. 160, p. 16

[96] OJ L 2019, nr 178, str. 1

[97] Judgment of the ECtHR of 8 January 2009, petition No. 41615/07, Neulinger and Shuruk v. Switzerland, https://hudoc.echr.coe.int/eng?i=002-11194, accessed on 22.02.2024

optimal development of the child within their family environment. This is in accordance with the preamble to the Convention, which states that the family is "the fundamental unit of society and the natural environment for the development and well-being of the child". These overarching considerations encompass a multitude of aspects. It has been emphasised that the ECtHR is fully aligned with the underlying principles that informed the 1980 Hague Convention. Furthermore, it was argued that these instruments were inspired by the necessity to protect children, who are regarded as the initial victims of the trauma resulting from their abduction or detention, and to prevent the proliferation of international child abductions. It is imperative that these considerations inform the interpretation of international instruments by the ECtHR. It has been emphasised that the return of a child is not an automatic consequence of the invocation of the 1980 Hague Convention. This is evidenced by the fact that the Convention recognises a number of exceptions to the obligation to return a child, based on considerations relating to the child's own person and environment. This demonstrates that it is for the court deciding the case to adopt a particular solution. In light of the aforementioned considerations, it is evident that the fundamental purpose of the ECHR and the 1980 Hague Convention would be undermined if the arguments of the parent who has abducted the child were to be accepted without sufficient scrutiny. It is thus imperative that the aforementioned exceptions be interpreted in a narrow manner. The ECHR has indicated that the harm referred to in Article 13(b) of the 1980 Hague Convention cannot result solely from separation from the parent responsible for the wrongful abduction or retention of the child. It is thus evident that the notion of "grave risk" as delineated in Article 8 of the 1980 Hague Convention cannot be interpreted as encompassing the entirety of the inconveniences associated with the experience of return. The exception set forth in Article 13(b) of the 1980 Hague Convention is applicable solely to circumstances that exceed what a child could reasonably be expected to endure.

The ECtHR observed that the stipulations set forth in the 1980 Hague Convention on the return of children cannot be automatically or mechanically applied. The judgment highlighted that in certain instances, the paramount interests of the child may prevail over the conventional approach of separating the child from the parent with whom they are residing or returning the child to the parent who requests it. This formula will be reiterated on numerous occasions by the ECtHR in the explanations provided for its judgments. The question of the best interests of the child thus became the point of departure for further consideration. The ECtHR has identified that this interest is constituted of two components. One such interest is the maintenance of the child's family ties, which may only be broken in exceptional circumstances. Conversely, it is in the child's best interests to develop in a healthy environment, and the parent is not entitled to take measures that are detrimental to the child's health and development. The Court asserts that this philosophy is enshrined in both the ECHR and the 1980 Hague Convention. The best interests of the child are dependent on a number of individual circumstances, in particular age and maturity. As a result, it is necessary to assess these interests on a case-by-case basis. National authorities are afforded a certain degree of discretion in this assessment, but this is subject to European supervision by the ECtHR, which reviews the decisions of these authorities. Furthermore, the ECtHR is responsible for ensuring that the decision-making processes of national courts are conducted in a fair and impartial manner, allowing the individuals involved to present their cases in full[98].

[98] Judgment of the ECtHR of 1 February 2011, Application No 23205/08, Karoussiotis v Portugal, https://hudoc.echr.coe.int/eng?i=001-103216, accessed on 22.02.2024. See also Judgment of the ECtHR of 16 October 2006, Application No. 32817/02, Wildgruber v. Germany, https://hudoc.echr.coe.int/eng?i=001-77685, accessed on 22.02.2024.

In the case of X. v. Latvia[99], the Grand Chamber of the ECtHR did not rule out the primacy of the ECHR over the 1980 Hague Convention. This is evidenced by paragraph 94 of the Explanatory Memorandum, which states that a harmonious interpretation of the two instruments is possible, provided that the Court is able to fulfil its function, which is to interpret and apply the ECHR in such a way that its guarantees remain practical and effective[100]. This resulted in the conclusion that the immediate return of a child under the 1980 Hague Convention could not be ordered automatically or mechanically, as had originally been suggested by the ECtHR jurisprudence. It was highlighted that a clear conflict existed between Article 8 of the ECHR and the 1980 Hague Convention[101].

The ECtHR has consistently maintained that the exceptions to a return order under the 1980 Hague Convention must be interpreted in a narrow manner. Therefore, the harm referenced in Article 13(b) of the Convention cannot be attributed solely to the separation of the parent responsible for the wrongful removal or retention of the child. It has been emphasised that effective respect for family life requires that the future relationship between the child and the parent should not be determined solely by the passage of time. Furthermore, where a change in factual circumstances may exceptionally justify a decision not to return, it must be demonstrated that the change was not a consequence of any action or delay on the part of the State[102].

[99] Judgment of the ECHR of 26 November 2013, Application No 27853/09, X v. Latvia, https://hudoc.echr.coe.int/eng?i=001-107888, accessed on 22.02.2024

[100] K. Gałka, Europejska Konwencja Praw Człowieka a Konwencja dotycząca cywilnych aspektów uprowadzenia dziecka za granicę. Glosa do wyroku ETPC z dnia 26 listopada 2013 r., 27853/09, LEX/el. 2014.

[101] The stance of the Grand Chamber of the ECtHR was shaped in the context of a case involving X., who gave birth to a daughter while in a relationship with her partner T. Despite this, no details of the father were included on the birth certificate, and no paternity tests were conducted. In 2008, the case was brought before the Grand Chamber of the ECtHR. X departed from the country with the child, and T. initiated legal proceedings in an Australian court to establish his parental rights to the girl, attesting under oath that he was her father. T. filed an application with the competent court in Riga requesting the return of the child to Australia. The court, in accordance with Articles 1 and 4 of the 1980 Hague Convention, ruled that the child should be returned to Australia. The applicant failed to comply with the decision, and T took the girl with him initially to Estonia and subsequently to Australia. The Australian court ruled that T had sole parental rights, but permitted the mother to have contact with her daughter solely in the presence of a social worker. Furthermore, the court prohibited the mother from communicating with the child in Latvian and limited her contact to twice a week. The mother subsequently returned to Australia. In its ruling, the Grand Chamber determined that Latvia had breached its obligations under Article 8 of the European Convention on Human Rights (ECHR) by a vote of nine to eight. The Chamber stated that it was not within its purview to determine whether the child's abduction was wrongful under the terms of Article 3 of the 1980 Hague Convention. In doing so, the Grand Chamber emphasised the subsidiary role of the ECtHR, which does not exclude its review in cases of child abduction. It noted that the Court does so to the extent that "errors by the courts may infringe rights and freedoms protected by the ECHR". The Court has emphasised that its role is to achieve a fair balance between the various interests involved in international child abduction cases. In this context, the interests of the child, the interests of each parent and the interests of the general public (public policy) must be considered. However, it is the interests of the child that must be given the greatest weight. Refer to K. Gałka, Europejska Konwencja Praw Człowieka a Konwencja dotycząca cywilnych aspektów uprowadzenia dziecka za granicę. Glosa do wyroku ETPC z dnia 26 listopada 2013 r., 27853/09, LEX/el. 2014. Por także. K. Warecka, Strasburg: dobro dziecka ponad wszystko. X. v.Łotwie – wyrok ETPC z dnia 26 listopada 2016 r., skarga 27853/09, LEX/el. 2014.

[102] Judgment of the ECtHR of 21.02.2023, Application No 16205/21, G. K. v. Ciprus, https://hudoc.echr.coe.int/eng?i=001-223107, accessed on 22.02.2024

The ECtHR observed that it was not within its mandate to assume the role of the competent national authorities in determining the permanent residence of the children or to ascertain whether there existed a significant risk of psychological harm to the children in the event of their return. The Court further emphasised that national courts should respect the time limits for proceedings set out in the 1980 Hague Convention[103]. In numerous cases concerning the abduction of children from Poland, it has been repeatedly demonstrated that the Polish authorities have failed to fulfil their obligations as set forth in the 1980 Hague Convention[104]. In cases where circumstances required the Polish courts to act diligently, which they did through a comprehensive examination of the case with the aim of protecting the child's best interests, the ECtHR nevertheless concluded that the proceedings were conducted in an unduly expeditious manner. The most optimal method was employed, and the decision-making process was not characterised by any lengthy periods of inactivity. It was therefore concluded that the state had not contravened its positive obligations as set forth in the 1980 Hague Convention[105].

In the context of an application for the return of a child, which differs from a child custody proceeding, the ECtHR has emphasised that it is primarily for the national authorities of the requested State to determine the best interests of the child and to assess the case in light of the exception set out in the 1980 Hague Convention. Nevertheless, it is incumbent upon the Court to ensure that the decision-making process undertaken by the national courts was conducted in a fair and impartial manner, affording the parties involved the opportunity to present their case in its entirety and to ascertain whether the best interests of the child were duly safeguarded. Furthermore, she asserted that the best interests of the child unquestionably encompass respect for the child's rights and dignity, and are of paramount importance in the prevention of corporal punishment. The risk of domestic violence to children is a significant one, extending beyond what a child can reasonably be expected to endure. In light of the aforementioned considerations, the Court concluded that the national courts (in this instance, the Romanian courts) had not duly considered the allegations of significant risk as set forth in Article 13(b) of the 1980 Hague Convention in reaching their determination of a violation of Article 8 ECHR. The Court held that the Member States of the European Union, which are also parties to Regulation 2201/2003, which is derived from the tradition of the 1980 Hague Convention, are founded on the principle of mutual trust between the Member States of the

[103] Judgment of the ECtHR of 17.03.2022, Application No 80606/17, Moga v. Poland, https://hudoc.echr.coe.int/eng?i=001-219026, accessed on 22.02.2024. Judgment of the ECtHR of 19 July 2016 r., Application No nr 2171/14, G.N. v. Poland, https://hudoc.echr.coe.int/eng?i=001-174149, accessed on 22.02.2024; Judgment of the ECtHR of 1 March 2016 r., Application No 30813/14, K.J. v. Poland, https://hudoc.echr.coe.int/eng?i=001-174018, accessed on 22.02.2024; Judgment of the ECHR of 2 November 2010 r., Application No 31515/04, Serghides v. Poland, https://hudoc.echr.coe.int/eng?i=001-125069, accessed on 22.02.2024.

[104] Judgment of the ECtHR of 1 April 2021, Application No 16202/14, M.V. v. Poland, https://hudoc.echr.coe.int/eng?i=001-171808, accessed on 22.02.2024. In considering the merits of the case, the ECtHR observed that there was doubt as to whether the abducted child had established a permanent place of residence in Italy, given that she had only been in the country for 22 days after birth. Furthermore, the testimonies of witnesses indicated that the parties had never intended to settle in Italy. This indicates that the substance of the complaint filed under the 1980 Hague Convention is unsubstantiated. With regard to the issue of failure to meet deadlines by the Polish courts, refer to Judgment of the ECtHR of 18.01.2018 r., Application No 28481/12, Oller Kamińska v. Poland, https://hudoc.echr.coe.int/eng?i=001-186495, accessed on 22.02.2024. The rationale behind the judgment posits that, in the context of the 1980 Hague Convention, any period of inactivity exceeding six weeks may give rise to a request for justification of such delay.

[105] Judgment of the ECtHR of 3 September 2019, Application No 4993/15, B.S. v. Poland, https://hudoc.echr.coe.int/eng?i=001-196432, accessed on 22.02.2024

European Union. The existence of such trust does not imply that the State to which a child has been wrongfully removed is obliged to return the child to an environment where the child is exposed to a serious risk of domestic violence. Such a return is not justified on the grounds that the State in which the child has been placed is capable of addressing cases of domestic violence against children. The ECtHR will emphasise that neither the 1980 Hague Convention nor Regulation 2201/2003 allows the Court to accept such a conclusion[106].

The case law of the ECtHR has repeatedly emphasised that Article 8 of the ECHR is primarily intended to protect against arbitrary action by public authorities[107]. Furthermore, there are positive obligations inherent to the effective respect for family life. However, the precise delineation of the boundaries between positive and negative duties under these rules remains an open question. Nevertheless, the applicable rules are comparable. In both contexts, it is necessary to strike a balance between the competing interests of the individual and the community as a whole. In both contexts, states are afforded a degree of discretion[108]. The Court observed that Article 8 of the ECHR also pertains to the right of a parent to request that the national authorities take measures to return the child to them[109]. The Court has consistently maintained that the 1980 Hague Convention must be implemented in accordance with the tenets of international law, particularly those pertaining to the safeguarding of human rights. In the context of international child abduction, the obligations set forth in Article 8 of the ECHR must be interpreted in light of the 1980 Hague Convention on the Civil Aspects of International Child Abduction and the 1989 Convention on the Rights of the Child[110].

The case law of the ECtHR has on numerous occasions asserted that the parent-child relationship should be founded upon a number of pertinent factors, rather than solely upon the passage of time. It has been observed that the 1980 Hague Convention provides for measures to ensure the prompt return of children who have been wrongfully abducted or

[106] Judgment of the ECtHR of 21 May 2019 r., Application No 49450/17, and Others v. Romania, https://hudoc.echr.coe.int/eng?i=001-193069, accessed on 22.02.2024.

[107] Judgment of the ECtHR of 13 January 2015 r., Application No 46600/11, Manic v. Lithuania, https://hudoc.echr.coe.int/eng?i=001-150216, accessed on 22.02.2024. It is of particular importance to establish a balance between the competing interests of individuals and the interests of the community as a whole. Refer to Judgment of the ECtHR of 23 September 1994 r., Application No 19823/92, Hokkanen v. Finland, https://hudoc.echr.coe.int/eng?i=002-10558, accessed on 22.02.2024; Judgment of the ECtHR of 23 October 2014 r., Application No 61362/12, V. P. v. Russia, https://hudoc.echr.coe.int/eng?i=001-147332, accessed on 22.02.2024.

[108] Refer to Judgment of the ECtHR of 15 January 2015 r., Application No 4097/13, M.A. v. Austria, https://hudoc.echr.coe.int/eng?i=001-150704, accessed on 22.02.2024, § 104; Judgment of the ECtHR of 7 March 2013 r., Application No 10131/11, Raw and Others v. France, https://hudoc.echr.coe.int/eng?i=001-153291 accessed on 22.02.2024, § 78; Judgment of the ECtHR of 26 June 2003 r., Application No 48206/99, Maire and Others v. Portugal, https://hudoc.echr.coe.int/eng?i=001-61184, accessed on 22.02.2024, § 69, ETPCz 2003-VII; Judgment of the ECtHR of 24 April 2003 r., Application No 36812/97 i 40104/98, Sylvester v. Austria, https://hudoc.echr.coe.int/eng?i=001-61054, accessed on 22.02.2024, § 55; Judgment of the ECtHR of 25 January 2000 r., Application No 31679/96, Ignaccolo-Zenide v. Romania, https://hudoc.echr.coe.int/eng?i=001-58448, accessed on 22.02.2024, § 94, ETPCz 2000-I

[109] Judgment of the ECtHR of 25 January 2000 r., Application No 31679/96, Ignaccolo-Zenide v. Romania, https://hudoc.echr.coe.int/eng?i=001-58448, accessed on 22.02.2024.

[110] Judgment of the ECtHR of 7 March 2013 r., Application No 10131/11, Raw and Others v. France, https://hudoc.echr.coe.int/eng?i=001-153291 accessed on 22.02.2024, § 82; Judgment of the ECtHR of 8 January 2009 r., Application No 41615/07, Neulinger i Shuruk v. Switzerland, https://hudoc.echr.coe.int/eng?i=002-11194, accessed on 22.02.2024, § 49-56 i 137; i Judgment of the Grand Chamber of the ECtHR of 26 November 2013 r., Application No 27853/09, X v. Latvia, https://hudoc.echr.coe.int/eng?i=001-107888, accessed on 22.02.2024, § 93 i 96.

who are detained in a Contracting State[111]. The ECtHR has ruled that the obligation on national authorities to take steps to facilitate contact between the non-custodial parent and the child after divorce is not absolute. The pivotal issue is whether the national authorities have taken all the requisite measures to facilitate such contact that could reasonably be anticipated in the particular circumstances of the case. It is evident that the passage of time can have irreversible consequences for the relationship between a child and a parent with whom the child does not reside. The absence of collaboration between separated parents does not, in and of itself, absolve the authorities of their positive obligations under Article 8 ECHR. In such a situation, it is incumbent upon the authorities to take steps to reconcile the conflicting interests of the parties, with due consideration for the overriding interests of the child[112].

The ECtHR observed that the reasoning of the Polish courts frequently lacked the requisite elements for a comprehensive assessment of the best interests of the child in the context of proceedings under the 1980 Hague Convention. The ECtHR took issue with this interpretation, recalling that the provisions of the 1980 Hague Convention must be interpreted restrictively and that the physical or mental harm referred to in Article 13(b) cannot result solely from separation from the parent responsible for the wrongful removal or retention of the child. It is not automatically the case that separation from such a parent indicates that the requirements of Article 13(b) of the 1980 Hague Convention are met, despite the seriousness of such an experience[113].

In a comparable case, K.J. v. Poland, the European Court of Human Rights (ECtHR) ruled that Article 13(b) of the 1980 Hague Convention was not unduly restrictive and that the terms "physical or mental harm" and "intolerable situation," as used in the aforementioned Article, could not be interpreted as encompassing all the inconveniences that are an inherent part of the experience of return. It can be reasonably deduced that the aforementioned terms do not refer to a situation that a child can be expected to endure in a reasonable manner[114].

The ECtHR has indicated that it does not consider itself to be responsible for interpreting

[111] Judgment of the ECtHR of 5 April 2005 r., Application No 71099/01, Monory v. Romania and Hunagry, https://hudoc.echr.coe.int/eng?i=001-68713, accessed on 22.02.2024; Judgment of the ECtHR of 26 June 2003 r., nr 48206/99, Maire v. Portugal, https://hudoc.echr.coe.int/eng?i=001-61184, accessed on 22.02.2024; Judgment of the ECtHR of 1 lutego 2011 r., Application No 23205/08, Karoussiotis v. Portugal, https://hudoc.echr.coe.int/eng?i=001-103216, accessed on 22.02.2024.

[112] Judgment of the ECtHR of 7 lutego 2017 r., Application No 28768/12, Wdowiak v. Poland, https://hudoc.echr.coe.int/eng?i=001-174055, accessed on 22.02.2024; K. Warecka, Strasburg: Polska nie naruszyła praw ojca do kontaktu z dzieckiem. Wdowiak przeciwko Polsce - wyrok ETPC z dnia 7 lutego 2016 r., Application No 28768/12, LEX/el. 2017.

[113] The judgment of the ECtHR of 19 July 2016 r., Application No 2171/14, G.N. v. Poland, https://hudoc.echr.coe.int/eng?i=001-174149, accessed on 22.02.2024. Zob. K. Warecka, Strasburg: Polska naruszyła prawa ojca. G.N. przeciwko Polsce - wyrok ETPC z dnia 19 lipca 2016 r., Application No 2171/14, LEX/el. 2016. The applicant was a Polish and Canadian citizen who had taken up permanent residence in Canada. The applicant's wife had left for Poland with a child and had refused to return to Canada, thereby retaining custody of the child. The applicant sought the return of the child under the 1980 Hague Convention through the Polish courts, but their request was unsuccessful. The Polish court declined to return the child, citing Article 13, paragraph b, of the 1980 Hague Convention as the basis for this decision. The ECtHR offered a robust critique of this interpretation of the aforementioned provision.

[114] The judgment of the ECtHR of 1 March 2016 r., Application No 30813/14, K.J. v. Poland, https://hudoc.echr.coe.int/eng?i=001-174018, accessed on 22.02.2024. Zob. M. Górski, Wykładnia Konwencji dotyczącej cywilnych aspektów uprowadzenia dziecka za granicę w świetle art. 8 Europejskiej Konwencji Praw Człowieka (prawo do poszanowania życia rodzinnego). Glosa do wyroku ETPC z dnia 1 marca 2016 r., 30813/14, LEX/el. 2016; K. Warecka, Strasburg: polskie sądy nieprawidłowo rozstrzygnęły o niewydaniu dziecka za granicę. K.J. przeciwko Polsce - wyrok ETPC z dnia 1 marca 2016 r., Application No 30813/14, LEX/el. 2016.

the provisions of the 1980 Hague Convention. Furthermore, it does not purport to act as a substitute for national courts with regard to the legal provisions that are in force in specific countries and legal systems[115]. Nevertheless, the Court has previously interpreted the provisions of the 1980 Hague Convention, in particular Article 13(b), in a number of cases. The case law of the Court has highlighted the possibility of finding that the legitimate interests of one of the parties have not been sufficiently or fairly taken into account in the judicial proceedings[116]. The judgments of the European Court of Human Rights have repeatedly emphasised that it is not within the Court's remit to substitute itself for the competent national authorities in matters of custody or access. Furthermore, it is not within the Court's authority to review the procedures applied by the national courts, particularly in determining whether those courts have guaranteed the rights set forth in the European Convention on Human Rights (ECHR), particularly Article 8 thereof[117], in their application and interpretation of the 1980 Hague Convention. In its judgments, the ECtHR has asserted that it is not within the Court's purview

[115] The judgment of the ECtHR of 21 February 2012 r. Application No 63777/09, R.S. v. Poland, https://hudoc.echr.coe.int/eng?i=001-174167, accessed on 22.02.2024. Zob. A. Wiśniewski, Naruszenie prawa do życia rodzinnego w związku z niezapewnieniem niezwłocznego powrotu dzieci skarżącego. Glosa do wyroku ETPC z dnia 21 lipca 2015 r., 63777/09, „Gdańskie Studia Prawnicze – Przegląd Orzecznictwa", 2016, nr 1, s. 115-126; K. Warecka, Strasburg: Polska naruszyła prawa ojca. R.S. przeciwko Polsce - wyrok ETPC z dnia 21 lipca 2015 r., Application No 63777/09, LEX/el. 2015. This was further elucidated in the reasoning of the ECtHR judgment of 3 June 2014, Application No 10280/12, LópezGuió v. Slovakia, https://hudoc.echr.coe.int/eng?i=001-144355, accessed on 22/02/2024. In this judgment, the ECtHR ruled that its jurisdiction under Article 32 of the ECHR is limited to matters concerning the interpretation and application of the Convention and its protocols. However, in the context of international child abduction, the obligations imposed on Contracting States by Article 8 of the ECHR must be interpreted in light of the requirements of the 1980 Hague Convention and the Convention on the Rights of the Child, as well as the relevant provisions and principles of international law applicable in relations between the Contracting Parties. Refer to K. Warecka, Strasburg: ojciec musi mieć prawo udziału w postępowaniu sądowym dotyczącym jego dziecka. LópezGuió przeciwko Słowacji - wyrok ETPC z dnia 3 czerwca 2014 r., Application No 10280/12, LEX/el. 2014.

[116] In the case of 63777/09, R.S. v. Poland, the commentator of the judgment highlighted that three of the Court's judges had filed a separate opinion. This opinion cited the judgment in case X. v. Lativa (Application No 27853/09) and sought to elucidate the relations between the 1980 Hague Convention and the ECtHR. The opinion identified two conditions that must be met for a harmonious interpretation to be achieved. Firstly, the court must consider in detail any factors that may constitute an exception to the principle of the immediate return of the child. Secondly, their assessment should be made in accordance with Article 8 of the ECHR. In their separate opinion, the judges highlighted that the 1980 Hague Convention is not the sole instrument that can be applied in cases of child abduction between Poland and Switzerland, given that both countries are also parties to the European Convention on the Recognition and Enforcement of Decisions concerning the Custody of Children and on Restoration of Custody of Children (hereinafter referred to as the Luxembourg Convention). It is notable that there was no attempt to interpret this Convention in the context of Article 8 of the ECHR and the 1980 Hague Convention. For further information, please see A. Wiśniewski, Naruszenie prawa do życia rodzinnego w związku z niezapewnieniem niezwłocznego powrotu dzieci skarżącego. Glosa do wyroku ETPC z dnia 21 lipca 2015 r., 63777/09,"Gdańskie Studia Prawnicze – Przegląd Orzecznictwa" 2016, no. 1, pp. 115-126. For the sake of clarity, it should be noted that case 27853/09 is that of X v. Latvia. Meanwhile, in the commentary by A. Wiśniewski, it was stated that the case in question is that of X. v. Lithuania. In the commentary, it was concluded that it would not be in the best interests of the children to return to Switzerland, from where they were abducted by their mother, due to the trauma they experienced as a result of their father's behaviour.

[117] The judgment of the ECtHR of 15 October 2013 r., Application No 78296/11, Nadolska i Lopez Nadolska v. Poland, https://hudoc.echr.coe.int/eng?i=001-174040, accessed on 22.02.2024, §102; The judgment of the ECtHR of 8 January 2009 r., Application No 41615/07, Neulinger i Shuruk v. Switzerland, https://hudoc.echr.coe.int/eng?i=002-11194, accessed on 22.02.2024, § 133, The decision of ECtHR of 15 May 2012 r., Application No 13420/12, M.R. i L.R. v. Estonia, https://hudoc.echr.coe.int/eng?i=001-111198, accessed on 22.02.2024, § 37.

to supplant the assessments of the national courts with its own. While the Court is not bound by the findings of the national courts and may assess the facts as it sees fit in the light of the material before it, it is necessary to present convincing arguments in order to persuade it to depart from the factual findings of the national courts[118]. It was observed that in instances of conflict over a child between parents residing in two different states, the national court is obliged to consider the entirety of the child's familial circumstances, in accordance with the principles enshrined in the 1980 Hague Convention. It was deemed inappropriate for the national court to consider solely the child's age, to ignore the father's rights of access to the child, and to base its findings on the provisions of the 1980 Hague Convention without due consideration of the father's rights.

In order to establish a clear understanding of what constitutes family life, the ECtHR has identified a number of key elements. These include the decision-making process regarding the child's place of residence, the formulation of educational and upbringing guidelines, and the determination of the extent to which the child's liberty and freedom of movement should be restricted. In certain circumstances, this may entail the child being hospitalised. It has been emphasised that national measures which interfere with the enjoyment of family life, including the decision to place a child in the custody of one parent, constitute an interference with the right to respect for family life as set forth in the European Convention on Human Rights. Any such interference constitutes a violation of Article 8 of the European Convention on Human Rights (ECHR) unless it is "provided for by law", pursues a legitimate aim or aims within the meaning of Article 8(2) of the ECHR and can be regarded as "necessary in a democratic society". The term "necessity" is used to describe a situation in which the interference meets a pressing social need and is proportionate to the legitimate aim pursued. The Court has consistently maintained that Article 8 ECHR encompasses the right of parents to seek appropriate measures for the reunification with their children and the obligation of national authorities to facilitate such measures. Furthermore, the aforementioned provisions apply to instances where there is a dispute between the parents regarding the child's access and residenceThe Court determined that a reasonable equilibrium must be achieved between the conflicting interests of the individual and society, and the "margin of appreciation" afforded to the duly authorized national authorities. The extent of this margin is contingent upon the nature of the matter in question and the gravity of the interests involved. It is therefore necessary to implement more rigorous safeguards to protect individuals from restrictions imposed by public authorities and limitations on parental rights of access to children. This is also true of any legal safeguards designed to ensure effective protection of the rights of parents and children to respect for their family life. Such restrictions may potentially have a detrimental impact on the familial bond between parents and young children. In such circumstances, the role of the Court is not to assume the functions of the competent national authorities in regulating the question of access to children and their place of residence. Rather, it is to review the decisions taken by the authorities in the exercise of their powers, on the basis of the ECHR. It is evident that the decision-making process undertaken by the local authorities cannot alter the fundamental substance of the decision in question; consequently, the manner in which this process is conducted is open to review by the Court. In this regard, it is of paramount

[118] Judgment of the ECtHR of 15 March 2012 r., Application No nr 39692/09, 40713/09 i 41008/09, Austin and Others v. United Kingdom, https://hudoc.echr.coe.int/eng?i=001-147966, accessed on 22.02.2024, § 61; The judgment of the ECtHR of 15 October 2013 r., Application No 78296/11, Nadolska i Lopez Nadolska v. Poland, https://hudoc.echr.coe.int/eng?i=001-174040, accessed on 22.02.2024, § 101.

importance that parents be afforded the opportunity to present all arguments in support of obtaining contact with their child and to access all pertinent information held by the national courts concerning the child. In exercising its power of review, the Court of Justice is not at liberty to limit its consideration to an analysis of the contested decision in isolation; rather, it must examine it in the context of the entire case. In making this determination, the Court must ascertain whether the rationale provided by the national courts to justify their decision was pertinent and sufficient. While Article 8 of the ECHR does not explicitly delineate procedural requirements, the decision-making process for the adoption of interference measures must be fair and ensure due respect for the individual interests protected by Article 8 of the ECHR[119].

In relation to the inter-relationship between the ECHR and EU law, particularly Council Regulation (EC) No 2201/2003, the ECtHR has previously held that the presumption of equivalent protection does not apply in cases concerning the return of an abducted or detained child. This was the view taken in a case where the child in question was to be returned by one parent to another resident in another state, and the case was therefore concerned with the enforcement of court orders. This stance was predicated on the fact that the Austrian Supreme Court had elected to submit a preliminary question to the ECtHR, which would have permitted an examination of the case for a potential violation of fundamental rights. However, the Court failed to do so. Nevertheless, the ECtHR considered that the applicants had the option of lodging a complaint with the ECtHR regarding the conduct of the authorities of another State party to the dispute. The ECtHR ruled that the European Union's system of individual rights protection was not dysfunctional, thereby confirming the existence of a presumption of equivalent protection. The doctrine has indicated that this results in the conclusion that the ECtHR is able to review EU law from the perspective of its compatibility with the ECHR[120].

The Court ruled that the positive obligations of the State in cases of violations of the right to respect for family life extend beyond the establishment of an appropriate legal framework; they also encompass the responsibility to ensure the effective implementation of these regulations[121]. In light of the Dabrowska v. Poland case, it can be seen that a conflict between parents does not constitute a circumstance which in itself can release the authority from its positive obligations under Article 8 of the European Convention on Human Rights. Conversely, this places an obligation on the authority to take measures that would facilitate a reconciliation of the competing interests of the parties, with due consideration to the overriding best interests of the child. Furthermore, it was observed that despite the amendment to the procedural rules, which were welcomed by the Committee of Ministers of the Council of Europe, allowing for

[119] Judgment of the ECtHR of 3 May 2012 r., Application No 60328/09, İlkerEnsarUyanık v. Turkey, https://hudoc.echr.coe.int/eng?i=001-110705, accessed on 22.02.2024. Zob. K. Warecka, Strasburg: decyzja sądu o powrocie dziecka za granicę wymaga analizy całej sytuacji rodzinnej dziecka. IlkerEnsarUyanik przeciwko Turcji - wyrok ETPC z dnia 3 maja 2012 r., Application No 60328/09, LEX/el. 2014. Judgment of the ECtHR of 27 September 2011 r., Application No 32250/08, Diamante and Pelliccioni v. San Marino https://hudoc.echr.coe.int/eng?i=001-106441, accessed on 22.02.2024.

[120] Judgment of the ECtHR of 18 June 2013 r., Application No 3890/11, Povse v. Austria, https://hudoc.echr.coe.int/eng?i=001-122449, accessed on 22.02.2024. Zob. A. Bodnar, Standard „równoważnej ochrony" w odniesieniu do ochrony praw człowieka po opinii Trybunału Sprawiedliwości 2/13, „Europejski Przegląd Sądowy" 2015, nr 12, s. 45-49.

[121] Judgment of the ECtHR of 2 February 2010 r., Application No 34568/08, Dąbrowska v. Poland, https://hudoc.echr.coe.int/eng?i=001-124585, accessed on 22.02.2024; Refer to N. Zawadzka, Glosa do wyroku ETPC z dnia 2 lutego 2010 r., 34568/08, LEX/el. 2010; Judgment of the ECtHR of 23 September 1994 r., Application No 19823/92, Hokkanen v. Finland, https://hudoc.echr.coe.int/eng?i=002-10558, accessed on 22.02.2024.

the disciplining of the person with custody of the child to ensure the other parent has contact with the child, this amendment is still not reflected in the practices of the courts[122].

In accordance with the Rules of Procedure, the ECtHR has emphasised that, in proceedings pertaining to the return of a child who has been abducted abroad by one parent, the other parent seeking the return of the child is obliged to participate in such proceedings[123]. Furthermore, the Court has indicated that, although the use of coercive measures for the return of abducted or detained children is generally considered an undesirable course of action, the possibility of sanctions being imposed in the event of wrongful conduct by a parent cannot be ruled out[124]. The pivotal issue is whether the national authorities implement sufficient measures to facilitate the enforcement of the decisions. The ECtHR has acknowledged that the failure of the State to implement sufficient enforcement measures may result in a shift in the pertinent factual circumstances. The Court has observed that in certain instances, the resistance of one parent, the passage of time, and the lack of involvement of the national authorities may collectively impede the enforcement of a judgment[125].

A review of the reasoning behind the ECtHR judgment in the case of A.B. v. Poland[126] reveals the intricate nature of cases concerning the return of an abducted child, particularly in terms of the facts. It is also important to note that in order to form an opinion about the motives of the ECtHR in deciding the case, it is necessary to refer to the reasoning of the judgments, which unfortunately requires a good knowledge of several foreign languages. It is evident that further clarification is required in order to form an informed opinion on the motives of the ECtHR in deciding this case[127]. The abduction of the child from Warsaw airport by her father, who was visiting his daughter, born in 1988, in 1995, may be considered an outrageous act. The child was born in Canada, where her parents were residing on a study grant. The child's father returned to Poland, while the mother remained in Canada with the child, as the parents had separated in 1991. In 1993, the Canadian judicial authorities awarded sole custody of the daughter to the mother, with the stipulation that the father would be permitted to visit

[122] M. Mrowicki, Zapewnienie rodzicom kontaktów z dzieckiem. Glosa do wyroku ETPC z dnia 6 października 2015 r., 21823/12, LEX/el. 2016.

[123] Judgment of the ECtHR of 3 June 2014 r., Application No 10280/12, LópezGuió v. Slovakia, https://hudoc.echr.coe.int/eng?i=001-144355, accessed on 22.02.2024.

[124] The issue of the application of coercive measures to children in cases concerning their extradition was previously considered by the ECtHR in its judgment of 13 September 2005. In this judgment, the Court stated that the application of such measures to children is not desirable, but that they cannot be excluded in cases of unlawful conduct on the part of the parent with whom the children live. For further details, please refer to the judgment of the ECtHR of 13 September 2005 r., Application No 77710/01, H.N. v. Poland, https://hudoc.echr.coe.int/eng?i=001-124703, accessed on 22.02.2024. Por. także M. A. Nowicki, H.N. przeciwko Polsce - wyrok ETPC z dnia 13 września 2005 r., Application No 77710/01, w: M.A. Nowicki, „Europejski Trybunał Praw Człowieka. Wybór orzeczeń 2005", Zakamycze, 2006, s. 146.

[125] Judgment of the ECtHR of 8 January 2008 r., Application No 8677/03, P.P. v. Poland, https://hudoc.echr.coe.int/eng?i=001-84293, accessed on 22.02.2024. The doctrine emphasises the necessity for the Polish authorities to take the requisite measures to modify court practice and guarantee the efficacy and efficiency of proceedings aimed at enforcing contact with the child. Por. M. Mrowicki, Zapewnienie rodzicom kontaktów z dzieckiem. Glosa do wyroku ETPC z dnia 6 października 2015 r., 21823/12, LEX/el. 2016.

[126] Judgment of the ECtHR of 20 November 2007 r., Application No 33878/96, A.B. v. Poland, https://hudoc.echr.coe.int/eng?i=001-83352, accessed on 22.02.2024

127 In Polish doctrine, with regard to the case presented here, the thesis of the judgment is disseminated, which is a translation of the French language version published on the ECtHR website and marked as Lex no. 593336. As with other cases, this summary only partially addresses the questions that arise when reading the judgment in full. The aforementioned summary is limited to points 112-118 of the document in question.

her only under the supervision of a third party. The child's father departed from Canada in 1994. On 26 May 1995, the marriage of the child's parents was dissolved. The child's father did not appeal against the decision, stating that he had not been informed of or participated in the proceedings. The child regularly visited his maternal grandparents in Poland, but did not have any contact with his father or maternal grandparents. The child regularly visited his maternal grandparents in Poland, but there was no contact with his father or maternal grandparents. Following the dissolution of the parental marriage on 13 September 1995, the child was abducted by his father at Warsaw Airport. This incident resulted in legal proceedings being initiated with the objective of securing the child's return to the custody of his mother. On 13 December 1995, the District Court ruled that the applicant was to return the child to its mother without delay. The subsequent appeal filed by the child's father was dismissed. Subsequently, a series of proceedings were conducted, during which the District Court of Warsaw ruled on 11 July 1997 that the child's father had been deprived of parental authority. This ruling was based on the premise that, as a consequence of the father's actions, the child had been deprived of any contact with his mother. The Regional Court in Warsaw upheld this ruling on 6 April 1998, having conducted a hearing following an appeal by the child's father. As a consequence of a cassation appeal, the Supreme Court annulled the rulings on the deprivation of parental authority and referred the case for reconsideration. The psychologist expert who was called to give evidence in the case stated that the child's account indicated that the mother had joined a religious sect in Canada. The Supreme Court highlighted that the child had, of her own volition, departed from the company of her grandparents at the airport to rejoin her father, despite the absence of any contact with him for a period exceeding two years. The Supreme Court concluded that a parent can only be deprived of their parental authority if the court determines that the rights have been abused.

In response to the convict's request, the Dominican Information Centre on Movements and Religious Sects conducted an investigation, which included questioning the convict and his daughter. This investigation led the Centre to conclude that the girl's mother may have been affiliated with the New Age sect. This assessment was subsequently validated on 28 October 1999. The Information Centre on Sects and New Religious Movements in Gdansk, Poland. It was observed that a return to Canada to the environment in which the mother lived could have a deleterious effect on the child's development. On 20 December 1999, an employee of the Psychological and Pedagogical Clinic in Otwock reached a similar conclusion. Subsequently, the father of the child was repeatedly detained, questioned and even arrested as the case proceeded. His parental authority was once again revoked. In the course of these proceedings, the Ombudsman requested that the order of 13 December 1995 be revoked, noting that the girl was already 12 years of age and thus capable of expressing her own views. Subsequent to the father's arrest, the child was relocated to a juvenile detention centre in Warsaw. In this setting, the child expressed a desire to remain with her father, thereby corroborating his assertions regarding the character of her mother. During the meeting with the mother, the subject exhibited aggressive behaviour, including verbal abuse and an attempted leap from the window. In view of the aforementioned developments, the child's mother withdrew her application for the recovery of the child, who was subsequently transferred to the Institute of Psychiatry and Neurology in Warsaw. On 22 June 2003, however, the mother retracted her initial statement and once more demanded her daughter's return. On 24 July 2003, the RPO once more petitioned the Warsaw Regional Court to modify the order of 13 December 1995. It was noted that although the child's mother had retracted her petition for her return,

the decision to release her had not been revised. On 8 August 2003, the girl absconded from the juvenile centre and was subsequently reunited with her father. However, they were subsequently apprehended by the relevant authorities during a routine traffic control operation. On 31 March 2004, the District Court of Warsaw annulled the decision to place the child in the juvenile centre and instead entrusted her to the custody of her paternal grandparents. This was on the grounds that the mother had relinquished her rights and the father had been deprived of parental authority. On 26 May 2004, the court ruled that the Ministry of Justice had informed the Ministry of Foreign Affairs that, as the child had reached the age of 16, the 1980 Hague Convention no longer applied to her and that the case was no longer within the competence of the Minister of Justice as a central authority. This was subsequent to the ruling of the Warsaw District Court of 7 May 2004, which suspended the exercise of parental authority by the child's mother and revoked the father's parental authority. The latter ruling was subsequently overturned by a decision of the Warsaw Regional Court of 14 October 2004. This decision remitted the case to the district court for re-examination, accepting the arguments put forth by the mother, who asserted that she had been deprived of the opportunity to present her case. By the time the European Court of Human Rights (ECtHR) handed down its ruling, the girl in question had already reached the age of 19.

The detailed account of the case's circumstances, while not disclosing certain information, should provide an informed reader with an understanding of the complexities involved in cases concerning the surrender of children abducted abroad by one of their parents. The inherent challenges of these cases are compounded when the parties involved are reluctant to comply with court rulings for various reasons. Moreover, the progression of these proceedings demonstrates the ineffectiveness and potential lack of preparation of the judges presiding over such cases, their inclination towards routine, and their reluctance to examine the motives of the parties involved. Furthermore, it demonstrates a certain degree of reflexivity and a limited capacity for empathic understanding. It is worthy of note that the Supreme Court, in a case that was largely peripheral to the central issue, has directed attention to significant legal and factual matters that the lower courts had been reluctant to acknowledge.

In reaching a decision on the case in question, the ECtHR observed that the margin of appreciation afforded to the competent national authorities in instances of international child abduction varies according to the nature of the issues at stake, the gravity of the interests involved in the case, and the potential for conflicting interests. On the one hand, there are the interests of justice and the protection of the rights of third parties, while on the other, there are the interests of the child, including their protection from grave risk to their health or development. It has also been correctly observed that, following an extended period of time, the desire to avoid further alterations to the child's familial circumstances may become a more compelling interest than the rights of the parents. Nevertheless, the ECtHR's evaluation of whether the convicted individual was furnished with the requisite guarantees by the judicial authorities to feel secure may be open to question. In reaching this decision, the court did not consider whether the individual in question could afford legal representation. The ECtHR reached the conclusion that the Polish courts, which had decided to terminate parental authority, had not contravened Article 8(2) of the ECHR..

It is important to highlight that some of the judgments of the ECtHR concerning the surrender of a child abducted by a parent have addressed the question of whether the judgments of national courts have violated human rights, with a particular focus on the right to privacy (Article 8 ECHR). It is important to note that a significant number of these cases did not

apply either Council Regulation (EU) 2019/1111 or its predecessor Council Regulation (EC) 2201/2003. In some instances, the ECtHR was only able to refer to the actions of the authorities of one of the countries in which the child's parent held nationality, given that the other country to which the child was to be surrendered was not a member of the Council of Europe. The ECtHR's omission of the EU's normative acts on child abduction appears to indicate a lack of competence to apply these provisions, given their extraterritorial scope. This is an intriguing scenario, as the rationale behind the rulings of the national courts of EU member states, whose conformity with Article 8 of the European Convention on Human Rights the Court subsequently assessed, cited solutions enshrined in EU regulations, notably Council Regulation (EU) 2019/1111.

SUMMARY

The international abduction of children constitutes a grave violation of the universally accepted rights of the child. The motives of the perpetrators are diverse and challenging to ascertain. Despite the existence of numerous normative acts at the international and EU levels, as well as in national legislation, including that of EU Member States, the phenomenon of child abduction persists and appears to be increasing. A review of the ECtHR case law reveals two key findings. Firstly, it demonstrates the helplessness of the judicial authorities of various states, particularly those that are members of the Council of Europe. Secondly, it exposes the inertia, inefficiency and, arguably, callousness of the actions of national courts. This illustrates the lack of preparation of the judges presiding over these cases, the automatism of their actions, and their apparent lack of empathy for the children and their parents. It is evident that the rights of the child are frequently not acknowledged in the decisions of national courts, despite their professed intention to uphold these rights. It is important to note that the role of the ECHR in this process is limited to examining whether Article 8 has been violated.

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MONIKA KOTOWSKA

Przestępczość zorganizowana jako zagrożenie demokracji (Organized crime as the existence of democracy)

WPROWADZENIE

W procesie globalizacji pojęcie zagrożenia ulega redefiniowaniu a wraz z rozwojem nauk o bezpieczeństwie rośnie zainteresowanie badaczy problematyką przeciwdziałania określonym zagrożeniom.[128] Przemiany prawne mają w istocie charakter wtórny wobec wszelkich innych przemian. Oznacza to, że nie zapoczątkowują one zasadniczo procesów społecznych, a raczej utwierdzają w systemie prawnym to, co dokonało się już w gospodarce, polityce i innych dziedzinach życia społecznego[129].

Przestępczość jako zjawisko społeczne towarzyszy człowiekowi niemal od zawsze, choć jego przyczyny, struktura czy dynamika zmieniają się wraz z upływem czasu. Zjawiska tego nie da się wyeliminować, jednak każde państwo w ramach wyznaczonych do tego organów stara się je ograniczać. W szczególności przestępczość o poważnym charakterze, która podlega przeobrażeniom społecznym, zmieniając postrzeganie państwa jako instytucji i stwarzając ryzyko dla prawidłowego jego funkcjonowania.

Wybór przestępczości zorganizowanej jako głównego pola badawczego w kontekście zagrożenia demokracji ma swoje uzasadnienie w licznych zagrożeniach, jakie są z nim związane. Rozpatrywać je można na wielu płaszczyznach, m.in. ekonomicznej, karno-materialnej, kryminologicznej, wiktymologicznej, kryminalistycznej czy socjologicznej. Przestępczość ta niesie za sobą ogromne straty finansowe i szkody społeczne zarówno na gruncie krajowym jak i międzynarodowym. Rozmiar i kształt tej przestępczości wynikają ze stabilności i poszanowania prawa (lub ich braku) zarówno w wymiarze lokalnym jak i globalnym. Jest ona silnie skorelowana z jakością otoczenia politycznego, społecznego i gospodarczego.

Celem opracowania jest analiza przestępczości zorganizowanej oraz powiązanych z nią innych form poważnej przestępczości w kontekście zagrożeń wynikających z tego zjawiska w szczególności z perspektywy demokratycznego państwa prawa, jego stabilności i bezpieczeństwa. W pierwszej kolejności skupiono się wyjaśnieniu czym jest przestępczość zorganizowana oraz dlaczego zjawisko to jest niebezpieczne. W dalszej kolejności przeanalizowane powiązane z przestępczością zorganizowaną inne poważne formy przestępczości oraz problemy, jakie mogą

[128] Szerzej: A. M. Hernacka-Janikowska, Przestępczość zorganizowana a państwo. Wzajemne relacje i uwarunkowania, Bydgoszcz 2021, s. 66.
[129] L. Gardocki, Zagadnienia teorii kryminalizacji, Warszawa 1990, s. 128.

generować z punktu widzenia demokratycznego państwa prawa. Pracę kończy podsumowanie wraz z wnioskami *de lege ferenda*.

Zagrożenia demokracji związane z najpoważniejszą przestępczością

Zagrożenia związane z nowymi formami przestępczości, w tym zorganizowanej, zaczęły być zauważalne wraz z nastaniem transformacji ustrojowej, czyli po 1989 r. Przyniosła ona szereg zmian o charakterze politycznym i gospodarczym, przy czym niektóre z konsekwencji tych zmian okazały się nieoczekiwane i bolesne[130]. Jedną z nich było pojawienie się zorganizowanych grup przestępczych i specyficznej dla nich przestępczości. Wychodząc naprzeciw potrzebom praktyki Biuro do Walki z Przestępczością Zorganizowaną Komendy Głównej Policji stworzyło na początku lat 90. XX w. pierwszą w Polsce definicję przestępczości zorganizowanej, rozumianą jako „działania związków przestępczych zorganizowanych z chęci zysku dla dokonywania ciągłych i różnorodnych przestępstw, zarówno kryminalnych jak i gospodarczych, zakładających osiąganie celów przez korupcję, szantaż, terror oraz użycie siły i broni oraz wprowadzanie nielegalnych zysków w obrót gospodarczy".[131] Jednocześnie twórcy definicji wyodrębnili 11 cech, charakterystycznych dla tego rodzaju przestępczości tj:

1) działalność z chęci zysku,
2) funkcjonowanie długoterminowe lub bezterminowe,
3) podział zadań i kompetencji pomiędzy członkami grupy,
4) specjalna hierarchia,
5) multiprzestępczość jako sposób zdobywania pieniędzy,
6) hermetyczność, dyscyplina i wewnętrzna kontrola członków grupy przestępczej,
7) popełnienie przestępstw o dużym ciężarze gatunkowym,
8) stosowanie przemocy lub innych środków zastraszania,
9) działalność w skali międzynarodowej,
10) pranie brudnych pieniędzy,
11) wywieranie wpływu na politykę, administrację i organy ścigania.

Założono przy tym, że dla zakwalifikowania działalności określonej grupy przestępczej do zjawiska przestępczości zorganizowanej działalność ta powinna charakteryzować się co najmniej pięcioma z powyższych cech. Przestępczość zorganizowana jako zjawisko ewaluowała i zmieniała się przez kolejne lata. Już w latach 90. XX w. zwiększyła się i pogłębiła specjalizacja grup przestępczych. Uwarunkowań takiego stanu rzeczy szukano m.in. w powiązaniach państwa jako instytucji z tym nowym typem przestępczości. Wskazywano, że tzw. polska „mafia" tworzona była dwojaki sposób: od góry – przez coraz bardziej skorumpowanych polityków i urzędników, którzy wykorzystując słabość organów ścigania przejmowali strategiczne działy gospodarki państwa oraz od dołu – przez coraz lepiej zorganizowanych drobnych przestępców. To, co było charakterystyczne dla przestępczości w początkach młodej demokracji w Polsce to zauważalne „kryminalizowanie się" polityków i „cywilizowanie się" przestępców. Obie grupy „spotykały się" gdy politycy potrzebowali partnerów z gotówką w

[130] Szerzej: A. Kossakowska, Zmiany społeczne a przestępczość – wzajemne związki, uwarunkowania, konsekwencje [w:] Społeczno-polityczne konteksty współczesnej przestępczości w Polsce, red. K. Buczkowski, B. Czarnecka-Dzialuk, W. Klaus, A. Kossakowska, I. Rzeplińska, P. Wiktorska, D. Woźniakowska-Fajst, D. Wójcik, Warszawa 2013, s. 94 i n.

[131] A. Rapacki, Stan zagrożenia przestępczością zorganizowaną w Polsce, [w:] B. Hołyst, E. Kube, R. Schulte (red.), Przestępczość zorganizowana w Niemczech i w Polsce, Warszawa-Munster-Łódź 1996, s. 194.

celu przejęcia intratnych interesów a przestępcy szukali osłony i kontaktów dla legalizacji zasobów finansowych zdobytych w wyniku nielegalnej działalności[132]. Miało to istotne związki ze zjawiskiem tzw. kapitalizmu politycznego, który polegał na układach władzy ze sferą biznesu. Taka uprzywilejowana pozycja dawała dostęp do szerokiego spektrum na wpół legalnej bądź nielegalnej działalności, tajnych informacji gospodarczych i bankowych a w konsekwencji możliwości blokowania przez pewne grupy wpływów tworzenia prawa pozbawionego luk, pozwalającego na zwalczanie przestępczości[133]. Triada biznes-polityka-przestępczość wpływała negatywnie na rozwój demokracji w Polsce, godząc w finansowe interesy państwa i jego obywateli oraz generując koszty godzące w Skarb Państwa. Z czasem zmienił się charakter przestępczości zorganizowanej, jednak niezależnie od form objawowych tego zjawiska zawsze dostosowuje się ono do zmian struktury społecznej i gospodarczej państwa, szybko reagując na przedsięwzięcia kontrolne a także wykorzystuje słabość legalnego aparatu władzy, wymykając mu się spod kontroli[134].

Od lat, zarówno z perspektywy lokalnej jak i globalnej odnotowuje się zmianę struktury przestępczości idącą w kierunku rozwoju i zwiększania się przestępczości gospodarczej, w tym popełnianej w przestrzeni internetowej. Z trendem tym powiązany jest odnotowywany spadek przestępstw kryminalnych[135]. Szczególne miejsce wśród przejawów współczesnej przestępczości gospodarczej zajmują jej zorganizowane formy. Przestępczość gospodarcza uznawana jest za tę formę przestępczości zorganizowanej, która przynosi największe zyski dzięki działaniu w sposób wysoce wyspecjalizowany w niezwykle skomplikowanych dziedzinach obrotu gospodarczego z wykorzystaniem pozycji sprawców wykreowanych jako godnych szacunku ludzi interesu. Są to z reguły trwałe sprzysiężenia o wielopoziomowej strukturze, mające na celu planowaną, długofalową działalność obejmująca nie tylko naruszanie prawa, lecz także realizowanie celów legalnych za pomocą nielegalnych środków. Zysk osiągają poprzez dostarczanie nielegalnych dóbr i usług bądź monopolizację określonych sfer biznesu dla maksymalizacji zysków przy zastosowaniu wyrafinowanych metod i środków takich jak wymuszone bankructwa, oszustwa kredytowe i subwencyjne, infiltracja struktur biznesu, korumpowanie aparatu władzy itp. Do tego dochodzi niejednokrotnie brak wyraźnej granicy między działalnością legalna a nielegalną oraz metody usprawiedliwiania czy neutralizowania ocen danej działalności poprzez traktowanie jej jako rzekome pożyteczne dla rozwoju gospodarczego i społecznego. Tacy sprawcy to często osoby z górnej warstwy społecznej, na eksponowanych środowiskach, dysponujący wpływami i bezpośrednią władzą lub posiadający liczne kontaktu społeczne i wysokie kwalifikacje zawodowe.[136] Grupy przestępcze wyposażone są w najnowszy sprzęt technologiczny, pozwalający na skuteczną

[132] J. W. Wójcik, Przeciwdziałanie przestępczości zorganizowanej. Zagadnienia prawne, kryminologiczne i kryminalistyczne, Warszawa 2011, s. 122.

[133] J. W. Wojcik, Oszustwa finansowe. Zagadnienia kryminologiczne i kryminalistyczne. Warszawa 2008, s. 46-48.

[134] H. J. Schneider, Przestępczość zorganizowana z perspektywy kryminologii porównawczej, [w:] B. Hołyst, E. Kube, R. Schulte (red.) Przestępczość zorganizowana w Niemczech i w Polsce, wyd. 2, Warszawa-Münster-Łódź 1998, s. 8.

[135] Szerzej: K. Buczkowski, Stan przestępczości w Polsce od roku 1918 do współczesności, [w:] Społeczno-polityczne konteksty współczesnej przestępczości w Polsce, red. K. Buczkowski, B. Czarnecka-Dzialuk, W. Klaus, A. Kossakowska, I. Rzeplińska, P. Wiktorska, D. Woźniakowska-Fajst, D. Wójcik, Warszawa 2013, s.68 i n.

[136] L. Wilk, Przestępczość gospodarcza [w:] Kryminologia. Teoria i praktyka, red. P. Chomczyński, P. Frąckowiak, D. Woźniakowska, Warszawa 2024, s. 302-304; M. Kotowska, Kariery kryminalne członków zorganizowanych grup przestępczych, Warszawa 2019, s. 210 i n.

komunikację oraz koordynację podejmowanych działań. Wyszczególnione powyżej cechy i właściwości sprawiają, że ich przestępna działalność może wpływać negatywnie na funkcjonowanie państwa jako instytucji oraz naruszać zasady demokratycznego państwa prawa.

Kolejnym problemem, który należałoby rozpatrywać w kontekście zagrożeń demokracji przez działalność zorganizowanych grup jest umiędzynarodowienie tego rodzaju przestępczości. Zarówno w wymiarze krajowym jak i międzynarodowym przestępczość transgraniczna o charakterze zorganizowanym postrzegana jest jako zagrożenie bezpieczeństwa i stabilności zarówno w wymiarze krajowym jak i międzynarodowym, co wykazały badania kryminologiczne prowadzone już w latach 90. XX w.[137]. Osoby realizujące tego rodzaju działania przestępne to często sprawcy mający doskonałe kontakty, w tym o charakterze międzynarodowym, posiadający odpowiednie kompetencje, znający języki obce, dobre wykształcenie lub powiązania z odpowiednimi służbami[138]. Szczególne zagrożenie bezpieczeństwa występuje w czasie różnego rodzaju konfliktów zbrojnych.

Ze zjawiskiem przestępczości zorganizowanej, w szczególności analizując jej zakres z perspektywy globalizacji, powiązana jest problematyka terroryzmu. Terroryzm jest zjawiskiem politycznym. Polityczność terroryzmu oznacza, że działania sprawców mają na celu doprowadzenie do zmiany systemu politycznego lub wywarcia wpływu na decyzje polityczne. Dotyczy to także działań motywowanych religijnie (np. islamscy fundamentaliści) gdyż one także zmierzają do wprowadzenia określonego ustroju zbudowanego na fundamentalistycznej interpretacji zasad religijnych[139].

Terroryzm, podobnie jak przestępczość grupowa polega na działaniu zbiorowym. Terroryści działają najczęściej dla zdobycia władzy, co również w wielu przypadkach przyświeca działaniom zorganizowanych grup przestępczych. Terroryści, podobnie jak członkowie zorganizowanych grup przestępczych z reguły dla osiągnięcia swoich celów są gotowi użyć przemocy. Zarówno *modus operandi* sprawców, jak i efekty zamachów terrorystycznych wywołują daleko idące skutki społeczne i polityczne. Funkcjonujące w ramach zorganizowanego przestępstwa grupy mogą być małe lub duże, z międzynarodowymi powiązaniami lub bez tego rodzaju kontaktów, zdolne do połączenia się z warstwami społeczno-politycznymi danego społeczeństwa bądź też pozostające poza jego zakresem. Ponadto są one w stanie angażować się w każdy rodzaj pospolitej przestępczości. Podobne właściwości można odnieść do grup terrorystycznych. Istnieje tu jednak wyjątek, bowiem terroryzm może obejmować działania ze strony państwa, być wspierany przez politykę państwową czy też wręcz kierowany przez państwo. W myśl obiegowo przyjętego założenia celem działań terrorystycznych jest doprowadzenie do unicestwienia istniejącego porządku prawnego[140]. Jako jaskrawym przykładem takiej działalności był zamach na World Trade Center w Nowym Yorku 11 września 2001 r., największy w dziejach historii zamach terrorystyczny. Wpłynął on na rozwiązania prawne i zaostrzoną kontrolę bezpieczeństwa na całym świecie.

[137] Szerzej: E. W. Pływaczewski, Przestępczość zorganizowana w RFN w świetle najnowszych badań kryminologicznych [w:] A. Marek, E. W. Pływaczewski (red.) Kryminologiczne i prawne aspekty przestępczości zorganizowanej. Studia i materiały, Szczytno 1992, s. 57 i n.

[138] Szerzej: M. Kotowska, Rola kontaktów społecznych w genezie funkcjonowania członków zorganizowanych grup przestępczych. Studium przypadku, [w:] Człowiek, społeczeństwo i państwo z perspektywy nauk kryminologicznych: księga jubileuszowa z okazji urodzin prof. zw. dr. hab. dr. h.c. Emila W. Pływaczewskiego, red. E. M. Guzik-Makaruk, K. Laskowska, W. Filipkowski, Warszawa 2023, s. 589-606.

[139] M. Piekarski, Terroryzm [w:] Kryminologia. Teoria i praktyka…, s. 342 i n.

[140] E. W. Pływaczewski, Geneza zjawiska przestępczości zorganizowanej, [w:] Przestępczość zorganizowana, red. E.W. Pływaczewski, Warszawa 2011, s. 52-53.

W literaturze wskazuje się na rozpoznane efekty i skutki przestępczości zorganizowanej oraz powiązane z nią inne poważne rodzaje przestępczości. Z punktu demokratycznego państwa prawa i zagwarantowania jego interesów można wskazać, że wysokie niebezpieczeństwo wynika z dostępu członków grup do wysokiej klasy wysoko opłacalnych specjalistów, co umożliwia omijania prawa, wyszukiwania jego luk a tym samym narażania Skarbu Państwa na znaczne straty. Efekt ochronny tego rodzaju przestępczości polega na tym, że dzięki dostępowi do wiedzy ekspertów oraz możliwościom finansowym członkom grup łatwiej niż pospolitym przestępcom zabezpieczyć się przez wykryciem ich działalności i jej osądzeniem. Efekt korupcji doprowadza z kolei do możliwości „wciągania" w działalność przestępczą funkcjonariuszy instytucji publicznych i gospodarczych[141]. W literaturze wskazuje się na tak istotne efekty korupcji, które wydają się istotne z perspektywy analizowanego w opracowaniu zagadnienia, jak: wpływ na treść decyzji administracyjnych i/lub wydawanych uprawnień, wpływ na przebieg referendów i wyborów, nepotyzm, finansowanie partii politycznych oraz przyznawanie intratnych stanowisk, korupcja legislacyjna przejawiająca się możliwością wpływania na kształt przepisów prawnych[142]. Takie objawy korupcji podważają stabilność polityczną i gospodarczą państwa, pogłębiając brak zaufania do niego obywateli oraz wiarygodność funkcjonowania urzędów, instytucji, organów i służb.

Efektem wysoko wyspecjalizowanej i sprofesjonalizowanej działalności przestępczej jest zjawisko polegające na praniu pieniędzy, które wywołuje skutki społeczno-ekonomiczne zarówno w makro jak i mikroskali. Jak wskazuje J.W. Wójcik, można wyodrębnić takie jego skutki jak: destabilizacja gospodarki państwa poprzez zakłócenie w systemie finansowym i podatkowym, wypaczenia mechanizmu rynkowego w zakresie określenia parametrów ekonomicznych oraz naruszenie zasad konkurencji gospodarczej, niekorzystny wpływ na politykę fiskalną państwa, w szczególności niewłaściwy pobór podatków, wzrost nieuczciwej konkurencji oraz niewłaściwa polityka inwestycyjna państwa[143]. Wszystko to może powodować zmniejszenie zaufania do polskiego systemu finansowego i jego stabilności oraz postrzegania państwa jako instytucji promującej praworządność i demokrację, co grozi znacznym zmniejszeniem inwestycji zagranicznych.

Podsumowanie i wnioski *de lege ferenda*

Zjawisko przestępczości zorganizowanej oraz powiązanych z nią form przestępczości, w szczególności terroryzmu, wpływa na rzeczywistość społeczno-polityczną w takim zakresie, że przekształca ją poprzez ukonstytuowanie się nowych zjawisk, zagrażających prawidłowemu funkcjonowaniu demokratycznego państwa oraz jego obywateli zaburzając prawidłowy obraz ładu i porządku społecznego.[144]

Przestępczość zorganizowana jako szczególna forma przestępczości jest zagrożeniem dla rynku wewnętrznego, swobody przedsiębiorczości i wzrostu gospodarczego. Jak słusznie zauważa E. W. Pływaczewski, z dzisiejszej perspektywy można powiedzieć, że przestępczość zorganizowana w aspekcie jej wielorakich powiązań nieformalną gospodarką urosła do roli fenomenu, który stawia zarówno praktykę organów ścigania i wymiaru sprawiedliwości jak i naukę w obliczu

[141] Szerzej: K. Bułat, P. Czarniak i.in., Kryminologia – repetytorium, Kraków 2007, s. 109.

[142] A. M. Hernecka-Janikowska, Przestępczość zorganizowana a państwo. Wzajemne relacje i uwarunkowania, Bydgoszcz 2021, s. 223-225.

[143] Szerzej: J. W. Wójcik, Oszustwa finansowe. Zagadnienia kryminologiczne i kryminalistyczne. Warszawa 2008, s. 131 i n.

[144] Szerzej: A. M. Hernacka-Janikowska, op.cit, s. 167-172.

wielu skomplikowanych i nowych problemów, wynikających z funkcjonowania wolnej gospodarki rynkowej[145]. Cechą a jednocześnie ogromnym problemem jest elastyczne dostosowywanie się zorganizowanych grup przestępczych do panujących warunków społeczno-polityczno-gospodarczych i zmian w ich zakresie oraz podążanie za zmieniającą się rzeczywistością, w tym wyszukiwanie takich obszarów eksploracji, które przynoszą przestępcom największe zyski[146].

Patrząc na analizowaną problematykę z perspektywy międzynarodowej można stwierdzić, że zjawisko to powoduje szkody finansowe dla Unii i jej państw członkowskich. Przestępczość zorganizowana poważnie zagraża zasadzie praworządności, a w konsekwencji funkcjonowaniu demokracji. Specyfika przestępczości zorganizowanej oraz jej złożony charakter a także profesjonalizacja sprawców powodują trudności w wykrywaniu przestępnej działalności jej sprawców. Trudno ocenić rzeczywisty rozmiar przestępczości zorganizowanej, ponieważ ze względu na swój charakter i cechy funkcjonuje ona w podziemiu, zasilając szarą strefę i pozostając przez długi okres niewidoczną zarówno dla organów ścigania jak i dla „zwykłych" obywateli. Jak wynika z badań przeprowadzonych w 2020 r. przez Centrum Badania Opinii Społecznej zdecydowana większość, bo 85% badanych uważa Polskę za państwo bezpieczne, natomiast 36% odczuwa zagrożenie przestępczością[147]. Na takie odpowiedzi respondentów wpłynąć mógł fakt wskazywanej już zmiany struktury przestępczości w ostatnim dwudziestoleciu tj. zmniejszania przestępstw kryminalnych na rzecz wzrostu gospodarczych, które są postrzegane przez obywateli jako mniej niebezpieczne a przez przestępców jako bardziej dochodowe i niosące mniejsze ryzyko wyrycia i surowego ukarania. Bez wątpienia to zorganizowana przestępczość o charakterze gospodarczym, ze względu na generację strat Skarbu Państwa oraz pozostałych podmiotów i obszarów gospodarki stanowi obecnie problem dla polityki państwa i zachowania jego demokratycznych zasad funkcjonowania. Można za ekspertami przyjąć, że taki trend rozwoju utrzymania przestępczości będzie się w przyszłości utrzymywał. Mimo wielu dobrych praktyk i wdrażania nowych rozwiązań prawnych i informatycznych mających na celu ograniczenie tego negatywnego zjawiska wiele pozostaje do zrobienia. W szczególności zwraca się uwagę, że w Polsce nie istnieje jeszcze spójny, kompleksowy system ujawniania i zabezpieczania mienia pochodzącego z przestępstw, który zapewniałby jego sprawne odzyskiwanie. Działania służb i instytucji są w tym zakresie rozproszone, nie ma też jednolitego systemu ewidencjonowania odzyskiwania mienia pochodzącego z przestępstw[148]. Niezwykle istotne jest również zacieśnienie współpracy instytucji organów i służb w celu optymalizacji efektywności zwalczania tego problemu.

[145] E. W. Pływaczewski, Geneza zjawiska przestępczości zorganizowanej, [w:] Przestępczość zorganizowana, red. E.W. Pływaczewski, Warszawa 2011, s. 57.

[146] Szerzej: W. Pływaczewski, Współczesne trendy przestępczości zorganizowanej w Europie (analiza wybranych zjawisk przestępczych z uwzględnieniem zadań Agencji Unii Europejskiej ds. Współpracy Organów Ścigania - Europol), Studia Prawnoustrojowe 2021 nr 52, s. 387-410.

[147] Poczucie bezpieczeństwa w najbliższej okolicy i kraju, Centrum Badań Opinii Społecznej 2020 nr 96, s. 1-3.

148 Odzyskiwanie mienia pochodzącego z przestępstw, Najwyższa Izba Kontroli, Warszawa 2019, s. 7.

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ALEKSANDRA LUKASEK & WIOLETTA ZALEWSKA

Arteterapia w pracy z dzieckiem ze spektrum autyzmu (Art therapy in working with a child with autism spectrum disorder)

WPROWADZENIE

Arteterapia jako jedna z form terapii przez sztukę, odgrywa coraz bardziej znaczącą rolę w pracy z dziećmi ze spektrum autyzmu. Spektrum autyzmu to złożone zaburzenie, które wpływa na interakcje społeczne, komunikację oraz zachowanie. Tradycyjne metody terapeutyczne nie zawsze okazują się skuteczne w pracy z dziećmi autystycznymi, co skłania specjalistów do poszukiwania alternatywnych i innowacyjnych podejść.

Arteterapia, poprzez swoje unikalne możliwości wyrażania siebie pozawerbalnymi środkami komunikacji, stwarza dzieciom ze spektrum autyzmu przestrzeń do wyrażania emocji, rozwijania umiejętności społecznych i nawiązywania kontaktów w sposób dla nich naturalny i komfortowy. Poprzez angażowanie w proces twórczy, dzieci mogą odkrywać i przetwarzać swoje wewnętrzne doświadczenia, co prowadzi do lepszego zrozumienia siebie i otaczającego świata.

Osoby w spektrum autyzmu mają trudności z uczestniczeniem w interakcjach społecznych, co obejmuje problemy z rozpoznawaniem, rozumieniem i angażowaniem się w kontakty z innymi ludźmi. Mają deficyty w umiejętnościach społecznych i komunikacyjnych, co utrudnia im nawiązywanie i podtrzymywanie relacji interpersonalnych.

W komunikacji często występują trudności z językiem werbalnym, kontakt wzrokowy jest zaburzony, a osoby w spektrum często ignorują obecność innych. Zaburzenia zachowania, takie jak stereotypie, rytuały, manieryzmy i obsesje, są powszechne.

Arteterapia pomaga dzieciom z autyzmem wyrażać myśli i emocje poprzez sztukę, co jest szczególnie ważne, gdy mają one trudności z komunikacją werbalną. Kluczowym elementem skuteczności jest indywidualizacja podejścia, uwzględniająca unikalne zainteresowania i potrzeby każdego dziecka. Odpowiedni dobór materiałów artystycznych oraz zastosowanie różnych technik, takich jak malarstwo, rzeźba, muzykoterapia i techniki teatralne, sprzyja zaangażowaniu i rozwojowi dzieci z ASD. Arteterapia wspomaga rozwój umiejętności społecznych, regulację emocji, integrację sensoryczną oraz przygotowanie do funkcjonowania w środowisku szkolnym.

Spektrum Autyzmu-charakterystyka

Spektrum autyzmu, znane również jako spektrum zaburzeń autystycznych, to złożone spektrum neurobiologicznych zaburzeń rozwojowych, które wykazują różnorodność w objawach, nasileniu i indywidualnym funkcjonowaniu. Charakteryzuje się ono pewnymi wspólnymi cechami, ale jednocześnie obejmuje szeroką gamę różnych przejawów. „Do autyzmu zalicza się całe spektrum zaburzeń, od umiarkowanych po ciężkie, wszystkie one cechują się trudnością w kontakcie z innymi ludźmi. Osoby autystyczne mają zaburzoną zdolność angażowania się w interakcje społeczne i komunikacje, zarówno werbalną jak i nie werbalną. Ponadto zawężeniu ulega krąg ich zainteresowań. Te bariery w interakcjach z innymi wywierają głęboki wpływ na zachowania społeczne.”(E.R. Kandel, 2022 s.48)

Według najnowszej definicji WHO, ICD-11 wyróżnia stopnie zaburzeń rozwoju intelektualnego lub upośledzenia czynnościowego/funkcjonalnego języka, które są podstawą klasyfikacji stopnia autyzmu. W nowej wersji klasyfikacji pojęcie całościowe zaburzenia rozwojowe zastąpione zostanie spektrum autyzmu.

Autyzm i zespół Aspergera w nowej klasyfikacji (ICD-11) przyjmuje następujące symbole:

- 6A02 Zaburzenia ze spektrum autyzmu
- 6A02.0 Zaburzenie ze spektrum autyzmu bez upośledzenia rozwoju intelektualnego i z łagodnym upośledzeniem lub bez upośledzenia funkcjonalnego języka
- 6A02.1 Zaburzenie ze spektrum autyzmu z upośledzeniem rozwoju intelektualnego i z łagodnym upośledzeniem lub bez upośledzenia funkcjonalnego języka
- 6A02.2 Zaburzenie ze spektrum autyzmu bez upośledzenia rozwoju intelektualnego i z upośledzonym językiem funkcjonalnym
- 6A02.3 Zaburzenie ze spektrum autyzmu z upośledzeniem rozwoju intelektualnego i z upośledzonym językiem funkcjonalnym
- 6A02.4 Zaburzenie ze spektrum autyzmu bez upośledzenia rozwoju intelektualnego i z brakiem języka funkcjonalnego
- 6A02.5 Zaburzenie ze spektrum autyzmu z upośledzeniem rozwoju intelektualnego i z brakiem języka funkcjonalnego
- 6A02.6 Inne zaburzenia ze spektrum autyzmu
- 6A02.7 Zaburzenie ze spektrum autyzmu, nieokreślone (http://www.mada.org.pl/autyzm-czym-jest/, 2023)

Autyzm ujawnia się w krytycznym okresie rozwoju na wczesnym etapie życia, przed ukończeniem trzeciego roku. Ponieważ dzieci autystyczne nie są w stanie spontanicznie rozwinąć u siebie umiejętności społecznych i komunikacyjnych, wycofują się do świata wewnętrznego i nie wchodzą w społeczne interakcje z otoczeniem (E.R.Kandel.,2022, s.47)

Zaburzenia w spektrum autyzmu mają znaczący wpływ na sposób, w jaki osoba się komunikuje i odnosi do innych. Osoby w spektrum autyzmu często mają trudności ze zrozumieniem wyrazu twarzy, języka ciała czy tonu głosu. Dzieci z ASD mogą mieć również trudności z przetwarzaniem informacji sensorycznych, takich jak kolory, głośne dźwięki czy faktury. Te trudności mogą powodować powtarzające się zachowania oraz trudności z akceptacją zmian. Osoby z ASD często mają poczucie, że nie są rozumiane bądź akceptowane, co często prowadzi do negatywnych uczuć, takich jak frustracja, złość, smutek.

Spektrum autyzmu to grupa zaburzeń rozwojowych, powodujących znaczące deficyty społeczne. Autyzm nie jest chorobą i nie da się go wyleczyć, jednak zasadnym jest poddawanie osób z diagnozą ASD oddziaływaniom pomocowym i terapeutycznym, które mogą wspomóc ich funkcjonowanie w społeczeństwie.

„Dzieci z ASD często doświadczają zaburzeń współistniejących, takich jak: lek, depresja, ADHD, epilepsja, agresja, zaburzenia odżywiania i snu oraz inne. Szacuje się, że około 70% dzieci i młodzieży z ASD cierpi na zaburzenia współistniejące. Występowanie zaburzeń współistniejących pogarsza jakość życia i kontakty społeczne osób z zaburzeniami ze spektrum autyzmu”(https://bip.uksw.edu.pl/sites/default/files/Rozprawa.pdf, 2023 s. 12)

Arteterapia jako forma terapii

Arteterapia jest definiowana jako proces terapeutyczny, który wykorzystuje sztukę do wspierania zdrowia psychicznego i emocjonalnego, jest uważana za stosunkowo nową dziedzinę, łączącą elementy psychologii, medycyny, pedagogiki specjalnej i sztuki. Wyróżnia się dwa podejścia: proces twórczy jako terapia oraz sztuka jako środek symbolicznej komunikacji. W sesjach arteterapii klienci wyrażają swoje emocje i doświadczenia poprzez różne formy artystyczne, co pomaga przełamywać bariery słowne i umożliwia ekspresję trudnych do opisania uczuć.

Arteterapia promuje świadomość społeczną i akceptację różnorodności, stając się potężnym narzędziem terapeutycznym, które wspiera ogólny rozwój dzieci z autyzmem. Rozwijanie innowacyjnych form arteterapii i współpraca z profesjonalistami z różnych dziedzin otwiera nowe możliwości dla dzieci z autyzmem i ich rodzin.

Arteterapia, będąca połączeniem procesu twórczego i terapii, jest unikalną dziedziną, która wykorzystuje sztukę jako narzędzie do samopoznania, leczenia i rozwoju osobistego.

Arteterapia to proces terapeutyczny, w którym używa się sztuki w celu wspierania zdrowia psychicznego i emocjonalnego, stwarza przestrzeń, w której uczniowie mogą użyć sztuki jako środka wyrażania się, co może prowadzić do głębszego zrozumienia siebie i innych. Zajęcia artystyczne rozwijają kreatywność i myślenie twórcze uczniów. Poprzez eksperymentowanie z różnymi formami sztuki, dzieci rozwijają umiejętność rozwiązywania problemów i elastyczne myślenie. Stwarza ona alternatywne ścieżki do przyswajania wiedzy, umożliwiając jednocześnie rozwijanie umiejętności społecznych i emocjonalnych. Wspólne tworzenie dzieł sztuki wzmacnia więzi społeczne, integrując i ucząc współpracy. Poprzez prace artystyczne, dzieci rozwijają umiejętność samooceny, budują poczucie własnej wartości i rozwijają zdolność refleksji nad własnymi doświadczeniami. Profesor Zbigniew Skorny, psycholog z Uniwersytetu Wrocławskiego, określił funkcje arteterapii jako: rekreacyjną, edukacyjną i korekcyjną. Natomiast jako formy wyróżnił:

- Muzykoterapii bierna- polegająca na słuchaniu muzyki i czynna: śpiew, granie na instrumentach.
- Choreoterapia: taniec
- Biblioterapia: literatura piękna, biografie, pamiętniki ukazujące modele zachowania się prospołecznego
- Psychodrama: inscenizacje dramatyczne na określony temat
- Grafoterapia: rysowanie, malowanie

Zauważył także, że arteterapia w formie autoarteterapii może pełnić funkcje psychoprofilaktyczną, chroniącą przed zaburzeniami i chorobami psychicznymi.(W. Szulc 1994, s.83-90)

Arteterapia staje się coraz bardziej akceptowaną formą terapii, zarówno jako samodzielna praktyka, jak i w połączeniu z innymi formami terapii. W społeczeństwie, gdzie zdrowie psychiczne staje się coraz bardziej priorytetem, arteterapia stanowi cenny dodatek do tradycyjnych metod leczenia, jak również wspierania rozwoju psychomotorycznego dzieci ze spectrum autyzmu.

Procedura badawcza

Badania zostały przeprowadzone w Mazowieckim Centrum Neuropsychiatrii w Józefowie na Psychiatrycznym Rehabilitacyjnym Oddziale Dziennym Wieku Rozwojowego.

W badaniu posłużono się metodą indywidualnych przypadków. z wykorzystaniem techniki obserwacji, wywiadu i analizy dokumentów.

Problemem badawczym badanego przypadku było uzyskanie odpowiedzi na pytania szczegółowe:

1. Czy arteterapia odgrywa rolę w sferze emocjonalno-motywacyjnej w pracy z dzieckiem w spektrum autyzmu?
2. Czy arteterapia odgrywa rolę w sferze poznawczej w pracy z dzieckiem w spektrum autyzmu?
3. Czy arteterapia odgrywa rolę w sferze fizycznej w pracy z dzieckiem w spektrum autyzmu?
4. Czy arteterapia odgrywa rolę w sferze społecznej w pracy z dzieckiem w spektrum autyzmu?
5. akie formy i techniki są wykorzystywane w arteterapii w pracy z dzieckiem ze spektrum autyzmu?

Uwzględniono motywację i gotowość dziecka do udziału w sesjach arteterapeutycznych, ponieważ uczestnictwo dziecka w badaniach powinno być dobrowolne. Określono indywidualne cele terapeutyczne dziecka i dopasowano do tych celów arteterapię. Zapoznano się z historią edukacyjną i terapeutyczną dziecka, w celu lepszego dostosowania sesji arteterapeutycznych do potrzeb dziecka. Oceniono poziom umiejętności komunikacyjnych dziecka, co było ważnym kryterium, ponieważ arteterapia często wykorzystuje formy niewerbalne komunikacji. W każdym przypadku przestrzegane były standardy etyczne, takie jak zachowanie poufności i zrozumienie praw dziecka i rodziców.

Opis przypadku

Daniel 8 lat uczestniczył w arteterapii pomiędzy 8.10.23 r i 16.12.23 r.

Daniel, 8-letni chłopiec, przejęty do oddziału dziecięcego z powodu wyraźnie obniżonego nastroju, anhedonii, wzmożonej senności, obniżonego apetytu, unikania kontaktu z rówieśnikami.

Sytuacja rodzinna

Daniel mieszka z mamą, która jest jego jedynym opiekunem po śmierci ojca w 2021 roku. Rodzice byli w separacji przed śmiercią ojca. Daniel jest jedynakiem. Mama, mająca 36 lat, pracuje jako psychoterapeuta i wykazuje cechy krytyczności oraz surowości w stosunku do syna, co znacząco wpływa na jego samopoczucie i zachowanie. Mama Daniela jest osobą wykształconą, ale jej podejście do wychowania syna często charakteryzuje się wysokimi oczekiwaniami i brakiem zrozumienia dla jego problemów emocjonalnych.

Ojciec Daniela miał zaburzenia nastroju i zmarł w 2021 roku. Relacja Daniela z ojcem była ograniczona ze względu na separację rodziców. Rodzina Daniela nie miała wcześniejszych historii psychiatrycznych, jednak ojciec Daniela doświadczał problemów emocjonalnych, które mogły wpłynąć na rozwój Daniela.

Daniel czuje się często osamotniony i niezrozumiany przez mamę, która, mimo że stara się zapewnić mu jak najlepszą opiekę, często wykazuje brak cierpliwości i empatii wobec jego problemów. Mama Daniela jest bardzo krytyczna, szczególnie w momentach, gdy Daniel nie spełnia jej oczekiwań szkolnych lub domowych, co dodatkowo pogarsza jego stan emocjonalny.

Identyfikacja problemu

Daniel zmaga się z zespołem Aspergera (ZA) i zaburzeniami obsesyjno-kompulsyjnymi (OCD). W przeszłości przyjmował różne leki psychotropowe, w tym fluoksetynę, która nie przyniosła oczekiwanych efektów. Obecnie jest leczony Miravil, jednak terapia farmakologiczna nie w pełni kontroluje objawy depresji i natręctw.

Problemy z natręctwami czystościowymi powodują, że Daniel izoluje się w swoim pokoju, który uważa za „strefę czystą". Ma trudności z jedzeniem i wykazuje nadwrażliwość na bodźce cenestetyczne, węchowe i słuchowe.

W wieku 8 lat Daniel wykazywał już cechy zespołu Aspergera oraz OCD. Jego problemy zdrowotne obejmują przewlekłe bóle ucha i brzucha, choć diagnostyka nie wykazała ich przyczyny. Daniel ponadto, cierpi na fobię szkolną, co utrudnia mu regularne uczęszczanie do szkoły.

Znaczenie problemu

Codzienne funkcjonowanie: Zaburzenia obsesyjno-kompulsyjne powodują, że Daniel nie pozwala nikomu wchodzić do swojego pokoju ani dotykać jego rzeczy, co wpływa na jego codzienne obowiązki i interakcje z rodziną. Nadmierna senność i obniżony apetyt dodatkowo utrudniają jego codzienne funkcjonowanie. Fobia szkolna sprawia, że ma trudności z regularnym uczęszczaniem do szkoły i uczestnictwem w zajęciach.

Relacje rodzinne: Krytyczne i surowe podejście mamy do Daniela wywołuje u niego stres i lęk, szczególnie w sytuacjach, które przypominają mu o przemocy psychicznej i fizycznej, której doświadczał wcześniej. Relacje z mamą są napięte, co dodatkowo pogarsza jego stan emocjonalny.

Interakcje społeczne: Daniel ma trudności w nawiązywaniu i utrzymywaniu relacji z rówieśnikami. Unika kontaktów społecznych, co prowadzi do izolacji i osamotnienia. W szkole Daniel nie nawiązał kontaktu z rówieśnikami i ma trudności z uczestnictwem w lekcjach, co wpływa na jego wyniki w nauce.

Rozwój emocjonalny: Daniel doświadcza cech zespołu depresyjnego, takich jak obniżony nastrój, anergia, anhedonia oraz wzmożona senność. Brak wsparcia emocjonalnego i krytyczne podejście mamy pogarszają jego stan emocjonalny, prowadząc do myśli i tendencji suicydalnych.

Żywienie

Daniel cierpi na wybiórczość pokarmową oraz nadwrażliwość cenestetyczną, węchową i słuchową, co znacznie utrudnia jego codzienne funkcjonowanie związane z jedzeniem. Wybiórczość pokarmowa oznacza, że Daniel akceptuje tylko ograniczoną ilość produktów spożywczych, odmawiając spożywania wielu posiłków z powodu ich tekstury, zapachu, smaku lub wyglądu. Jego dieta jest więc monotonna i pozbawiona niezbędnych składników odżywczych. Problemy żywieniowe Daniela mają bezpośredni wpływ na jego zdrowie fizyczne i samopoczucie. Nadwrażliwość na bodźce cenestetyczne sprawia, że jedzenie posiłków, które odbiega od jego akceptowanych norm, może wywoływać silne reakcje emocjonalne i fizyczne, takie jak mdłości, wymioty czy napady lęku. Ograniczona dieta wpływa również na poziom energii, co może prowadzić do chronicznego zmęczenia i trudności w koncentracji.

Brak odpowiedniego wsparcia terapeutycznego może prowadzić do pogłębiania się problemów żywieniowych Daniela. Długotrwałe niedobory żywieniowe mogą skutkować poważnymi problemami zdrowotnymi, takimi jak niedobory witamin i minerałów, osłabienie układu odpornościowego, problemy z kośćmi i mięśniami oraz opóźnienia wzrostu i rozwoju fizycznego. Psychologiczne skutki mogą obejmować zwiększenie izolacji społecznej, nasilenie objawów depresyjnych i lękowych oraz dalsze komplikacje w relacjach rodzinnych. Dlatego kluczowe jest, aby Daniel otrzymał odpowiednią terapię, która pomoże mu radzić sobie z nadwrażliwością i wybiórczością pokarmową, oraz wsparcie w rozwijaniu zdrowych nawyków żywieniowych. Brak odpowiedniej terapii może prowadzić do dalszego pogłębiania się problemów emocjonalnych i psychicznych Daniela. Może to skutkować nasileniem myśli i prób samobójczych, pogorszeniem wyników w nauce oraz dalszą izolacją społeczną. Daniel uczestniczył w zajęciach arteterapii, aby zniwelować trudności z radzeniem sobie z natręctwami oraz innymi objawami OCD, co może prowadzić do większych problemów zdrowotnych i psychicznych w przyszłości. Zajęcia arteterapii, na które uczęszczał Daniel podczas pobytu w szpitalu, wspomagają rozwój zdrowych relacji rodzinnych i społecznych, co jest kluczowe dla jego ogólnego dobrostanu.

Ocena zmiany po zakończeniu arteterapii

Sfera emocjonalno-motywacyjna: Po zakończeniu arteterapii u Daniela zaobserwowano znaczną poprawę w regulacji emocji i wyrażaniu uczuć. Daniel stał się bardziej świadomy swoich emocji i potrafił je identyfikować oraz wyrażać w sposób konstruktywny. Zredukowało to częstotliwość napadów złości i frustracji, co miało pozytywny wpływ na jego codzienne funkcjonowanie. Motywacja do angażowania się w różnorodne aktywności, zarówno szkolne, jak i domowe, uległa poprawie. Chłopiec wykazywał większą chęć do nauki i podejmowania nowych wyzwań.

Sfera poznawcza: Arteterapia przyczyniła się do rozwoju umiejętności poznawczych Daniela. Poprawiła się jego koncentracja, zdolność do planowania i organizacji zadań. Zauważono lepsze wyniki w szkole, zwłaszcza w przedmiotach wymagających logicznego myślenia i kreatywności. Daniel zaczął przejawiać większą ciekawość świata i chęć do eksploracji nowych tematów. Techniki stosowane w arteterapii pomogły mu w lepszym przyswajaniu informacji i rozwijaniu umiejętności abstrakcyjnego myślenia.

Sfera fizyczna: W sferze fizycznej arteterapia pomogła w rozwijaniu umiejętności motorycznych Daniela. Regularne uczestnictwo w zajęciach plastycznych i muzycznych wpłynęło na poprawę koordynacji ręka-oko oraz zdolności manualnych. Daniel stał się bardziej sprawny manualnie, co przełożyło się na lepsze radzenie sobie z codziennymi czynnościami, takimi jak ubieranie się, pisanie czy jedzenie. Dodatkowo, aktywności fizyczne związane z arteterapią przyczyniły się do ogólnego poprawienia kondycji fizycznej chłopca.

Sfera społeczna: Arteterapia znacząco wpłynęła na rozwój umiejętności społecznych Daniela. Chłopiec stał się bardziej otwarty na kontakty z rówieśnikami i dorosłymi. Lepsze zrozumienie norm społecznych i umiejętność wyrażania swoich myśli oraz uczuć pomogły mu w nawiązywaniu i utrzymywaniu relacji. Daniel wykazywał większą empatię i lepiej rozumiał emocje innych osób. Dzięki temu poprawiły się jego relacje z rodziną oraz rówieśnikami w szkole i poza nią.

Po zakończeniu arteterapii Daniel wykazał znaczące postępy we wszystkich analizowanych sferach. Zmiany te przyczyniły się do poprawy jego ogólnego funkcjonowania, zarówno w środowisku domowym, jak i szkolnym. Poprawa w sferze emocjonalno-motywacyjnej, poznawczej, fizycznej i społecznej świadczy o skuteczności arteterapii jako metody wspierającej rozwój dziecka ze spektrum autyzmu.

Udzielając odpowiedzi na powyższe pytania szczegółowe:

Ad 1. Arteterapia odegrała istotną rolę w sferze emocjonalno-motywacyjnej Daniela. Pomogła chłopcu w wyrażaniu trudnych emocji, redukcji stresu i lęku oraz w budowaniu poczucia własnej wartości. W przypadku Daniela, poprzez twórcze działania, arteterapia pomogła

zrozumieć i kontrolować swoje emocje, co doprowadziło do zmniejszenia napięcia i poprawy nastroju.

Ad 2. Arteterapia wpłynęła na sferę poznawczą Daniela. Proces twórczy wsparł rozwój umiejętności poznawczych, takich jak koncentracja, planowanie, rozwiązywanie problemów i myślenie abstrakcyjne. W przypadku Daniela, arteterapia pomogła w rozwijaniu umiejętności skupienia i logicznego myślenia, co jest istotne w jego edukacji i codziennych aktywnościach.

Ad 3. Arteterapia odegrała rolę w sferze fizycznej Daniela, szczególnie poprzez rozwijanie umiejętności motorycznych. Twórcze działania, takie jak malowanie, rysowanie czy rzeźbienie, pomogły w rozwijaniu koordynacji ręka-oko oraz zdolności manualnych. Dla Daniela, arteterapia jest korzystna w kontekście rozwijania umiejętności ruchowych i precyzyjnych czynności manualnych.

Ad 4. Arteterapia odegrała ważną rolę w sferze społecznej Daniela. Wsparła rozwój umiejętności komunikacyjnych, interakcji społecznych i budowania relacji. Wspólne tworzenie sztuki z innymi dziećmi lub terapeutą pomogło Danielowi w nauce współpracy, zrozumieniu norm społecznych oraz w budowaniu relacji z rówieśnikami.

Ad 5. Formy i techniki wykorzystywane w arteterapii w pracy z dzieckiem ze spektrum autyzmu:

Malarstwo i rysunek: Umożliwiły Danielowi wyrażanie emocji i myśli w sposób wizualny.

Rzeźba i modelowanie: Pomogły Danielowi rozwijać umiejętności manualne i przestrzenne myślenie.

Muzykoterapia: Wykorzystując dźwięki i rytmy wsparły regulację emocji i rozwoju komunikacji.

Teatroterapia: Pozwoliły Danielowi na eksplorację ról społecznych i rozwijanie umiejętności społecznych.

Kolaże i prace z papierem: Wsparły kreatywność i rozwinęły umiejętności planowania oraz realizację projektów.

W przypadku Daniela, indywidualnie dostosowane techniki arteterapii przyczyniły się do poprawy jego funkcjonowania we wszystkich wymienionych sferach, wspierając jego rozwój emocjonalny, poznawczy, fizyczny i społeczny.

Prognoza

W perspektywie długoterminowej, dzięki arteterapii, Daniel prawdopodobnie będzie w stanie lepiej radzić sobie z emocjami i stresem. Umiejętność identyfikowania i wyrażania uczuć w sposób konstruktywny powinna stać się dla niego naturalna, co zmniejszy ryzyko napadów złości i frustracji. Kontynuowanie terapii może prowadzić do dalszego wzrostu motywacji i zaangażowania w różnorodne aktywności, co pozytywnie wpłynie na jego rozwój osobisty i edukacyjny.

Prognozy dla rozwoju poznawczego Daniela są pozytywne. Poprawa koncentracji, zdolności planowania i organizacji zadań wskazuje na rosnący potencjał do osiągania lepszych wyników w szkole. Dalsze angażowanie się w aktywności artystyczne i edukacyjne może stymulować jego ciekawość świata i chęć do nauki, co będzie sprzyjać jego ogólnemu rozwojowi intelektualnemu.

Dzięki regularnym zajęciom arteterapeutycznym, które wspierają rozwój motoryczny, Daniel prawdopodobnie utrzyma lub nawet poprawi swoją sprawność manualną i koordynację ruchową. Kontynuowanie aktywności związanych z terapią, takich jak malowanie, rzeźba czy zajęcia ruchowe, będzie sprzyjać jego dalszemu rozwojowi fizycznemu i poprawie zdolności manualnych.

W sferze społecznej prognozy są również korzystne. Daniel, dzięki poprawie umiejętności komunikacyjnych i społecznych, będzie mógł nawiązywać i utrzymywać bardziej satysfakcjonujące relacje z rówieśnikami oraz dorosłymi. Rozwijanie empatii i lepsze rozumienie emocji innych osób pomoże mu w integracji społecznej, co będzie miało pozytywny wpływ na jego samopoczucie i rozwój osobisty.

Prognozy dla Daniela są pozytywne, pod warunkiem kontynuacji terapii i wsparcia ze strony rodziny oraz specjalistów. Arteterapia jako integralna część jego planu terapeutycznego, będzie nadal wspierać jego rozwój we wszystkich sferach życia. Z czasem, Daniel ma szansę na coraz lepsze funkcjonowanie zarówno w środowisku szkolnym, jak i domowym, co zwiększy jego szanse na osiągnięcie pełni swojego potencjału i poprawę jakości życia.

Propozycje rozwiązań

Kontynuacja Arteterapii: Regularne sesje arteterapii, które pozwalają Danielowi na wyrażanie emocji poprzez sztukę, są kluczowe. Można włączyć różnorodne formy sztuki, takie jak malowanie, rzeźba czy muzyka, aby dostosować się do jego zmieniających się potrzeb i zainteresowań.

Techniki Relaksacyjne: Wprowadzenie technik relaksacyjnych, takich jak medytacja, głębokie oddychanie czy joga, które mogą pomóc Danielowi w zarządzaniu stresem i napięciem emocjonalnym.

Indywidualne Sesje Terapeutyczne: Regularne spotkania z psychoterapeutą specjalizującym się w pracy z dziećmi w spektrum autyzmu, aby monitorować postępy i dostosowywać metody terapeutyczne do jego potrzeb.

Stymulacja Intelektualna: Wprowadzenie programów edukacyjnych i gier stymulujących rozwój poznawczy. Aktywności te mogą obejmować łamigłówki, gry logiczne i zadania rozwijające umiejętności planowania i rozwiązywania problemów.

Indywidualny Plan Nauczania: Dostosowanie programu nauczania do indywidualnych potrzeb i zdolności Daniela, z naciskiem na jego mocne strony oraz obszary wymagające wsparcia.

Wsparcie Specjalistyczne: Regularne sesje z logopedą i terapeutą zajęciowym, aby wspierać rozwój językowy i motoryczny.

Wprowadzenie regularnych zajęć ruchowych, takich jak gimnastyka, taniec czy zajęcia sportowe, które wspierają rozwój motoryczny i koordynację ruchową.

Zajęcia z terapeutą zajęciowym, które mogą pomóc Danielowi w rozwijaniu umiejętności manualnych i motorycznych poprzez zabawę i zadania praktyczne.

Zdrowa Dieta i Styl Życia: Zachęcanie do zdrowego stylu życia poprzez zrównoważoną dietę, odpowiednią ilość snu i regularną aktywność fizyczną.

Grupy Wsparcia: Udział w grupach wsparcia dla dzieci w spektrum autyzmu, które umożliwiają interakcje z rówieśnikami o podobnych doświadczeniach i problemach.

Trening Umiejętności Społecznych: Programy treningowe, które skupiają się na rozwijaniu umiejętności społecznych, takich jak nawiązywanie i utrzymywanie przyjaźni, komunikacja interpersonalna oraz rozwiązywanie konfliktów.

Regularne oceny postępów Daniela we wszystkich sferach, aby dostosowywać programy terapeutyczne do jego aktualnych potrzeb i osiągnięć. Współpraca różnych specjalistów (psychologów, terapeutów zajęciowych, pedagogów, logopedów) w celu zapewnienia kompleksowego wsparcia.

Realizacja tych propozycji może znacznie poprawić jakość życia Daniela, wspierając jego rozwój emocjonalny, poznawczy, fizyczny i społeczny.

Daniel, 8-letni chłopiec z rozpoznaniem zespołu Aspergera i zaburzeń obsesyjno-kompulsyjnych, boryka się z poważnymi problemami emocjonalnymi i behawioralnymi, które znacząco wpływają na jego codzienne funkcjonowanie, relacje rodzinne, interakcje społeczne i rozwój emocjonalny. Jego sytuacja rodzinna, związana ze stratą ojca i napiętymi relacjami z matką, dodatkowo komplikuje proces leczenia.

Arteterapia jako forma wsparcia, może pomóc w wielu aspektach życia Daniela. W sferze emocjonalno-motywacyjnej pomaga w wyrażaniu uczuć, redukcji napięcia i budowaniu pozytywnej motywacji. W sferze poznawczej wspiera rozwój umiejętności myślenia abstrakcyjnego, rozwiązywania problemów i kreatywności. Fizycznie, poprzez techniki arteterapeutyczne i zajęcia ruchowe, wspiera rozwój motoryczny i koordynację. W sferze społecznej umożliwia nawiązywanie kontaktów, rozwijanie umiejętności komunikacyjnych i budowanie relacji z rówieśnikami.

Brak odpowiedniej terapii może prowadzić do pogłębienia problemów emocjonalnych i behawioralnych Daniela, zwiększenia izolacji społecznej oraz dalszego pogorszenia relacji rodzinnych. Regularna, indywidualnie dostosowana terapia jest bardzo ważna dla poprawy jakości życia Daniela i jego rodziny.

Proponowane rozwiązania obejmują kontynuację arteterapii, wprowadzenie technik relaksacyjnych, indywidualne sesje terapeutyczne, programy edukacyjne i wsparcie rodzinne. Regularne monitorowanie postępów oraz współpraca różnych specjalistów zapewnią kompleksowe wsparcie dla Daniela.

Skuteczna terapia Daniela wymaga wieloaspektowego podejścia, które uwzględni wszystkie sfery jego życia. Dzięki odpowiedniemu wsparciu terapeutycznemu, Daniel ma szansę na poprawę swojego funkcjonowania, lepszą integrację społeczną i rozwój osobisty.

Podsumeóowanie

Przeprowadzone badania wykazały, że sztuka jako środek wyrazu ma kluczowe znaczenie w terapii dziecka z ASD, pomagając im w wyrażaniu trudnych emocji, rozwijaniu zdolności poznawczych oraz poprawie umiejętności społecznych i fizycznych.

Przykład Daniela pokazuje, jak skuteczna może być ta forma terapii w zarządzaniu emocjami i redukcji napadów agresji. Dzieci z ASD korzystają z arteterapii poprzez rozwijanie myślenia abstrakcyjnego, kreatywności oraz umiejętności rozwiązywania problemów. Praca z różnymi materiałami artystycznymi wspiera rozwój motoryki i koordynacji ruchowej.

Każde dziecko ma unikalne potrzeby i preferencje, dlatego indywidualizacja metod terapeutycznych jest kluczowa. Proces arteterapii może napotykać na różne trudności, takie jak frustracja i agresja wynikające z ograniczonych umiejętności komunikacyjnych dzieci. Dobór odpowiednich materiałów artystycznych jest również wyzwaniem, które wymaga uwzględnienia specyficznych preferencji sensorycznych dzieci z ASD.

Regularne uczestnictwo w arteterapii przynosi długoterminowe korzyści, w tym lepsze funkcjonowanie emocjonalne, społeczne i poznawcze. Kontynuacja wsparcia terapeutycznego i regularna ewaluacja postępów są kluczowe dla trwałej poprawy jakości życia dzieci z ASD.

Arteterapia, dzięki swojej elastyczności i różnorodności technik, stanowi cenne narzędzie terapeutyczne dla dzieci z autyzmem wysokofunkcjonującym. Przypadek Daniela pokazuje, że sztuka może wspierać rozwój emocjonalny, poznawczy, fizyczny i społeczny dzieci z ASD. Indywidualizacja podejścia oraz ciągłe wsparcie terapeutyczne są kluczowe dla osiągnięcia trwałych korzyści i poprawy jakości życia tych dzieci. Rozwijanie innowacyjnych form arteterapii oraz zacieśnianie współpracy z profesjonalistami z różnych dziedzin może otworzyć

nowe możliwości dla dzieci z autyzmem i ich rodzin, przyczyniając się do ich lepszego funkcjonowania w społeczeństwie.

Postulaty

Indywidualizacja Terapii: Każde dziecko z ASD powinno mieć indywidualnie dostosowany plan arteterapeutyczny, uwzględniający jego unikalne potrzeby, zainteresowania oraz poziom komunikacji i preferencje sensoryczne. Personalizacja podejścia zwiększa efektywność terapii i motywację dziecka do udziału.

Interdyscyplinarne Podejście: Współpraca między arteterapeutami, psychologami, pedagogami specjalnymi i rodzicami jest kluczowa. Regularne konsultacje i wspólne planowanie działań terapeutycznych pomagają w lepszym zrozumieniu potrzeb dziecka i monitorowaniu jego postępów.

Edukacja i Szkolenia dla Terapeutów: Arteterapeuci powinni przechodzić specjalistyczne szkolenia z zakresu pracy z dziećmi z ASD, aby lepiej rozumieć specyfikę zaburzeń i skutecznie stosować różnorodne techniki terapeutyczne. Stałe podnoszenie kwalifikacji i aktualizacja wiedzy są niezbędne.

Zróżnicowane Techniki Terapeutyczne: W arteterapii należy wykorzystywać różnorodne techniki, takie jak malarstwo, rzeźba, muzyka, teatr czy taniec, aby zaspokoić różne potrzeby i zainteresowania dzieci z ASD. Różnorodność technik pomaga w pełniejszym rozwoju emocjonalnym, poznawczym, fizycznym i społecznym.

Tworzenie Bezpiecznego Środowiska: Sesje arteterapii powinny odbywać się w bezpiecznym, przewidywalnym i przyjaznym otoczeniu. Stabilność i rutyna są ważne dla dzieci z ASD, pomagają im poczuć się pewnie i komfortowo podczas zajęć.

Zaangażowanie Rodziców: Rodzice powinni być aktywnie zaangażowani w proces terapeutyczny. Regularne spotkania z terapeutami, udział w sesjach oraz stosowanie technik arteterapii w domu mogą znacznie zwiększyć skuteczność terapii i poprawić relacje rodzinne.

Monitorowanie i Ewaluacja Postępów: Systematyczne monitorowanie postępów dzieci oraz regularna ewaluacja programów terapeutycznych pozwalają na bieżące dostosowywanie działań i wprowadzanie niezbędnych modyfikacji. Dokumentacja postępów pomaga w długoterminowym planowaniu terapii.

Wsparcie w Rozwoju Społecznym: Arteterapia powinna kłaść duży nacisk na rozwój umiejętności społecznych dzieci z ASD. Zajęcia grupowe, teatr terapeutyczny i inne formy wspólnych działań pomagają dzieciom w nawiązywaniu i utrzymywaniu relacji z rówieśnikami oraz w lepszym zrozumieniu konwencji społecznych.

Promowanie Świadomości Społecznej: Warto prowadzić kampanie informacyjne i edukacyjne dotyczące korzyści arteterapii dla dzieci z ASD. Zwiększenie świadomości społecznej przyczynia się do większej akceptacji różnorodności i wsparcia dla rodzin dzieci z autyzmem.

Rozwój i Wsparcie Finansowe Programów Terapeutycznych: Konieczne jest zwiększenie finansowania programów arteterapeutycznych i zapewnienie wsparcia dla instytucji prowadzących takie terapie. Stabilne finansowanie pozwala na ciągłe rozwijanie i udoskonalanie oferty terapeutycznej.

Przyjęcie i realizacja tych postulatów może znacząco poprawić efektywność arteterapii oraz jakość życia dzieci z autyzmem i ich rodzin, a także wspierać ich rozwój i integrację społeczną.

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MAGDALENA SITEK

Czy współczesne media wychowują dzieci? Krytyczne spojrzenie na edukacyjną rolę mediów Do contemporary media educate children?

WPROWADZENIE

Media wykorzystujące najnowsze techniki teleinformatyczne oraz zdobycze nauk społecznych i humanistycznych, zwłaszcza w zakresie stosowanych metod i sposobów oddziaływania na czytelników czy słuchaczy, stały się najpotężniejszą siłą oddziaływania na człowieka na o charakterze globalnym. Mówiąc o mediach musimy sobie powiedzieć, co przez to określenie należy rozumieć. Tradycyjnie przez media rozumie się prasę, radio i telewizję, a więc urządzenia, które pozawalają na przekaz treści, dźwięku i obrazu, a które oddziaływująca na odbiorców najczęściej należących do starszego pokolenia. Obecnie, to media tradycyjne są przenoszone do Internetu. Stąd największą rolę we współczesnym społeczeństwie informacyjnym odgrywają media elektroniczne, przekazywane przez Internet. W doktrynie toczy się dyskusja nad tym czym jest Internet w pespektywie dyskusji nad mediami? Trzeba jednak wiedzieć, że Internet jest przestrzenią, w której często publikują osoby indywidualne, niezwiązane z konkretnym wydawnictwem. Trudniej jest zatem o kontrolę treści, chociaż taki obowiązek spoczywa na administratorze platformy[149]. W dalszej części ograniczę mój dyskurs do rozważań nad rolą mediów czy mas mediów publikujących treści w Internecie w procesie edukacji dzieci.

W wielu opracowaniach i badaniach naukowych nad rolą mediów można spotkać się z pytaniami, a zwłaszcza wątpliwościami co do ich funkcji społecznej. Do tych pytań niewątpliwie należy zaliczyć: Czy rzeczywiście media są wolne?[150] Jakie funkcje media powinny spełniać z punktu widzenia edukacji i formacji społeczeństwa, zwłaszcza dzieci i młodzieży[151]? Krytyczna ocena masmediów z punktu widzenia realizacji oczekiwań społecznych[152]? Na powyższe pytania postaram się odpowiedzieć w dalszej części opracowania.

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Czy rzeczywiście media są wolne?

Jednym z głównych haseł głoszonych przez polityków czy obrońców demokracji jest walka o zagwarantowanie wolności mediom, wolności najczęściej utożsamianej z prawami, czyli interesami wydawcy. Takie postulaty pojawiają się waśnie w dyskusji nad projektem nowelizacji prawa autorskiego, jaka się toczy obecnie w Sejmie[153].

W art. 213 Konstytucji RP ustrojodawca stanowi, że KRRiT stoi na straży wolności słowa. Artykuł ten związany jest z art. 54 ust. 1 Konstytucji, w którym postanowiono, że *każdemu zapewnia się wolność wyrażania swoich poglądów* (Małecka, 2022, p. 287-297). Z kolei w art. 1 ustawy z dnia 26 stycznia 1984 r. prawo prasowe (t.j. Dz.U. z 2018 r. poz. 1914) ustawodawca stanowi, że *prasa korzysta z wolności wypowiedzi i urzeczywistniania prawa obywateli do ich rzetelnego informowania, jawności życia publicznego oraz kontroli i krytyki społecznej.* Samo pojęcie prawa jest wieloznaczne, inaczej jest ono rozumiane w języku potocznym, a inaczej w języku prawniczymi czy prawnym. Zgodnie z art. 7 ust. 2 prawa prasowego termin „prasa" oznacza publikacje periodyczne, które nie tworzą zamkniętej, jednorodnej całości, ukazujące się nie rzadziej niż raz do roku, opatrzone stałym tytułem lub nazwą[154]. Widzimy zatem, że prasa szeroko rozumiana cieszy się daleko idącą autonomią, ale głównie w zakresie niezależności właścicieli mediów od organów politycznych czy administracyjnych państwa. Czy w tym normatywnym kontekście można mówić o wolności dziennikarzy od właścicieli prasy, w tym także właścicieli portali internatowych? Czy dziennikarz może pisać teksty zgodnie ze swoim sumieniem, przekonaniem i rzetelnie zdobytą wiedzą, nawet przeciwko linii programowej redakcji, w której pracuje? Stąd w debatach nad prawem porusza się kwestię wprowadzenia klauzuli sumienia również dla dziennikarzy, podobnie jak to jest w prawie medycznym[155].

Nie można nie zauważyć, że wspomniana powyżej relacja jaka zachodzi pomiędzy dziennikarzem a właścicielem czy dysponentem danego medium jest najistotniejsza w rozważaniach nad faktyczną wolnością mediów. Właściciel jakichkolwiek mediów, lokalnych czy globalnych nie działa w próżni. Media, także te internetowe, krajowe czy globalne działają w formie spółek czy innych zorganizowanych form prawnych działalności gospodarczej. Często są powiązane kapitałowo z wielkimi koncernami międzynarodowymi. Ponadto właściciele czy dysponenci mediów muszą kierować się przede wszystkim wynikiem ekonomicznym, aby utrzymać się na rynku wydawniczym. Reklamodawcy czy sponsorzy nie są w stanie pokryć wszystkich kosztów funkcjonowania danego medium, stąd nierzadko są one dotowane ze środków publicznych. Dlatego nie można ukryć, że media są wykorzystywane przez biznes tak wielki jak i mały do intensyfikacji istniejących potrzeb czy kreowania nowych potrzeb u konsumentów[156]. Są też wykorzystywane przez instytucje polityczne do kreowania ideologicznych założeń danej grupy politycznej, najczęściej trzymającej władzę[157].

[153] Ważą się losy wolnych mediów. Lewica zapowiada kluczowe zmiany, Business Insider z 28 czerwca 2024, dostęp: 3.07.2024 z https://businessinsider.com.pl/prawo/bitwa-o-wolne-media-lewica-broni-wydawcow-przed-gigantami-cyfrowymi/xhhen69.

[154] M. Sawicki, Pojęcie prasy i przestępstwa prasowego, Prokuratura 19(2008), s. 85-106.

[155] J. Sobczak, M. Gołda-Sobczak, Nowelizacja prawa i obowiązków dziennikarza w ustawie prawo prasowe w perspektywie klauzuli sumienia, Ius Novum 3(2023), s. 103-125.

[156] J. Skrzypczak, Spor o media publiczne w Polsce w świetle standardów europejskich, Środkowoeuropejskie Studia Polityczne 4(2022), s. 91-112.

[157] P. Góra, Wpływ polityków na media i mediów na polityków. Modelowa typologia współzależności, Studia Politologiczne 41(2016), s. 221-239.

Wspomniani powyżej właściciele czy dysponenci mediów, aby przetrwać na rynku, w sposób zasadniczy muszą się godzić z żądaniami reklamodawców, świata biznesu i polityki, wspieranego przez profesjonalnych badaczy rynków, znawców od kreowania nowych potrzeb. Co więcej biznes nie rzadko jest powiązany z polityką tak lokalną jak i międzynarodową. Ten związek, ekonomii z polityką kreuje nowe uzależnienia mediów od ideologii poszczególnych partii politycznych. Stąd dzisiaj stosunkowo łatwo jest zdefiniować, które media powiązane są z konkretnym rodzajem biznesu czy z daną opcją polityczną lub ideologiczną[158]. Znane są przypadki usuwania z FB tekstów, które są niezgodne z ideologią tego portalu[159]. Innym klasycznym przypadkiem ideologizacji portali internetowych jest usuwanie treści niezgodnych z linią ideologiczną tego portalu lub blokownie kont z tego samego powodu, nawet urzędującym prezydentom[160].

Konkludując rozważania na temat wolności mediów należy stwierdzić, że istnieje pośrednie, a niekiedy bezpośrednie związanie mediów, ich właścicieli ze światem biznesu i polityki, co w sposób istotny determinuje, a nawet można powiedzieć krępuje i ogranicza wolność samych mediów rozumianych jako wydawców. Przede wszystkim wątpliwości rodzą się w odniesieniu do wolności dziennikarzy czy osób publikujących na portalach internetowych czy w szeroko rozumianym Internecie.

Jakie funkcje powinny spełniać media z punktu widzenia edukacji i formacji społeczeństwa, zwłaszcza dzieci i młodzieży?

Niewątpliwe media odgrywają ważną rolę w organizacji i funkcjonowaniu tak całych społeczeństw jak również w życiu jednostek. Z założenia media powinny mieć wpływ na wychowanie dzieci, młodzieży, ale też i osób dorosłych. Należy być świadomym jednak, że rola jaką pełnią media czy Internet w procesie wychowawczym jest bardzo złożona i różnorodna[161] (Nosek-Kozłowska, 2023, p. 38-54).

Niewątpliwie jedną z najważniejszych funkcji mediów jest funkcja edukacyjna i informacyjna. Media są źródłem wiedzy o wydarzeniach politycznych, społecznych, lokalnych i globalnych. Obiorca tych informacji, dzięki mediom, jest na bieżąco z wiedzą na temat otaczającego go świata. Funkcja informacyjna jest bezpośrednio powiązana z funkcją edukacyjną. Temu celowi służą również wszelkiego rodzaju filmy i programy edukacyjne, gry komputerowe, internetowe strony edukacyjne, bazy źródeł. W Internecie znajdziemy liczne aplikacje mobilne służące do nauki matematyki, historii, sztuki, biologii czy przyrody. Prezentacje te są często ubogacane zdjęciami czy filmami, co pozwala uczniom, studentom i dorosłym mieć wyobrażenie o tym jak wyglądają zwierzęta, ptaki, miasta, laboratoria czy muzea i dzieła sztuki[162]. Nadmiar informacji w mediach internetowych sprawia, że osoba szukająca odpowiedzi na nurtujące ją pytania niestety traci orientację co jest ważne. Zresztą daje się też zauważyć tendencje zmierzające do pomniejszenia roli i znaczenie historii dla współczesnego człowieka żyjącego w społeczeństwie cyfrowym[163] (Sitek, 2024, p. 9 ff).

[158] Giereło-Klimaszewska, Oligarchizacja mediów w Czechach na przykładzie koncernu Mafra Andreja Babiša, Studia Politologiczne 24(2020), s. 183-200.

[159] Chmielewska, Porwać, przejąć, pokonać-jak internetowi giganci czerpią zyski z naszej aktywności w sieci? Refleksje na podstawie książki Shoshany Zubof, Alcumena. Pismo Interdyscyplinarne 3/7(2021), s. 5-12.

[160] Jak doszło do usunięcia konta Donalda Trumpa? Musk udostępnił dziennikarzom wewnętrzną korespondencję, Dziennik Gazeta Prawna z 13 grudnia 2022 r. dostęp: 3.07.2024 z https://serwisy.gazetaprawna.pl/media/artykuly/8609169,twitter-musk-usuniecie-konta-trumpa.html.

[161] K. Nosek-Kozłowska, Oddziaływanie mediów elektronicznych na rozwój i wychowanie małego dziecka-narracje pedagogów, Problemy Opiekuńczo-Wychowawcze 5(2023), s. 38-54.

[162] Klim-Klimaszewska, Edukacja informatyczna w klasach I-III szkoły podstawowej w Polsce, Studia Scientifica Facultatis Paedagogicae Universitas Catholica Ružomberok 1/22(2023), s. 33-44.

163 M. Sitek, Historia jako istotny determinant wychowania dzieci i młodzieży. Journal of Modern Science. 1/55(2024), s. 9 i n.

Edukacja medialna może pomagać dzieciom, ale też i dorosłym w krytycznym myśleniu, zdolności analizowania treści medialnych, rozpoznania manipulacji informacją oraz w ocenie wiarygodności przeczytanej czy zasłyszanej informacji.

Jednym z zadań jakie staje przed mediami, w tym i przed Internetem, jest kreowanie pozytywnych wzorców zachowań nie tylko dla dzieci, młodzieży, ale też i dla osób dorosłych. Ważną rolę media spełniają w obszarze promowania tolerancji w ramach różnorodności[164]. To działanie ma ogromne znaczenie w okresie wielkiej migracji z południa świata do Europy i Ameryki Północnej. O tym problemie wspominał już w latach 60-tych XX wieku papież Jan XXIII w encyklice *Pacem in terris*. Obecnie problem ten był rozważny w encyklice *Fratelli tutti* przez papieża Franciszka[165]. Media promują też zdrowy styl życia czy potrzebę ochrony środowiska. Obecnie kluczowym zadaniem mediów jest nauczanie dzieci umiejętnego i bezpiecznego korzystania z mediów w świecie cyfrowym.

Kształtowanie przez media powyższych kompetycji, tak u dzieci, jak i dorosłych pozwoli na lepsze przygotowanie się społeczeństwa do rozpoznawania treści szkodliwych, zwłaszcza tych, które zawierają przemoc, pornografię, nieodpowiednie dla ich wieku, brak tolerancji czy treści promujące szkodliwe zachowania. Ważnym elementem edukacji jest również nauka rozpoznawania informacji prawdziwych od fałszywych, dezinformujących (*fake news*), których jest coraz więcej w mediach, w tym również i w Internecie[166] Stąd bardzo ważna jest też medialna edukacja rodziców w zakresie monitorowania treści z jakimi zapoznają się dzieci, czy też sposób w jaki korzystają one z bezpiecznych narzędzi.

Jak zauważyliśmy media spełniają, a przynajmniej powinny spełniać pozytywną rolę w procesie edukacji i formacji dzieci, ale nie tylko. Edukacja medialna winna obejmować również młodzież, a nawet i osoby dorosłe czy starsze. Ważna jest umiejętność korzystających z mediów czy Internetu do kontroli i samokontroli, gdy chodzi o treści z których korzystają. W przypadku dzieci ważne jest zachowanie równowagi pomiędzy korzystaniem z mediów jako narzędziem edukacyjnym, a kontrolą nad treściami, do których dzieci mają dostęp.

Krytyczna ocena masmediów z punktu widzenia realizacji oczekiwań społecznych?

W badaniach socjologicznych czy psychologicznych coraz częściej mówi się o tym, że współczesne media mogą prowadzić do deprawacji społeczeństwa w całości lub w jego znacznej części[167]. Przykładem może być propaganda nazistowska w Niemczech w latach 30-tych XX wieku czy propaganda sowiecka w Rosji[168]. Współcześnie, namacalnym przykładem takiego działania, może być agitacja putniowska, dzięki której znaczna część Rosjan sądzi, że przyczyną wojny rosyjsko-ukraińskiej są Ukraińcy[169].

We współczesnych mediach, zwłaszcza elektronicznych dominują głównie treści zawierające przemoc, pornografię, szkodliwe zachowania, które mogą mieć negatywny wpływ na ludzi, zwłaszcza na dzieci i młodzież. Takie działania mediów mogą i prowadzą do ich deprawacji.

[164] E. Kozik, Postawy antyuchodźcze uczestników social mediów a cele edukacji międzykulturowej, Edukacja Międzykulturowa 2(2023), s. 28-40.

[165] Toso, Nowy świat. Encyklika poświęcona braterstwu i przyjaźni społecznej, Społeczeństwo 1(2021), s. 107-132.

[166] Pennycook, Rand, The psychology of fake news, Trends in cognitive sciences.5(2021), s. 388-402

[167] J. Ferman, Obscenity: Manners and Morals in the Media. Liberty and Legislation. Routledge 2013, s. 47-75.

[168] K. Łuszczek, System propagandy a rozwój mediów w nazistowskich Niemczech w świetle „Dzienników J. Goebelsa, Studia Paradyskie 27(2017), s. 335-353.

[169] M. Kochan, Wojenna retoryka przemocy w konflikcie rosyjsko-ukraińskim, Res Rhetorica. 3/10(2017), s. 63-80.

Niektórzy badacze sugerują, że regularne narażenie się na przemoc lub inne szkodliwe treści w mediach może prowadzić do desensybilizacji emocjonalnej i zmniejszenia wrażliwości na cierpienie innych. Podawanie tylko informacji o kataklizmach, wojnach prowadzi do zobojętnienia. Być może warto byłoby informacje napełnione przemocą, zwłaszcza donoszące się do okrucieństwa wojny zastąpić edukacją na rzecz pokoju.

W tym kontekście media stały się bezwiednym narzędziem ekonomii i polityki zmiany w tradycyjnym systemie wartości, jaki funkcjonował w tzw. zachodniej kulturze od kilkunastu wieków. Wartości te wyrosły na filozofii greckiej, prawie rzymskim, chrześcijaństwie i w pewnym zakresie na kulturze judaistycznej[170]. Media, dla celów ekonomicznych, ale też i politycznych promują przede wszystkim takie wartości jak: hedonizm, narcyzm, a przede wszystkim konsumpcjonizm. Współcześnie liczy się bardziej ten człowiek, który więcej ma niż to czym sobą reprezentuje[171]. Przed tym zjawiskiem wielokrotnie przestrzegał papież Jan Paweł II mówiąc i pisząc, że człowiek winien raczej być niż mieć[172]. W tym kontekście nie dostrzegamy obecnie w treściach medialnych takich wartości jak empatia, wspólnota czy altruizm. W filmach, w wiadomościach czy w artykułach medialnych nie pokazuje się czy też małżeństwa, rodziny, wierności. Idealnym wzorcem dla mediów staje się singel, osoba mająca piątą czy piątego partnera lub partnerkę. Kultowy dla mediów staje rozwód, apostazja, wolny związek, kochający się związek osób tej samej płci. Spotykamy się z totalną krytyką instytucji, które od wieków stały na straży stabilności systemu wartości, np. kościoła Katolickiego. O tym kościele są podawane głownie informacje negatywne, takie jak pedofilia, zdzierstwo, bogactwo czy inne skandale. Aktualnie nie przebijają się do mediów żadne informacje pozytywne o tej instytucji.

Można powiedzieć, że dzisiejsze media kreują negatywne zachowania poprzez prezentowanie określonych wzorców i stylów życia, począwszy od mody, poprzez zmianę relacji do innych osób, zwłaszcza oponentów politycznych i ideologicznych. Często promowane są negatywne czy wręcz nieetyczne wzorce, które inni, zwłaszcza dzieci zaczynają naśladować. Nie ulega wątpliwości, że celem zmiany stylu życia promowanego przez media jest pozyskiwanie nowych rynków zbytu, czy też kreowanie nowych potrzeb u konsumentów. Przykładem tego może być marginalizacja świąt chrześcijańskich, w miejscu których wchodzi przemysł turystyczny. W tym celu stosuje się swoistą socjotechnikę, przykładem tego jest używanie m.in. takich zwrotów jak „Polacy uważają… . W artykule takim nie podaje się jednak czy wszyscy Polacy, a więc prawie 38 mln, czy tylko część z nich, na jakie próbie badawczej oparte było to twierdzenie i badanie oraz kto to badanie przeprowadzał.

W końcu należy też powiedzieć i o tym, że dzisiaj w mediach mamy do czynienia z manipulacją informacją na ogromną skalę. Podawane są tzw. *fake news,* a więc informacje nieprawdziwe, czy też półprawdy lub wiadomości zamanipulowane. Za takimi działaniami stoją różne siły począwszy od sił ekonomicznych, o których wspominałam, ale też siły wrogie demokracji, jak np. Rosja, Korea Północna. Należy też wspomnieć o różnych organizacjach, zwłaszcza międzynarodowych, celem których jest zburzenie stabilnego układu wartości na rzecz zmiennej czy płynnej rzeczywistości, o której pisał Z. Bauman[173]. Człowiek zagubiony

[170] H. Kupiszewski, Prawo rzymskie a współczesność, Kraków 2013, s. 31 nn.

[171] K. Leksy, Znaczenie mediów społecznościowych dla samooceny i zachowań związanych z wyglądem ciała młodych dorosłych. Perspektywa społeczno-pedagogiczna. Wydawnictwo Uniwersytetu Śląskiego, Katowice 2023, s. 15 nn.

[172] D. Natorski, Cywilizacja miłości jako odpowiedź na współczesny kryzys moralny według św. Jana Pawła II, Zeszyty Formacji Katechetów 3/71(2018), s. 43-52.

[173] Z. Bauman, Etyka ponowoczesności, Warszawa 2012, s. 27 n.

pomiędzy prawdą i fałszem, dobrem i złem, pięknym i brzydotą, pozbawiony autokrytycyzmu i autokontroli nie wie jaką drogę życiową wybrać. Niejednokrotnie sam gubi się w swoich decyzjach i wartościach jakimi kieruje się w życiu. Dotyczy to szczególnie dzieci, których wychowanie w mediach opiera się głównie na podejmowaniu przez nie decyzji samodzielnych, najlepiej w oderwaniu od rodzica. Tym samym marginalizuje się rolę rodziców w wychowaniu dziecka, a sprowadza się ich do roli bankomatu. Nierzadko media wprost mówią, nierzadko pod wpływem sił ekonomicznych, politycznych, ekonomicznych, że to one powiedzą dziecku jakie ma potrzeby. Zaś rodzice mają tylko i wyłącznie zapłacić za decyzje dzieci.

Wnioski końcowe

Rola współczesnych mediów wraz z Internetem we współczesnym świecie jest przeogromna. Nie na darmo mówi się, że jest to czwarta władza, a nawet pierwsza władza, która ma wpływ na decyzje polityczne w poszczególnych krajach, ale też i w Unii Europejskiej czy w skali globalnej. Oczywiście nie można demonizować mediów, które spełniają wiele pożytecznych ról, zwłaszcza w zakresie przekazywania informacji czy edukacji dzieci, młodzieży i osób dorosłych. Media, zwłaszcza media elektroniczne pozwalają na łatwą i szybką edukację dzieci i młodzieży. Nie można też nie zauważyć funkcji formacyjnej mediów całego społeczeństwa w takich chociażby obszarach jak tolerancja w różnorodności, poszanowanie godności drugiego człowieka.

Nie można jednak nie zauważyć, że media coraz częściej odgrywają negatywną rolę. Wynika to z faktu, że dzisiaj nie ma tak naprawdę wolnych mediów. Przepisy prawa krajowego czy międzynarodowego ugruntowują niezależność wydawców mediów od organów politycznych. Jednak media są powiązane najczęściej z biznesem tak lokalnym jak i globalnym, a ten nierzadko pośrednio powiązany jest z polityką czy ugrupowaniami ideologicznymi. W konwencji należy stwierdzić, że media nie są wolne, także dziennikarze nie są wolni, są bowiem związani przede wszystkim z ekonomią poprzez system reklam i sponsoringu. Zgodnie z zasadą, ten kto płaci ma prawo wymagać. Stąd media są wciągnięte w politykę poszukiwania nowych rynków zbytu poprzez kreowanie nowych postaw i zachowań konsumentów na potrzeby ekonomii, media kreują nowe potrzeby na ryku poprzez zmianę zachowań i systemu wartości, zwłaszcza promowania postawy konsumpcjonizmu, hedonizmu czy narcyzmu (Such-Pyrgiel, 2015, p. 11-32). Taka polityka mediów może prowadzić do destrukcji moralnej społeczeństwa.

Na koniec należy stwierdzić, że krytyczne stanowisko wobec mediów, w żadnej mierze ich nie dyskwalifikuje. Potrzeba jednak, aby już u dzieci wyrabiać krytyczne podejście do informacji medialnych, wyrabiać u dziecka i osób dorosłych zdolności krytycznej analizy treści informacji medialnych. Nie zawsze to co jest napisane zawiera prawdziwe informacje, podobnie jak było w czasach realnego socjalizmu, kiedy to media były na służbie polityki komunistycznej. Media, zwłaszcza Internetowe są potrzebne, spełaniją bowiem wiele pożytecznych funkcji. Jednak korzystając z nich trzeba zachować rozumne i krytyczne podejście. Ważne jest, aby korzystać z mediów w sposób świadomy i krytyczny, oraz promować odpowiedzialne podejście do produkcji i konsumpcji treści medialnych. Wspieranie mediów ze środków publicznych, które promują wartości pozytywne i edukacyjne, oraz zachęcają do rozwijania kompetencji medialnych, mogą pomóc w ograniczeniu potencjalnych negatywnych wpływów mediów na społeczeństwo.

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Limitation of the patient's right's right to information about their health status and the doctor"s obligation to provide such information in polish legislation

INTRODUCTION

The right to self-determination is one of the fundamental personal rights and freedoms enshrined in Article 47 of the 1997 Constitution of the Republic of Poland,[174] according to which '[e]veryone shall have the right to legal protection of his private and family life, of his honour and good reputation and to make decisions about his personal life'. In the light of this principle, the sphere of a person's existence involving their health and life is particularly highlighted, especially when they have to undergo medical treatment.[175] However, in order for any person to fully exercise their right to decide about their own health and life,[176] this person should obtain full information about their state of health before agreeing to such treatment in the form of informed consent.[177] In accordance with the provisions of the Act of 6 November 2008 on Patients' Rights and Patient Ombudsman (hereinafter referred to as the Patients' Rights Act/PRA[178]), every patient has the right to information about their state of health.[179] This principle would not raise any doubts if the patient's right to information correlated with the doctor's duty to provide it in full, regardless of the patient's situation. The present analysis focuses on exceptional cases, in which the prognosis for the patient is inauspicious. The author attempts to answer several fundamental questions. First, are the current legal regulations in Poland regarding the patient's right to information about their state of health defined in such a way that they genuinely take into account their own welfare? Second, is the information about the patient's state of health defined in a way that is unambiguous, in particular with reference to

[174] Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., Dziennik Ustaw z 1997 r., nr 78, poz. 483. All the quotations from the Polish Constitution in the main text come from its official English translation: The Constitution of the Republic of Poland of 2nd April, 1997 as published in Dziennik Ustaw No. 78 item 483 <www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> accessed 2 August 2024.

[175] According to art 68 of the Polish Constitution, '[e]veryone shall have the right to have his health protected'.

[176] I. Lazari-Pawłowska, 'Etyki zawodowe jako role społeczne' in P. J. Smoczyński (ed), Etyka: pisma wybrane (Zakład Narodowy im. Ossolińskich 1992) 84, 86.

[177] See D. Karkowska and B. Kmieciak, 'Prawo pacjenta do informacji' in D. Karkowska (ed), Prawa pacjenta i Rzecznik Praw Pacjenta: komentarz (Wolters Kluwer 2021) 445, 447.

[178] Ustawa z dnia 6 listopada 2008 r. o prawach pacjenta i Rzeczniku Praw Pacjenta (consolidated text), Dziennik Ustaw z 2024 r. poz. 581 (Ustawa o prawach pacjenta).

[179] ibid. art 9.

the exceptional situations mentioned above? Third, as the law stands at present, are the key concepts constituting the patient's right to information defined, including the patient's best interests? Fourth, is there a discord between the current legal regulations concerning the subject and their application in practice? Our analysis, apart from addressing the fundamental issues related to the patient's right to information, concentrates on the relationship between the patient and their legal representative on the one hand and the doctor on the other. We also discuss the information about the patient's state of health provided by the doctor in exceptional situations, when there is little chance of the patient's recovery, analysing the essential legal provisions of the Act on Patients' Rights, the Act of 5 December 1996 on the Profession of Doctor and Dentist[180] (hereinafter referred to as the Medical Act/MA), and the Code of Medical Ethics[181] (hereinafter referred to as the CME).

Although the described problem is addressed in various scientific publications[182], there are still no detailed rules of conduct in exceptional cases, when the prognosis is unfavourable. This results in the fact that in practice, there are situations in which there is a conscious or unconscious limitation of the information about the patient's state of health provided by the doctor.[183] Moreover, there are no transparent legal rules stating that in a specific situation (the patient's clinical condition), the doctor may use their right to limit the information provided to the patient (the so-called therapeutic privilege). For this reason, it is legitimate to ask the question whether such 'trump card' as 'the good of the patient' can justify doctors' behaviour, and whether doctors' understanding of their patients' welfare is always the same as that of the patients themselves, who may or may not want to know the truth. This problem can manifest itself in situations where the patient is not aware that the doctor, for the patient's sake, does not give them full information about their state of health because the prognosis is unfavourable (eg in chronic cancer). Therefore, it is worth discussing whether the current legal provisions are implemented in accordance with the intention of the legislators and whether any changes should be considered in order to reflect the expectations of patients themselves.

[180] Ustawa z dnia 5 grudnia 1996 r. o zawodach lekarza i lekarza dentysty (consolidated text), Dziennik Ustaw z 2023 r., 1516 (Ustawa lekarska).

[181] Kodeks Etyki Lekarskiej stanowiący Załącznik do uchwały nr 5 Nadzwyczajnego XVI Krajowego Zjazdu Lekarzy z dnia 18 maja 2024 r. <www.sip.lex.pl/akty-prawne/akty-korporacyjne/kodeks-etyki-lekarskiej-290416298> accessed 15 July 2024.

[182] See, eg, K. Bączyk-Rozwadowska, 'Prawo pacjenta do informacji według przepisów polskiego prawa medycznego' (2011) IX Studia Iuridica Toruniensia 59; M. Serwach, Prawo medyczne w działalności podmiotów leczniczych i praktyce lekarskiej (Wydawnictwo Uniwersytetu Łódzkiego 2014) 101-05; R. Kubiak, Prawo medyczne (4th edn, C.H. Beck 2021) 265-70; M. Nesterowicz, 'Zgoda pacjenta na zabiegi medyczne: obowiązek informacyjny in Prawo medyczne: komentarze i glosy do orzeczeń sądowych (7th edn, Wolters Kluwer 2022).

[183] In 2022, the Patient Ombudsman recorded 8,947 notifications about the patient's right to information, accounting for 11% of all the notifications received. According to the Ombudsman's report, '223 of the 1,317 completed investigations (17%) concerned the patient's right to information. In almost 93% of the cases, the Ombudsman found a violation of this right. Out of the total of 206 violations of the patient's right to information, 185 concerned the patient's right to be informed about their medical condition. Violations of the right to be informed sufficiently early about the doctor's intention to stop the treatment were found in 14 cases. In 2022, the highest number of violations was found in hospital treatment (47%), followed by outpatient specialist care (28%) and primary care (13%)': Sprawozdanie Rzecznika Praw Pacjenta z przestrzegania praw pacjenta w 2022 roku (2023, PDF file), 49-50 <www.gov.pl/web/rpp/sprawozdanie-za-2022-rok> accessed 24 July 2024. (Sprawozdanie Rzecznika Praw Pacjenta).

The patient's right to information: specific persons and their rights

According to the Patients' Rights Act, the right to information about the state of health is vested in a patient, a patient who is a minor over the age of 16, a patient's statutory representative, and other persons authorised by a patient or a patient's statutory representative. This catalogue is closed, which means that third parties without proper authorisation are not entitled to request or receive information about a patient's health status.

As for the specific rights to information, under the PRA, they include understandable information about the patient's medical condition, the proposed and possible diagnostic and treatment methods, and the foreseeable consequences of their application or non-application. This information is provided as part of the services offered by a medical professional in accordance with their qualifications.[184]

Thus, while the persons entitled to receive the information are clearly defined, the same cannot be said about the content, form and scope of the information itself.[185] However, bearing in mind the decisions of law courts,[186] it should be strongly emphasised that the liability of the entity providing medical services is determined, firstly, exclusively by the violation of the rights specified in the PRA, and, secondly, by the attribution of fault to this act.[187] Consequently, the injured party is not obliged to prove that, together with the infringement of a given right (eg the patient's right to information), their legally protected personal interest has been threatened. In such a situation, it is sufficient to point to an obvious violation of the patient's rights.[188]

As stated by the Katowice Court of Appeal. At the same time, according to art 9 of the Act on Patients' Rights and Patients' Ombudsman, the patient has the right to be informed about their state of health. The manner of informing the patient and the information that they should receive is specified in para 2 of art 9, corresponding to the doctor's obligation to provide information under art 3, para 9 of the Act of 5 December 1996 on the Professions of Doctor and Dentist (Dz.U. 2020. 514). Accordingly, the patient and/or their statutory representative have the right to obtain from the doctor a wide range of information concerning various aspects of the process of providing health services. ... This has the effect that, on the basis of this provision, compensation may be claimed for the mere failure to provide correct, complete information (the judgment of the Warsaw Court of Appeal, 17 June 2019, I ACa 316/18, LEX no. 2726857). It is also worthwhile to refer to the view presented by B. J. in the article 'O skutkach niedopełnienia przez lekarza obowiązku informacji wobec pacjenta' [On the Consequences of the Doctor's Failure to Meet the Duty of Providing the Patient with Information] (*Monitor Prawniczy* 3/2021 145-46), according to which supplying the patient with specific and often detailed information is of fundamental importance to the patient's decision to give or refuse their consent to the provision of medical services.[189]

[184] Ustawa o prawach pacjenta, art 9, para 3.

[185] See A. Jacek and K. Ożóg, 'Przestrzeganie praw pacjenta przez personel medyczny' (2012) 47 [3] Hygeia Public Health 265; P. Szudejko, 'Treść i forma informacji zdrowotnej w kontekście realizacji prawa pacjenta do decydowania o sobie' (2023) 2 [18] Studia Administracyjne 29.

[186] Wyrok Sądu Apelacyjnego w Poznaniu z dnia 9 grudnia 2019 r., I ACa1192/17, LEX nr 3050341; Wyrok Sądu Apelacyjnego w Warszawie z dnia 4 października 2019 r., V ACa 94/19, LEX nr 2978511.

[187] For more on this subject see M. Serwach, 'Wina jako zasada odpowiedzialności cywilnej oraz okoliczność zwalniająca z obowiązku naprawienia szkody' (2009) 1 Wiadomości Ubezpieczeniowe 84.

[188] B. Chmielowiec, 'Przepisy ogólne', in D. Karkowska (ed) (n 4) 33, 224.

[189] Wyrok Sądu Apelacyjnego w Katowicach z dnia 10 marca 2021 r., I ACa 1009/19, LEX nr 3262345.

Thus, the court confirms that the information provided to the patient should be true and complete.

In the light of the above considerations, it should be pointed out that the patient has the right to request the doctor not to provide him with any information about their state of health.[190] However, in a situation in which the patient does not exercise that right, should they be provided with the understandable and at the same time complete information specified in art 9, para 2 of the PRA? For this question to be answered, it would have to be assumed that, in principle, the patient should be provided with detailed and comprehensible information about their medical condition. However, in the current legislation, by virtue of the legal norm, it is the doctor that is the disposer and creator of the information. The judicature and law experts have developed practical guidelines on how the doctor should provide the information in question.[191] As pointed out by the Katowice District Court,

According to art 9, para 2 of the Act of 6 November 2008 on Patients' Rights and Patients' Ombudsman, the information provided to the patient should be 'accessible', which means its form and content should be adapted to the patient's perceptive and intellectual capabilities, also taking their age into account. In addition, its reliability and comprehensiveness should be determined by various types of the explanations provided, depending on the patient's specific condition, the type of treatment, and the extent to which such treatment is deemed necessary.[192]

Pursuant to the act, once the information referred to in art 9, para 2 of the PRA has been obtained, the patient has the right to present their opinion on the matter to a medical professional. It follows that, in order to exercise this right, the patient should receive comprehensive information about their condition from the doctor. Any limitation of the content and scope of this information may adversely affect the patient's perception of their health status, resulting in their erroneous feedback. This is especially important bearing in mind the fact that the patient's decision often concerns their informed consent to a medical intervention. Consequently, this may give rise to civil liability (the sole basis for compensation[193]) and/or criminal liability for the treatment measures taken in the healthcare facility concerned.[194] It is also wrong to accept the thesis that the doctor knows best what they should tell their patient and when. This is demonstrated by the following practical interpretation:

The scope of the information provided does not depend on what the doctor thinks the patient should know but on what a reasonable person in the patient's situation would really need to hear from the doctor in order to make a conscious and sensible decision on the proposed treatment. Since the consent must always be informed and free, the patient's mere approval of a medical procedure given in the absence of prior information about it cannot be regarded as consent in the legal sense of the word. In addition, the doctor may provide detailed information about the planned surgical operation at the request of the person giving their consent. The scope of the information provided to a patient undergoing an aesthetic procedure should be broader than in the case of a typical medical procedure.[195]

In this light, the common practice of accepting a patient's consent to carry out a medical

[190] See Karkowska and Kmieciak (n 4), 486.

[191] Such guidelines are, eg, set out in the Calgary-Cambridge model of communication, described by J. Silverman, S. Kurtz and J. Draper, Skills for Communicating with Patients (4rd edn, Taylor & Francis 2017). See also W. Feleszko, K. M. Nowina and Ł. Małecki (eds), Komunikacja medyczna dla studentów i lekarzy (Medycyna Praktyczna 2023).

[192] Wyrok Sądu Apelacyjnego w Katowicach (n 16).

[193] Karkowska and Kmieciak (n 4), 447.

[194] D. Hajdukiewicz, Odpowiedzialność karna lekarza za błąd informacyjny (Wolters Kluwer 2019) 56-246.

[195] ibid. See also M. Safjan and K. Zaradkiewicz, 'Zgoda na interwencję medyczną w konwencji Rady Europy o prawach człowieka i biomedycynie', in A. Dębiński, W. Bar and P. Stanisz (eds), Divina et humana: Księga Jubileuszowa w 65. rocznicę urodzin Księdza Profesora Henryka Misztala (Redakcja Wydawnictw Katolickiego Uniwersytetu Lubelskiego 2001) 209.

intervention without being informed in detail of the consequences of this procedure and of its potential complications and risks is an unlawful act.[196] A similar interpretation should be made with regard to a situation in which a patient receives an informed consent form for a medical treatment containing information about the complications that may arise during and after the treatment without the doctor having explained them in detail. It seems obligatory to assume that patients are not familiar with medical terms and language, and thus lack the ability to make informed assessments and rational decisions. The opinion quoted above invites one more argument: it is impossible to accept the explanation according to which the scope of information should be broader in the case of aesthetic treatments than in the case of 'typical' medical treatments. Although these kinds of treatment are different, the information provided to the patient, irrespective of the type of medical intervention, should be full and comprehensible. An aesthetic procedure, which does not qualify as a 'typical' medical procedure, is nonetheless also a medical procedure and may give rise to various risks and complications, which, in turn, may result in further treatment.

The present analysis also invites the question whether the current legislation is a manifestation of a limitation of the patient's right to information about their state of health. In order to answer this question, it is necessary to analyse the Medical Act. In the light of art 31, para 4 of the act, defining the doctor's obligation to provide the patient with information about their medical condition, the latter has the right to demand that the information referred to in art 9, para 2 of the PRA is comprehensive. Such a legal construct is correct but nevertheless raises some doubts. The patient has the right to demand that the doctor provide him with information about their state of health, but they may not exercise this right; for example, when they do not suspect that their condition is serious or do not feel the need to do so. It can be assumed that a more favourable situation would be one in which the legislation required doctors to ask their patients whether they wished to be given full information about their medical condition, in which case patients would always be able to take advantage of their right to information. It seems that such a legal regulation would reflect the legislators' intention that patients should be able to fully and consciously exercise this right. On the other hand, the regulation adopted in relation to minor patients under the age of 16 is correct. Such patients are entitled to obtain from medical professionals the information referred to in art 9, para 2 of the PRA to the extent and in the form necessary for proper diagnosis and treatment.

In this context, it would also be advisable to consider, in view of the patient's age, condition, personality, and emotional state, the involvement of a patient representative and a clinical psychologist in the process of providing the patient with information about their state of health. Such a solution should be applied obligatorily in the case of a minor patient (together with their statutory representative) whenever there is a justified suspicion that the information about the patient's medical condition will not be accurate, and also in exceptional situations, when the prognosis is unfavourable.

[196] In 2022, the Patient Ombudsman recorded 777 notifications, appeals, and complaints concerning the patient's right to give consent to receive health treatment, which accounts for about 1% of all the documents received. According to the Ombudsman's report, 'In 2022, 75 investigations into the right to consent were completed. 94% of these were concluded with a finding of a breach of this right. It should be noted that in more than 90% of the proceedings in which a breach of the right to consent was identified, a breach of the right to information was identified, too. The investigations concerned, among others, errors in the use of the consent form, the inclusion of content that was not understandable to the patient, the lack of a precise definition of the medical procedure, and the failure to specify possible typical complications resulting from this procedure': Sprawozdanie Rzecznika Praw Pacjenta 51-52.

The doctor's obligation to provide the patient with information on their state of health

Pursuant to art 31, para 1 of the Medical Act, doctors are obliged to provide their patients, including minor patients over 16 years of age or their statutory representatives, with comprehensible information about their state of health, the proposed and possible diagnostic and treatment methods, along with the foreseeable consequences of its application or non-application, and the results of the treatment administered. Upon the consent of the patient or their statutory representative, the doctor may also provide this information to other persons.[197] Furthermore, at the patient's request, the doctor may refrain from providing the patient with the information referred to in art 31, para 1 of the MA. The legislation also covers special situations: if the patient is under 16 years of age or is unconscious or incapable of understanding the meaning of the information, the doctor shall provide the information to their close relative within the meaning of art 3, paras 1 and 2 of the MA: a spouse, a relative up to the second degree or an in-law up to the second degree in a straight line, a statutory representative, a person in cohabitation, or a person indicated by the patient. As for patients under 16, the content and form of the information supplied by the doctor is determined by the diagnosis and treatment, with the doctor listening to the patient's opinion.

In the light of the cited legal provisions, it is the doctor alone that assesses the patient's medical condition and determines the content of the information about the patient's state of health, conveying it in an appropriate form. (The information should be understandable and should facilitate proper diagnosis and treatment.) While there are no doubts as to the information the doctor has about their patient (eg their state of health, the proposed and possible diagnostic and treatment methods, along with the foreseeable consequences of their application or non-application, and the results of the treatment administered), its form and content, when communicated to the patient, may cause legal and psychological dilemmas.

In this context, as already noted, it would be appropriate for a patient representative and a clinical psychologist to be involved in the process of providing the patient with relevant information. However, in order for this process to be effective with regard to the patient representative, this function should be performed by a lawyer or a person with legal training as well as interpersonal qualifications and skills. An incompetent person in the position could fail to carry out the duties allocated to them properly or fail to carry them out altogether, thus misleading the patient as to their rights.

The patient's right to be informed about their rights

Bearing in mind the discussion presented in the preceding section, it is necessary to refer to art 11, par 1 of the Patients' Rights Act, which obliges entities providing health care services to publicise patients' rights in a written form by making them easily accessible on their premises.[198] In accordance with this legal provision, the patient has the right to be informed about their rights set out in the PRA and in other regulations, also taking into account the limitation of these rights. Undoubtedly, the ratio legis behind such a provision is to make the content of

[197] Ustawa lekarska, art 31, para 2. See also, eg, R. Kubiak, 'Ograniczenie obowiązku informacyjnego ciążącego na lekarzu' (2014) 2 Medycyna Paliatywna 101; M. Paszkowska, 'Podstawowe standardy prawne wykonywania zawodu lekarza' (2018) LXXI [6] Wiadomości Lekarskie 1239, 1240-41.

[198] It should be emphasised, however, that, pursuant to art 2, par 2 of the PRA, this obligation does not apply in the case of general and specialist private health services provided by doctors, nurses, midwives, and physiotherapists.

patients' rights available to all the patients in a health care facility. In this respect, however, the question should be asked how many patients who lack legal knowledge are able to fully understand their rights on their own, without professional advice. As an example, one can quote art 9, para 6 of the PRA: 'In the case referred to in art 31, par 4 of the Act of 5 December 1996 on the Professions of Doctor and Dentist (Dz.U. z 2023r., poz. 1516, 1617, 1831 and 1972), the patient has the right to demand that the doctor provide him with the information referred to in par 2 to the full extent'. For a person without legal training, it is difficult to understand the quoted provision, which, de facto, refers to another piece of legislation. Similarly, art 31, par 4 of the Medical Act states,

In exceptional situations, if the prognosis is unfavourable for the patient, the doctor may limit the information about their state of health and the prognosis if, in the doctor's assessment, the aforementioned limitation is in the patient's best interests. In such cases, the doctor shall inform the patient's statutory representative or any other person authorised by the patient. However, at the patient's request, the doctor is obliged to provide the requested information.

Again, the quoted example invites the question to what extent the patient, reading the available legal provisions, is able to understand their rights without the assistance of a professional employee of the medical facility (eg a patient representative). The adoption of a regulation under which the patient is supposed to interpret a legal text themselves is undoubtedly a manifestation of a limitation of patients' rights, including the right to information. Such a limitation is also evidenced by the fact that, in practice, patient representatives in medical facilities do not assist patients in exercising their right to information, only conducting patient satisfaction surveys and investigations following patients' formal complaints about a violation of their rights by a medical establishment or its staff, as well as compiling relevant statistics.[199] Therefore, steps should be taken in order to ensure that in the catalogue of patient rights the legislators include the right to request the provision of legal assistance by medical facilities employing professional lawyers or patient representatives with legal training.

Limitation of the patient's right to information about their health and the doctor's respect for the patient's autonomy and dignity

In exceptional situations, when the prognosis is unfavourable for the patient, the doctor may limit the information about their state of health if, in the doctor's judgment, this is in the patient's best interests. In such cases, the doctor shall inform the patient's legal representative or a person authorised by the patient. The doctor is also obliged to provide the information requested by the patient.[200] Interpreting this legal provision literally, one may reach two conclusions. First, it is the doctor that is the exclusive dispenser of the content and form of the information provided to the patient. Second, the patient's right to request information only includes the doctor's obligation to give answers to the patient's specific questions rather than provide full information. Such a legal construct may lead to situations in which the patient is not aware either of their true state of health or the fact that the information provided is incomplete (limited), including the prognosis. Importantly, in the exceptional situation described, if the prognosis is unfavourable, the patient is the only person who may not know what is actually happening to them and what is going to happen to them in the future.

[199] This thesis is also confirmed by the following regulation in the Patients' Rights Act: 'In the case of a patient who is unable to move, the information referred to in par 1 shall be made available in such a way that it can be consulted in the patient's place': Ustawa o prawach pacjenta, art 11, par 3.

[200] Ustawa lekarska, art 31, para 4.

On the basis of the interpretation carried out, it can be assumed that, in essence, this provision does not guarantee that the patient will receive full information about their medical condition unless they explicitly make such a request. Under the current legislation, there may be a situation in which, despite having requested the full information about their state of health, the patient does not receive it. The justification for the doctor to act in this way is the patient's own good. However, the patient's good should not be interpreted by the doctor alone, and any assessment of this type should take account of the patient's dignity, autonomy, and rights. Doctors should also be aware that their concept of their patients' well-being may, after all, be different from that of the patients themselves. For example, in the case of a terminal illness, it may be important for a patient to make arrangements for the disposal of their property in the event of their death. Such an interpretation of the patient's welfare fits the humane model of medicine, in which it is both the doctor and the patient that make decisions concerning the treatment so as to ensure the patient's broadly understood well-being, respecting and trusting each other rather than striving for the patient's ideal emotional and spiritual condition. For this reason, doctors should not be sole disposers of the information about their patients' condition but rather their partners, assisted by professionals, including patient representatives and clinical psychologists, whenever there is a need for such assistance.

Patients' autonomy in the relationship with their doctors is an obvious example of a relationship based on partnership. It stands in contrast to the so-called paternalistic model (from the Latin *pater*, meaning father), in which doctors alone, in the name of acting for patients' sake by taking care of their health and saving their lives, in a parent-like manner decide what is good for their patients, often without the patients' knowledge or even against their will. Such an approach, which is an obvious infringement of constitutional freedoms and a threat to the dignity of the human being, should never take place. In this context, when analysing the right to health care, one should take into account Article 30 of the Constitution of the Republic of Poland.[201] According to this article, human and civic freedoms and rights are based on the inherent and inalienable dignity of a human being, which is inviolable, and which should be respected and protected by public authorities. Accordingly, the prohibition of any violation of human dignity is of an absolute nature and is effective towards all (erga omnes). As a consequence of Article 30, Article 38 states, 'The Republic of Poland shall ensure the legal protection of every human being'. In this respect, it is necessary to cite the position of the Constitutional Tribunal, which, when pronouncing on the regulations in Articles 30 and 38 of the Polish Constitution, linked them closely to Article 68, due to the fact that the protection of human health is directly related to the protection of human life, which, in turn, is related to human dignity.[202]

Against the above background, one may ask whether, taking into account the Constitution of the Republic of Poland, the autonomy and dignity of the patient are respected in the analysed acts, as intended by the legislators. For this question to be answered, the concept of patient autonomy needs to be defined. According to Prof. M. Machinek, patient autonomy should be understood both in positive and negative terms:

In positive terms, patient autonomy is a reflection of the patient's sovereignty and equality in their relationship with the doctor, as well as a manifestation of their conscious and free decisions (as exemplified by their consent to a medical procedure), along with appropriate moral

[201] See Wyrok Trybunału Konstytucyjnego z dnia 7.1.2004 r., K 14/03, OTK-A 2004, Nr 1, poz. 1.

[202] ibid. See also K. Ryś, 'Konstytucyjne prawo do ochrony zdrowia i prawo do szczególnej opieki zdrowotnej' (2017) 10 Zeszyty Naukowe Prawa Konstytucyjnego 113, 121.

choices made according to their own moral criteria. On the other hand, in negative terms, this autonomy can express itself in the patient demanding that the doctor perform certain actions, thus reducing the doctor's role to obeying the patient's will.[203]

Bearing in mind the foregoing analysis, it seems justified to assume that, for positive patient autonomy to be reflected in legal regulations, the patient should, in principle, be guaranteed full information about their state of health in every case unless they relinquish this right themselves. This thesis is supported by a position taken in judicial practice:

It is also important to treat patients as partners in their relationships with doctors and to guarantee patients the legal means of respecting their dignity, which should manifest itself in ensuring that they are able to exercise a real influence over the diagnostic and treatment measures taken in relation to them.[204]

Respecting the patient' right to information and medical ethics

According to art 14, par 1 of the Code of Medical Ethics, it is the doctor's duty to respect the patient's right to informed participation in decisions concerning their health. This principle logically follows from the regulations in paras 2 and 3 of the same article, ie the doctor's obligation to provide the patient with understandable information about the benefits and risks of the proposed diagnostic and treatment measures, as well as the possibility of applying a different medical procedure.[205] The CME not only lays down guidelines for the content and scope of the information about the patient's condition or treatment, but it also accepts the possibility of withholding such information from the patient provided they themselves wish to stay uninformed.[206] Thus, it can be concluded that we are dealing with a situation in which it is the patient that takes the initiative, without being informed by the doctor of this entitlement. This is analogous to legal regulations. At the same time, the CME notes that the patient's family or other persons may only be informed with the patient's consent.[207] In addition, there are no doubts as to the principles according to which, in the case of a minor patient, the doctor is obliged to inform their statutory representative or actual guardian, respecting the patient's right to intimacy and dignity, as well as to provide the necessary information to an authorised person in the case of an unconscious patient.[208]

With reference to the abovementioned principles concerning the doctor's duty to inform the patient about their state of health, special attention should be paid to the provision concerning exceptional situations, when the prognosis for the patient is unfavourable. The terminology and structure of the CME are different from those of the statutory law. Nevertheless, in essence, they render the limitation of the doctor's duty to provide the patient with relevant information in a similar way:

In the event of an unfavourable prognosis for the patient, the doctor is obliged to inform the patient of this prognosis with tact and caution. The news of the diagnosis and unfavourable

[203] For more on the topic, see M. Machinek, 'Autonomia jako wartość i problem moralny w relacji lekarz--pacjent' <https://www.mp.pl/etyka/podstawy_etyki_lekarskiej/57229,autonomia-jako-wartosc-iproblem-moralny-wrelacji-lekarzpacjent> accessed 22 July 2024.

[204] Wyrok Sądu Apelacyjnego w Katowicach (n 16).

[205] Kodeks etyki lekarskiej, art 14, paras 2 and 3.

[206] ibid, art 17, para 1.

[207] ibid. See also A. Modlinska and others, 'Aspekty prawne udzielania informacji-część II: prawo wobec informowania pacjenta' (2013) 7 [1] Forum Medycyny Rodzinnej 47.

[208] Ustawa lekarska, art 17, paras 2 and 3.

prognosis may be withheld from the patient only if, in the doctor's opinion, its disclosure may lead to the patient's exceptional suffering or other adverse health consequences. Nevertheless, the doctor must provide full information at the patient's explicit request.[209]

Under this provision, formulated in correlation with the Medical Act, the doctor is the sole disposer of information about the patient's condition, but in this case priority is given to the necessity of actually providing the patient with relevant information when the prognosis is unfavourable. However, is the concept of prognosis synonymous with the patient's future condition as envisaged by the doctor on the basis of the treatment? A prognosis is fraught with uncertainty about the patient's actual state of health, which results in the form in which the information is communicated, ie 'with tact and caution'. It can be assumed that this information is communicated as a message that may not necessarily 'come true'. In contrast, in the second sentence, in which the concept of unfavourable prognosis is applied in the context of the news of the diagnosis, the situation changes dramatically. Relying on specific medical data, the doctor can presume with certainty or high probability the possible final outcome of the patient's treatment. For this reason, the doctor is obliged to decide whether, in relation to a particular patient, to provide information about the patient's state of health, taking into account the results of doing so: 'the patient's exceptional suffering or other adverse health consequences'.[210] In this situation, the doctor must make an accurate assessment of the patient's emotional state, taking into account their well-being. The question is whether the doctor is really able to make such an assessment, and whether their subjective perception of the whole situation is beneficial to the patient, ie congruent with the patient's intention.

In relation to the problem discussed, one more provision of the Code of Medical Ethics should be cited. In the case of a serious mistake made by the doctor or the occurrence of unforeseen complications during the treatment, the doctor is obliged to inform the patient about them and take measures to rectify their consequences.[211] However, in a situation in which the doctor's mistake and the subsequent complications in the course of treatment result in irreversible and unfavourable changes in the patient which result in a poor prognosis, may the doctor withhold this information from the patient if, in their opinion, its disclosure will cause the patient's suffering or have some other adverse consequences for their health? Such a legal and ethical dilemma may be detrimental to the patient's welfare.[212] With this in mind, it is worth quoting the following judicial standpoint:

Especially in the case of complications, the information should be detailed and comprehensive, of course, as far as this is possible in a given situation. ... it is incumbent on the doctor in charge of the treatment process to provide the patient with information that is understandable, as only such information guarantees that the patient is genuinely able to participate in the treatment process. Consequently, the information provided must always be adapted to the specific case – to the patient in question and to their perceptive capacities, education, mental state, or age.[213]

Thus, in the court's opinion, it is doctors who are always the disposers of the information about their patients' medical condition. This means that, pursuant to the existing regulations, doctors may always limit the amount of information about their patients' state of health as a result of their subjective assessment of particular cases.

[209] ibid, art 18.

[210] See A. Przyłuska-Fiszer, 'Etyka lekarska i cnota prawdomówności' (2005) 4 Diametros 143.

[211] Kodeks Etyki Lekarskiej, art 18.

[212] See M. Jaranowski, 'Dramaturgia artykułu 17 kodeksu etyki lekarskiej: ujęcie sytuacji niepomyślnych rokowań z wykorzystaniem elementów aksjologii Józefa Tischnera' (2022) 1 [59] Logos i Ethos 193.

[213] Wyrok Sądu Apelacyjnego w Katowicach (n 16).

CONCLUSION

When considering selected aspects of the patient's right to information in exceptional situations, in particular when the prognosis is inauspicious, and the related power of the doctor to limit this information for the patient's sake, the following main conclusions can be drawn:

1. In Polish legislation, there are no statutory definitions of such concepts as understandable information, full information, information needed for proper diagnosis or treatment, or patients' welfare. This may result in doctors' subjective interpretation of these concepts and their subsequent manipulation of the information about their patients' state of health. At present, the aforementioned concepts are only explained in practical interpretations found in courts' decisions.
2. In principle, doctors are not obliged to provide full information about their patients' state of health, as they are free to make their own assessment of the patients' actual clinical condition (so-called decisional liberty).
3. The concept of understandable information is not synonymous with full (comprehensive and properly structured) information about the patient's condition. In this context, understandable information may be a manifestation of a limitation of the patient's right to information about their health condition.
4. In exceptional situations, when the prognosis is unfavourable, the provision of full information about the patient's state of health by the doctor may take place only at the patient's request (art 31, para 4 of the MA). It should be presumed that the adoption of such a legal construct confirms the thesis that understandable information is not equivalent to full information.
5. The restriction of the patient's right to information about their health, under art 31, par 4 of the Medical Act, is a relic of the paternalistic model.
6. There is a conceptual discrepancy between the statutory provisions and the Code of Medical Ethics (Załącznik do uchwały nr 5 Nadzwyczajnego XVI Krajowego Zjazdu Lekarzy z dnia 18 maja 2024 r – Annex to Resolution No. 5 of the Extraordinary 16th National Congress of Doctors of 18 May 2024), as exemplified by the good of the patient versus the good of the sick person.

In conclusion, the present analysis demonstrates that allowing doctors to provide information about their patients' state of health at their own discretion in exceptional situations, ie when the prognosis is inauspicious, poses a potential risk of limiting patients' right to information.

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Digital identity as an element of sustainable social economic development in democratic countries

GENERAL COMMENTS

The literature points out that the founder of the theory of 'sustainability' was Hans Carl von Carlowitz in the 18th century, who first used the term in terms of forestry. According to the author, the term meant a way of managing the forest in such a way that only as many trees as can grow in this place are cut down, so that the forest is never eradicated and can regenerate itself[214] .

On the grounds of the Polish legislator, the concept of "sustainable development" has been elevated to constitutional status. In Article 5 of the Constitution of the Republic of Poland of 2 April 1997[215] , the legislator defined the principle of sustainable development. According to this provision, the Republic of Poland shall safeguard the independence and inviolability of its territory, ensure the freedoms and rights of man and citizen and the security of citizens, protect the national heritage and ensure the protection of the environment, guided by the principle of sustainable development. The analysis of this notion allows one to conclude that the legislator on the grounds of Article 5 of the Constitution of the Republic of Poland - in accordance with Carlowitz's theory - also refers this notion to environmental protection. This position is confirmed in the court jurisprudence[216] . The Supreme Administrative Court, in its verdict of 17 May 2022, emphasised that "sustainable development gives the planning and spatial development processes the feature of permanently combining the requirements of environmental protection and economic development. Therefore, the planning solutions adopted in this respect should serve to ensure a real improvement in the quality of life of the municipality's residents, respecting the constitutional principle of environmental protection and sustainable development"[217] .

[214] More extensively: R. Lusawa, Hans Carl von Carlowitz the creator of the concept of "sustainability", "Scientific Yearbook of the Faculty of Management in Ciechanów" 2009, vol. 3, no. 1-2, p. 5.
[215] Journal of Laws. No. 78, item 483.
[216] See: judgment of the NSA of 10 January 2023, III OSK 1514/21, Legalis; judgment of the WSA in Gdańsk of 15 February 2023, II SA/Gd 827/22, Legalis; judgment of the NSA of 19 April 2023, II OSK 1278/20, Legalis; judgment of the NSA of 5 June 2023, II OSK 525/22.
[217] II OSK, 1144/21, Legalis.

Sustainability and sustainable development

The concept of 'sustainable development' is sometimes equated with the concept of 'sustainable development'. The terms are used interchangeably. The literature emphasises that it is appropriate to use the term "sustainable development"[218] . This was also the term used by Carlowitz. R. Lusawa notes that "both the original German name of the concept, die Nahchaltigkeit, used by Hans Carl von Carlowitz, and the derivative English term 'sustainable development' mean sustainability, not sustainability[219] .

The idea of sustainability, as expressed by Carlowitz, was linked to the crisis. The author did not agree with a philosophy geared towards quick profit. In his work 'Sylvicultura Oeconomica. Die Naturmäßige Anweisung zur Wilden Baum-Zucht', he pointed out that a field yields an annual income, whereas a tree from the forest takes years to come. He stressed that a person could make a very quick profit from selling timber, but the result would be the destruction of the forest. Once destroyed, the forest remained so for years and the apparent profit turned into a loss. He also noted that man did not plant trees afterwards because he knew he would no longer benefit from their wood. The quick, steady income from field cultivation was also the reason for clearing forests for fields and meadows. The predatory forestry described by Carlowitz was the basis for the formulation of the principle of sustainability, linked to the crisis. The author emphasised that "timber is as important as daily bread, so it has to be used carefully so that a balance can be achieved between the growth of the forest and the timber harvested from it"[220] . Thus, Carlowitz conceived of this balance as an equality between the number of trees felled and those planted and sown, a long-term use of nature and an emphasis on thinking about resource conservation and protection. This is how the term, translated today as 'sustainable development' or 'sustainability', first emerged[221] .

Today, the concept of sustainable development is considered in terms of the trade-off between 'to have' or 'to be', creating a contemporary definition of quality of life[222] . Sustainable development is defined as "development that ensures that the needs of present and future generations are met"[223] . Among the main objectives of sustainable development are indicated the improvement of the quality of life, the establishment of a hierarchy of needs determining the quality of life of the individual. Carlowitz's theory was also the basis for the 'triangle of sustainability' theory formulated in the 20th century, i.e. the postulate of simultaneously guaranteeing environmental sustainability, economic security and social justice[224] . The triangle of sustainability assumes that the economy should create wealth for society. It is obliged to deal gently with nature and bound by responsibility for future generations.

Summarising the above, it should be stressed that the analysis of the concepts in question should take into account Carlowitz's work, which allows for a better understanding of the

[218] K.S. Howe, Perspektywy rozwoju obszarów wiejskich w Europie: kwestia zrównoważenia, [in:] K. Zawalińska (ed.), Rozwój obszarów wiejskich, Warsaw 2005, p. 38.

[219] R. Lusawa, op.cit., p. 6.

[220] Quoted in R. Lusawa, op.cit, p. 10.

[221] R. Lusawa, op.cit., p. 11.

[222] M. Zadrożniak, Quality of life in the context of the concept of sustainable development, "Acata Universitatis Lodziensis" 2015, no. 2 (313), p. 21.

[223] W. Tyburski, Principles of shaping attitudes conducive to the implementation of sustainable development, Toruń 2011, p. 9.

[224] This concept is included in the UN Peace University (UPEACE) documents http://upeace.org (accessed 05.06.2024).

meaning of the terms in question. The considerations carried out allow us to assume that the idea of sustainability is not so much to protect natural resources as to ensure crisis-proof economic development for a long time. This understanding of the concept should be translated into the currently designed legal solutions and all economic activities. It seems appropriate to use the concept of "sustainable development". This principle does not allow measures to be oriented towards short-term profit. An increase in the production of material goods that does not take into account the need to protect the raw materials used in this production leads *de facto* to a decline in production and an economic crisis. Thus, any policy of 'sustainable development' should first and foremost take care of the state of the natural environment, should be implemented in the name of responsibility for the future of the world, should serve man, secure his needs, while respecting the rights of individuals and weaker groups. As R. Lusawa aptly notes, "it is in the interest of sustainable development to avoid being guided only by the desire to maximise profit in the short term"[225] .

Digital identity

The functioning of the individual in new conditions - in the so-called cyberspace - raises new questions regarding the functioning of the individual in the virtual world as one of the elements of sustainable socio-economic development. Digital identity is an indispensable element of the modern economy. An individual's online presence is already the norm, affecting many aspects of his or her life. It encompasses all the information that identifies a person in the digital world, such as email addresses, logins, images, social media accounts, digital documents containing personal data, certificates. It is widely accepted that a digital identity is an electronic representation of an individual that enables them to interact securely and effectively in the digital space[226] .

The issue of sustainability is explicitly addressed in the 'European Declaration of Digital Rights and Principles for the Digital Decade'[227] of 23 January 2023, proclaimed by the European Parliament, the Council and the Commission. It emphasises that digital transformation affects every aspect of life[228] . It offers significant opportunities to improve quality of life, economic growth and sustainable development. Hence, digital transformation is a challenge for the EU to define how fundamental rights, as applied in normal life, should be implemented in the online world.

Chapter VI of the Declaration, entitled "Sustainability", points out that, in order to avoid significant harmful environmental impacts and promote a circular economy, digital products and services should be designed, manufactured, used, repaired, recycled and disposed of in a way that mitigates their negative environmental and social impacts and does not allow for premature obsolescence. Everyone should have access to accurate, understandable information about the environmental impact of digital products and services and their energy consumption, repairability and durability so that they can make responsible choices. The Declaration emphasises

[225] R. Lusawa, op.cit., p. 15.

[226] M. Nowikowska, On the concept and essence of information security, [in:] Individual privacy and state security. Resolving the conflict of principles, M. Nowikowska (ed.), Warsaw 2022, p. 26.

[227] Joint Declarations European Parliament, Council, European Commission "European Declaration on Digital Rights and Principles in the Digital Decade" (OJ C 23, 21.01.2023 p. 1) - hereinafter Declaration.

[228] Previous digital development initiatives include: "Tallinn Declaration on e-Government"; "Berlin Declaration on Digital Society and Value-Based Digital Administration"; "Lisbon Declaration - Purposeful Digital Democracy".

that it is very important to promote the development and use of sustainable digital technologies with minimal negative environmental impact and minimal social impact. It is also important to promote the development, deployment and active use of innovative digital technologies with a positive impact on the environment and climate in order to accelerate the ecological transformation. One such solution is digital identity.

The Declaration *explicitly* addresses the issue of digital identity. Chapter 2, point 7 of the Declaration stresses that everyone should have online access to key public services in the EU. It is important to ensure that EU citizens can voluntarily use an accessible, secure and trusted digital identity that allows access to a wide range of online services. It is very important to promote seamless, secure and interoperable access across the EU to digital public services designed to effectively meet the needs of citizens, including in particular digital health and care services, access to electronic health records.

From a digital identity perspective, it is important to ensure security and protect privacy and personal data. Chapter V of the Declaration on security indicates that everyone should have access to digital technologies, products and services that are inherently secure, guarantee privacy to ensure a high level of confidentiality, integrity, availability and authenticity of the information processed[229] . This presumption includes cyber security requirements for products marketed in the Digital Single Market. Paragraph 17 further emphasises that everyone has the right to privacy and to the protection of their personal data. This protection includes people's control over how their personal data is used and with whom it is shared.

Another important document in the area of the development of digital identity is the Council's programme 'Road to the Digital Decade'[230] describing the digital transformation of the EU by 2030. It sets out digital objectives based on four main points: 1) digital skills, 2) digital infrastructure, 3) digitisation of businesses and 4) public services). The EU's primary objective by 2030 is to create an inclusive, people-centric digital environment. The Agenda indicates that in 2019, around 56% of 17-74 year olds will have basic digital skills. The EU has set a target of increasing this figure to 80% by 2030. Similarly, by 2030. The EU wants to ensure 100% access to infrastructure, i.e. guaranteeing gigabit connections and 5G connectivity access in every area (urban and rural). The Programme also indicates that in 2020. 60% of citizens were using electronic identification. The EU aims to raise this figure to 80% of all EU citizens.

Summarising the above, it can be said that the EU's digital transformation journey includes, in particular, digital sovereignty, respect for fundamental rights, the rule of law and democracy, social inclusion (through connectivity, digital education, training, fair and equitable working conditions, access to digital public services online), sustainability, security, improved quality of life, accessibility of services and respect for the rights and aspirations of all.

By analysing the provisions of the Declaration, it can be concluded that the EU's vision of digital transformation is human-centred. Section 1(1) indicates that the digital transformation in the European Union is all about people. Technology should serve and benefit all people living in the EU and enable them to realise their aspirations in full security while respecting their fundamental rights. The Declaration sets as a fundamental objective to ensure that the rights of individuals and the values recognised in EU Union law are respected online. Technology should be used to bring people together, not to divide them. It should foster a fair and inclusive society and a just and inclusive economy in the EU.

[229] K. Chałubińska-Jentkiewicz, M. Nowikowska, Personal data protection in cyberspace, Warsaw 2021, p. 50.

[230] The Road to the Digital Decade programme', 8 December 2022: https://www.consilium.europa.eu/pl/infographics/digital-decade/ (accessed 19.08.2024).

The concept of digital identity also appears in EU legislation. In 2021. Commission proposed a framework for a European digital identity that will be available to all EU citizens, residents and businesses in the EU. In the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 910/2014 with regard to the establishment of a European framework for digital identity, the EU legislator defined the concept "European digital identity wallet"[231] . A digital identity wallet is understood to be a service that enables a user to store his or her identity data, credentials and attributes associated with his or her identity, and provide them to relying parties on demand. An example of a digital identity could be an electronic identity card, ID card, passport or driving licence. The European Commission has indicated that digital identity will be able to be used by EU citizens and residents, as well as EU-based companies, for identity verification or to confirm certain personal information across the EU[232] .

On 11 April 2024, Regulation 2024/1183 of the European Parliament and of the Council amending Regulation (EU) No 910/2014 as regards the establishment of a European framework for digital identity was adopted[233] . Point 5 of the preamble indicates that citizens should have the right to a digital identity that is under their exclusive control and that allows them to exercise their rights in the digital environment and to participate in the digital economy. The digital identity framework should contribute to a more digitally integrated Union by reducing digital barriers between Member States and enabling Union citizens to reap the benefits of digitisation, while increasing transparency and protecting their rights.

Digital identity is becoming an indispensable part of today's digital economy. Its role in sustainable economic development is very important. In the literature, digital identity is defined as one or more specific factors that define a person's physical, mental, economic, cultural or social characteristics[234] . Noteworthy is the definition by C. Sullivan, according to which an individual's identity consists of information. Identity is a database of a person, it is a set of defined information such as name, gender, date and place of birth, external characteristics. R. Coomaraswamy points out that identity is not intrinsically unchangeable, as it is a composite consisting of many independent, often competing, contradictory and transformable criteria. Therefore, identity is often subject to change, also in response to the reaction or variability of ideologies and under the influence of life experiences[235] .

With the above in mind, it can be assumed that a digital identity is a set of information that identifies an individual in the digital space. It consists of a range of data, including personal data, biometric data, as well as online activity. Digital identity is necessary to use various online services, such as online banking, online shopping, access to e-government, medical services,

[231] European digital identity https:// commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/european-digital-identity (accessed: 16.06.2024).

[232] European Digita Identity Wallet http:// digital-strategy-ec.europa.eu/en/policies/eudi-wallet-implementation (accessed 23.02.2024).

[233] Journal of EU Law L, 20.04.2024.

[234] K. Chałubińska-Jentkiewicz, M. Nowikowska, Bezpieczeństwo, tożsamość, prywatność - aspekty prawne, Warszawa 2020, pp. 60-61.

[235] R. Coomaraswamy, Identity within: Cultural Relativism, Minority Rights and the Empowerment of Women, 'The George Washington International Law Review' 2002, no. 34/3, p. 484; M. Nowikowska, Digital Identity on the Internet - Challenges and Threats, [in:] Wielowymiarowość cyberbezpieczeństwa, J. Żylińska, K. Huczek, K. Borkowski (eds.), Warsaw 2024, p. 24.

The importance of digital identity in sustainable socio-economic development

Digital identity in promoting sustainable economic development plays a key role. Several examples can be identified of the use of digital identity to ensure economic and social sustainability. Firstly, digital identity represents the so-called 'inclusion' of the individual in cyberspace. Thanks to digital identity, people previously excluded from financial or administrative systems can, through online authentication, gain access to basic services such as bank accounts, social benefits, e-government services. Promoting a digital identity framework in the European Union, can have an impact on reducing inequalities and promoting social development.

The mObywatel application can be mentioned as an example of a universal system allowing for the identification of an individual on the Internet. By virtue of the Act of 26 May 2023 on the mObywatel application[236], the principles of the application offering free access to digital official services and electronic documents are regulated. The mObywatel application is a software designed for mobile devices in which services provided by public entities and non-public entities are made available[237]. A trusted profile is required to use the mObywatel application. The legislator in this Act has defined the scope of services made available in the mObywatel application, including: the functioning of the mObywatel document, the mObywatel profile, application user certificates and electronic signature verified using the mObywatel application user certificate. A user of the mOcitizen application can only be a natural person after his/her identity has been established. One of the goals of introducing the mObywatel application, was to allow the use of electronic documents handled by the application, on the same principles as for the corresponding traditional documents. As the doctrine aptly points out, more and more people want to be able to remotely transfer their data, confirm their identity or deal with official matters using online services, including those provided via mobile devices[238] . The legislator in the mObywatel application has placed particular emphasis on the use of electronic documents, handled using the mObywatel application, as mobile equivalents of identity cards. In addition, the provisions of the law presuppose the use of school and student mLegitimacy by pupils and students respectively. By mCitizen document the Polish legislator means a mobile document, i.e. an electronic document in the mCitizen application, stating the identity and Polish citizenship of the mCitizen application user on the territory of the Republic of Poland in the mutual physical presence of the parties. One of the most important solutions included in the mCitizen Act was to provide citizens with the possibility to confirm their identity using the mCitizen application. *The ratio legis* of the introduction of the Act was therefore to enable the use of the mObivel application in all situations where an identity card is used. Thus, if a legal provision imposes an obligation to present an identity card to confirm one's identity, this obligation will be deemed to be fulfilled by the use of mCitizen[239] .

[236] Journal of Laws item 1234.

[237] In the disposition of Article 3 of the mCitizen Act, the legislator has defined the types of services provided in the application. These include downloading from public registers and non-public registers the user's personal data, the legal situation concerning him/her, the rights to which he/she is entitled, enabling the identification of an item related to the user, the legal situation of a minor or the rights to which the minor is entitled, if the app user is the parent or legal guardian of the minor.

[238] M. Dobrzycka, Rules comprehensively regulating the functioning of the mCitizen application, 'n.ius' 2017, Legalis.

[239] Ibid.

Article 7 sets out the scope of data in the mCitizen document. The document contains data on the mCitizen app user taken from the PESEL register: surname and first name(s), PESEL number, date of birth, citizenship, father's name, mother's name, the user's photograph taken from the Register of Personal Identity Cards, number, series, date of issue and expiry date. The mCitizen document is issued to the app user automatically, for a period of 5 years. It should be stressed that the mCitizen document does not authorise the crossing of state borders and cannot be used to establish one's identity or Polish citizenship in the case of circumstances where the use of the document does not ensure the necessary level of certainty and security of establishing one's identity or Polish citizenship or cannot be carried out in conditions ensuring such a level.

Secondly, the digitisation of administrative processes through digital identities leads to savings in time and resources, both for citizens and for institutions[240] . The growing network of e-government services influences the so-called administrative efficiency. The development of e-government (e-government, e-governance, e-state) is a natural stage of improving the state's communication with the citizen. As A. Romejko-Borowska aptly notes, this process is closely linked to the extensive modernisation of a country's infrastructure, standardisation of systems, and improvement in the quality of services provided. The author notes that this is "a source of huge savings and a way to protect the environment"[241] . As an example, as part of the operation of e-government, the need for paper documents is reduced, which is good for the environment. The author goes on to point out that e-government consequently creates additional mechanisms to enable greater citizen involvement in state affairs, which in turn can systematically contribute to the building of a democratic state and to the development of democratic and pro-state processes in a country[242] .

Thirdly, the use of advanced technologies in the field of digital identity, involves the need to guarantee security and data protection243 . Interrelating personal data with digital identity, it can be assumed that digital identity is a set of data that allows a person to be identified in the digital environment244 . This data, may include personal data as well as other information that does not constitute data, but makes it possible to determine who an individual is in the virtual world. Digital identity thus includes personal data, but also other information that can be used to identify a person in a digital context, e.g. login data, IP addresses, web profiles. This issue is important for protection against fraud and identity theft245 , which is crucial for economic stability.

[240] D. Szostek, Amendments to the Administrative Procedure Code in the aspect of e-government, 'Electronic Media Review' 2010, no. 1, p. 40.

[241] A. Romejko-Borowska, E-administracja, czyli cyfryzacja usług publicznych w Europie i w Polsce - nowa rola operatorów pocztowych?, "Kwartalnik Antymonopolowy i Regulacyjny" 2018, no. 1, Legalis.

[242] Ibid.

[243] K. Chałubińska-Jentkiewicz, M. Nowikowska, Artificial Intelligence v. Personal Data, "Polish Political Science Yearbook" 2022, no. 51(3), pp. 185.

[244] See in more detail: K. Chałubińska-Jentkiewicz, M. Nowikowska, Ochrona danych osobowych w cyberprzestrzeni, Warsaw 2021, p. 49; J. Taczkowska-Olszewska, Pojęcie i rodzaje danych osobowych, [in:] J. Taczkowska-Olszewska, M. Nowikowska, Prawo do informacji publicznej. Ochrona informacji niejawnych. Ochrona danych osobowych, Warsaw 2019, pp. 245-246; P.M. Schwartz, Property, Privacy, and Personal Data, 'Harvard Law Review' 2004, no. 117/7, p. 2056; S. Kulhari, Data Protection, Privacy and Identity: A Complex Triad [in:] S. Kulhari, Building-Blocks of a Data Protection Revolution: The Uneasy Case for Blockchain Technology to Secure Privacy and Identity, Nomos Verlagsgesellschaft mbH, 2018, pp. 23-37.

[245] See in more detail: M. Nowikowska, Identity theft. Protection of personal data in cyberspace, [in:] Human Rights. Digital Well-Being - a concern for the quality of life, eds. L. Tafaro, I. Laki, I. Florek, Józefów 2023, p. 149.

Object of protection of identity theft is private and personal data. The crime of identity theft has been expressed in Art. 190 a § 2 of the Penal Code, according to which identity theft is impersonating another person, thereby using his or her image or other personal data to cause him personal or material damage. Identity theft is all actions taken to obtain real data from real people. These data are obtained with the use of various technical and ICT means using social engineering246 . In 2023, phishing campaigns, i.e. attacks using social engineering, increased significantly247 .

It seems that the future of digital identity and data protection will require not only the further development of security technologies, but also the adaptation of legal regulations to the dynamically changing digital environment. Raising users' awareness of the importance of protecting their data and developing a culture of security among employees of companies processing data will also be key.

Finally, fourthly, the development of digital identity is closely linked to technological developments and innovations. As an example, telemedicine can be mentioned, whereby remote consultations and advice are possible through secure digital identity systems. Developments in technology related to digital identity are driving innovation in sectors ranging from e-commerce248 to healthcare. Another example of innovation using digital identity in the field of learning is the virtual university. The term 'virtual university' refers to a web-based system designed to provide a one-stop shop for students. The virtual university contains all the information necessary for students - the timetable, the study programme, consultations with lecturers and an account for paying tuition fees. Here, the student can also view grades for exercises and examinations and access an e-mail account. Through the virtual university it is also possible to enrol in a specific course of study249 . Among the benefits of using virtual universities is the ability to deal with matters that students could previously deal with in person at the dean's office. The application allows specific matters to be dealt with online. Students can submit electronic applications and receive a response or decision by the same means. This course of action not only speeds up the circulation of documents, but also streamlines the work of the administration and reduces its costs.

246 Journal of Law 2024, item 17.

247 Annual Report on the Activities of CERT Polska 2023 https://www.nask.pl/pl/raporty/raporty/5381,RAPORT-CERT-2023.html (accessed 20.07.2024).

248 M. Godyń, Impact of the changes to the consumer's right of withdrawal introduced by the Consumer Rights Act on the e-commerce industry, 'Antitrust and Regulatory Quarterly' 2014, no. 4, p. 9.

249 What is and what is a virtual university? https://www.osnews.pl (accessed 30.07.2024).

SUMMARY

While indicating the numerous benefits of using digital identity to build sustainable socio-economic development, the implementation of digital identity also faces various challenges. Among them, we can mention the issues of individual privacy[250] in terms of the use of online identity, the accessibility of technology or the management of digital identity. It is very important to find a balance between security and privacy of users in cyberspace[251] . At this point, it should be noted that clear legal and ethical regulations will be necessary in this respect to ensure proper and adequate protection of personal data. The availability of technology can be identified as a second challenge. Differences in access to modern technologies between different regions may lead to digital exclusion instead of social inclusion through the use of new technologies. It seems that investments in telecommunications infrastructure and digital education are crucial to ensure equal access. It should be noted that the Cyber Security Strategy of the Republic of Poland for 2019-2024[252] identifies "Building public awareness and competence in cyber security" as a specific objective. The Strategy emphasises that cyber security education should be available at the earliest possible stage of children and young people's access to digital services is at the early childhood education stage. In the face of the increasing number of threats aimed at influencing society, as well as bearing in mind the consequences of the deliberate use of social engineering tools for manipulative activities in the form of, among others, phishing campaigns, it is necessary to take systemic measures to develop citizens' awareness in the context of verifying the authenticity of information and responding to attempts to disrupt it.

Finally, the introduction of digital identity systems at European Union level requires close cross-sectoral and international cooperation. The issue of identity management is very important in this respect. Standardisation and interoperability of systems, to ensure global consistency, can be identified as the most important challenges in this regard.

In the context of sustainable development, digital identity is playing an increasingly important role. Market trends show that the phenomenon of replacing traditional products with modern (digital) equivalents is becoming more and more widespread. There is also a growing interest in services that are convenient and accessible at any time, while being secure in terms of protecting information and any sensitive data. Digital identity is an indispensable component of today's digital economy. Its role in sustainable economic and business development cannot be overestimated. By promoting inclusion, efficiency and security, digital identity contributes to building a fairer and more sustainable world. To realise its full potential, however, challenges around privacy, accessibility and governance must be addressed. Joint action by governments, the private sector and the international community is key to creating a secure and sustainable digital ecosystem.

250 Cf. extensive discussion of the problem: A. Kopff, The concept of rights to intimacy and to privacy of personal life. Constructive issues, "Civil Studies" 1972, no. XX, pp. 32-33; M. Safjan, Reflections on the constitutional conditions for the development of the protection of personal rights, "Private Law Quarterly" 2002, no. 1, p. 234; J. Sieńczyło-Chlabicz, Naruszenie prywatności osób publicznych przez prasę. Analiza cywilnoprawna, Warsaw 2006; S. Warren, L. Brandeis, The Right to Privacy, "Harvard Law Review" 1890, no. 193.
K. Chałubińska-Jentkiewicz, M. Nowikowska, Bezpieczeństwo, tożsamość, prywatność - aspekty prawne, Warszawa 2020, pp. 60-61.

251 See M. Nowikowska, The right to privacy and state security - a conflict of principles, [in:] Individual privacy and state security. Resolving the conflict of principles, M. Nowikowska (ed.), Warsaw 2022, p. 118.

252 Resolution No. 125 of the Council of Ministers of 22 October 2019 on the Cyber Security Strategy of the Republic of Poland for 2019-2024, "Monitor Polski" (Dz.Urz. of 30.10.2019, item 1037).

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ROSA INDELLICATO

Educating for human rights: Olympe de Gouges a model of courage and justice

Human rights: the path to a just society

Human rights are the fundamental element that allows each person to live with dignity as a human being. Only through them, and in respect of them, is it possible for the person and the community to build freedom, justice, peace, democracy, and foster the path of a life worthy of being called civilised. It is necessary to affirm the right to exist as the foundation of the existence of law and on condition that the right to exist is understood as the right to exist as a person. If it is true that the awareness of the inviolability and non-negotiability of human rights has broadened, it is also true that from many quarters and in every corner of the world, the continuous violation of fundamental rights is denounced, often without the possibility in the courts of exercising effective sanctioning and re-educational powers[253]. The evolution of human rights has its roots in great events in human history, where their relevance lies, and in particular in the struggle for freedom and equality, which «are not a given but an ideal to be pursued»[254] .

The basic principles of human rights are proclaimed in the *Universal Declaration of Human Rights* adopted unanimously by the United Nations on 10 December 1948. This Declaration includes a set of fundamental rights for every human being regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The legal-political revolution of the 20th century led to the recognition of the need for a planetary solidarity of men and nations, and human rights represented the attempt to proclaim this recognition, based on the humanist option to be carried out integrally on the 'whole man' and for all men[255] . Today is said to be the age of rights, and the problem of the foundation of a right presents itself differently depending on whether one is seeking the foundation of a right one has or a right one would like to have[256]. Human rights are ends worthy of pursuit, which, despite their desirability, have not yet been recognised by everyone and everywhere equally

[253] Cfr. A. Cassese, Il diritto internazionale nel mondo contemporaneo, Il Mulino, Bologna 1984; Id., I diritti umani nel mondo contemporaneo, Laterza, Roma-Bari 1988.

[254] N. Bobbio, L'età dei diritti, Einaudi, Torino 1997, p.22.

[255] Cfr. S. Cotta, Il diritto naturale e l'universalizzazione del diritto, in Unione Giuristi Cattolici Italiani (ed.) Diritto naturale e diritti dell'uomo all'alba del XXI secolo, Giuffrè, Roma 1993, in particular p.26.

[256] Cfr. ivi, p. 5. Sulla questione dei diritti fondamentali cfr. G. Peces-Barba, Teorie dei diritti fondamentali, tr.it., Giuffrè, Milano 1993; H. Denninger, Diritti dell'uomo e legge fondamentale, Giappichelli, Torino 1988; L. Ferrajoli, Dirittti fondamentali: un dibattito teorico, Laterza, Roma 2001; P. Barile, I diritti dell'uomo e le libertà fondamentali, Il Mulino, Bologna 1984.

Hence the importance of human rights education and the conviction that finding a foundation for human rights, and thus providing reasons to justify the choice we have made and would like others to make, are adequate means to obtain wider recognition[257]. As history has progressed, human rights have undergone evolution and modification, even according to the needs and realities of reference, so much so that, as Bobbio himself states, the rights defined as «sacre et inviolable»[258] in the 1700s have changed in the numerous national and international declarations of our contemporary times. Looking closely and circumstantially at concrete man, at the 'whole man', Aristotle would say, through what Francesco Viola has called the «situated anthropologies»[259], one can see that the *Declarations of the Rights of Man*, in recent decades, have focused on the specific conditions of men in concrete situations and therefore concerning man himself at different ages, from the first years of life to the last stages of life, in different environmental situations, of illness, of disability, as an indigenous person, as a migrant, up to the most recent debate on the right to a mother's surname for the unborn, so much so that a continuous movement towards a never closed redefinition of human rights has arisen. «Fundamental rights can only be taken seriously as such on the sole condition that they concern individuals as such and that they are not regarded as founding the laws but as founding the laws. Even better: that they are not founded on the system but foundational to the system»[260]. In reality, legal doctrine and historiography have never managed to exorcise the demon of the legal positivism of Kelsen, Jhering and Santi Romano, going so far as to subordinate subjective law to objective law, for the safeguarding of which the legislator could only reconfirm the historical nature of the individual to the point of denying an onto-axiological foundation of human rights. The inevitable product of such a philosophical-legal orientation has led, in today's society, to a new 'libertine natural lawism', which posits man as the legislator and creator of himself, as law unto himself, independently of the ethics that nonetheless constitutes the essential basis of law itself and without which the latter would have no meaning. Legal positivism, in fact, refuses to refer to an objective, ontological criterion of what is just. In this perspective, the ultimate horizon of law and morality is the law in force, which is considered just by definition.

The crisis of legal positivism called this axiom into question, particularly with Capograssi, who introduced the concept of law as legal experience, at one with the vital world. Hence the

[257] Cfr. N. Bobbio, L'età dei diritti, cit., p.6.

[258] Ivi, p. 9.

[259] Cfr. F. Viola-G.Zaccaria, Le ragioni del diritto, Il Mulino, Bologna 2003.

[260] G. Limone, Dal giusnaturalismo al giuspersonalismo. Alla frontiera geoculturale della persona come bene comune, Teknopress, Napoli 2005, p. 67. In this essay, the author considers that the time is ripe to move from natural lawism to legal-personalism starting from an empirical entity: man. This transition must take place through a 'reflective judgement that is not a procedure already given and consummated, but a theoretical, value-based, interpretative and practical work [...]' and through two fundamental steps: the first assuming 'the singular man in his daily concreteness, insofar as distinct from every other insofar as original, insofar as new [...], the second looking at this man as a concrete basis for enucleating a universal consideration' (Ivi, p.75). And again the author dwells on the passage from natural law to personal law, and, wondering what this itinerary might mean, replies: 'It means that the culture of rights that today imposes itself on attention as a high response to the challenge of globalisation, is a culture not of rights tout court, but of fundamental rights, that is, of those rights that prevail over laws themselves. Rights whose unspoken ethical substance is the dignity of every human being, taken in its concreteness and in its difference from every other. And true dignity is pertinent to the singular, not to a genus or species. And it is a dignity not understood at the passive degree, as a mere expectation, but also, above all, at the active degree, as the promotion of relational identity' (Ivi., pp.72-73). On this theme cf. by the same author Il sacro come la contraddizione rubata. Prolegomeni a un pensiero metapolitico dei diritti fondamentali, Iovene, Napoli 2001 particularly the first chapter; R. Dworkin, I diritti presi sul serio, Il Mulino, Bologna 1982; J. Habermas, Morale Diritto Politica, Einaudi, Torino 1972; Cfr. anche U. Pomarici, Un'arte divina. Il diritto fra natura e libertà nella filosofia pratica kantiana, ESI, Napoli 2004.

idea of a law understood not as a state, but as the regulation of interpersonal relationships on which ethics has a strong weight[261] to protect the dignity of the person[262] . The philosopher Rosmini states that the person is the source, the seat and the sole source of law, and having in himself all the constituents of law, he is «therefore the subsistent law, the essence of law»[263]. while the state and the laws should protect the person so that the person's dignity, personal freedom, and right to knowledge and fulfilment of happiness are not violated[264]. The Roveretan philosopher then distinguished between the 'person as subsisting right' 'connatural rights' and 'acquired rights'[265] . Rosmini insists, in reference to the person, not only on the concept of the unity of the individual and concrete man, but also on his uniqueness and unrepeatability. Uniqueness, in the sense of non-reducibility to common constituent characteristics. And in this regard we find significant references in his thought, suffice it to think of his reasoning on the radical distinction between external phenomena and those of sensation when he affirms: «who[...] does not see that the body of the grieving person, which changes externally, and the sensation of his pain are two entirely different things? The grieved man's body falls under my senses, and produces sensations in me; his grief at the meeting does not fall under my senses, but is all in him alone»[266] . And this pain is of the soul. And the soul, for Rosmini, is the sentient principle of the individual which therefore not only gives him unity, but also uniqueness. Precisely on the uniqueness and irreplaceable singularity that is in itself and disposes of itself, Romano Guardini has some enlightening expressions regarding the concept of the person when he states that «person means that I, in my being, ultimately cannot be possessed by any other instance but that I belong to myself [...]. Person means that I cannot be used by anyone else, but that I am my own end [...]. Person means that I cannot be inhabited by anyone else, but that in relation to me I am alone with myself; I cannot be represented by anyone else, but I am guarantor for me; I cannot be replaced by anyone else, but I am unique»[267]. It can be said that the task of a personalist philosophy is to proceed phenomenologically in a transcendental quest to investigate the fundamental structures of the person as embodied consciousness or 'embodied spirit' as Mounier would say. It is a search that «leads more and more to recognising and rooting the person in the generative and pre-objective ('narrating') Self in which the human finds its undivided unity; and it also leads to recognising in this pre-objective Self the centre from which the human radiates, and from which the human expands along the three "existential" coordinates of the personal construction of the Self: self-identity,

[261] Cfr. on this subject M. Indellicato, Etica della persona e diritti umani. La prospettiva del personalismo polacco, PensaMultimedia, Lecce 2013, in particular chapter IV. The jurist Perlingeri himself states that 'the legal norm lives and is consolidated only in hermeneutics and application' and that the person himself is a prius with respect to the order (cfr., P. Perlingeri, La persona e i suoi diritti, ESI, Napoli 2005). In this regard cfr. P. Grossi, L'Europa del Diritto, Laterza, Roma-Bari 2007.

[262] For some reflections on 'dignity' in a constitutional context, see A.Ruggieri-A.Spadaro, Dignità dell'uomo in un contesto istituzionale (prime notazioni) in "Politica del diritto", a. XXII, n. 3, Settembre 1991.

[263] A. Rosmini, Filosofia del diritto, R.Orecchia, Cedam, Padova 1967, I, n. 52 p.192.

[264] Cfr. ivi, nn. 101-127, pp. 201-209.

[265] Cfr. ivi, I, n. 48 ss. e n. 245 ss., pp. 191 ss. e pp. 243 ss.

[266] A. Rosmini, Antropologia in servizio della scienza morale, Città Nuova, Roma 1981, nn. 56-60, pp. 48 ss. Rosmini also speaks of the person as a supreme principle, i.e. independent of any other and let us say irreducible(Cfr. Ivi, nn. 832-837, pp.460-462).

[267] R. Guardini, Wund Person. Wersuche zur christliche Lebre von Menschen (1939), in Werke, Grünewald, Mainz/Schöningh, Paderborn, 1998, vol.7 pp. 121-122; tr.it., Mondo e persona, in R.Guardini, Scritti filosofici, vol. II, pp. 79-80.

relationship, transcendence»[268]. Therefore, the person is valid in its fullness as the capacity to be oneself in relation and, finally, in rooting oneself on the principle of all relations: finite and infinite relations, and inter-subjective and inter-worldly proximity, and therefore religious proximity. And it is precisely in these relationships that man becomes the place «of a greater and more radical dignity, that of the other, whose face and word he becomes»[269] . The being of the person is given in relation, is given in a constructive manner only in the dialectic of mutual recognition and in the care of singularities, precisely because «with the man-other the same fundamental human feeling of dignity is at stake that is at stake with the man-whom I am, and that by wounding the dignity of the other I wound my own dignity, because wounded in me or wounded in the other, the dignity of common humanity is wounded in any case»[270]. It can be said that the dialectic of recognition finds its fulfilment in the mutual telling of the truth of each other. It follows that communion is given in the respect of differences. Thus, if on the one hand it can be affirmed that only in the encounter with the other do I constitute myself as an indeclinable *proprium*, as an irreplaceable self, it is on the other hand true that in the reciprocity of recognitions the other is in turn restored to his truth and therefore to singularity[271]. And it is precisely on this basis that the theme of respect and care for the human person, his or her dignity and inviolable rights come to the fore[272]. The strength of the person lies in its very power of dignity that establishes it, in itself, despite all the manipulations and violations to which it may be subjected, as that which has dignity and is priceless. «With this recognition is attributed to the person that ownership of the normative role of the human that human rights sanction and assume as the basis of their legal prescriptiveness. And it is as a result of the recognition of this normative role that today, in the condition of an increasing fragmentation of the human, we look to the idea of the person [...] as the least inadequate denotation [because it is more 'inclusive'] of the human being»[273] .

[268] A. Pavan, Dire persona nell'età globale dei diritti umani, in A. Pavan (a cura di) Dire persona, il Mulino, Bologna 2003, p.488

[269] A. Pavan, Prefazione a Persona e personalismi, a cura di A. Pavan-A. Milano, Edizioni Dehoniane, Napoli 1987, p. XII.

[270] A. Pavan, Dire persona nell'età globale dei diritti umani, cit., p.304

[271] In this regard, the work of P. Ricoeur, in which it is pointed out that the very notion of the 'self' could not take place without a finding oneself from the other, without a dialectical relationship with l'autre que soi (Cfr. P. Ricoeur, Soi même comme un autre, Editions du Seuil, Paris 1990, in particular pp.12- 15, 211 ss., 220-226; tr.it. di D. Iannotta, Sé come un altro, Jacka Book, Milano 1993, pp.76-79, 225 ss., 284-290).

[272] Respect and regard for the singularity of the other can translate, as Kant said, into admiration. 'Respect' and "regard" have their common origin in the Latin respicere, i.e. to reflect, to regard, but also to have regard, to have respect (in Latin respectus). Cfr. in this regard I. Kant, Kritik der praktischen Vernunft, in Gesammelte Schriften, A A, Bd. V, p. 76; tr.it. in V. Mathieu (ed.), Critica della ragione pratica, Bompiani, Milano 2004, in particular p.163.

[273] A. Pavan, Dire persona nell'età globale dei diritti umani, cit., p.594. With regard to the globalisation of human rights Signore speaks of the need for an anthropological 'conversion' and in his essay, Prolegomeni ad una nuova/antica idea di Welfare (Prolegomeni to a new/ancient idea of Welfare), he insists on the opportunity to identify the possible alternatives «with reference to value systems and social morals that are more attentive to the construction of an ethic and an economy capable of meeting the challenge of our time, in which the questions of "salvation" of the "whole man" are placed [...]', and proposes, "at least as a viable hypothesis, the possibility not only of a globalisation of trade and financial exchanges, but also of the globalisation of certain essential values, among the first certainly the value of solidarity, which has the human person as its universal, founding reference» (M.Signore, Prolegomeni ad una nuova/antica idea di Welfare, PensaMultimedia, Lecce 2011, pp. 68-69).

Olympe de Gouges: example of education for democracy

Olympe de Gouges feminist forerunner, controversial, inconstant and very inconvenient for the revolution was executed in 1793. Just before the blade fell on her neck, she exclaimed: «Women may have the right to ascend the tribune, if they have the right to ascend the scaffold»[274]. She was baptised in 1748, in Montauban, near Toulouse, as Marie Gouze. She learned to read and write enough to sign in her first language, Occitan, used in the south of France by common people and nobility alike. Married to Louis-Yves Aubry, she had her only child with him. She soon got rid of that marriage by remaining a widow and did not marry again; for her, marriage was 'the grave of trust and love'. Her ideal of a couple was a union between man and woman through a contract that - once separated - would allow them to have legitimate children with other people[275].

Intent on starting a new life, she changed her name. She chose Marie Olympe Gouges and added a 'de' to it, the bourgeois particle with which she probably wanted to conceal her humble origins. With this new identity, she moved to Paris with her friend Jacques Biétrix, whose generosity allowed her to live in comfort and strive for fame as a writer.

In Paris, he became passionate about theatre and writing. She frequented artists, intellectuals, philosophers and writers. But she was aware of her limitations: she could barely read and write, like all women of her time and class. And this represented one of the greatest worries of her life. Olympe felt a literary vein in her, which she attributed to her real father: she was not, in fact, the daughter of the butcher Pierre Gouze, as she was registered at the registry office, but of a man of letters, the Marquis Jean-Jacques Lefranc de Pompignan, by whom she was never recognised.

From 1784 until her death nine years later, Olympe wrote, or rather dictated, around twenty plays for the theatre, as well as around sixty political texts, pamphlets, manifestos, articles and speeches, always with strong social connotations. Already in her early works she carried out her life's mission: to raise public awareness of the condition of women[276]. In the preface to her L'*homme genereux* she wrote: «This is how fragile our sex is. Men have all the advantages... We have been excluded from all power, from all knowledge»[277] . In Mariage inattendu de Cherubin of 1786, she denounced forced marriages and oppression by fathers and husbands: everything she had experienced on her own skin.

The French activist Olympe de Gouges fought for women's rights all her life[278]: in September 1791 she published the *Declaration of the Rights of Women and the Citizen*[279], in which she declared political and social equality between men and women. On 3 November 1793, she was guillotined because she had opposed the execution of Louis XVI and had apparently attacked the Committee of Public Health. With her death came not only the ruthless repression of all dissidence, but a liberticidal involution, also due to the now permanent state of war put in place by the allied and counter-revolutionary powers (Prussia, England, Austria and Russia). The *Declaration of the Rights of Women and the Citizen* is a legal document based on the model of the *Declaration of the Rights of Man and the Citizen of 1789*.

Olympe de Gouges' thought is shockingly topical today, despite more than two centuries

[274] E. Cantarella, Prefazione in Sui diritti delle donne, RCS, Milano 2010, p. 7.

[275] Cfr. S. Mousset, Olympe de Gouges: The French Revolution's Forgotten Feminist, Pluto Press, Londra 2007.

[276] Cfr. C. Papa, Olympe de Gouges. Una donna nel cuore della rivoluzione, Salerno Editrice, Salerno 2020.

[277] Cfr. O. de Gouges, L'homme généreux, ou l'adroit politique, Chez la Veuve Duchesne, Paris 1786.

[278] Cfr. T. Casadei, L. Milazzo (a cura di), Un dialogo su Olympe de Gouges. Donne, schiavitù, cittadinanza, Edizioni ETS, Pisa 2022.

[279] O. de Gauges, Dichiarazione dei diritti della donna e della cittadina, Caravan, Roma 2012.

having passed since the famous fall of the Bastille that changed the face of Europe. The storming of the Bastille on 14 July 1789 in Paris was the culminating historical event of the French Revolution as the Bastille was the symbol of the *ancien régime*. The event, although unimportant in itself on a practical level, took on enormous symbolic significance to such an extent that it was considered the real beginning of the revolution. And it is precisely in this period of the French Revolution that we can trace the roots of political order in many western states. The resonance of that epochal motion can still be felt today when reading our Italian Constitution. Let us think, for example, of the third of the fundamental principles of our Constitution in which we read: «All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions»[280] . These words echo what is reiterated in the first article of the *Déclaration des droits de l'homme et du citoyen of 1789*[281], which reads: «Men are born and remain free and equal in rights. Social distinctions can only be founded on common utility»[282] . Much of the content of the Declaration later flowed into the *Universal Declaration of Human Rights*, adopted by the United Nations on 10 December 1948. Even today, the Declaration is a law of constitutional status in the French Republic.

The Declaration of the Rights of Man and of the Citizen, together with the first part of the *American Declaration of Independence*, represented one of the most important testimonies of respect for the freedom and dignity of the human being. The affirmation of the rights of man and the citizen earned France the title of «Homeland of Human Rights»[283] .Two years after the *Declaration of the Rights of Man and of the Citizen*, Olympe de Gouges fought to affirm equal rights for all women as well, affirming the *Declaration of the Rights of Women and Citizens*. In this sense, Madame glimpsed the discrepancy that in fact existed between the formal equality, programmed by the act of 1789, and the substantive equality, not found in revolutionary practice[284]. But the *Declaration of Women's Rights* was deemed excessive and scandalous: its appeal fell on deaf ears, amidst the hostility of men and the total lack of solidarity of women who feared displeasing the husbands on whom they depended economically. The appeal included in the text was useless: "O women, women! When will you cease to be blind? What advantages have you gained from the Revolution?" Few joined her battle and for Olympe it was a bitter disappointment.

Olympe de Gouges remains relevant for several reasons, including her pioneering contributions to women's rights and social equality. Her fight for the rights of the marginalised and for the abolition of slavery reflects a commitment to social justice that still resonates today. Issues of racial, gender and class equality remain central to contemporary struggles for human rights. de Gouges used her writing to challenge the government and defend freedom of expression. Her determination to speak out against injustice, even at the risk of her own life, is an example for those fighting for free speech and against censorship. She championed the right of women[285]

[280] Article 3 of the Italian Constitution.

[281] Cfr. O. de Gouges Déclaration des droits de la femme et de la citoyenne, Les Public' de l'APFUCC, n° 1, 1789.

[282] Cfr. P. Biscaretti di Ruffia, Le Costituzioni di dieci Stati di "democrazia stabilizzata", Giuffrè, Milano 1994.

[283] R. Marchese, Piani e percorsi della storia, Le Monnier, Milano 2002, p. 149.

[284] Cfr. C. Margiotta, Alla ricerca dell'uguaglianza perduta, in Civitas et Humanitas. Annali di cultura etico-politica, Milella, Lecce 2018, p. 104.

[285] Cfr. J. W. Scott, Olympe de Gouges: The Biography of a Revolutionary Woman, Harvard University Press, Cambridge 2017.

to actively participate in politics[286], a battle that continues in many parts of the world where women are still under-represented in positions of power. Her reform ideas, which included improving civil and social rights for all, are still relevant at a time when inequalities and injustices continue to persist.

While it is true that a greater awareness of human rights, as well as an increase in human rights, has matured compared to the past, it is also true that we are unfortunately witnessing in recent years a violation of fundamental rights in every part of the world and a social, civil and political illiteracy that call for a renewed ethical and educational commitment.

In our time, in fact, there is a lack of serious and attentive education so that a practical implementation of respect for human rights can be put in place; all this, however, should not discourage us from seeking paths, certainly not easy, but possible. Ethical commitment must certainly be combined with educational commitment, which requires responsibility on the part of parents, teachers, institutions and, in general, the adult world, as well as governments, towards the new generations that are increasingly experiencing situations of great unease and disorientation[287]. Hence the need to reinvigorate education on human rights, in an attempt to «rediscover a set of shared values and rules capable of resolving, at least on a practical level, the fragmentation, instability and fluctuation of human phenomena»[288]. Human rights are defined as 'the beacon of all human beings' and their protection and promotion is the first responsibility of governments. Consequently, it is the duty of all states, which wish to remain within the international community, to spread the culture of fundamental human rights by all means. This is the passage that founds the right-duty to human rights education on a juridical level, which is directly included in the duty of international cooperation set forth in Article 55 of the *UN Charter*: «The promotion and protection of all human rights and fundamental freedoms must be regarded as an objective priority of the United Nations in accordance with its purposes and principles, in particular the purpose of international cooperation»[289].

Education to human rights, therefore, becomes a priority right, but also a duty, and not only on a purely cognitive level, but ethical, cultural and, strictly speaking, even technical, for the

[286] Cfr. O. de Gouges, Olympe de Gouges: Escrits politiques, a cura di Benoîte Groult, Côté-femmes, Parigi 1993.

[287] Cfr. W. Brezinka, L'educazione in una società disorientata, Armando, Roma 1989. The author considers in this essay that intellectual abilities and rational thinking alone are insufficient to guide us through life, while we need the 'value of emotional strengths and the goods of faith' (cf. ivi., p.13). With reference to the objective concerning respect for human rights and fundamental freedoms, it is worth recalling that the Second World Conference on Human Rights, held in Vienna in 1993, drafted the Declaration on Human Rights Education between 14 and 25 June. The document states: 'The World Conference on Human Rights reaffirms the solemn commitment of all States to realise their obligations, to promote universal respect, observance and protection of all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations and other instruments concerning human rights and international law'. On 20 October 1997, the Plan of Action was then approved, setting out the guidelines for the realisation of such an ambitious project.

[288] G. Chiosso, Novecento pedagogico. Profilo delle teorie pedagogiche contemporanee, La Scuola, Brescia 1997, p. 321

[289] By Resolution 49/184 of 6 March 1995, the UN General Assembly declared the period between 1 January 1995 and 31 December 2004 as the Decade, dedicated to human rights education, in the conviction that 'human rights education contributes to a concept of development in harmony with the dignity of women and men of all ages, dignity that takes into account different segments of society, such as children, indigenous peoples, minorities and persons with disabilities' and that all, in order to realise their full potential, «must be aware of their human, civil, cultural, economic, political and social rights».

effective translation of these rights into practice, to protect a «universal intrinsic value»[290] such as that of the human person and on which it is possible to find agreement in every culture and country. And it is precisely respect for universality that makes it possible to overcome social, cultural or ethnic differences and pluralism itself, which would justify different interpretations of human rights[291] . It is often in the name of cultural and religious diversity that the greatest violations of human rights are justified, and there is therefore a real «risk of perceiving the distance between the ideal world that emerges from the affirmation of human principles and the disenchantment of the reality that disregards those norms and tramples them underfoot»[292] . However much we talk about the universality of rights, in fact, they are far from being the rights of all and there is also a lack of practical application, which certainly cannot be resolved in a bureaucratic delegation to international bodies, but which, on the contrary, requires an assumption of ethical-educational responsibility and a cultural commitment that takes into account the centrality of the person and respect for his dignity as the basic values of a new culture of human rights and a new ethical universality for a civil coexistence based on mutual respect. The practical translation of human rights cannot but concern the individual man in relation to others, because the other is constitutive of the being-person and this means that the self-realisation of the individual «needs intersubjectivity and community and is far from postulating the separateness of individuals. One is aware that others are necessary for the construction of one's identity»[293].

In conclusion, we can say that Olympe de Gouges, a prominent figure of the French Revolution, is an example of democracy and civic courage for our young people.

Olympe de Gouges' courage is evident in the way she defended her ideals, even at the cost of her life. She was one of the few women of her time to speak out against slavery and to support divorce, gender equality and the right of women to participate in politics. Her dedication to the cause of human and civil rights led her to clash with the revolutionary authorities, who eventually condemned her to the guillotine in 1793. For us, de Gouges represents an example of moral integrity and commitment to social justice. Her life is a reminder of the importance of fighting for one's rights and those of others, even in the face of seemingly insurmountable obstacles. In a world where democracy is often tested, her example is a testimony to the value of being active and aware in political and social dynamics. De Gouges argued that 'it is necessary for young people to feel the duty to prepare themselves to face life by assuming the most vivid sense of moral responsibility', so that there is an awareness on their part of the existence of 'values' and 'ends' to be pursued, an indispensable prerequisite for the formation of a civic and moral conscience and sensitivity, which allows them to realise themselves, grow and mature according to positive models.

[290] Cfr. L. Pati, L'educazione nella comunità locale, La Scuola, Brescia 1990, in particular p.295.

[291] Cfr. M. Santerini, La scuola della cittadinanza, Laterza, Roma-Bari 2010, in particular p.65.

[292] M. Tarozzi, Cittadinanza interculturale. L'esperienza educativa come agire politico, La Nuova Italia, Milano 2005, p.76. Tolerance also stems from a feeling of respect for the rights and freedoms of others and must consist of a process of listening, communication, understanding and appreciation in order to implement the dialectic of mutual recognition and thus valorisation of diversity in the expression of all its human potential (Cfr. G. Harrison, I fondamenti antropologici dei diritti umani, Meltemi, Roma 2001, in particular p.22). Fundamental remains, in the history of Western thought, the Letter on Tolerance that Jhon Locke published in 1689 (Cfr. J. Locke, Lettera sulla tolleranza, tr.it., di A. Sabetti (ed.), La Nuova Italia, Firenze 1991). Locke writes: «toleration of those who dissent from others in matters of religion is a thing so consonant with the gospel and reason that it is monstrous there are men blind to so much light' (ivi.p.8). And again: «In tolerance I see the most important distinguishing mark of the true church» (ivi.p.3).

[293] F. Viola, Etica e metaetica dei diritti umani, Giappichelli, Torino 2000, p.102.

A school based on the example of Olympe de Gouges must actively promote gender equality and the inclusion of all diversities. This means adopting policies that ensure equal opportunities for all students, regardless of their gender, origin, sexual orientation or ability. Civic education must be central, teaching not only the functioning of democratic institutions, but also the importance of active involvement in the community, highlighting the need for equal rights for women.

A school that follows the example of the French activist provides gender equality education[294] from an early age, challenging gender stereotypes and promoting positive role models for all. This could lead to the revision of teaching materials to ensure that they are representative and non-discriminatory, and the training of teachers to deal with gender issues effectively.

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Pedagogical aspects of the implementation of the concept of sustainable development

The concept and aims of sustainable development

In the era of growing threats to the socio-natural environment (Meadows, Meadows, Randers, 1973, 1995; Stern, 2007; Adams, 2016; The Global Risks Report, 2018), the basic problem at the international level is to ensure the further safe development of civilization. However, this requires consolidating efforts to implement specific projects that ensure a balance between human activity and the natural world.

First initiatives in the field of activities aimed at eliminating growing ecological threats were undertaken at the international level back in the 1960s, when it became clear that the current development of civilization was increasingly posing a threat to the natural environment. It was then that the need to control the unfavorable changes that were occurring in the natural world was realized.

First initiatives in the field of activities aimed at eliminating growing ecological threats were undertaken at the international level already in the 1960s, when it became clear that the current development of civilization increasingly posed a threat to the natural environment. It was then that the need to control the unfavorable changes occurring in the natural world was recognized.

In 1968, the first intergovernmental conference of scientific experts of UNESCO was held, devoted to the interrelationships of the environment and economic development. The result of this conference was the creation of the international, interdisciplinary program "Man and the Biosphere" (Man and Biosphere – MAB, 1971), aimed at establishing sustainable relationships between human activity and the biosphere. Based on the results of the above-mentioned conference, it was possible to convene the world's first conference on environmental problems four years later in Stockholm, where the concepts of transboundary pollution and global pollution requiring international action first appeared (Deklaracja Sztokholmska, 1976). As a result of the previously widely accepted theory of economic growth, the concept of sustainable development was contrasted (Sarzała, 2003; Skowroński 2006; Gawor, 2010; Paschalis-Jakubowicz, 2011; Papuziński, 2018).

However, this concept first appeared in the United Nations (UN) report „Our Common Future" from 1987 (Our Common Future, 1987), which pointed out that, along with economic and social issues, concern for the living environment is one of the most important prerequisites for the further development of civilization in the world. However, for the first time the concept

of sustainable development was adopted at the United Nations Conference on Environment and Development (UNCED) organized by the United Nations. This conference, also called the „Earth Summit", was held in Rio de Janeiro in 1992 (Środowisko i Rozwój, 1992). This concept was fully accepted there by all countries of the world. At this conference, binding decisions were also made to carry out pro-ecological activities at the global level. It was attended by representatives of 179 countries and international organizations who signed and adopted a global action program called Agenda 21. This document formulated tasks addressed to all groups of society and aimed at both present and future generations (Agenda 21, 1992, chapter 25). The idea of sustainable development was also presented in the UN resolution adopted by the General Assembly on September 25, 2015 under the name „Transforming our world: 2030 Agenda for Sustainable Development" (Rezolucja, 2015), which contains the sustainable development goals for 2016-2030, as well as tasks (Samborska, 2018, p. 233).

As a result of the conferences and adopted documents, sustainable development has also become a guiding principle at a number of other UN conferences, including: (World Summit on Sustainable Development); (World Summit for Social Development); (Programme of Action of the International Conference on Population and Development); (United Nations Conference on Sustainable Development – Rio+20); (Fourth United Nations Conference on the Least Developed Countries); (Third International Conference on Small Island Developing States); (Second United Nations Conference on Landlocked Developing Countries); (Third United Nations World Conference on Disaster Risk Reduction).

Sustainable development is generally defined in the following sense: "(...) sustainable development is development that ensures the satisfaction of the needs of present generations without compromising the ability of future generations to meet their own needs" (Pawłowski, 2009). However, it should be noted that the concept of sustainable development, although it has been used for many years in international documents, legal acts and scientific literature, is an ambiguous term and is difficult to define unambiguously, as there is a lot of room for its interpretation and understanding of the assumptions adopted. This concept contains a vision of how the international community should implement its development. Therefore, it can be interpreted in ethical categories (political, economic, social, intergenerational, justice, etc.) and perceived as a development program that forms the basis for agendas and action strategies formulated by various entities (Nakonieczna-Bartosiewicz, 2022, p. 18).

However, it should be noted that sustainable development is a „multidimensional" concept that includes the basic aspects of social, economic, environmental, spatial and cultural development, and its implementation is aimed at eliminating threats associated with economic and social crises and ensuring continuous and safe development of civilization.

When analyzing the concept of sustainable development, it is also worth noting that it includes three priorities: environmental sustainability; economic development; social justice between and within each generation. (Sarzała, 2019, p. 33). By implementing this concept, there is a chance to restore the so-called triadic balance and equilibrium, which allows you to maintain the so-called the principle of retinization, which consists in "the mutual connection of all civilizational activities and their products with nature as their bearer, conditioning and securing the future of modern society" (Juros, 1998, pp. 70-71). Sustainable development therefore refers not only to the most important socio-natural phenomena and processes, but also combines cultural elements and education as well as all phases of political action.

Sustainable development is, first and foremost, a political idea and a strategy of action. As an idea, it defines the long-term goals of international policy regarding global problems.

As a strategy, it is a well-thought-out plan to solve global problems through international cooperation through joint actions and the initiation of appropriate national policies (Papuziński, 2018, pp. 57-68).

The adoption of the concept of sustainable development is a breakthrough in the field of social and natural environmental protection at the international level and provides an opportunity to solve ecological problems on a global scale. Although the concept of sustainable development quickly gained popularity, it proved difficult to formulate practical solutions resulting from its assumptions (Sarzała, 2003, p. 91).

Sustainable development and pedagogy

The concept of sustainable development concerns both the relationship between people living today (generations) and those who will live in the future, as well as the relationship between people and their living environment. (Bałachowicz 2016, pp. 13–14). Therefore, when implementing the Sustainable Development Goals, pedagogy cannot be ignored, as it enables the education and upbringing of people in relationships with other people and with nature, and also focuses on the future, setting the future well-being of man as a goal (Nowak, 2001, p. 232). S. Kunowski (1981, p. 12) defined it as „a human development asset that is not currently understood, but is realized in the future and is directed towards the future, thanks to which a person can improve and reach the end of the development process." In pedagogy, we are interested not only in what is, but also in what should and can happen.

It should be remembered that curbing the deterioration of the natural environment is not possible through legal, economic mechanisms or organizational measures alone, unless they are accompanied by the understanding and support of the whole society. Proposals to counter ecological threats with technological solutions seem to be completely inadequate (Gola, 2023, p. 17). The change in human attitudes towards the natural environment therefore indicates the need for pedagogical interventions aimed at forming a new human attitude towards the natural world (Latawiec, 2015, p. 191). In the field of pedagogy, we deal with education, which largely determines the development of a person and his attitude to the surrounding reality.

In addition, it is worth remembering that pedagogy is a science focused on the study of educational processes and the development of methods and strategies that support effective teaching, learning and upbringing. It is also a scientific discipline that deals with "identifying, naming and defining all the facts that constitute the practice of education" (Rubacha, 2005, p. 24), which is expected to help solve problems at the individual and social level. It is also worth emphasizing that the concept of education in a broader sense refers to all interactions that serve the formation (change, development) of human life skills (Milerski, Śliwerski, 2000, p. 54).

At the same time, it is worth noting that from the very beginning of the emergence of the idea of sustainable development, the role of education was emphasized, as it was considered an important factor in people's mental changes and a factor stimulating people to counteract the ecological crisis and awakening responsibility for the further development of civilization (Bałachowicz, 2017, p. 24).

Challenges of this kind appeared already in the 1970s – the last century, when the report of the Club of Rome entitled „Limits to Growth" in 1972, which highlighted the threats posed by the current economic model. Then another report edited by E. Faure was published: Learning to Be (Faure, 1975). The basic themes clearly highlighted in the above-mentioned report are the idea of permanent learning, the understanding of education as self-education, supporting

the development of an „integral human being" capable of surpassing his own achievements and his own limitations.

The next report of the Club of Rome was related to educational issues: Learning – without limits. How to close the "human gap"? (Botkin, Elmandjra, Malița, 1982) and concerned the threat of further uncontrolled economic development. This report proposed understanding learning as the release of unlimited human mental capacities in view of the challenges of the future. The authors of the report also stated: „The progress of our skills cannot keep pace with the increase in man-made complications" (Botkin, Elmandjra, Malița 1982, p. 48). This report therefore proposed a new definition of learning that goes beyond the conventional content and mainly combines education and schooling.

The expanded aims and objectives of education relating to the concept of sustainable development can also be found in the report prepared for UNESCO by the International Commission on Education for the 21st Century, „Learning: the Treasure" Within (Report for UNESCO, 1998). (Raport dla UNESCO, 1998). This report, published in 1996, was prepared by Jacques Delors. The report shows that education must go far beyond current practice in European countries. This report serves a more harmonious, authentic development of people and aims to eliminate poverty, exclusion, misunderstanding, oppression and war. The report emphasizes that the new expanded concept of education should provide each individual with the opportunity to discover, stimulate and strengthen their creative potential, that is, to reveal the treasure hidden in each of us.

The published reports meant that the traditional understanding of pedagogy began to gradually expand and new horizons of human moral responsibility for the natural world began to emerge. More and more attention was paid not only to the inner development of man, but also to supporting his creativity in the external world, both in the material sphere and in the sphere of information, values and interpersonal relationships.

At the same time, the need for appropriate education in this area was pointed out (Batorczak, Klimska, 2020, p. 18). Therefore, a number of educational concepts have emerged, ranging from environmental and eco-pedagogy to a broad understanding of education including ethical, cultural, social, political, ecological and political dimensions (Jickling, Wels, 2008).

As a result, education for sustainable development was recognized as a key prerequisite for the realization of the concept at three landmark global sustainability summits: not least at the 1992 UN Conference on Environment and Development in Rio de Janeiro, Brazil, and the 2002 World Summit on Sustainable Development in Johannesburg, South Africa; but also at the 2012 UN Conference, again held in Rio de Janeiro, and at subsequent conferences devoted to these issues.

The international recognition of education for sustainable development as a necessary prerequisite for its realization continues to grow and finds increasing acceptance in modern societies.

Education for sustainable development is the subject of important global agreements, including: such as the Paris Climate Agreement (Unesco.pl 2020). The need for education for sustainable development is also reflected in binding international agreements that oblige specific educational activities (e.g. the Convention on Climate Change or the Convention on Biological Diversity (Ramowa Konwencja Narodów Zjednoczonych, 1992; Konwencja,1992).

At the same time, it should be noted that the tasks and obligations arising from the main conferences and summits are interrelated, which requires integrated solutions in this area at the international level. Although the idea of sustainable development provides an opportunity to eliminate the threats associated with economic and social crises and ensure the continuous

and safe development of modern civilization, its implementation does not bring completely satisfactory results.

The importance of education in the implementation of the idea of sustainable development

When looking for factors that determine the successful implementation of the idea of sustainable development, it is worth paying attention to educational aspects. When analyzing this concept, it should be noted that the prerequisite for achieving its goals is not only the effective participation of an "ecologically conscious" and educated society in this area. First of all, we need people with appropriate intellectual and moral education, capable of thorough reflection and environmentally friendly activities, understanding the relationship between global ecological threats and the prevailing model of civilization development. These aims can be achieved if, as already mentioned, when implementing the idea of sustainable development, the educational aspect is taken into account, in particular ecological education, which is the basis for the necessary changes in the relationship between man and the natural environment.

In education aimed at implementing the assumptions of sustainable development, we should first of all move away from a narrow understanding of development, including the understanding of teaching as mere transmission of knowledge. Such education should be understood as a process of human development aimed at expanding its potential and that of the whole society, taking into account the protection of the natural environment (Bałachowicz 2015, p. 28). Education for sustainable development should simultaneously concern all areas of human life, economic, political, social and environmental issues (Gadomska, 2023, p. 19).

However, education cannot be separated from upbringing, the aim of which is not only to initiate specific learning processes, but also to adopt and strengthen new behaviors and support the personal development of people. It should also be emphasized that the main cause of the ecological crisis is to be found in people themselves. What is important, above all, is how a person understands himself and the world in which he lives, and what values he pursues in his life. Therefore, it is worth thinking about the goals of ecological education and its subject, focusing on the concept of man and his place in the world of nature. Therefore, ecological education should be based on specific philosophical foundations, in particular anthropology and axiology. An important issue in pedagogy is philosophical assumptions about pedagogical thinking and action, because the basis of any education is a educational philosophy. (Gola, 2023, p. 2). It is necessary to adopt a concept of man, which is the central reference point for education for sustainable development (Sarzała, 2019, p. 32).

Education for sustainable development, based on reliable anthropological reflection and ethics, enables the development of not only spiritual but also moral dispositions that allow perceiving reality in the sense of a synthesis of technological development and humanistic values. The goal of such education should not only be to provide people with the necessary ecological knowledge and appropriate norms and values, but must also relate to the development of a pro-ecological attitude. At the same time, it should be noted that ecological education should also form the basis for the formation of relationships that allow people to live in harmony with the natural environment (Sarzała, 2002).

In addition, in ecological education it is necessary to form not only ethical, but also aesthetic and economic values, which play an important role both in the lives of individuals and entire societies and influence people's attitudes towards the socio-natural environment (Łódzki, 2022). Therefore, the focus should not only be on acquiring knowledge and skills, but also on shaping attitudes and internalising the values necessary for creating a sustainable future.

Consistently implemented ecological education in all educational institutions and educational establishments creates the chance to develop a person who values ecological values, who is able and willing to live in harmony with nature, is sensitive to ecological and social interrelationships, is responsible for both his own destiny and the destiny of the entire natural world and is thus able to restore the balance between the natural environment and human activities in it. However, Bałachowicz points out that „pedagogy has a lot to do when it comes to helping society shape its living environment and taking responsibility for its quality. In our country, it has to catch up with many theoretical backlogs and rebuild educational practice" (Bałachowicz, 2017, p. 31).

Therefore, it is an important concern to search for optimal solutions on a pedagogical basis and to act consistently in order to create appropriate conditions for sustainable positive changes in the way man interacts with the natural environment, thus ensuring the implementation of the idea of sustainable development.

CONCLUSIONS

Based on the analysis carried out, it should be concluded that pedagogy, a science that studies educational processes and develops methods and strategies that support effective teaching and learning and upbringing, is an important factor in the implementation of sustainable development. We must not forget that man is both the cause of phenomena that threaten the natural environment and the being that implements the idea of sustainable development. It should therefore be noted that a person without appropriate intellectual and moral education resulting from the upbringing and education process will not be able to think deeply about the need for environmentally friendly activities and will not be able to see the connection between global ecological threats and the currently prevailing model of civilization development.

It should also be emphasized that the successful implementation of sustainable development depends largely on the creation of appropriate relationships between man and the natural environment, as well as on the development of a pro-ecological attitude. Impacts in this area should therefore become an integral part of the educational process, the aim of which is not only to initiate specific learning processes, but also to adopt and strengthen new behaviors, as well as to achieve comprehensive human development.

The postulated objectives can be achieved, above all, by taking into account the pedagogical aspect when implementing the idea of sustainable development, in particular properly understood education, which has its roots in the upbringing process, which is a key to the necessary changes in the relationship between man and the natural environment.

It is also worth considering the attempt to create an ecological pedagogy that would provide optimal conditions for the formation of people who are friendly towards the socio-natural environment and capable of implementing the principles of sustainable development. However, the perspective presented requires that this type of pedagogy be based on specific philosophical foundations, mainly anthropology and axiology. Reflecting on the goals and subject of ecological pedagogy, it is worth focusing on the concept of man and his place and role in the world of nature, because without a deeper reflection on man it is difficult to lay the foundations for ecological education.

Such pedagogy would also provide an opportunity for the successful implementation of the idea of sustainable development and would allow maintaining an appropriate balance between human activity and the social and natural environment.

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ANNA SZYSZKA

Application of the principle of proportionality in proceedings concerning the imposition of a financial penalty

INTRODUCTION

The application by a public administration body of the provisions regulating the procedure for imposing a financial penalty imposes on the body the obligation to undertake procedural activities with respect for the rule of law. At the same time, the rule of law implies, among others, the principle of proportionality, which plays a key role in the process of imposing a financial penalty. These considerations relate to the issue of applying the principle of proportionality in the procedure for imposing a financial penalty regulated by the provisions of the Code of Administrative Procedure[295]. It is complex in that it covers all the procedural activities of the body, including the obligation to assess the evidence with a view to possibly refraining from imposing an administrative fine.

Administrative fine

The concept of an administrative pecuniary penalty is defined in Article 189b of the Code of Administrative Procedure and covers a pecuniary sanction specified in the Act, imposed by a public administration body, by way of a decision, as a result of a breach of law consisting in failure to fulfil an obligation or a breach of a prohibition imposed on a natural person, a legal person or an organizational unit without legal personality.[296] Definicja administracyjnej kary pieniężnej zawiera elementy formalne i materialne. The formal elements include the statutory definition of the penalty, the imposition by a public administration body and the form of the administrative decision. The material elements are: the sanction, its monetary nature, (sanction) as a consequence of a violation of the law, failure to fulfil an obligation or violation of a prohibition as a form of violation of the law, a natural person, a legal person or an organizational unit without legal personality as entities subject to an obligation or prohibition and as entities failing to fulfil an obligation or violating a prohibition.[297] Administrative fines are primarily preventive measures, aimed at motivating entities to perform their obligations to the state in a timely and

[295] Act of 14 June 1960, the Code of Administrative Procedure, Journal of Laws of 2024, item 572, as amended, hereinafter referred to as the Code of Administrative Procedure.
[296] The provisions of Chapter IVa Administrative pecuniary penalties were introduced to the Code of Administrative Procedure by the Act of 7 April 2017 amending the Code of Administrative Procedure and certain other acts, Journal of Laws of 2017, item 935.
[297] A. Wróbel, Commentary to Article 189b of the Code of Administrative Procedure, (in:) Kodeks postępowania administracyjnego. Komentarz, M. Jaśkowska, M. Wilbrandt-Gotowicz, A. Wróbel, Warszawa 2024, LEX/el.

proper manner. By announcing negative consequences that will occur in the event of a breach of the obligations specified in the act or in an administrative decision, they motivate the addressees to perform their statutory obligations.[298] P.M. Przybysz noted that the statutory definition of an administrative fine does not indicate that it can be imposed only for violating the provisions of administrative law, but it should be assumed that an administrative fine cannot be imposed for committing acts prohibited by criminal law, civil law and labor law, because the penalty is not then imposed by an administrative decision. The form of the decision on the imposition of a fine determines what type of penalty is imposed. However, if the provisions on the imposition of fines do not specify the form of the decision, it becomes necessary to determine the nature of the penalty, either as an administrative penalty or as a penalty of another type.[299]

A. Cebera and G. Firlusa indicated that an administrative sanction is an objective grievance provided for in a sanctioning norm, imposed in monetary form. At the stage of law-making, the legislator specifies the sanction (or its legally permissible limits) in monetary units in the content of the sanctioning norm, and at the stage of applying the law, the public administration body imposes a sanction in monetary units by an administrative decision. The monetary form of an administrative penalty distinguishes it from other sanctions of a non-monetary nature.[300]

In the provision of Art. 189d of the Code of Administrative Procedure, the legislator introduced the conditions for imposing an administrative pecuniary penalty, through the need for the public administration body to take into account: 1) the gravity and circumstances of the breach of law, in particular the need to protect life or health, protect property of a significant size or protect an important public interest or an exceptionally important interest of the party and the duration of such breach; 2) the frequency of failure to fulfil an obligation in the past or violation of a prohibition of the same type as the failure to fulfil an obligation or violation of a prohibition as a result of which the penalty is to be imposed; 3) previous punishment for the same conduct for a crime, fiscal crime, petty offence or fiscal petty offence; 4) the degree of contribution of the party on whom the administrative pecuniary penalty is imposed to the occurrence of the breach of law; 5) actions taken by the party voluntarily in order to avoid the effects of the breach of law; 6) the amount of the benefit obtained by the party or the loss avoided; 7) in the case of a natural person - the personal conditions of the party on whom the administrative pecuniary penalty is imposed. At the same time, circumstances were indicated in which the authority does not apply the solutions provided for in the provisions of Chapter IVa of the Code of Administrative Procedure.[301]

The grounds for imposing an administrative pecuniary penalty indicated in Article 189d of the Code of Administrative Procedure may apply only when a special provision provides for the freedom of the public administration body as to the amount of the administrative pecuniary penalty and only to the extent that the special provision does not specify the guidelines for the amount of this pecuniary penalty. Therefore, Article 189d of the Code of Administrative

[298] Judgment of the Provincial Administrative Court in Warsaw of 19 January 2021, VII SA/Wa 1345/20.

[299] P.M. Przybysz, Commentary to Article 189b of the Code of Administrative Procedure, (in:) Kodeks postępowania administracyjnego. Komentarz aktualizowany, P.M. Przybysz, Warszawa 2024, LEX/el. A similar position was presented by P.M. Przybysz in the Commentary to Article 189b of the Code of Administrative Procedure, (in:) Kodeks postępowania administracyjnego. Komentarz aktualizowany, P.M. Przybysz, Warszawa 2017, LEX/el. It was accepted by A. Cebera, J. Firlus, Komentarz do art. 189b k.p.a., (in:) Kodeks postępowania administracyjnego. Komentarz, red. H. Knysiak-Sudyka, Warszawa 2023, LEX/el.

[300] A. Cebera, J. Firlus, Commentary to Article 189b of the Code of Administrative….

[301] See Art. 189a § 2 and 3 of the Code of Administrative Procedure.

Procedure may not apply in cases where a special provision provides that a penalty is imposed for a breach of law in an amount strictly specified in the Act.[302]

The judicial review of a decision imposing an administrative pecuniary penalty consists in examining its legality both in terms of the factual circumstances (the existence of a breach of law) and the application of the provisions of competence authorizing the imposition of an administrative penalty. The administrative court does not review the amount of the penalty imposed if it falls within the statutory limits of the amount and at the same time complies with the statutory directives for imposing a penalty.[303] The directives relating to the imposition of an administrative pecuniary penalty are legally equivalent in the sense that there is no basis for constructing a hierarchy between them. The public administration body applies the indicated directives on the assessment of the penalty in accordance with the factual and legal circumstances occurring in the case of the administrative pecuniary penalty. However, imposing a penalty of the highest statutory risk is only possible if it is supported by each of the sentencing directives.[304] At the same time, it should be noted that the grounds for imposing administrative penalties provided for in the Code of Administrative Procedure do not apply to penalties imposed by related decisions, i.e. those in relation to which the legislator orders the application of a certain unambiguous mechanism - a pecuniary sanction. Penalty directives apply only in cases of administrative discretion, in which the amount of the penalty depends on the body and is not defined rigidly.[305]

The legislator has provided for the possibility of refraining from imposing an administrative pecuniary penalty in cases specified in Art. 189f of the Code of Administrative Procedure. The grounds for refraining from imposing a penalty are the insignificant gravity of the infringement of the law, when the party has ceased to violate the law or for the same conduct an administrative pecuniary penalty has been previously imposed on the party by a final decision of another authorized body or the party has been finally punished for a petty offence or a fiscal petty offence, or finally convicted for a crime or a fiscal offence and the previous penalty meets the purposes for which an administrative pecuniary penalty should be imposed (Art. 189f §1 of the Code of Administrative Procedure). In cases other than those listed in Article 189f §1 of the Code of Administrative Procedure, the waiver of the imposition of an administrative pecuniary penalty may occur in a situation where it will allow the achievement of the purposes for which the administrative pecuniary penalty was to be imposed. In such a situation, the public administration body, by way of a resolution, may set a deadline for the party to present evidence confirming:

1) the removal of the violation of law or 2) notification of the relevant entities of the identified violation of law, specifying the deadline and method of notification (Article 189f §2 of the Code of Administrative Procedure).

Refraining from imposing an administrative pecuniary penalty should be treated as the legislator's departure from the construction of administrative objective liability for a breach of law consisting in failure to fulfil an obligation (violation of a prohibition) of an administrative nature. The essence of refraining from imposing an administrative pecuniary penalty is not imposing this penalty, despite the fact that the law was breached by the obligated party (the addressee of the prohibition).[306]

[302] Judgment of the Supreme Administrative Court of 9 March 2023, II GSK 700/20.

[303] Judgment of the Provincial Administrative Court in Warsaw of 27 April 2021, VII SA/Wa 1965/20.

[304] Judgment of the Provincial Administrative Court in Warsaw of 9 December 2020, VII SA/Wa 1239/20.

[305] Judgment of the Provincial Administrative Court in Warsaw of 7 January 2020, V SA/Wa 1020/19.

[306] A. Wróbel, Commentary to Article 189b of the Code of Administrative Procedure, (in:) Kodeks postępowania …, Warszawa 2024, LEX/el

The principle of proportionality

The legal basis of the principle of proportionality can be found in Article 31 paragraph 3 of the Constitution of the Republic of Poland[307] and Article 5 paragraph 4 of the TEU[308].

The principle of proportionality is difficult to define due to its multidimensionality and multicontextuality. It is characterized by relativity, imprecision, which results from its open and general formula.[309] It constitutes a meta-principle, thus determining the scope and manner of application of other principles.[310]

The constitutional principle of proportionality, which is regulated in Art. 31 sec. 3 of the Constitution of the Republic of Poland, can also be interpreted from Art. 2 of the Constitution of the Republic of Poland. The principle of proportionality within the meaning of Art. 31 sec. 3 of the Constitution of the Republic of Poland consists of 3 elements: usefulness, necessity and proportionality in the strict sense, meaning the prohibition of excessive interference. The interpretation of the principle of proportionality from Art. 2 of the Constitution of the Republic of Poland results from the prohibition of the legislator encroaching on the constitutional subjective right of an individual. The application of the principle of proportionality, in the meaning given to it by Art. 2 of the Constitution of the Republic of Poland, consists in the appropriate balance of the legislative goal and the means used to achieve it. The legislator should apply such necessary legal means that will lead to the achievement of the set goals. The concept of the necessity of means should be understood as the use of the least burdensome for the individual whose rights are protected by a specific legal regulation.[311]

In turn, the principle of proportionality specified in Article 31 paragraph 3 of the Constitution of the Republic of Poland refers to the prohibition of excessive interference, i.e. the prohibition of disproportionate encroachment on the sphere of freedom or human rights.[312] Zakaz ten nie polega na tym, że ma on zastosowanie wprost do sytuacji, „w której z The Constitution gives rise to a positive obligation for the state to act. In this case, it is not a question of prohibiting excessive interference (Übermassverbot), from which the principle of proportionality is derived, but of prohibiting the introduction of too weakly developed regulations specifying human rights (Untermassverbot)[313]. In other words, the essence of the principle of proportionality is to moderate the actions taken by public administration bodies, involving the least possible interference in the sphere of individual rights and freedoms.[314]

[307] Journal of Laws No. 78, item 483, as amended Pursuant to Article 31 section 2 of the Constitution of the Republic of Poland: Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.

[308] OJ C 326 of 26/10/2012, pp. 13-390. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties. The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

[309] Z. Duniewska, Zasada proporcjonalności a prawo administracyjne - zagadnienia wybrane, Studia Prawno-Ekonomiczne t. CXXIII, 2022 r., p. 11.

[310] M. Safjan, Wprowadzenie, (in:) Konstytucja RP, Tom I, Komentarz do art. 1–86, red. M. Safjan, L. Bosek, Warszawa 2016, p. 37.

[311] A. Wróbel, Commentary to Article 8 of the Code of Administrative Procedure, (in:) Kodeks postępowania …, Warszawa 2024, LEX/el and the literature and case law given therein.

[312] See P. Tuleja, Granice konstytucjonalizacji prawa pracy (artykuł recenzyjny), Państwo i Prawo 9/2020, p. 130.

[313] P. Tuleja, Granice konstytucjonalizacji …, p. 131.

[314] See D. Kijowski, Ogólne zasady prawa i postępowania administracyjnego, Warszawa 2000, p. 111 and next.; M. Charkiewicz, Odstąpienie od nałożenia kary pieniężnej za nieprawidłowości w zgłoszeniu SENT w świetle orzecznictwa sądów administracyjnych, Przegląd Podatkowy 7/2023, p. 47.

The principle of proportionality assumes the possibility of interference by public authorities in the sphere of individual freedoms if such interference leads to the effective implementation of the set objectives and brings effects proportional to the burdens imposed by a given regulation on the individual.[315]

The content of the principle of proportionality specified in Art. 31 sec. 3 of the Constitution of the Republic of Poland is determined by: adequacy, necessity and proportionality in the strict sense. The condition of adequacy will be fulfilled when the examined legal measure is objectively suitable for achieving the intended goal. The requirement of necessity is met when the selected legal measure achieves the intended goal in the most effective way among other available means while causing the least discomfort. Finally, the requirement of proportionality in the strict sense is met when the discomfort caused by the examined measure remains in reasonable relations to the importance of the goals that the measure is to achieve. This condition is met when the degree of discomfort of the legal measure can be rationally justified by the social need to achieve the goals that the measure is to achieve. The test of proportionality of the legal measure should be considered fulfilled when the measure meets all the above-mentioned requirements specifying the content of the principle of proportionality.[316]

As noted by A. Wróbel, the examination of the conformity of a provision with Article 2 of the Constitution of the Republic of Poland in terms of the principle of proportionality consists in assessing the following three issues:

1) whether the contested regulation is necessary for the protection and realization of the public interest with which it is related;

2) whether it is effective, i.e. allows the achievement of the goals intended by the legislator;

3) whether the effects of the contested regulation are in appropriate proportion to the burdens imposed on the addressee of a given legal norm.[317]

The conditions for applying the principle of proportionality indicated in Article 31, section 3 and interpreted from Article 2 of the Constitution of the Republic of Poland are different, however both are the basis for the review of the constitutionality of law. The principle of proportionality indicated in Article 31, section 3 of the Constitution of the Republic of Poland is applied in the case of review of legal provisions limiting the constitutional rights and freedoms of persons, while the principle of proportionality from Article 2 of the Constitution of the Republic of Poland is applied when the review covers legal provisions concerning the limitation of rights or freedoms of a statutory nature or the constitutional rights of variously understood public entities or finally the assessment of the limitation of property rights resulting from the imposition or increase of a tax obligation.[318]

The application of the principle of proportionality precedes the designation of a precisely defined system of protected values and objectives that the legislator aims to achieve when

[315] P. Banasik, S. Morawska, Sankcje w prawie gospodarczym na przykładzie negatywnych i pozytywnych sankcji w prawie upadłościowym, Przegląd Prawa Publicznego 1/2017, p. 135. See also S. Golec, Zasada proporcjonalności jako podstawa orzeczenia sądu administracyjnego w sprawie dotyczącej zobowiązań podatkowych, Zeszyty Naukowe Sądownictwa Administracyjnego 3/2021, p. 63-85.

[316] K. Wardełek, Dodatkowe zobowiązanie podatkowe w rozumieniu ustawy o podatku od towarów i usług w świetle zasady proporcjonalności, Doradca Podatkowy 5/2022, p. 35.

[317] A. Wróbel, Commentary to Article 8 of the Code of Administrative Procedure, (in:) Kodeks postępowania …, Warszawa 2024, LEX/el and the literature and case law given therein.

[318] A. Wróbel, Commentary to Article 8 of the Code of Administrative Procedure, (in:) Kodeks postępowania …, Warszawa 2024, LEX/el.

weighing conflicting interests. The principle of proportionality requires that the effect of introducing the desired state be achieved using the least burdensome means.[319]

The application of the principle of proportionality in the proceedings on the imposition of an administrative pecuniary penalty imposes on the authority a number of obligations, which appear at the stage of the evidentiary proceedings and at the stage of adjudication. When conducting activities in the evidentiary proceedings, the authority should take actions of the least burdensome nature, while at the same time implementing the provisions of Articles 7, 8 and 77 of the Code of Administrative Procedure. The process of adjudicating on the imposition of a pecuniary penalty should assess whether, in the established factual circumstances, the authority should impose a pecuniary penalty on the party or refrain from imposing a penalty in connection with the occurrence of the grounds for refraining from imposing a penalty indicated in Article 189f of the Code of Administrative Procedure. The application of the principle of proportionality at the stage of making a decision on the imposition of an administrative pecuniary penalty comes down to the correct application of the legal norm, which is preceded by a correctly established factual situation. The imposition of an administrative pecuniary penalty is also associated with determining the amount of the administrative pecuniary penalty. The application of the principle of proportionality does not mean the obligation to moderate the amount of the administrative pecuniary penalty, in cases in which the legislator allows for such a possibility.

CONCLUSION

The principle of proportionality plays a key role in the proceedings on the imposition of an administrative pecuniary penalty. The institution of an administrative pecuniary penalty may cause problems when the authority applies legal solutions that oblige the authority to impose an administrative pecuniary penalty in the event of a party violating the provisions of a legal norm. The principle of proportionality is applied by the authority at every stage of the proceedings - from the moment of initiation of the proceedings to the moment of issuing the final decision. At the same time, the principle of proportionality applied by the authority during the proceedings on the imposition of a pecuniary penalty is controlled by the administrative court after the initiation of the administrative court proceedings.

[319] J. Dylewska, Zasada proporcjonalności w orzecznictwie Trybunału Konstytucyjnego po wejściu w życie Konstytucji RP z 2.04.1997 r., Przegląd Sejmowy 1/2001, p. 45.

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GOKAY CANBERK BULUS & MUHAMMED BILGEHAN AYTAC
Better Governance Better Consumer Confidence: Evidence from Panel Data

INTRODUCTION AND BACKGROUND

The Consumer Confidence Index (CCI) is a widely used statistical measure that represents consumers' overall optimism about the economy of their country or their financial situation. Confidence forms the basis of social order, individual life, and economic and democratic development. A sense of confidence is enhanced when a society shares a set of moral values that create expectations for orderly and honest behavior (Gökalp, 2003). Consumer confidence is affected by the income level of the person's family and environment, general economic situation, unemployment expectations, social environment, political factors, global events, wars, and economic and financial crises. For example, consumer confidence showed an upward inclination during the global economic crisis in 2008 (Earle, 2009). To put it differently, it is one of the widely discussed economic situation indicators, and it has an impact on future expectations and attitudes (Garner, 1991). CCI is typically measured through surveys that ask consumers about their current and future financial and employment conditions, savings, and willingness to engage in major purchases. A higher CCI shows greater consumer confidence, which leads to increased spending and fuels economic growth, while a lower CCI generally leads to a decline in consumer spending. There are several ways to create the CCI; however, the Michigan Index is the subject of much published scholarly study. In the late 1940s, the Michigan Index started as an annual poll. It changed to a quarterly survey in 1952 and a monthly survey in 1978 (Ludvigson, 2004).

For a long time, public administration literature has placed much emphasis on the concept of governance. It is defined as "the traditions and institutions by which authority in a country is exercised" (Kaufmann, Kraay & Mastruzzi, 2009, 5). This covers the selected processes and administrators' ability to create and implement sound social and economic policies effectively. Fukuyama (2013) defined governance as "a government's ability to make and enforce rules, and to deliver services, regardless of whether that government is democratic or not." The qualities of good governance are expressed as participation, consensus-oriented, accountability,

transparency, responsibility, effectiveness and efficiency, equality and inclusiveness, and the rule of law (Kefela, 2011). The World Bank (2024), which has a leading role in developing determinants of the quality of governance, declares six criteria of better governance: voice and accountability, political stability and absence of violence/terrorism, government effectiveness, regulatory quality, the rule of law, and corruption control.

The rule of law is sometimes stated simply as "no one is above the law," or it is identified with the phrase "the rule of law, not of men" (Radin, 2017). It is formally defined as the mechanism, process, institution, practice, or norm that supports the equality of all citizens before the law, secures a nonarbitrary form of government, and more generally prevents the arbitrary use of power (Britannica, 2024). According to Fukuyama (2013), the rule of law indicates a state's quality. A market economy that offers economic stability and well-being, creates and protects wealth, and enhances living quality cannot exist without the rule of law. Setting an effective rule of law is fundamental for promoting transparency in business transactions and operations. It creates economic stability, provides a reliable domain for investors, increases citizens' life quality, and safes property rights (Bufford, 2005).

In this study, we tried to predict CCI through an econometric model with the rule of law and other associated governance and macroeconomic variables: economic growth, unemployment rate, inflation, rule of law, voice and accountability, political stability, and absence of violence/terrorism. We have included those classical macroeconomic variables in order to isolate the effects of the rule of law. This allows us to assess the unique contribution of the rule of law to consumer confidence. Furthermore, we have added the 2008 financial crisis (CCI plumbed the depths in 2008 in the USA [Statista, n.d.]) and the COVID-19 pandemic period (e.g., fatalities negatively affected consumer confidence [Gholipour et al., 2023]) as dummy variable to increase the robustness of the model.

The sample consisted of OECD countries. We have chosen OECD countries (in addition to the fact that the context of this book is mostly Poland and Turkey and that these countries are members of the OECD) because they account for around 61% of the world's gross domestic product while representing only 17% of the global population. Furthermore, all OECD countries provide reliable data, which enables us to assess indicators accurately, such as the rule of law (Balmori de la Miyar, 2021). Analyzing OECD countries in economic studies is a common practice (e.g., see Özcan and Özer, [2017] for the impact of R&D expenditures and patent applications on economic growth in OECD countries). The analyzed dataset covered 2004-2022 years. The data is explained in detail in Section 2.

This study is considered to be part of a project that Polish and Turkish scholars mainly initiated; even the covered issues in the project are universal. Within this, we wanted to contribute to this project by specifically discussing our findings for both countries, which are members of the OECD. We aimed to illustrate the differences between Poland and Turkey within CCI and the rule of law through a brief discussion and a graphic at the end of the study. We aimed to contribute to the literature by illustrating the significance of better governance, in particular the rule of law, on one of the essential economic indicators (CCI) in developing countries. This little discussion will contribute to this project by providing some data and also will create a baseline for future studies that aim to compare these two significant emerging economies (e.g., Raiser et al., 2016; Gencler et al., 2018).

In line with this purpose, our research is divided into the following sections: data and methodology, empirical findings, conclusions and recommendations, and finally, a brief comparison of Poland and Turkey in terms of the rule of law and CCI.

Data and Methodology

Data

In the data used in the research, member countries of the Organisation for Economic Co-Operation and Development (OECD) were taken as reference. These countries are, in alphabetical order: Austria, Australia, Belgium, Canada, Chile, Colombia, Costa Rica, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. Among these countries, the consumer confidence index data of Canada, Iceland, Ireland, Israel, and Norway are excluded from the panel because the OECD data did not compile them. In other words, there are 38 member countries of the OECD, but analyses were carried out for 33 countries. The period 2004-2022 was chosen because of two reasons for choosing this period: i) The year 2004, when consumer confidence index (CCI) data started to be published regularly on an annual basis, was selected as the starting year of the analyses. ii) The last compilation date of all data used is 2022. The primary dependent variable in the research model is CCI[320]. The independent variables in the model are, respectively, economic growth, unemployment rate, inflation, rule of law, voice and accountability, and political stability and absence of violence/terrorism. The variables used in the analysis, their definitions, abbreviations, and sources are shown in Table 1.

[320] CCI data was included in analyzes by taking its logarithm.

Table 1. Definition and Sources of the Data

Data	Definition	Abbreviations	Sources
Consumer confidence index	Consumer confidence indicates future developments of households' consumption and saving, based upon answers regarding their expected financial situation, their sentiment about the general economic situation, unemployment and capability of savings. An indicator above 100 signals a boost in the consumers' confidence towards the future economic situation. Values below 100 indicate a pessimistic attitude towards future economic developments, possibly resulting in a tendency to save more and consume less.	cci	OECD
Economic growth	Gross domestic product growth (annual %)	grw	Worldbank
Unemployment rate	Unemployment refers to the share of the labor force that is without work but available for and seeking employment. Total (% of total labor force)	unemp	Worldbank
inflation	Consumer prices (annual %)	inf	Worldbank
Rule of law	Reflects perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence. Estimate of governance (ranges from approximately -2.5 (weak) to 2.5 (strong) governance performance)	law	Worldwide Governance Indicators (WGI)
Voice and accountability	Reflects perceptions of the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media. Estimate of governance (ranges from approximately -2.5 (weak) to 2.5 (strong) governance performance)	voi	(WGI)
Political stability	Political Stability and Absence of Violence/Terrorism measures perceptions of the likelihood of political instability and/or politically-motivated violence, including terrorism. Estimate of governance (ranges from approximately -2.5 (weak) to 2.5 (strong) governance performance)	pol	(WGI)
Dummy	2008-2009 global financial crisis and 2020-2021 COVID-19 pandemic	dum	

The existing literature was decisive in the selection of these variables. In addition to macroeconomic variables frequently used in the CCI literature, governance quality indicators were included in the model as independent variables (Sum, 2012; Gedik and Özbek, 2021; Kellstedt, 2004).

Methodology

The panel data method was chosen as the econometric estimation method because it allows the analysis of a time series of multiple cross-sections or cross-sectional data with multiple time dimensions. In other words, the panel data method was preferred because it allows for examining the differences between N units over time in the T time period (Greene, 2012). As an extension of this choice, it is aimed to benefit from the advantages of the panel data method over the time series and cross-section methods. The data suitable for analysis in the study covers the years 2004-2022 and the panel of 33 OECD countries.

If there are no unit and/or time effects in the error term, the pooled least squares (POLS) estimator is a better estimation method compared to other panel data methods. Additionally, if there are unit and/or time effects in the error term, the error term in the POLS estimation method is . In this equation; : unit effects and : shows the effects of time. Finally, if there are unit and/or time effects in the error term; POLS estimators give consistent results only if these effects are not correlated with independent variables (Baltagi, 2005). Another of the most main methods used in panel data analysis is the Fixed Effects (FE) method. The most important feature of this method is that all parameter estimates in the model are constant across cross-sections and over time. On the other hand, while the constant term in the model varies across cross-sections, it does not show this difference over time. With this feature, the FE method reflects effects that are specific to horizontal sections and do not change over time. In the FE method, the relationship between the explanatory variables and the dependent variable for each parameter is examined. The unique characteristics of each parameter may have an impact on the explanatory variables. Using this method, it is assumed that some unobservable features within a model may affect the explanatory variables or dependent variables. Finally, in the random effects (RE) model, the individual effects of the data are random. Unlike the fixed effects model, in addition to the fixed variable, the model includes unobservable random errors that take into account individual differences in the data and the change between observations according to fixed time (Asteriou and Hall, 2007; Baltagi, 2005). In this study, POLS, FE and RE estimators were chosen as the appropriate estimation method due to the advantages stated above. The POLS, FE and RE estimator, including the cross section () and the time series (), can be represented in the following equation:

In Equation (1), 'i' represents the cross-sectional dimension of the model (such as households, individuals, firms, and countries), 't' represents the time dimension, and represents the error term. In this equation, includes slope parameters and is constant. Finally, the basic regression equation of the research for the POLS, FE and RE estimator can be written as in equation (1):

$$\text{Model I:} \quad cci_{it} = \beta_0 + \beta_1 grw_{it} + \beta_2 unemp_{it} + \beta_3 inf_{it} + \varepsilon_{it} \quad (2)$$

$$\text{Model II:} \quad cci_{it} = \beta_0 + \beta_1 grw_{it} + \beta_2 unemp_{it} + \beta_3 law_{it} + \varepsilon_{it} \quad (3)$$

$$\text{Model III:} \quad cci_{it} = \beta_0 + \beta_1 grw_{it} + \beta_2 unemp_{it} + \beta_3 voi_{it} + \varepsilon_{it} \quad (4)$$

$$\text{Model IV:} \quad cci_{it} = \beta_0 + \beta_1 grw_{it} + \beta_2 unemp_{it} + \beta_3 pol_{it} + dum_{it} + \varepsilon_{it} \quad (5)$$

Empirical Findings

In this section, the main research question of the study is investigated, and empirical findings are reported in the context of methods previously briefly described in the data and methodology section. As a preliminary data analysis, the descriptive statistics and correlation matrix are reported in Table 2.

Table 2: Descriptive statistics and correlation matrix

	Mean	Maximum	Minimum	Std. Dev	Observations
cci	99.92	107.2	87.9	2.06	627
grw	2.23	11.97	-14.83	3.52	627
unemp	7.64	27.69	2.02	4.01	627
inf	2.93	72.31	-1.73	4.12	627
law	1.11	2.12	-0.86	0.68	627
voi	1.06	1.80	-0.92	0.47	627
pol	0.59	1.61	-2.27	0.65	627

	cci	grw	unemp	inf	law	voi	pol
cci	1.00						
grw	0.52	1.00					
unemp	-0.29	-0.17	1.00				
inf	-0.18	0.21	-0.16	1.00			
law	0.02	-0.13	-0.20	-0.33	1.00		
voi	0.02	-0.14	-0.07	-0.42	0.89	1.00	
pol	0.06	-0.06	-0.11	-0.33	0.75	0.83	1.00

Note: This table shows the summary of statistics for all observations of the model over the period 2004-2022. Descriptive statistics values and correlation matrix were calculated with the help of the Eviews-10 program.

Before proceeding to the econometric analysis of the estimation model to be used in the analyses, the correlation matrix was calculated in order to control the possible multicollinearity problem between the explanatory variables. The fact that if the correlation coefficients between the explanatory variables are greater than 0.80 in absolute value, it indicates the existence of a high degree of correlation between the two independent variables that might cause a multicollinearity problem (Kennedy, 2008). According to the correlation matrix table, there is a high multicollinearity problem between the explanatory variables pol and voi (0.89) and law and voi (0.83). For this reason, the governance quality variables in question were included separately in the model, and IV different models were analyzed. Table 3 shows the results of the analysis performed with the static and dynamic POLS, FE, and RE estimators to answer the main research question.

Table 3: Impact of Governance Indicators on Consumer Confidence Index

Dependent variable	Model I			Model II			Model III			Model IV		
	OLS	FE	RE	OLS	FE	RE	OLS	FE	RE	OLS	FE	RE
g2rw	0.03 (0.02)**	0.02 (0.01)**	0.03 (0.01)***	0.02 (0.01)**	0.03 (0.01)***	0.03 (0.01)***	0.03 (0.01)***	0.02 (0.01)***	0.02 (0.01)***	0.02 (0.01)***	0.02 (0.01)***	0.02 (0.01)***
unemp	-0.01 (0.01)**	-0.03 (0.01)**	-0.01 (0.01)**	-0.01 (0.01)**	-0.02 (0.01)***	-0.01 (0.01)***	-0.01 (0.01)***	-0.01 (0.01)***	-0.01 (0.01)***	-0.01 (0.01)***	-0.02 (0.01)***	-0.01 (0.01)***
inf	-0.02 (0.01)**	-0.02 (0.01)**	-0.01 (0.01)**									
law				0.01 (0.01)*	0.09 (0.05)*	0.01 (0.02)**						
voi							0.04 (0.02)**	0.09 (0.05)	0.03 (0.01)**			
pol										0.02 (0.01)*	0.04 (0.03)	0.01 (0.01)**
dum										-0.03 (0.01)***	-0.01 (0.01)	-0.03 (0.01)*
Constant	4.61 (0.01)***	4.62 (0.02)***	4.61 (0.01)***	4.60 (0.02)***	4.60 (0.07)***	4.60 (0.02)***	4.60 (0.02)***	4.60 (0.06)***.	4.60 (0.03)***	4.61 (0.01)***	4.61 (0.03)**	4.60 (0.02)***
R2	0.44	0.49	0.47	0.33	0.34	0.43	0.33	0.32	0.33	0.34	0.36	0.33
Observations	627	627	627	627	627	627	627	627	627	627	627	627
Country	33	33	33	33	33	33	33	33	33	33	33	33

Note: Panel data tests were performed using the Stata 14 program.

* Indicates 10% significance level.

** Indicates 5% significance level.

*** Indicates 1% significance level.

Table 3 presents the regression model estimates for OECD countries, identifying the critical macroeconomic and governance determinants of the consumer confidence index. The analysis reveals that economic growth, unemployment, and inflation are the primary macroeconomic indicators influencing consumer sentiment. Economic growth emerges as a positive and statistically significant driver of consumer confidence, whereas rising unemployment and inflation exert a detrimental effect, diminishing confidence levels. Among governance indicators, the rule of law, political stability, and voice and accountability are found to have a significant and favorable influence on consumer confidence, reinforcing the importance of institutional quality. Furthermore, the inclusion of the 2008 global financial crisis and the COVID-19 pandemic as dummy variables in the model underscores the negative impact of these global shocks, highlighting their profound effect in eroding consumer confidence.

CONCLUSION AND RECOMMENDATIONS

The Consumer Confidence Index (CCI) is crucial for monitoring the macroeconomic environment and even financial markets (e.g., it can predict stock prices; Fisher and Statman, 2003). It can signal potential growth or downward trends. It also can be an indicator of the level of trust in the government (Chanley et al., 2000). This shows the political side of the CCI. In other words, CCI is associated closely with the decision-making mechanism of political authorities. As we mentioned earlier, within a free market economy, political powers need to ensure the rule of law for successful governance (Bufford, 2005). In this context, in this study, we aimed to prove this thesis empirically in OECD countries.

The effects of economic growth, unemployment, inflation, rule of law, political stability and voice and accountability on the consumer confidence index between 2004-2022 for OECD countries were examined by panel data techniques. OLS, FE, and RE estimation techniques were used. Findings showed us that while increases in economic growth enhance CCI, increases in unemployment and inflation decrease CCI. These findings are in line with the vast majority of evidence in the literature (e.g., Sum, 2012; Gedik and Özbek, 2021).

Overall, as expected, for the governance quality, we found that the rule of law, political stability, and voice and accountability variables positively predicted CCI, which indicates that consumers can feel safe under a fair, stable, and transparent legal system and can be confident within their consumption choices. This study can also be considered as a contribution to De Boef and Kellstedt's (2004) early proof related to the role of politics on consumer sentiment.

The findings of the study reemphasize the crucial role of the RoL in OECD countries and globally in all countries. It also underlines that with a transparent, participatory, and pluralistic management philosophy, policymakers can boost consumer confidence. Today, it is possible to claim that governments are increasingly embracing authoritarian rule and populist politics in the world. Some even describe this situation as a democratic recession (Balmori de la Miyar, 2021), and we can say that the state of affairs regarding the rule of law around the world is distressing. Fukuyama (2013) reminded us that democratic administration is not a must for good governance. Accordingly, without giving up on democratization in the long term, in the short term, strategies should be suggested to the governments to improve the quality of governance, especially for emerging economies. Finally, this study retested the impact of the Covid-19 pandemic and the 2008 financial crisis on the consumer confidence index in OECD countries. Dramatic declines in CCI were observed in both periods.

Turkey vs. Poland: A Glimpse into Consumer Confidence and Rule of Law

One of the 20 founding members of the OECD, Turkey, signed the convention in 1960. On the other hand, Poland joined the organization in 1996. While Poland's GDP was 811,229.10 in 2023, Turkey had 1,108,022.37 $. Turkey's GDP per capita was 12,985.8 $, and Poland's was 22,112.9 $ in the same year (World Bank, n.d.). Both countries are classified as one of the ten big emerging markets (BEM) together with Argentina, Brazil, China, India, Indonesia, Mexico, South Africa, and South Korea (Soyyiğit et al., 2023).

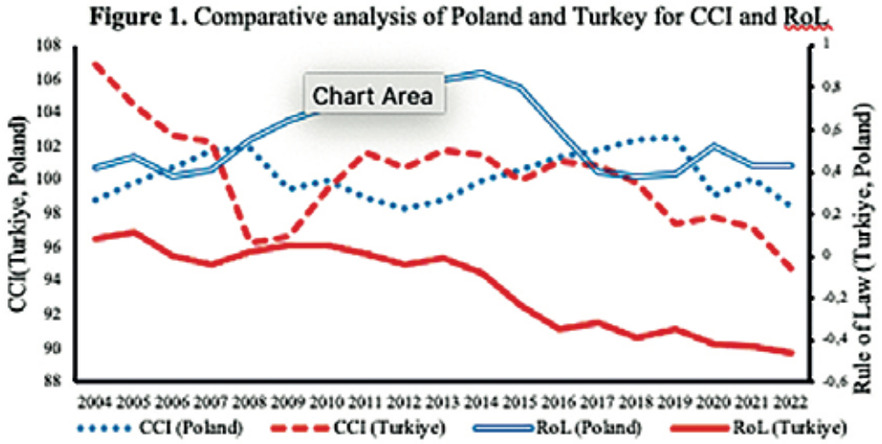

Figure 1. Comparative analysis of Poland and Turkey for CCI and RoL

As is seen in the Figure, Poland's CCI shows a generally upward trend, while Turkey's CCI exhibits a downward trend. Especially after 2008 (financial crisis) and after 2020 (pandemic), we see a sharp decline in Turkey's CCI. Poland experienced the same deterioration but with lower levels. While in the early 2000s, Turkey had much higher levels of CCI, today, we see that Poland surpassed Turkey with a higher degree of CCI and also the rule of law. Overall, Poland demonstrates improvements in both consumer confidence and the rule of law. At the same time, Turkey's indices reflect a decline, highlighting differing trajectories in economic sentiment and legal stability between the two nations during this period.

While Poland seems to have more strengths in governance, business regulations, and openness of the economy, to some extent thanks to the European Union (Raiser et al., 2016), Turkey has more strengths in the age of the population and a relatively more potent agricultural sector (Gencler et al., 2018). Both countries have had large amounts of immigrants over the last decade and suffered the negative consequences of the COVID-19 pandemic. However, when looking at Turkey's extreme inflation indicators today, we can see that the adverse effects of these socioeconomic developments were much more devastating for the country. It is obvious that these two countries can boost their economic and political success by increasing cooperation between them. In the past, Poland's membership to NATO was supported by Turkey in 1999, and Poland supported Türkiye's EU membership process (Republic of Türkiye Ministry of Foreign Affairs, n.d.). Strong cultural and diplomatic relations can reinforce both countries' governance accordingly CCI. This study is a reminder of the essential role of governance in economic development for both countries: better governance and better economics.

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