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FROM THE EDITOR-IN-CHIEF

Dear Readers,

On behalf of the Editorial Board, I present to you the next issue of the journal "Teka Komisji Prawniczej PAN Oddział w Lublinie" Volume XVII (2024), Issue 2.

The current issue contains 51 scientific articles, structured by discipline (e.g. legal sciences and canon law). The authors of the published texts represent 29 research centres, including 6 foreign ("1 Decembrie 1918" University of Alba Iulia – Romania; German-Polish Law Association – Germany; Izmir Democracy University – Turkey; Lviv University of Business and Law – Ukraine; National University of Water and Environmental Engineering – Ukraine; Sulkhan-Saba Orbeliani University – Georgia) and 23 domestic (Casimir Pulaski Radom University; Center of Postgraduate Medical Education; Jan Kochanowski University in Kielce; Maria Curie-Skłodowska University of Lublin; Medical University of Warsaw; Medical University of Lublin; National Academy of Rural Science; Nicolaus Copernicus Superior School; Nicolaus Copernicus University in Toruń; Nowy Sącz School of Business – National Louis University; Regional Environmental Impact Assessment Committee; State Vocational University in Suwałki; The Cardinal Stefan Wyszyński University in Warsaw; The John Paul II Catholic University of Lublin; University of Gdańsk; University of Łomża; University of Rzeszów; University of Szczecin; University of Zielona Góra; Vincent Pol University in Lublin; War Studies University; WSEI University in Lublin; WSB University).

I would like to thank the authors, reviewers and members of the Editorial Board for their efforts in preparing this issue. I wish all of you an interesting read.

Rev. Prof. Dr. habil. Mirosław Sitarz
Editor-in-Chief

LEGAL SCIENCES

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THE RECOGNITION OF DIPLOMAS, ACADEMIC DEGREES AND TITLES OF UKRAINIAN CITIZENS IN POLAND IN THE TIME OF FULL-SCALE RUSSIAN MILITARY AGGRESSION AGAINST UKRAINE*

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Abstract: The recognition of diplomas, academic degrees and titles of Ukrainian citizens in Poland in the time of full-scale Russian military aggression against Ukraine has become quite an important issue after 24 February 2022. Diplomas and degrees obtained after 20 June 2006 are not recognized on the basis of international agreements, since nostrification of the relevant diploma or degree is required, on the basis of which a certificate of recognition of the relevant diploma or degree as equivalent to the Polish one is issued. Unfortunately, there is no publication in the Polish literature that discusses the process of nostrification of foreign diplomas and academic degrees along with practical aspects in this regard. Therefore, the article aims to present the criteria for the recognition of diplomas and academic degrees obtained in Ukraine and to analyse the most significant challenges that Ukrainian citizens may face in the procedure on recognition of their diplomas and academic degrees.

Keywords: recognition (nostrification) procedure; foreign diplomas; foreign academic degrees and titles; full-scale Russian military aggression.

INTRODUCTION

Full-scale Russian military aggression on Ukraine provoked one of the biggest waves of mass migration to neighboring countries. Millions of Ukrainian citizens were supposed to start a new life under completely unknown conditions. EU member states were obliged by the EU law, especially Council Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine,[1] to introduce provisions that were

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[1] Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive

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supposed to provide for particular rights to Ukrainian citizens that register for temporary protection. One of the most important right is the right to work without any previously obtained permit. However, there are professions, which despite having a right to work, will require to fulfil additional criteria in order to be employed. The most obvious example of such professions are the professions that require to obtain particular diploma or academic degree. Ukrainian citizens, who arrived after the start of full-scale Russian military invasion on 24 of February 2022, it means that diplomas or academic degrees were obtained in Ukraine and if one wants to have them recognized in Poland there is a particular procedure on their recognition by the institution of higher education in Poland.

The aim of this article is, first of all, to present the criteria for recognition of diplomas and academic degrees obtained in Ukraine, and second of all analyze what are the greatest challenges faced by Ukrainian citizens in terms of recognition of their diplomas and academic degrees. After analyzing the criteria for recognition of particular academic degrees it becomes clear that the higher academic degree is, the harder it is to recognize it as equivalent with Polish one, since the criteria become more "subjective" and more dependable on national requirements introduced by the Ministry of Higher Education as to the criteria for obtaining PhD degree or Habilitation. Additionally, this article aim to summarize the criteria for recognition of particular academic degrees and main aspects of the procedure on recognition, since there is no publication in Polish literature, which would summarize the most significant aspects of procedure on recognition of foreign academic degrees, together with main criteria and conditions for recognition.

1. TYPES OF DIPLOMAS, ACADEMIC DEGREES AND TITLES IN UKRAINE

In order to present types of diplomas that are to be recognized on the territory of Poland there is a need to briefly discuss Ukrainian law regarding particular levels of its system of education. In Ukraine the following levels of education can be identified: preschool education, primary education, basic secondary education, specialized secondary education, first (initial) level of vocational (vocational-technical) education, second (basic) level of professional (vocational) education, third (higher) level of professional (vocational)

2001/55/EC, and having the effect of introducing temporary protection, Official Journal of the European Union L 71/1, 4.3.2022; Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, Official Journal of European Union L 212, 7.8.2001, p. 12.

education, professional higher education, initial level (short cycle) of higher education, first (bachelor's) level of higher education, second (master's) level of higher education, third (educational-scientific/educational-creative) level of higher education.[2] In terms of higher education the following levels should be identified: initial level (short cycle) of higher education, first (bachelor's) level, second (master's) level, third (educational-scientific/educational-creative) level.[3] Diplomas and degrees that undergo particular process of recognition are those that were obtained as a document confirming termination of particular cycle of higher education. As a result there are the following types of higher education degrees are established: degrees junior bachelor's degree, bachelor's degree, Master's degree, Doctor of Philosophy/ Doctor of Arts degree[4]. The titles of docent and professor are awarded not by the university or other higher education institution, but by the Ministry of Education and Science of Ukraine,[5] since they are not awarded as a result of any studies as the Master's or PhD degree.

In accordance with Article 326(2) of the Law on Higher Education and Science,[6] a degree obtained in Ukraine, which gives the right to continue education in this country at the second-degree studies, entitles to continue education in second-degree studies in Poland as well. Article 160 of the aforementioned law provides that postgraduate studies may be accessed only by those, whose diplomas confirm the possession of higher education in Poland pursuant to Article 326(1) of the Law on Higher Education or whose diplomas have been recognized based on the provisions on recognition procedure in Poland.

However, a significant distinction should be made at this point based on the date of issuing the diploma of bachelor's degree and Master's degree. Diplomas issued in Ukraine prior to 20 June 2006, are recognized as equivalent with Polish ones on the basis of international agreements, without the need to undergo the procedure of recognition [Łętowska 2022, 30]. The following international agreements are regulating the issue of recognition of diplomas between Poland and Ukraine: Protocol between the Government of the Republic of Poland and the Government of Ukraine on temporary regulating the issue of mutual recognition of equivalence of documents of graduation from secondary schools, secondary vocational schools and higher schools, as well as documents on the awarding of degrees and academic

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2 Zakon Ukrainy pro osvitu, "Vidomosti Verkhovnoi Rady", 2017, no. 38-39, p. 380, Article 10.

3 Zakon Ukrainy pro vyshchu osvitu, "Vidomosti Verkhovnoi Rady", 2014, no. 37-38, p. 2004, Article 5.

4 Ibid., Article 7.

5 Postanova Kabinetu Ministriv Ukrainy (31.12.2004), no. 1791: *Poriadok prysvoiennia vchenykh zvan profesora i dotsenta*, , Article I.1.

6 Act of 20 July 2018, the Law on Higher Education and Science, Journal of Laws of 2023, item 742.

titles; Agreement of 10 May 1974 between the Government of the Republic of Poland and the Government of the Union of Soviet Socialist Republics Soviet Republics on the equivalence of documents on education, academic degrees and titles issued in the Republic of Poland and the USSR;[7] Convention of 7 June 1972 on the mutual recognition of the equivalence of graduation documents of secondary schools, secondary vocational schools and higher education institutions, as well as documents on the conferral of academic degrees and academic titles.[8] Nevertheless, there is an exception from the above mentioned principle concerning the date of issuance, which regards to particular professions, such as doctor, dentist, pharmacist, nurse, midwife, veterinarian and architect. In such cases regardless of the date of issuance of the diploma, they can be recognized in Poland only throughout the procedure of recognition (called "nostrification") [Karpiuk 2010, 127].

What concerns the diplomas issued after 20 June 2006 they are recognized as equivalents to the Polish ones on the basis of the procedure on recognition (nostrification). Recognition procedure is not subject to international agreements, but to national law – Ordinance of the Minister of Science and Higher Education of 28 September 2018 on the nostrification of diplomas of study abroad and confirmation of completion of studies at a certain level.[9]

After receiving the Master's diploma there exists a possibility to continue the academic career during additional 3 years of third-degree studies and receive a degree of Scientific Candidate (Ukr. *Kandydat nauk*), which is the equivalent of PhD degree. According to the changes introduced in Ukrainian law that came into force on 1 March 2018 the degree of Scientific Candidate was replaced by the degree of Doctor of Philosophy (Ukr. *Doktop filosofii*). Similar as in case of previously mentioned diplomas, degree of Doctor of Philosophy, issued in Ukraine prior to 20 June 2006, are recognized as equivalent with Polish ones on the basis of international agreements, without the need to undergo the procedure of recognition. The following international agreements are regulating the issue of recognition of degrees of Scientific Candidate or Doctor of Philosophy: Protocol between the Government of the Republic of Poland and the Government of Ukraine on the temporary regulating the issue of mutual recognition of equivalence of documents of graduation from secondary schools, secondary vocational schools and higher schools, as well as documents on the awarding of degrees and academic titles; Agreement between the Government of the Republic of Poland and the Government of the Union of Soviet Socialist Republics Soviet Republics on the equivalence of documents on education, academic degrees and titles issued in the Republic of Poland and the USSR; Convention on the

[7] Journal of Laws No. 4, item 14 and 15.

[8] Journal of Laws of 1975, No. 5, item 28 and 29.

[9] Journal of Laws item 1881.

mutual recognition of the equivalence of graduation documents of secondary schools, secondary vocational schools and higher education institutions, as well as documents on the conferral of academic degrees and academic titles. However, the degree of Scientific Candidate (Ukr. *Kandydat nauk*), or the degree of Doctor of Philosophy (Ukr. *Doktop filosofii*) that were conferred after 20 June 2006 are recognized as equivalents to the Polish ones on the basis of the procedure on recognition (nostrification).

The final academic and scientific title that can be conferred according to the Ukrainian national law is the title of Professor (Ukr. *Profesor*). The title of Professor conferred prior to 20 June 2006 is recognized as equivalent with Polish ones on the basis of international agreements, without the need to undergo the procedure of recognition: Protocol between the Government of the Republic of Poland and the Government of Ukraine on the temporary regulating the issue of mutual recognition of equivalence of documents of graduation from secondary schools, secondary vocational schools and higher schools, as well as documents on the awarding of degrees and academic titles; Agreement between the Government of the Republic of Poland and the Government of the Union of Soviet Socialist Republics Soviet Republics on the equivalence of documents on education, academic degrees and titles issued in the Republic of Poland and the USSR; Convention on the mutual recognition of the equivalence of graduation documents of secondary schools, secondary vocational schools and higher education institutions, as well as documents on the conferral of academic degrees and academic titles. However, the academic title of Professor conferred in Ukraine after 20 June 2006 cannot be considered as equivalent to a Polish academic title according to the Polish Law on Higher Education and Science. This particular law does not provide for the recognition of the Ukrainian academic title of Professor with its Polish equivalent via the procedure on nostrification.

Recognition of the title of Professor is different as a result of the character of the title concerned. First of all, academic title of Professor, not only in Ukraine, but also in other countries, does not require any defense of thesis or other type of work – e.g. monography. That is why there is no evidence and in the same time publication that resulted in conferral of the title of Professor and that could be analyzed via nostrification procedure in any other country. Second of all, criteria for conferring the title of Professor are not unified and differ in different countries. Therefore, unlike the PhD degree there are no exams to pass or thesis to defend within so-called post-graduate or doctoral studies. For these particular reasons it is hard to establish if the title of the Professor conferred in Ukraine can be recognized as equivalent with the Polish ones.

Additionally, academics in Ukraine, who received a PhD degree and work at the university or any other institution of higher education

conducting scientific and pedagogical activity, receive a title of "Docent"[10] (Ukr. *Dotsent*).[11] The academic title of Docent is assigned by the academic council of the higher education institution where the person is employed. Therefore, it is not assigned by the Ministry. This title is not a subject to formal recognition in Poland neither on the basis of international agreements, nor through nostrification procedure, due to the lack of its equivalent in the Polish higher education system [Kierznowski 2021, 78-79]. This fact may be challenged, since there is an associate professor position (Polish: *stanowisko adiunkta*) at the higher education institutions in Poland, however it is not a degree or title, but an academic position, strictly related to the fact of being employed at that higher education institution. Therefore, it is not equivalent to the Ukrainian "Docent" and can not undergo recognition either on the basis of international agreements, nor through nostrification procedure.

2. RECOGNITION (NOSTRIFICATION) PROCEDURE

Citizens of Ukraine, who came to Poland after Russia has started full-scale military aggression, have the right to register for temporary protection in Poland, and therefore have a right to work without a need to apply for any additional permit. However, if someone's intention is to continue academic work or work at institutions of higher education in Poland, this person needs to verify what are the additional criteria for the recognition of his diplomas and academic degrees [Słomińska 2010, 23]. Citizens of Ukraine who arrived to Poland after 24 February 2022 may benefit from the following rights: a certificate confirming full education issued in Ukraine entitles them to apply for admission to studies in university or any other institution of higher education in Poland; a university or any other higher education institution in Poland may recognize appropriate periods of study, passed exams, credits and internships in accordance with Polish law; bachelor or master's qualifications obtained in Ukraine entitle Ukrainian citizen to apply for a doctoral studies and degree in accordance with applicable Polish law. The reasoning behind such exceptions, especially these concerning recognition of periods of studies, exams that were passed during the studies in Ukraine, credits and internships, relates to the sudden start of full-scale Russian military aggression, which made Ukrainians leaving their jobs, studies and escaping to the country that is not under the risk of direct military attacks. As a result, those who had interrupted their studies should have the chance to continue them, with recognition of some achievements that make

[10] The equivalent term in English should be "Associate Professor".

[11] Zakon Ukrainy pro vyshchu osvitu, "Vidomosti Verkhovnoi Rady", 2014, no. 37-38, p. 2004, Article 54.

it possible to continue the studies at the same year that they left their studies in Ukraine.

Procedure on recognition (nostrification) of Ukrainian diplomas, academic degrees and titles is not automatically initiated. This is upon particular person to submit the motion to the proper institution of higher education in Poland. The nostrification procedure is conducted by an institution of higher education with category A+ or A in the discipline related to the applicant's scientific degree [Antonowicz 2020, 157]. It may happen that a university having a category A or A+, may receive in the next evaluation period lower category, e.g. B, which means that it loses the right of recognize foreign academic degrees.[12] It has to be mentioned that it is not the whole university or other institution of higher education that receives particular category, but each faculty of that university or institution of higher education. Therefore, commission that is supposed to analyze the motion for nostrification is established by the dean of particular faculty that has a competence to confer academic degree in the discipline of the applicant. As a result, if the applicant wants to recognize the PhD degree in Economics, then he should search for the university or other institution of higher education, whose faculty of economics has the category of A or A+.

The motion itself is short, and does not have any elaborated structure. The most important information that should be provided this are the following: personal data of the applicant; name and address of the university or any other institution of higher education; the request of recognition of particular degree; identification of the document based on which one had received this degree and the list of attachments – therefore documents that support the motion for the recognition. The list of the attachments is probably the most important part of the motion, since lack of any document that is required may result in request to remedy a formal deficiency, which will definitely slow the procedure on recognition down.

The list of the attachments to the motion will differ depending on the type of the degree that is to be recognized. In case of recognition of the PhD degree the following documents are required to be attached to the motion: a diploma confirming the conferral of this degree; documents constituting the basis for awarding this degree (master's diploma, supplement to the diploma with the list of exams passed before the conferral of the degree); doctoral studies diploma, which confirms the completion of the studies that lead to the defense of the PhD degree; additional declarations of the applicant (declaration concerning the data and place of the birth, and declaration on

[12] The list of evaluations of the scientific activities of universities and faculties and their categories can be found on the following website: https://radon.nauka.gov.pl/dane/ewaluacja-dzialalnosci-naukowej?&pageNumber=1 [accessed: 20.05.2024].

previous attempt to recognize the degree in case there had been such an attempt before); PhD thesis self-report (with translation); doctoral dissertation in the original language version (this is not a required document, however some institutions may ask the applicant to provide doctoral dissertation).

In case of recognition of the degree of Habilitated Doctor the following documents are required to be attached to the motion: diploma confirming the conferral of this degree; documents confirming scientific or academic achievements constituting the basis for conferral of this degree; a diploma confirming the conferral of a doctoral degree; additional declarations of the applicant (declaration concerning the data and place of the birth, and declaration on previous attempt to recognize the degree in case there had been such an attempt before); PhD thesis self-report (with translation); monograph, which was the basis for conferring the degree in the original language version (this is not a required document, however some institutions may ask the applicant to provide doctoral dissertation).

Comparing those two lists of attachments there are particular differences that influence the character of the recognition procedure. First of all, it can be noticed that in case of recognition of PhD degree it is more about proving the completion of the doctoral studies, with the list of exams passed during the doctoral studies. The Commission is analyzing whether the applicant had passed the same exams as required during the doctoral studies in the same discipline in Poland. What is more, during the procedure of recognition of the degree of PhD there is no requirement of providing documents confirming scientific or academic achievements constituting the basis for conferral of this degree. The reason is that in comparison to the degree of Habilitated Doctor, PhD degree does not require to present significant scientific or academic achievements. As a result, Commission that analyzes the motion to recognize the degree of the Habilitated Doctor has to analyzed not only the work that was published (monograph) itself, but also the scientific achievements, especially publications, conferences. However, the main part of the procedure is the study of the monograph that was the basis for conferring degree of the Habilitated Doctor.

The date of initiation of the procedure on recognition is the date of delivery of the motion to the university or other institution of higher education. If the motion is incomplete, then the applicant is required to remedy formal deficiencies and only after the motion can be proceeded. University or other institution of higher education shall either recognize or refuse to recognize a degree as equivalent to a corresponding Polish degree within 90 days from the date of submission of a motion that met the formal requirements. In particular case it may take longer and in this case the applicant can not influence the date of issuing the decision on recognition or refusal to recognize the degree as equivalent to a corresponding Polish one. Usually,

if the procedure overcomes the period of 90 days it means that there may be particular technical issues related to the work of the members of nostrification commission or the institution itself. The final decision on refusal to recognize the degree can be appealed, however the success of the appeal will always depend on the reasons for which according to the nostrification commission it was impossible to recognize the degree. Procedure on nostrification is not free of charge. The maximum fee is 50% of a professor's salary. Although, there is a possibility of setting a lower fee. The fee should be paid on the day the motion is submitted. However, in case of refusing to recognize a degree, the fee is not refunded.

3. CHALLENGES FACED IN PROCEDURES ON RECOGNITION

As the practice has shown there can be identified particular challenges in procedures on recognition. First of all, it has to be taken into account that while escaping from military activities one does not always have a chance to collect all the necessary documents, especially those that are not directly related to the travel requirements. In order to submit the motion for recognition of particular academic degree one has to present the original diploma with its certified translation. Unfortunately, in case one did not take the original of the diploma with him, then the application for recognition cannot be proceeded. In this case recognition of the diploma is not possible.

Furthermore, it is important to mention that during the procedure on recognition of Ukrainian PhD degree the motion on recognition should include the supplement to the PhD diploma, where there will be provided a list of subjects and exams passed during the PhD studies, that ended with the PhD defense and obtaining the degree. In such case the issue of recognizing such degree as equivalent with Polish one will also depend on the exams that the person concerned had passed during the PhD studies in Ukraine, and whether these exams are the same (or similar to great extend) as those that PhD candidate has to pass during PhD studies in Poland. In case there is not much convergence then the institution that considers the motion for recognition may ask the applicant to pass those exams that he could not pass in Ukraine, since there was no such a subject during his PhD studies. The exams are to be conducted before the commission that considers the application. Passing additional exams may create an important difficulty for the applicant, as the exam should be held in Polish and obviously the applicant may not be as fluent in Polish as necessary for passing a professional university exam.

Another challenge that appeared while proceeding motions on recognition is the difference in requirements for obtaining particular degree in Poland and Ukraine. This issue is mostly visible in procedures on recognition

of the academic degree of habilitated doctor. The reason is that in order to obtain the degree of habilitated doctor the competent authority is not only evaluating the work (monograph), but also the scientific work, achievements and other academic accomplishments of the person concerned. At this stage the requirements may differ and as a consequence degree of habilitated doctor obtained in Ukraine may be not recognized as equivalent with Polish one. Usually, the reasons for not recognizing a degree as equivalent with Polish one relate to the insufficient number of scientific achievements, shortcomings in the monograph. The latter one is quite significant, since usually each country has different requirement as to the PhD or habilitations and submitting them for recognition in another country may result in a negative decision due to different requirements.

FINAL REMARKS

Recognition of diplomas and academic degrees is a significant procedure which should enable to work in someone's profession in a country, which did not confer the diploma or academic degree. The aim of recognition procedure is to ensure that the diploma or academic degree fulfil the criteria of diplomas and academic degrees conferred in that country and can be considered as equivalent. In case of EU member states such as Poland there should be made a distinction between diplomas and academic degrees obtained in EU and in third countries. Those that were obtained in EU should be mutually recognized in other EU member states, at least regarding some professions and in case of fulfilling particular conditions. However, in regard of third countries, such as Ukraine, diplomas and academic degrees can not be recognized automatically and those issued after 20 June 2006 should undergo the procedure on recognition (nostrification).

In case of Ukrainian citizens, who arrived to Poland after to 24 February 2022 escaping the military activities due to Russian military aggression, recognition procedure may cause some difficulties, such as lack of original documents, lack of knowledge of Polish language in case there appears the need to pass additional exams. The massive influx of Ukrainian citizens to Poland after 24 February 2022 proved to be quite challenging, since among them there was an important number of highly qualified specialists or academic teachers holding academic degrees. On the one hand, that category of people was looking for any job, since temporary protection provides them the right to work. On the other hand however, being highly qualified or holding particular diplomas or academic degrees gives them a possibility of submitting the motion for nostrification (recognition) of their diploma or degree. The final result of nostrification rely on the aspects discussed in this article and not all of them are dependent on the applicant. The practice also shows

that final result of nostrification procedure may also depend on the evaluation of the work (PhD thesis or habilitation) itself, where the criteria for PhD thesis or habilitation itself differ in different countries and in case of significant shortcomings the institution in Poland may refuse to recognize the diploma or academic degree.

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LICENSING OF INSURANCE ACTIVITIES OF FOREIGN ENTITIES IN INTERWAR POLAND

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Abstract. Licensing of activities is a form of securing the interests of the state and citizens in a economic sector that is important to them. In the interwar period, the Polish authorities used this instrument, among other things, to control the insurance market. Licenses were required from both insurance companies with domestic and foreign capital. However, due to the specific nature of the insurance market in Poland at that time and the problems that the founders of independence encountered in relations with foreign countries, the government treated non-Polish entities in a special way. The experience with the reliability of this type of insurers during the partition period and immediately after the establishment of an independent Polish state was of great importance for mutual relations, prompting us to treat foreign insurers in a special way. Therefore, we observe a significant number of regulations and a large dose of activity towards foreign economic entities operating in the field of insurance.

Keywords: insurance; reconstruction of the Polish state; Second Polish Republic; economy in 1918-1939.

INTRODUCTION

Licensing business activities leads to restrictions on freedom in a specific branch of the economy. Such rationing is introduced when the state sees the need to protect its own interests or the interests of citizens who, in the absence of such a mechanism, could be exposed to significant losses from their point of view. It is used especially in industries considered strategic from the perspective of the above-mentioned interests.

In practice, the idea is to limit the number of entities conducting a given activity to those that will guarantee the production of products or the provision of services at an appropriately high level. This measure is also intended to eliminate initiatives that do not meet the criteria specified by the legislator and to reject at an early stage those that do not promise success in a given industry.

The occupying powers introduced various systems of operation of insurance companies on Polish lands, mainly in the 19th century. In the Prussian partition, there were public companies, but without a monopoly in any

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insurance sector, and private companies. An efficient supervision system meant that these entities, competing with each other, complemented their offers to the benefit of customers. Compulsory insurance has not been introduced here either. In the Austrian partition, the activities of the insurance market were licensed, there were no public entities and, apart from a few exceptions regarding schools and churches, no insurance obligation was introduced. Compulsory fire insurance of buildings was used in the lands of the former Kingdom of Poland under Russian rule, where a state monopoly was introduced in the field of this type of insurance. However, the rest of the Russian partition was no longer subject to the regulations regarding the area of Congress Poland [Pokorzyński 1958, 47-49].

Licensing of security activities was therefore known in Polish lands during the partition period and treated by a significant part of the political elites of reborn Poland as a necessary instrument for the protection of citizens. Hence, work on domestic solutions was carried out towards regulating the insurance market through concessions issued by authorized state bodies. The normative acts adopted in the first months of the existence of the independent Polish state imposed the division of insurance companies, maintained in later years, into domestic and foreign, state and private, small and large entities. Depending on the category, the legislator provided different requirements to be met for a given entity to obtain a license [Wysznacki 1926, 31, Biskupski 1925, 42].

1. REGULATIONS REGARDING DOMESTIC INSURERS

1.1. Public bets

The least concerns about solvency and fair approach to customers were towards public establishments. Hence, state-owned entities were treated preferentially. In their case, it was considered that the level of risk for citizens when using the insurer's services would be the lowest. For these reasons, the existence of a monopoly in the field of compulsory fire insurance, i.e. a public company called *Ubezpieczenia Wzajemne*, operating in the territory of the former Kingdom of Poland, was maintained, while at the same time it was decided to temporarily maintain the order inherited from the partitioners.[1]

In the following years, the obligation to insure real estate against fire was extended to other provinces, while largely maintaining the monopoly

[1] See *Dekret Naczelnika Państwa z dnia 7 lutego 1919 r. w przedmiocie przepisów tymczasowych dla Ubezpieczeń Wzajemnych budowli od ognia w b. Królestwie Polskim*, "Dz. Pr. P. P." of 1919, No. 14, item 190.

of public companies,[2] which benefited from a privileged position in this area of insurance and extensive assistance from public authorities. In other departments, they competed freely with private societies.[3]

The obligation to insure buildings against fire covered the full value of the insured buildings, but the Act of June 23, 1921 introduced compulsory insurance in public institutions only up to the value of 2/3 of a given property. The owner could insure the remaining part in the company of his choice. This allowed private insurance companies to effectively compete with public insurers also in the fire insurance section, but only in the free part. The legislator also decided that the monopoly would not apply to industrial and factory buildings that had to be insured, but it was not specified what type of plant.[4]

Public institutions were created, changed and reorganized through normative acts. They defined the scope of activities, the organization of authorities, the structure of the plant, the principles of creating financial reserves and at least general insurance conditions. This procedure, involving state institutions in the process of creating the entity, gave a sense of control by public authorities over the principles of operation of this type of insurers.

1.2. Private bets

The initial requirements for all private entities in the insurance industry were quite modest. The basic condition was to declare the activity in the appropriate form of a business entity. In the case of domestic insurers, only mutual insurance companies or joint-stock companies could apply for a license to conduct insurance activities. The second condition was to submit an application for a permit to operate in this industry with attached documents. These included the statute, the company agreement, general insurance conditions and the plant's activity plan [Sztykgold 1927, 1-3].

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[2] Act of 23 June 1921: *o przymusie ubezpieczenia budowli od ognia i Polskiej Dyrekcji Ubezpieczeń Wzajemnych*, Journal of Laws No. 64, item 395; Regulation of the President of the Republic of Poland of 27 May 1927: *o przymusie ubezpieczenia od ognia budowli w m. st. Warszawie i o Zakładzie Ubezpieczeń Wzajemnych m. st. Warszawy*, Journal of Laws No. 116, item 983; Decree of the President of the Republic of Poland of 10 December 1935: *w sprawie zmiany rozporządzenia Prezydenta Rzeczypospolitej z dnia 27 maja 1927 r. o przymusie ubezpieczenia od ognia i o Powszechnym Zakładzie Ubezpieczeń Wzajemnych*, Journal of Laws No. 90, item 576.

[3] For more information see Bednaruk 2019, 135ff.

[4] This exception caused numerous disputes about the concept of factory buildings, because the freedom to secure real estate depended on its understanding. The owners tried to extend this freedom also to buildings accompanying the properties, known as factories, cf. Judgment of the Supreme Administrative Court of 18 April 1933, ref. no. 9359/30, where written: "Za budowle fabryczne […] mogą być uznane tylko takie zabudowania gospodarcze i mieszkalne, które się znajdują na tym samym co i zakład fabryczny terenie."

Over time, it was clarified that all annexes were to have a specific form and content. The statute had to specify the scope of the insurer's activity, list the planned insurance departments and the type of activity conducted. The statute of the mutual insurance company, drawn up by way of an official act, should have indicated the name of the company, which should clearly indicate that it is based on the principle of reciprocity. There, the registered office of the entity had to be indicated, and in addition to the above-mentioned elements common to all insurers, also the rules for acquiring and losing membership.[5]

Much smaller requirements were placed on small insurance companies that operated locally or provided insurance only in certain insurance sectors. The obligation to have a statute was waived for them, and by decision of the Minister of Treasury they could be exempted from the need to create share capital and supplementary capital.[6]

Meeting these and subsequent conditions was necessary to apply for a license, but it did not result in automatic entry in the commercial register. The decision was always made by the supervisory authority, which could content itself with the conditions specified by law, but could also impose new ones. In individual cases, it is possible to request additional documents or submit a special deposit to protect clients' interests against unfair practices of the insurer [Bednaruk 2019, 109ff].

2. FOREIGN INSURANCE COMPANIES

2.1. The first months after regaining independence

In relation to foreign plants, the legislator had the greatest requirements in the process of obtaining licenses. From today's perspective, this may at first look like discrimination between foreign entities and domestic entities, but at that time most countries used protectionist practices that were not treated as exceptional or reprehensible tools. And to better understand the basis and even the necessity of using this type of security, we need to go back to the times of the partitions. Because only knowledge of unfair practices of external entities towards Polish citizens makes it possible to fully understand the situation on the domestic insurance market.

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[5] Article 20 and 21 of the Regulation of the President of the Republic of Poland of 26 January 1928: *o kontroli ubezpieczeń*, Journal of Laws No. 9, item 64.

[6] Cf. Regulation of the Minister of Treasury of 25 February 1928: *o trybie i zasadach prowadzenia rejestru małych towarzystw ubezpieczeń wzajemnych*, Journal of Laws No. 30, item 283; Circular of the State Insurance Control Office No. 68 of 7 February 1928, L.481/U.U/III: *do małych towarzystw ubezpieczeń wzajemnych bydła w sprawie podań o zezwolenie na dalszą działalność*, "Rocznik Państwowego Urzędu Kontroli Ubezpieczeń" of 1928, p. 156.

Well, in individual partitions, for decades, insurance companies have been collecting customer funds on the accounts of numerous companies that found excellent conditions for development in Polish lands. Suffice it to mention that only within a few months of 1915, right after the occupation of Polish territories from which the Russians withdrew, the Germans introduced 43 German insurance companies to the occupied territory and completely dominated the local market, crowding out the competition. Even incomplete data show that every year millions of marks and rubles in insurance premiums flowed into the coffers of insurance companies with foreign capital [Wysznacki 1926, 50; Handelsman 1936, 79].

The capital accumulated before the establishment of the Polish state was withdrawn to headquarters located outside the borders of the reborn state. Only Russia withdrew 20 million gold rubles of collected insurance premiums, and the other two countries probably withdrew more [Kozłowski 1923b, 13; Szczęśniak 2003, 180]. The victorious powers in the just-ended World War I were aware of the importance and volume of funds accumulated by insurance companies in recent years, hence they saw the need for them to settle accounts with customers remaining outside their previous borders. During the peace talks, great emphasis was placed on the need for meticulous settlements in this respect.[7]

Unfortunately, the partitioning countries were not willing to cooperate with the Polish state authorities in this respect. Their policy depended on the position of the country with which they negotiated and can be briefly summarized as: submission to the strong and stubbornness towards the weak. Thus, while settlements with citizens of stronger countries were reached relatively quickly [Kozłowski 1922a, 12; Idem 1923c, 27], no will to cooperate was observed with respect to Poles. The Polish state made unsuccessful attempts to recover the contributions of its citizens throughout the interwar period, and it must be said that entities with capital from countries other than the invaders did a lot to prevent fair settlements with customers [Bednaruk 2018, 132].

This aspect was the basis for the actions taken by the Polish authorities in the first years of the existence of the independent state. The efforts began with an attempt to estimate the scale of receivables owed to the citizens of the Republic of Poland, which is why the governments of the partitioning countries were first called upon to sit at the table and present documents illustrating the scale of the analyzed phenomenon. The authorities of the requested countries, using various techniques and excuses, avoided talks and deceived Polish negotiators for many months.

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[7] See *Traktat pokoju między mocarstwami sprzymierzonemi i skojarzonemi i Niemcami, podpisany w Wersalu* of 28 June 1919, Journal of Laws of 1920, No. 35, item 200, Article 77, 238 and 239.

When it turned out that it was impossible to achieve the expected results quickly using the above-mentioned method, more emphasis was placed on direct pressure directed directly at entities insuring Poles in the past period. The vast majority of plants wanted to continue their operations in independent Poland, hence the opportunity to obtain information about the contributions collected in the past in exchange for granting a license for the following years. This was also the first condition of the Polish authorities towards foreign insurers – providing settlements of their activities in previous years.[8]

Unfortunately, many entities preferred to resign from opening their branches in Poland rather than reveal the amount of contributions collected in the past. Those who applied for a license despite clearly stated conditions, tried to outsmart Polish officials and presented incomplete data, postponed or refused to send them, explaining their loss in the turmoil of war. Almost all of them were playing for time, hoping that as the months passed, the determination of the Polish authorities would weaken. Especially in the face of the solidarity of the environment of foreign insurers and the poverty of the Polish insurance market [Kozłowski 1922a, 12; Idem 1923a, 10].

The weakness of the domestic insurance market, resulting from the lack of capital, was to the detriment of the Polish side. After huge sums were transferred from the insurance and banking systems and with such a significant destruction of practically the entire economy, there was not enough money to rebuild the structures of the insurance industry with its own resources. Representatives of foreign capital were perfectly aware of this fact, hence their tendency to comply with the orders of the Polish authorities was largely moderate [Bednaruk 2019, 188].

Despite these circumstances, attempts were made to induce foreign insurers to submit. The position of Chief Commissioner for Foreign Companies was created in the Ministry of Treasury, which was entrusted with the authority to control the activities of this part of the insurance market. Already in December 1918, foreign entities were ordered to submit a detailed report on their activities in the years 1915-1918 within three months under penalty of a high fine or arrest to the plant authorities [Kozłowski 1922b, 3; Idem 1922c, 15]. In addition, an obligation was introduced to keep books in Polish branches, enabling control of the society's activities at any time.[9]

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[8] Regulation of the Minister of Treasury of 31 December 1918: *o zagranicznych towarzystwach ubezpieczeniowych*, "Monitor Polski" of 1918, No. 241; Regulation of the Minister of Treasury of 29 April 1919: *w przedmiocie działalności zagranicznych Zakładów Ubezpieczeniowych na obszarach Państwa Polskiego, należących poprzednio do krajów, wchodzących w skład byłej Monarchji Austro-Węgierskiej*, "Monitor Polski" of 1919, No. 96.

[9] Regulation of the Minister of Treasury of 31 December 1918: *o zagranicznych towarzystwach ubezpieczeniowych*; Regulation of the Minister of Treasury of 1 March 1919: *uzupełniające rozporządzenie z dnia 31 grudnia 1918 roku o zagranicznych towarzystwach ubezpieczeniowych*, "Monitor Polski" of 1919, No. 51.

Each foreign insurer wishing to open a branch in Poland had to appoint its main representative with Polish citizenship, equipped with a power of attorney to issue policies. All operations of the insurer were to be secured by reserves that had to be deposited in Polish currency on the account of the Polish central bank within a specified period. The amount of the reserves, after examining the state of the plant's finances, was determined by the Minister of Treasury, and until they were secured, it was forbidden to conclude new contracts with customers.[10]

3. IN THE FOLLOWING YEARS

The actions of the Polish authorities to subordinate all aspects of life to their regulations in structures sometimes built from scratch were not easy due to the environment in which the newly created state had to function. The fight over the borders, the threat to the state's existence, financial and organizational problems meant that the government was unable to enforce the application of all the introduced regulations. Especially in relation to foreign entities that enjoy the protection and support of their countries.

In the following years, the legislator imposed further obligations on insurers, the fulfillment of which required obtaining or extending licenses for further years. They were intended to increase the safety of customers, especially those with policies of foreign entities, who were too often surprised by the liquidation of an insurer disappearing from the market along with the premiums collected for many years [Kozłowski 1924, 19]. The rules for creating capital, reserves and deposits securing funds for the payment of compensation in the event of problems have been clarified. This was particularly important in the case of foreign insurance companies because, as observed, they pursued a consistent policy of eating up profits on a scale unknown to domestic insurers and transferring funds to their headquarters located in other countries.[11]

Subsequently, an obligation was introduced to attach complete plant documentation in the language of production and translation into Polish to the license application; a certificate of legal personality in the home country and confirmation of the principle of reciprocity, which gives Polish entities the right to conduct insurance activities in a given country.[12] Those obliged tried to avoid

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[10] Article 5 and 7 of the Regulation of the Minister of Treasury of 1 March 1919.

[11] See *Korespondencja w sprawie transferu sum ubezpieczeniowych do Szwajcarii, AAN, zespół Ministerstwo Skarbu*, ref. no. 4089, card 1ff; ibid., ref. no. 4111, card 3ff, where there is similar content in correspondence regarding Italian societies, and ibid., ref. no. 5018, card 9ff, where correspondence about the transfer of profits of Swiss plants.

[12] Circular No. 66 of the State Insurance Control Office of 31 January 1928, L.371/U.U/III: *do zagranicznych zakładów ubezpieczeń w sprawie podań o zezwolenie na dalszą działalność.*

the imposed obligations. Hence, the analyzed period is a time of constant struggle to impose the same framework of activity on everyone and civilize the market, which put up stiff resistance to government interference.

After introducing the previously mentioned regulations, officials tried to force compliance of the plants, which consistently refused to fulfill their obligations and, first of all, to present balance sheets for previous years. In response, actions were taken to stop the activities of resistant entities, which sparked protests from the governments of many countries. The situation was complicated by the fact that numerous insurers had permits issued by the governments of the occupying countries, the validity of which had not yet expired.

The initially stubborn stubbornness of both sides of the conflict weakened over time, because on the one hand, the citizens of the Polish state, impoverished as a result of the war, were no longer as attractive customers as before; on the other hand, the sharp decline in the number of foreign societies cooled the temperature of the dispute. The first few months of 1919 showed a reduction in the number of foreign entities in the insurance industry by half – from the initial 70 to just over 30. Over the next 5 years, subsequent companies disappeared, up to 26 in 1923 [Sangowski 1988, 21]. In the following years we observed a further decline in foreign entities to 12 in 1926.[13]

The reduction in the number of foreign insurers, although initially desirable, was surprising in its scale and forced the government to relax its policy. For a decade, many foreign entities did not comply with all the requirements of Polish law, and yet they were allowed to operate, while issuing increasingly threatening calls to respect the applicable regulations. Documents from that period include warnings about the need to "use the strictest possible legal measures" in the event of non-compliance with applicable regulations, including failure to meet the requirements necessary to issue a license, and yet there were still entities operating on the Polish insurance market that consciously violated local law.[14]

The Polish authorities tried various methods to force all entities to comply with the applicable rules, including through intergovernmental consultations. Several agreements were concluded, which were supposed to result in a radical improvement of the situation,[15] but no significant changes

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[13] See *Wykaz Zagranicznych Zakładów Ubezpieczeń*, "Rocznik PUKU" 1926, Warsaw 1927, p. 110; *Wykaz zakładów ubezpieczeń, działających na obszarze Państwa Polskiego. II. Zagraniczne zakłady ubezpieczeń*, "Rocznik PUKU" 1928, Warsaw 1929, p. 268.

[14] See Circular No. 17 of the State Insurance Control Office of 26 October 1921, L.1252/U.U.: *do Generalnych Reprezentacji Zagranicznych Zakładów Ubezpieczeń działających na obszarach należących poprzednio do b. Monarchji Austro-Węgierskiej,* "Rocznik PUKU" 1928, Warsaw 1929, p. 129; Circular No. 28 of the State Insurance Control Office of 2 June 1923, L.981/U.U.: *do niemieckich zakładów ubezpieczeń działających na górnośląskiej części województwa śląskiego.*

[15] See Act of 17 March 1926: *w sprawie ratyfikacji konwencji między Rzecząpospolitą*

in the policy of foreign insurers were noticed. They still avoided fulfilling all obligations, the market was plagued by constant attempts to circumvent the law, including conducting insurance activities without a license [Bednaruk 2019, 203ff; Kozłowski 1923c, 29].

The breakthrough was to be the comprehensive reform of the insurance market in 1928. At that time, the regulation of the President of the Republic of Poland defined the most important rule: "Insurance business may be carried out only with the permission of the supervisory authority."[16] The rules for obtaining licenses have also been clarified by including earlier conditions in the regulation, and Article 111 all previous operating permits issued by both domestic and foreign authorities have been terminated.

This procedure was intended to lead to the entire procedure of granting licenses being carried out from scratch for each participant of the insurance market in Poland. This, in turn, will force all insurers, both domestic and foreign, to comply with the rules. Unfortunately, not everything went according to plan. Some foreign plants did not apply for a license, and investors from this industry decided to change their tactics, making their operations easier by purchasing domestic entities. The German government forced the Polish authorities to grant concessions to several German plants without meeting all the necessary conditions. They started operating in Silesia. In return, Germany promised to make its position more flexible regarding the refund of insurance premiums due to Poles [Bednaruk 2018, 146ff].

Unfortunately, the German promises were not kept. The coming years were marked by a continuous fight between insurance supervisory authorities and foreign entities to ensure their compliance with applicable regulations. The second sign of the times was the progressive takeover of domestic companies by foreign companies, which from then on operated under the Polish banner. There were more and more such cases, leading to a significant scale of removal of Polish capital from the domestic insurance market [Bednaruk 2019, 206ff; Kozłowski 1931, 28].

Polską a Królestwem Włoch, dotyczącej przepisów finansowych dla włoskich towarzystw ubezpieczeniowych, które działały na obszarze należącym obecnie do Rzeczypospolitej Polskiej, podpisanej w Rzymie dn. 22 lipca 1925 r., Journal of Laws No. 30, item 184; *Konwencja między Rzecząpospolitą Polską i Królestwem Włoch, dotycząca przepisów finansowych dla włoskich towarzystw ubezpieczeń, które działały na obszarze należącym obecnie do Rzeczypospolitej Polskiej, podpisana w Rzymie dn. 22 lipca 1925 r.*, Journal of Laws of 1926, No. 30, item 184.

[16] Article 1 of the Regulation of the President of the Republic of Poland of 26 January 1928: *o kontroli ubezpieczeń*, Journal of Laws No. 9, item 64.

CONCLUSIONS

The struggle of Polish authorities to impose conditions on foreign insurers for obtaining licenses to operate in the insurance industry was long and, unfortunately, not fully effective. The intensified efforts of officials and reference to the principle of reciprocity did not help – after all, Polish regulations were not unique in this market segment. Similar and even more severe measures were also used in other countries. However, the power of foreign capital combined with effective pressure from the governments of the countries from which the companies operating on the Polish market came from outweighed the determination of our officers, striving to control and fully regulate the domestic insurance industry. Of course, the circumstances in which the fight against existing pathologies was carried out did not help – many years of struggle over the shape of the borders, the state's financial problems and numerous economic crises weakened the country and hindered the proper functioning of its organs.

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ENTRY CONDITIONS, RIGHTS AND OBLIGATIONS OF UKRAINIAN CITIZENS ACCORDING TO ROMANIAN LEGISLATION*

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Abstract. The war between Russia and Ukraine has political, military, economic and humanitarian implications. Europe as a whole was not prepared to face the economic and social consequences of the military actions. The international community mobilized and organized complex actions to sanction the aggressor state, to help the population and logistical support for the Republic of Ukraine. Diplomatic efforts were manifold and of great international scope. Romania, a state on the Eastern border of the European Union with a common border with Ukraine, was receptive and mobilised important logistical resources, either by facilitating humanitarian aid or by sending aid directly.

Keywords: Ukrainian citizens; war; Romanian legislation; diplomatic efforts.

INTRODUCTION

The war between Russia and Ukraine has political – military, economic and humanitarian connotations. Europe as a whole was not prepared to face the economic and social consequences of military actions. The international community mobilized and organized complex actions to sanction the aggressor state, to help the population and logistical support for the Republic of Ukraine.

The diplomatic efforts were multiple and of great international scope. Romania, a state on the Eastern border of the European Union with a common border with Ukraine, showed receptivity and mobilized important logistical resources either by facilitating humanitarian aid or by directly sending aid.

In a humanitarian context, Romania has organized humanitarian aid since the beginning of the conflict for refugees from Ukraine. The complex measures taken by the Romanian Government prevented a humanitarian

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catastrophe. The immigration flows had a logistics for accommodation and food constituted on the principle of emergency situations. The transit flows of citizens who wanted to migrate to the west of the European Union was facilitated by various exemptions from the regular legislation.

Our study cannot be complete due to the complexity of the case, but it can represent a basis for discussions and scientific arguments used by researchers. The debates can be for the analysis and study of: exceptional situations generated by the aggression of some states on other states; international cooperation in emergency situations and military conflict; a working basis for the development of procedures for the organization of humanitarian activities with impact at the border from a social, medical, economic point of view, etc.

Last but not least, the study can constitute a review for the history of relations between Romania and Ukraine during hot periods in which the Romanian state proved to be an honest state, correctly balanced in relation to the exceptional situation created by the armed conflict. Romania organized itself in an exemplary manner in de-escalating the exceptional situation created in order not to affect the member countries of the European Union and Ukraine.

1. ROMANIAN LEGISLATION FOR THE CROSSING OF THE STATE BORDER BY FOREIGN CITIZENS

According to Romanian legislation, Ukrainian citizens have the right to enter and stay in Romania under certain conditions.

Access to Romania: It is based on a biometric passport. Persons holding passports with security features according to European Union standards can enter Romania according to the law[1] and can stay a maximum of 90 days in any 180 day period.

Entry conditions[2]: When entering Romania, third-country nationals are required to meet "the general entry conditions provided by Article 6(1) from Regulation (EU) no. 399/2016 regarding the Union Code regarding the border crossing regime by persons (Schengen Borders Code), with subsequent amendments and additions."

Humanitarian exceptions: In the context of the war, with the title of exception and for humanitarian reasons, the representatives *of the Border Police* allowed Ukrainian citizens (including citizens of other states, residents on the territory of Ukraine) who came from the conflict zone to enter the country without a prior entry visa is required. Entry was made on the basis of documents certifying identity and membership

[1] Ordinance of the Government of Romania no. 194/2002.

[2] See https://www.politiadefrontiera.ro/ro/main/i-conditii-tranzitarea-romaniei-de-catre-cetateni-ucraineni-35988.html [accessed: 29.08.2024].

as a citizen, "in accordance with the provisions of Article 6(5) of Regulation (EU) 2016/399", situation also applicable to those in transit.

Transiting Romania: Ukrainian citizens, holders of valid biometric passports , are exempted from the obligation to hold a visa upon entering the territory of Romania for stays whose total duration does not exceed 90 days during any 180-day period.[3] These are just some of the rights and obligations of Ukrainian citizens according to Romanian legislation.

In practical terms, Romania makes substantial efforts to protect applicants for political asylum or entry into Romanian territory for transit to other countries. Thus: From March 18, 2022 until now, 162,611 residence permits have been granted for beneficiaries of temporary protection. Just in these days, between May 1 and 15, 2024, the General Inspectorate for Immigration[3] issued 1,707 residence permits for beneficiaries of temporary protection. From the start of the conflict in Ukraine, until May 2024, 4,466 Ukrainian citizens applied for asylum in Romania. They benefit from all the rights provided by national law in accordance with international law.

In a humanitarian sense, we note that six "regional centers for procedures and accommodation of asylum seekers" have been organized in Romania, in the localities: Bucharest, Galați, Giurgiu, Timișoara, Șomcuta Mare (Maramureș County) and Rădăuți (Suceava County). At this moment, "the occupancy rate of the accommodation centers" managed by the specialized institution "General Inspectorate for Immigration" is, at this moment, 29.7%. The accommodation capacity in these centers amounts to 1,100 places, with the possibility of expansion with another 262 places.

The accommodation spaces are intended for people who have requested a form of protection in Romania. In the situation where they do not have the necessary material means for maintenance, people can live in these spaces "until the termination of the right to stay on the territory of Romania." There were also situations reported in the media by the "dissatisfaction" of some applicants with the quality and standard offered, probably forgetting that they have refugee status due to an armed conflict, and these were the possibilities offered in real time. During the outbreak of the "Russian-Ukrainian conflict", the Romanian authorities rented "tourist accommodation spaces" from the hotel industry for refugees, which they then made available to citizens from Ukraine.

The press of the time (March 25, 2022, G4MEDIA[4]) took over the official communiques of the Government of Romania which stated that, be-

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[3] See https://igi.mai.gov.ro/politistii-de-imigrari-au-emis-in-prima-jumatate-a-acestei-luni-peste-1-700-de-permise-de-sedere-pentru- beneficiaries-of-temporary-protection/ [accessed: 29.08.2024].

[4] See https://www.g4media.ro/guvernul-anunta-ca-peste-570-000-de-ucraineni-au-intrat-in-romania-tara-noastra-poate-asigura-circa-400-000-de-locuri-de-cazare-pentru-refugiati-alte-masuri-anuntate-de-ministere.html [accessed: 29.08.2024].

tween 10.02.2022 – 25.03.2022, more than 572,888 citizens of the Republic of Ukraine entered Romania, under conditions where there were accommodation possibilities , reserved, of approximately 400,000 seats. Of these, 4,310 Ukrainian citizens requested a form of protection from the Romanian state. The pressure of the humanitarian crisis was in March 2022, revealing the day 22.03.2022, when 9,995 Ukrainian citizens entered Romania, of which 5,338 directly from Ukraine (through the common border), 2,905 in transit through the Republic of Moldova and 1,752 citizens came from other states. In this context, we must highlight the fact that all counties in Romania have organized support and aid centers. The centers were located in the area of national roads and highways, in parking lots in different central areas of cities and municipalities.

There are several centers and organizations that provide support for Ukrainian citizens in Romania:

1. *Dopomoha*: Platform, created by "Code for Romania"[5] in partnership with "the Department for Emergency Situations" of the Ministry of Internal Affairs, "the UN Refugee Agency", "the International Organization for Migration", and "the Romanian National Council for Refugees", offers relevant information for Ukrainian citizens who seek protection in Romania.

2. *Romexpo Center*: This center was the main place where the Ukrainian refugees in the City of Bucharest got food [Despa 2023].

3. *Local Intervention Center for the Support of Residents from Ukraine in Braşov Cattia* Community Center: This center offers assistance in Romanian, Ukrainian and Russian.[6]

4. *UNICEF Romania*: UNICEF offers assistance to refugees from Ukraine. Also, UNICEF established Logistics Support Centers dedicated to refugee children and their families, called "Blue Dots."[7]

These centers and organizations offered a wide range of services, including legal information, housing support, post-traumatic stress management assistance, and more.

We particularly highlight the solidarity of the Romanian people through the exemplary mobilization of the population to ensure the accommodation of refugee citizens from Ukraine in their own homes. The Romanian government paid for each night's accommodation the price of 50 lei (approximately 10 EURO) and food expenses at a price of 20 lei (approximately 4 EURO)

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[5] See https://dopomoha.ro/ro [accessed: 29.08.2024].

[6] See https://dopomoha.ro/ro/dopomoha-brasov [accessed: 29.08.2024].

[7] See https://www.unicef.org/romania/ro/pove%C8%99ti/asisten%C8%9B%C4%83-pentru-refugia%C8%9Bii-din-ucraina; https://www.g4media.ro/guvernul-anunta-ca-peste-570-000-de-ucraineni-au-intrat-in-romania-tara-noastra-poate-asigura-circa-400-000-de-locuri-de-cazare-pentru-refugiati-alte-masuri-anuntate-de-ministere.html [accessed: 29.08.2024].

[Diaconu 2021]. The good organization made the first payments for refugees immediately in April 2022. By the end of 2022 the Government made an additional budgetary effort and paid 591.97 million lei (about[8] 104,306,931 million EUR) only for the settlement of food expenses and accommodation of Ukrainians. Of this amount, 519.37 million lei went to individuals (87%) and 72.6 million lei to companies (23%) that provided accommodation and food services. Some situations of "fictitious accommodation" in certain privately owned premises have been reported. The purpose was to benefit from certain unfair financial facilities. The cases are investigated by the competent authorities, the police and the Prosecutor's Office under the aspect of the crimes of "illegal acquisition of funds and forgery in documents under private signature." The damage caused represents sums paid from "the State's Budgetary Reserve Fund" provided for in the program "50 lei accommodation/20 lei food" which will be recovered after the completion of the research.[9]

A year after the outbreak of the conflict, Romania amended the legislation and created the largest integration program. Thus, the citizens of Ukraine who found a job and enrolled their children in the educational program of the schools received an aid of 2,000 lei per month / family for accommodation expenses (approximately 400 EURO). Retrospectively, the analysis shows that the offer of aid and financial support from the countries of western Europe was more generous, financially, and the citizens, refugees, chose to emigrate to these countries in the west.

According to official data, more than 3.2 million Ukrainian citizens entered Romania until January 2023, and approximately 100,000 of them remained. Most of the Ukrainian citizens settled in Romania were employed and became employees especially in the manufacturing industry, in construction or trade. The Romanian legislation was quickly adapted,[10] as follows: "Ukrainian citizens who come from the armed conflict zone in Ukraine and want to work, but do not have documents proving their professional qualification or experience in the activity, can present themselves to employment agencies county work, respectively of the municipality of Bucharest, in order to be registered." The dispersion in the geography of Romania shows that they were mainly located in the Municipality of Bucharest or the counties of Bistrița-Năsăud, Argeș and Timiș. In all

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[8] Value determined at the currency conversion from the date of editing: 23.05.2024 (1 EUR = 4.97 RON).

[9] See https://romania.europalibera.org/a/perchezitii-cazare-refugiati/32343094.html [accessed: 29.08.2024].

[10] The 2022 procedure for employment of Ukrainian citizens who come from the armed *conflict zone* in *Ukraine*, "Official Gazette" no. 240 of 2022, with subsequent amendments and additions. https://sintact.ro/#/act/17006625/2/procedura-din-2022-de-incadrare-in-munca-a-cetatenilor-ukraineni-care-provin-din-zona-de-conflict... ?keyword=Ukraine%20conflict&cm=STOP [accessed: 24.05.2024].

localities, courses were organized to teach children and adults the Romanian language and the Latin alphabet. The courses were supported by "pro bono" teachers through voluntary action.

From an educational point of view, Romania has amended the legislation facilitating access to education for all children and adolescents from Ukraine who entered the country and wanted to continue their general, secondary or university education studies (bachelor's/master's/doctorate) equating studies in Ukraine through the procedure simplified recognition. In Romania, significant efforts are being made to ensure access to education for Ukrainian children and adolescents:

UNICEF in Romania is working with the Government and partners to help refugee children from Ukraine resume their studies. UNICEF is part of the working group led by the Government of Romania that coordinates the national response to the refugee situation.[11]

The European Commission funds support for schools and vocational education and training facilities, as well as care and early childhood education facilities, through the EU Cohesion Funds and the *Erasmus+* and *European Solidarity Corps programmes*.[12]

The Romanian government has urgently adopted several normative acts by which refugee children with their mothers will have the same rights as Romanian citizens and students from Romania. Places in universities have been increased by about 20% to respond affirmatively to the education requests of young people in Ukraine forced to leave their country because of the war. All Ukrainian children on the territory of Romania, including those who do not request protection, according to the asylum law, will benefit from the right to education in educational institutions in Romania, under the same conditions and with funding from the same budgets as for preschoolers and Romanian students.

On May 17, 2024, the Government of Romania modified the form of the residence permit for beneficiaries of temporary protection through Government Decision no. 505/2024. The legislative measure is taken to have a real situation on citizens' residence and to limit the fictitious locations where residence permit holders "declare" that they live. Thus, starting from the date of application of the new measure, residence permit applicants must submit documents proving the existence of the living space legally "(beneficiaries of temporary protection must present one of the following

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[11] See https://www.unicef.org/romania/ro/pove%C8%99ti/utilizarea-inova%C8%9Biilor-%C3%AEn-rom%C3%A2nia-pentru-asigurarea-accesului-la-educa%C8%9Bie-copiilor [accessed: 29.08.2024].

[12] See https://eu-solidarity-ukraine.ec.europa.eu/information-people-fleeing-war-ukraine/fleeing-ukraine-support-education_ro [accessed: 29.08.2024].

documents: property title, rental contract registered with the tax administration, loan agreement concluded in authentic form or any other documents concluded under the validity conditions provided by the Romanian legislation in force regarding the housing title, which provide proof of the acquisition of housing rights, similar to the way in which proof of residence is provided by asylum seekers)."

The immigration flows of citizens from Ukraine in relation to crossing the state border to Romania have two general legal entry colors and one through which the illegal crossing of the state border of Romania with the Republic of Ukraine is "forced".

2. THE FIRST "INDIRECT" CORRIDOR IS UKRAINE – REPUBLIC OF MOLDOVA – ROMANIA

According to the statistics of the Border Police of the Republic of Moldova[13] and Romania, we have a number of 116,927 citizens under the age of 18 and 309,299 citizens over the age of 18 in the entry corridor. We cannot pronounce a point of view on the statistics because many cases are really humanitarian. When discussing a humanitarian issue, "nothing" is not much! The cause must be supported through joint efforts of both the European Union and the states with a common border to the area of armed conflict.

3. THE SECOND "DIRECT" CORRIDOR IS UKRAINE – ROMANIA THROUGH COMMON BORDER POINTS

Romania has a common border with the Republic of Ukraine for a length of 649.4 kilometers (land, fluvial and maritime). The first segment (362 km) land and river, (TISA river) includes the section between the border Romania/Hungary and Romania/Republic of Moldova. The second sector of the border (169km) is from the border of Romania/ Republic of Moldova – Danube Delta/ Black Sea. Citizens who fled the war had easier access to these sectors. The Romanian Government has established an Entry Procedure for unaccompanied minors as well.[14] At the same time, Romania

[13] The statistics refer to the time period between 24.02.2022 and 12.05.2024. Source: https://igm.gov.md/ro [accessed: 29.08.2024].

[14] The 2022 procedure for cooperation between authorities regarding entry, registration, transit, stay , as well as ensuring the protection of the rights of unaccompanied minors coming from the armed conflict zone in Ukraine, "Official Gazette" no. 266 of 2022, with subsequent amendments and additions.

offered free public transport and facilities.[15] Practically on these lines, Romania sent humanitarian and logistical aid to Ukraine.

4. CROSSING OF THE STATE BORDER BY SOME CITIZENS OF UKRAINE

The defense and control structures of the state border in Romania have frequently detected citizens from the Republic of Ukraine who have forced the state border through illegal crossing. In the database of the Border Police, approximately 11,000 incidents regarding cases at the land border in northern Romania are recorded. According to AGERPRES, the national press agency in Romania[16]: "Since the beginning of the conflict in Ukraine, more precisely from February 24, 2022 until now, (05.09.2024) at the northern border of Romania, within the range of Maramureș counties, Satu Mare and Suceava approximately 11,000 Ukrainian citizens (more precisely 10,850) between the ages of 18 and 60, who declared to the border police that they fled Ukraine because of the war." In the first 4 months of 2024, 1,218 cases were detected of fraudulent crossing of the state border from Ukraine to Romania, in which 2,373 Ukrainian citizens were involved, of which 1,028 in the Maramureș county, 1,066 in the Suceava county and 279 at the border of Satu Mare county with Ukraine requested temporary protection. Of the total detections at the green border, 97.24% are Ukrainian citizens. The risks of unauthorized border crossing have resulted in 19 deaths. The Romanian Border Police in joint actions with the "SALVAMONT" public rescue service have had 72 interventions in the Maramureș Mountains, saving 108 Ukrainian citizens. In the first five months of 2024, there were 20 missions with 36 Ukrainian citizens rescued.

5. OTHER SUPPORT ACTIONS OF ROMANIA IN FAVOR OF THE CITIZENS OF THE REPUBLIC OF UKRAINE

Romania's efforts to help Ukraine are also highlighted in the area of energy security through the interconnection of electrical networks and the direct transfer of energy power at times when the infrastructure of this country

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[15] Decision 337/2022 on the granting of gratuities and facilities for the transport of foreign citizens or stateless persons in special situations, coming from the zone of armed *conflict in Ukraine*, "Official Gazette" no. 246 of 2022, https://sintact.ro/#/act/17006663/1/hotararea-337-2022-privind-acordarea-de-gratuitati-si-facilitati-pentru-transportul-cetatenilor...?keyword=Ukraine%20conflict&cm=SREST [accessed: 24.05.2024].

[16] See https://agerpres.ro/justitie/2024/05/09/maramures-aproximativ-11-000-de-ukraineni-au-trecut-illegal-frontiera-de-nord-dupa-februarie-2022--1292223 [accessed: 29.08.2024].

has failed due to missile attacks on transport networks and production capacities. Romania also supports interconnection through the gas pipeline to ensure the supply of methane gas. Transport and transit lines for oil products were created when Ukraine's port infrastructure on the Black Sea was affected in the oil terminals. n the opposite direction, Romania facilitated the transit of the export of goods and grain of Ukraine to the infrastructure of the port of Constanța on the Black Sea in the export to different countries of the world.

Romania's aid to Ukraine is constant, consistent and on multiple visible or less visible levels, in accordance with the strategy of the European Union. The Romanian government has consistently responded to Ukraine's requests and provided, among other things, fuel, medicine, food and ambulances. By Government Decision, the withdrawal from the state reserves and the granting by Romania of an external emergency humanitarian aid, free of charge, for Ukraine, consisting of food products and materials,[17] were approved. It was organized and operationalized in Suceava (March 9, 2022), on the border with Ukraine. Romania facilitated many humanitarian transports, from countries such as Italy, France, Bulgaria, Austria, Slovenia, Cyprus, Greece, Germany or the Republic of North Macedonia.

CONCLUSIONS

The entry conditions, rights and obligations of Ukrainian citizens according to Romanian legislation have been adapted to the realities generated by the Russian-Ukrainian war.

The Romanian government has allowed derogations from the legislation to facilitate refugee flows while maintaining effective border control.

Immigration from Ukraine had three colors, of which we highlight the direct border, transit Republic of Moldova and illegal border crossings between states.

The rights of citizens of Ukraine have been respected to high standards of quality regarding fundamental human rights.

Most of the refugees continued the exodus to the countries of the western European Union, which reduced the economic, administrative and social pressure on the Romanian Government. The refugees who remained

[17] Decision 249/2023 regarding the removal from the state reserves and the granting by Romania of an external emergency humanitarian aid, free of charge, for *Ukraine* , in order to ensure the protection population in the context *of the conflict* in *Ukraine*, "Official Gazette" no. 243 of 2023. https://sintact.ro/#/act/17016676/1/hotararea-249-2023-privind-scoaterea-din-rezervele-de-stat-si-acordarea-de-catre-romania-a-toa...?keyword=Ukraine%20conflict&cm=SREST [accessed: 24.05.2024].

integrated perfectly into Romanian society (professional, economic, social and educational).

Romania through its Government has shown solidarity since the beginning of the conflict and generated measures on all levels to support the citizens of Ukraine. Directly by facilitating the professional integration of those who wanted to work; entrepreneurial facilities; continuing studies through free education at all levels of education; free healthcare; cultural and social integration.

Romania promptly responded with measures to support the state of Ukraine to ensure stability in energy and cyber security. The supply of electricity to balance the energy system of Ukraine either directly or through the Republic of Moldova in emergency situations is a great help. At the same time, the supply of methane gas, fuels for maintaining energy security at the request of the Government of Ukraine balanced the economy and society of Ukraine. This aid stabilized the living conditions of the citizens of Ukraine and no more massive emigration flows were generated due to the war.

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COMPETENCY PROFILE OF THE MEDIATOR. SELECTED ASPECTS

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Abstract. In the process of professionalisation of the mediator occupation, it is important to develop the mediator's competency profile and the profile update mechanisms in view of changes taking place in the social environment. A lack of the competency profile may have a negative effect on the quality of mediation proceedings and on the number of agreements concluded. In this study, in connection with the discussion on the professionalisation of the mediator occupation that has been going on in Poland for many years, the concept and essence of mediator's competencies, the relevant current legal requirements for mediators as well as selected results of empirical research on the status of the mediator, in particular the mediator's competencies and their verification, are presented.

Keywords: competencies; competency profile; mediator.

INTRODUCTION

The quality of the mediator – the mediator's competencies – largely determines the quality of the mediation proceedings [Cybulko and Siedlecka-Andrychowicz 2009, 167]. A good mediator knows what to do and does it skilfully, and his or her experience confirms that he or she is not a mediator by chance. A good mediator is the foundation and the critical element of the mediation process.

In this study, we will present the concept and the essence of the mediator competencies and the legal requirements for mediators. In the last part, we will present selected results of empirical research on the professionalisation of the mediator occupation in Poland.[1]

[1] The research was conducted by a Research Team including Rev. Prof. Włodzimierz Broński, Ph. D. at the John Paul II Catholic University of Lublin, Marek Dąbrowski, Ph.D., Piotr Sławicki, Ph.D., and Michał Wiechetek, Ph.D., as part of the project entitled "Popularisation of Alternative Dispute Resolution Methods by Improving the Competency of Mediators, Establishment of the National Register of Mediators (KRM) and Information Activities" in the period from 01.11.2020 to 18.06.2021.

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1. CONCEPT AND ESSENCE OF THE MEDIATOR'S COMPETENCIES

The mediator is a person who accompanies the parties to a dispute in the process of resolving the dispute through mediation proceedings. Ch. Moore defines the institution of mediation as "the intervention in a standard negotiation or conflict of an acceptable third party who has limited or no authoritative decision-making power but who assists the involved parties in voluntarily reaching a mutually acceptable settlement of issues in dispute" [Moore 2009, 30]. At its core there lies the belief that it can be used to reconcile the parties to a dispute without recourse to court adjudication and reach a mutually beneficial agreement that takes into account the interests of all parties.

The mediator is a third party to the mediation process, i.e. a person not directly involved in the dispute, so that he or she can manage the conflict and, acting as an "outsider", provide the parties with new insights into their contradictory interests and possible ways to find an adequate solution. However, the owners of the dispute must be ready to include the mediator in the process of finding an agreement, accept the mediator's person and follow the mediator's guidance [ibid., 30-31]. Due to the very nature of mediation, the mediator does not have any authoritative powers, does not resolve the dispute and should remain impartial when conducting mediation (Article 183^3 of the Code of Civil Procedure).[2] This principle is fundamental and is one of the two normative rules determining the nature of the relationship between the mediator and the parties to the dispute, apart from confidentiality (Article 183^4 CCP). It is an indispensable element in ensuring the proper course of the proceedings, also being a guarantee of the proper performance of the mediator's functions. In addition to impartiality and confidentiality, the mediator is also obliged to observe the rules of neutrality and independence,[3] the violation of which could lead to "deformation

[2] Act of 17 November 1964, the Code of Civil Procedure, Journal of Laws of 2023, item 1550 as amended [hereinafter: CCP].

[3] Section 10 of the Recommendation of the Council of Europe No. R (98) 1 distinguishes impartiality and neutrality among the principles relating to the mediator. Similarly, section 4 of the Recommendation of the Council of Europe No. R (2002) 10 and sections 2.1 and 2.2 of the European Code for Mediators also emphasise that mediation should proceed in an independent and impartial manner. The Standards for the conduct of mediation and the conduct of the mediator also distinguish neutrality, next to the principle of impartiality, while Directive 2008/52/EC only indicates the requirement of impartiality of the mediator which is reflected in the wording of Article 183^3 CCP. See the Recommendation of the Committee of Ministers of the Council of Europe No. R (98) 1 on family mediation and the Explanatory Memorandum of 21 January 1998, (*Recommendation No. R (98) 1 on family mediation*), https://www.coe.int/en/web/cdcj/recommendations-resolutions-guidelines [accessed: 03.10.2024], Recommendation of the Committee of Ministers of the Council of Europe No. R (2002) 10 on mediation in civil law cases of 18 September 2002, https://www.coe.int/en/web/cdcj/recommendations-resolutions-guidelines [accessed: 03.10.2024], European Code of Conduct

of the mediation proceedings by influencing their course, including the conduct of the parties or the outcome of the mediation, depreciating the importance of the rule of impartiality" [Dąbrowski 2019, 116]. Thus, a constitutive set of features of mediation is the presence of the mediator whose competencies in mediation proceedings derive, inter alia, from the very nature of this institution.

In Poland, there are 29,147,064 mediators, including approx. 3,500 permanent mediators.[4] This offers a huge potential but also brings along dangers. The quality and thus the development of mediation in Poland depends on them, their competencies. In the doctrine, more and more is written about the professionalisation of mediation and the professionalisation of the mediator occupation, and in this context, about the mediator's competencies. What is competency then?

The term "competency" (Lat. *competentia*) means suitability, conformity, authority to act. It is "the extent of someone's knowledge, skill or responsibility" [Szymczak 1983, 977]. Competency becomes apparent when knowledge is translated into action, that is, into the ability to perform certain activities. It is based on knowledge and experience – it is a learned ability to act appropriately to a situation [North, Reinhardt, and Sieber-Suter 2013, 43].

Competent action is based on the effort and combination of knowledge, practical skills as well as social aspects and behavioural elements such as attitudes, feelings, values and motivation.[5] By taking multiple actions, a competent person is able to exploit the potential of his or her resources, i.e. the entirety

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for Mediators of 21 July 2004, https://e-ustice.europa.eu/63/PL/eu_rules_on_mediation [accessed: 03.10.2024], Standards for the conduct of mediation and the conduct of the mediator, adopted on 26 June 2006 by the Social Council for Alternative Methods of Resolving Conflicts and Disputes associated with the Minister of Justice, https://www.gov.pl/web/sprawiedliwosc/dokumenty-i-deklaracja-o-stosowaniu-mediacji [accessed: 23.04.2023], Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial cases (Journal of Laws, EU L 136 of 24.05.2008, pp. 3-8).

[4] In Poland, one can distinguish up to four categories of mediators. Firstly, there are the so-called *ad hoc* mediators who are neither enrolled in the list of permanent mediators nor belong to any mediation centre and may be selected by the parties to conduct the proceedings on an *ad hoc* basis. Secondly, there are mediators entered in the list of a particular mediation centre who have not applied to the president of the regional court for enrolment in the list of permanent mediators or who do not comply with the criteria provided for them, just because they do not know the Polish language or are under 26 years of age. In the *a contrario* doctrine they were referred to as not being permanent (non-permanent). Thirdly, one can distinguish permanent mediators who have been included in the list by the decision of the president of the regional court and their status has been most extensively regulated. The fourth possible group is family mediators, distinguished under Article 436(4) CCP. See Dąbrowski 2019, 88.

[5] OECD Annual Report 2003, https://www.oecd-ilibrary.org/economics/oecd-annual-report-2003_annrep-2003-en [dostęp: 28.09.2024], p. 2; Rychen and Hersch-Salganik 2003, 41-62.

of knowledge, skills, attitudes, personality traits, talents etc., combine individual elements into solutions and activate them in order to accomplish an assignment. In doing so, he or she is guided by a specific situation and by principles, values, norms and rules [Hurrelmann 2006, 11-18]. Competency is therefore a multidimensional construct. We can speak of it when a person concerned is able to use is or her knowledge and skills for a specific purpose, develop a realistic plan of action and is able to stay motivated to act and perform tasks successfully and appropriately for the situation.

Competency therefore, is the sum of skills that the mediator needs in order to fulfil his or her role and tasks in mediation proceedings in a professional manner. It includes, on the one hand, knowledge, practical skills - which calls for a practice-oriented process of training and verification/certification of mediators – and experience. On the other hand, competency also means aptitude, i.e. a natural inclination or ability to do something, e.g. to be a mediator. While we can acquire, shaped and develop knowledge, practical skills and experience, aptitude comes from our personality. It is therefore more difficult to change but they should be learned. It can be a source of the mediator's strengths but also of potential threats to the course and outcome of mediation proceedings. We distinguish hard competencies, or specialised knowledge in the field of mediation and specific technical skills, and soft competencies, or skills attributed to the mediator's person, such as his or her traits, aptitude, way of acting and perception of the environment.

Mediator's competencies are the ability to combine knowledge, practical skills and experience in such a way that the tasks undertaken in mediation proceedings can be performed independently, autonomously and appropriately. These competencies should be reflected in the mediator's profile. The mediator's competency profile is a detailed description of traits (competencies) of an ideal mediator. This set of qualities (competencies) results from the nature of the institution of mediation, its objectives and the values laying at the foundation of it. If the mediator is to mediate then, as mentioned above, his or her qualities (competencies) should correspond to the nature of this institution and enable it to work in practice. Thus, the competency profile makes it possible to assess more quickly and easily whether a candidate is suitable to be a mediator.

In accordance with Principle V. of the Code of Ethics of Polish mediators adopted on 19 May 2008 by the Social Council for Alternative Methods of Resolving Conflicts and Disputes at the Minister of Justice, "A mediator should not undertake to help resolve a conflict when he or she does not have full confidence in his or her competencies to conduct the proceedings in a fair way"[6]. In this context, the aspect of the competencies

[6] See https://www.gov.pl/web/sprawiedliwosc/dokumenty-i-deklaracja-o-stosowaniu-mediacji [accessed: 04.10.2024].

of the mediator who should be a professional creator of the agreement process having, on the one hand, a vision and concepts of the specific mediation process in a given case and, on the other hand, an active role in the mediation proceedings, gains significant importance for the proper conduct of the proceedings and for increasing the chances that the disputing parties have to reach an agreement [Pakuła 2023, 118].

2. LEGAL REQUIREMENTS FOR MEDIATORS

In Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, the mediator means "any third person who is asked to conduct a mediation in an effective, impartial and competent way, regardless of the denomination or profession of that third person in the Member State concerned and of the way in which the third person has been appointed or requested to conduct the mediation" (Article 3 b). A point of reference for mediation practitioners and theorists is also the definition of the mediator formulated in the *Standards for the Conduct of Mediation and the Conduct of Mediators* adopted by the Social Council for Alternative Methods of Resolving Conflicts and Disputes at the Minister of Justice on 26 June 2006 defining a mediator as "a professionally trained, independent and impartial person who helps parties deal with the conflict with their consent."[7] The definitions cited above refer both to the manner in which the mediator's role is played and to the need to possess relevant competencies. They are reflected in the current legal provisions which constitute the so-called boundary conditions for playing the role of a mediator and the process of his or her professional preparation to play this role [Cybulko 2023, 111-12].

The legal status of the mediator in the context of his or her professionalisation has been the subject of analyses and regulations at the European and EU law level for years. Recommendation No. R (98) 1 of the Council of Europe has highlighted that Member States should take appropriate steps to create mechanisms for the selection, qualification and standards that mediators should comply with.[8] This position has been maintained and repeated in Recommendation No. R (2002) 10 of the Council of Europe. It has recommended measures to promote standards for the selection, responsibility and qualification of mediators,[9] emphasizing the need for regulating their status more broadly. Similar assumptions have been included in clause 17 and Article 4 of Directive 2008/52/EC where it has been indicated that

[7] See https://www.gov.pl/attachment/e7e44ed1–085b-4265–9802–a9f930eff7a5 [accessed: 04.10.2024].
[8] Clause II letter c.
[9] Clause V training and responsibility of mediators.

Member States should ensure to the parties that the mediation process is conducted effectively, impartially and competently. The content of the cited documents therefore indicates that their common underlying assumption is professionalisation of services provided by mediators such as specific competencies as well as mechanisms for their selection, standards of conduct and rules of liability.

The need to regulate the status of the mediator more broadly and to professionalise it has also been recognised, *inter alia*, in the text of the statement of reasons for the Regulation of the Minister of Justice of 1 August 2005 on the establishment of the Social Council for Alternative Methods of Resolving Conflicts and Disputes.[10] It emphasises that "persons to whom ADR has been entrusted to be conducted as part of the court proceedings must have proof of qualification, training or relevant experience which is assessed by the court each time or have a recognised official accreditation."[11] Furthermore, since "courts refer parties to mediation, the state has an obligation to guarantee to the parties the highest quality of services provided by professional mediators."[12]

It should be noted that the requirements set for mediators vary to some extent depending on the branch of law. The Code of Civil Procedure formulates minimum functioning criteria for all categories of mediators (Article $183^2(3^1)$). It stipulates that "when referring the parties to mediation, the court shall appoint a mediator with adequate knowledge and skills in the field of mediation in cases of a given type" (Article $183^9(1)$ CCP) and the mediator may be a natural person having full legal capacity and exercising full public rights (Article $183^2(1)$ CCP), except for a professionally active judge under the exemption in Article $183^2(2)$. *De lege lata*, therefore, only a natural person can be a mediator.[13] In criminal cases, on the other

[10] An important source of knowledge on the status and competencies of the mediator are the so-called environmental regulations, i.e. documents containing regulations adapted by mediators themselves, such as professional and ethical codes, standards for the conduct of mediation or mediator's training standards. They standardise the matters related to the mediator's competencies in a more concrete manner but do not have a directly binding legal force. They do, however, have an effect on the way in which the Polish mediation environment functions. Therefore, regulations such as: the Code of Ethics for Polish Mediators of 2008, the Standards for the Training of Mediators of 2023 or the Standards for the Conduct of Mediation and the Conduct of Mediators of 2016, see https://www.gov.pl/web/sprawiedliwosc/dokumenty-i-deklaracja-o-stosowaniu-mediacji [accessed: 24.10.2024] provide information allowing to make complete the overall picture of the mediator's status and competencies [Cybulko 2023, 115].

[11] Statement of Reasons for the Regulation of the Minister of Justice of 1 August 2005 on the establishment of the Social Council for Alternative Methods of Resolving Conflicts and Disputes at the Minister of Justice, Journal of Laws No. 5, item 19, p. 7.

[12] Statement of Reasons for the amendment of the CCP of 10 September 2015, p. 14.

[13] The provisions of the CCP do not require a mediator to hold Polish citizenship.

hand, a mediator can also be an institution that has been legally authorised to conduct mediation. The Regulation of the Minister of Justice of 7 May 2015 on mediation proceedings in criminal cases requires that the mediator, among other things, has "skills and knowledge in the field of mediation proceedings, resolving conflicts and establishing interpersonal contacts" (clause 6).[14] Mediators in criminal cases are also subject to additional requirements set out in para. 4 of this Regulation: holding citizenship of Poland, of another European Union Member State or of a Member State of the European Free Trade Association (EFTA) – a party to the European Economic Area Agreement or of the Swiss Confederation, or of another state, if the right to take up employment or self-employment in the territory of the Republic of Poland is granted under the provisions of European Union law) and giving a guarantee of due performance of their duties.[15] As in civil and criminal proceedings, also in administrative proceedings, according to Article 96d(2) of the Code of Administrative Procedure,[16] a mediator "having adequate knowledge and skills in the field of conducting mediation in cases of a given type" shall be appointed to conduct mediation. A mediator can be a natural person who has full capacity to perform legal acts and can exercise full public rights, in particular a mediator who has been entered in the list of permanent mediators or in the list of institutions and persons authorised to conduct mediation proceedings kept by the president of a regional court or in the list kept by a non-governmental organisation or a university, information about which has been provided to the president of a regional

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The requirements for permanent mediators are, on the other hand, specified in the Act on the Common Court System Law of 27 July 2001 (Journal of Laws of 2024, item 334). A permanent mediator can be a person who complies with the conditions set out in Article 183^2(1) and (2) CCP; has knowledge and skills necessary to conduct mediation; is at least 26 years of age; speaks the Polish language; has not been validly convicted of an intentional offence or an intentional fiscal offence; and has been entered in the list of permanent mediators kept by the president of the regional court (Article 157a).

14 Journal of Laws of 2015, item 716.

15 In para. 4 of the Regulation of the Minister of Justice of 7 May 2015 on mediation proceedings in criminal cases, the following requirements are additionally listed for a mediator in criminal cases: exercises full public rights and has full legal capacity; is at least 26 years of age; knows the Polish language in speaking and writing; has not been validly convicted of an intentional offence or an intentional fiscal offence; has skills and knowledge necessary to conduct mediation proceedings, resolving conflicts and establishing interpersonal contacts; provides the guarantee of due performance of duties; has been entered in the list of persons authorised to conduct mediation proceedings in criminal cases in the regional court. On the other hand, pursuant to para. 5 of this Regulation , mediation proceedings may not be conducted by an active judge, prosecutor, prosecutor's assessor, trainee of the listed professions, juror, court registrar, judge's assistant, prosecutor's assistant and officer of an institution authorised to prosecute crimes.

16 Act of 14 June 1969, the Code of Administrative Procedure, Journal of Laws of 2024, item 572 [hereinafter: CAP].

court (Article 96f(1) CAP). On the other hand, the mediator cannot be an employee of a public administration body before which the proceedings are conducted (Article 96f(3) CAP). In a situation where the body conducting the proceedings is a participant in mediation, the mediator can only be a person who has been entered in the list of permanent mediators or in the list of institutions and persons authorised to conduct mediation proceedings or a mediator entered in the list (Article 96f(2) CAP).

As the above analysis shows, apart from the above-described formal requirements for mediators conducting mediation proceedings to resolve various types of disputes, the legislator does not regulate the requirements for the mediator to possess relevant competencies. It merely assumes that the mediator should have them.

3. PROFESSIONALISATION OF THE MEDIATOR OCCUPATION IN POLAND

There are significant differences among countries in terms of their approach to the professionalisation of the mediator occupation. Legal regulations applicable in this respect in different countries "can be situated on a continuum, one end of which is determined by the belief that the state should verify and control the competencies of mediators (full professionalisation of mediator's services) while the other end marks the position according to which mediation is one of many services that should be subject to natural market verification (complete freedom to provide mediation services)" [Cybulko 2023, 128].[17] The Polish approach to the mediator's professionalism places our country in the middle of this continuum because mediation can be conducted by any mediator who meets at least the minimum formal requirements.

There is no doubt that high requirements for a mediator in terms of education, practice and training in mediation as well as ethics are necessary to conduct effective and efficient mediations [Gmurzyńska 2007, 367]. While appreciating the importance of the mediator's personality, his or her individual aptitude, attention should also be paid to the competencies that he or she should possess and the need to improve and verify them. In fact, "the mediator's experience, qualifications, knowledge as well as aptitude and abilities are of paramount importance for the success of the mediation" [Gonera 2005, 78].[18] Considering this, a discussion on the professionalisation

[17] The author discusses the ways in which mediator status is regulated in Austria, Belgium, France, Ireland, Lithuania, Germany, Sweden, Italy and Poland on pages 17-126.

[18] See Bobrowicz 2004, 31; Maślikowska 2008, 164-67; Korybski 2019, 125-39; Bieliński 2008, 12-21; Białecki 2012, 104-13 and others.

of the mediator occupation and mediation services has been taking place in Poland since at least 2005. In particular, the amendments to the Code of Civil Procedure and the Common Court System Law were particularly important for this discussion in the doctrine and literature.[19] The Statement of Reasons to the draft Act of 10 September 2015 on the amendment of certain acts in connection with the promotion of amicable dispute resolution methods emphasises the need to define the conditions to be met by mediators and to guarantee the possibility of their verification. The key provisions were included in the Act on the Common Court System Law where a chapter was added in Section IV: 6a Permanent mediators (Articles 157a-157f).

In order to ensure the quality and effectiveness of the mediation service, it becomes necessary to regulate the status of the mediator in a proper way. In Poland, this regulation is heterogeneous because permanent and *ad hoc* mediators as well as mediators of different specialisations (e.g. civil, criminal, administrative mediation) are distinguished, with no uniform criteria established for particular categories. Furthermore, the regulation of the institution of mediation is scattered in many legal acts and is not of a comprehensive nature.[20] There are separate legal regimes binding for different types of mediation depending on the branch of law into which they fall. Hence, numerous statements made by respondents to the research conducted as part of the KRM project show the need for a separate law on mediation [Broński, Dąbrowski, Sławicki, et al. 2021, 18].[21]

The professionalisation of the mediator occupation calls for taking a holistic view of the mediator's training and competency verification process.[22] First of all, a common range of competencies should be established for all groups of mediators. In the light of the research conducted as part of the KRM project, every mediator should have three blocks of competencies. Block one comprises contents related to the psychological field

[19] Act of 27 July 2001 on the Common Court System Law, Journal of Laws of 2024, item 334 [hereinafter: CCSL]. Amendments to the CCP and CCSL were introduced by the Act of 10 September 2015 on the amendment of certain acts in connection with the promotion of amicable dispute resolution methods (Journal of Laws of 2015, item 1595).

[20] Issues referring to mediation and the mediator are scattered in e.g. Belgium and France.

[21] Acts on mediation laws have been adopted e.g. in Austria, Ireland, Italy, Lithuania, Germany and Sweden. In general, acts on mediation law regulate issues referring to mediation in civil cases. Issues concerning mediation in non-civil cases are generally enshrined in other laws. It should also be emphasized that acts on mediation law are not usually comprehensive.

[22] In Poland, the legislator has not stipulated any requirements for the training of mediators but only limited itself to a general formulation of the mediator's competencies as possessing knowledge and skills in the field of mediation. Only mediators conducting mediation in divorce and separation, family and guardianship cases have been treated differently. Pursuant to Article 436(4) CCP, courts should refer parties to mediation to a permanent mediator who has theoretical knowledge, particularly having a degree in psychology, pedagogy, sociology or law along with practical skills in mediating family cases.

(e.g. psychology of conflict, communication, assertiveness, dealing with emotions). The mediator should not focus exclusively on the organisation and conduct of the mediation proceedings but should use the knowledge in the field of psychology in these proceedings. The mediator does not need to have a degree in psychology but a basic knowledge in this field is desirable. Block two comprises the mediators' basic knowledge of the law. Among other things, it is essential when drafting a mediation settlement agreement which should not contain unlawful provisions. Finally, the third block is the workshop – methods and techniques used in mediation work. The mediator should therefore have interdisciplinary knowledge to help him or her fully embrace different mediation situations. Some of these competencies should be acquired during training and professional courses preparing for the mediation occupation but elements of knowledge and skills acquired while accumulating life experience are also important. Competencies that are difficult to develop in a short training course are also important, relating to personal culture, empathy, ability to conduct dialogue and adapt one's behaviour to the parties in mediation, and knowledge of and adherence to ethical principles in mediation proceedings [ibid., 30-31].

The lack of a unified training system and uniformity of requirements results in mediators being prepared for their professional roles to varying degrees. A large number of respondents emphasised that a mediators demonstrate low level of legal knowledge which is a significant deficiency (e.g. lack of knowledge on how to correctly prepare settlements). This is particularly the case for those who have not graduated from law schools. In contrast, those graduating from law faculties and undertaking mediation activity experience deficiencies in aspects of soft skills related to contact with parties taking part in mediation sessions. Mediators also lack skills related to persuading clients to end their dispute amicably, so mediation is often reduced to negotiation rather than a joint search for a satisfactory solution. Therefore, the mediator training should include content on psychological aspects, including mediation techniques, styles of communication with clients in mediation, empathy in mediator's work and legal aspects, in particular drafting settlement agreements and changes in the provisions of the law. It is also worth using the training to make mediators familiar with tools from other professional areas that can be innovatively used in mediation (e.g. SWOT techniques, SMART, brainstorming). Finally, there is a need to develop mediators' knowledge of new phenomena that have been increasingly emerging in course of mediation. These include issues such as non-heteronormative partnerships, gender in mediation in the context of stereotypes, parental alienation or alternating custody [ibid., 31-32].

In view of the above, the new Standards for the Training of Mediators developed this year by the Social Council for ADR at the Minister of Justice

(23.03.2023) should be assessed positively.[23] They set out standards for the base training of mediators and recommend six specialised training courses. Each training – both basic and specialised – consists of parts on legal issues and psychological issues concerning the conduct of mediation, including communication, conflict and negotiation issues). The ADR Board recommends that mediation simulations, discussions and feedback should comprise about 50%, exercises and discussions about 40%, and lectures and presentations a maximum of 10% of the time. Recommended didactic methods include: mediation simulations, case study analyses, mediation demonstrations, individual and group exercises, participant discussions and reflections, questionnaires, tests, theoretical lectures and presentations. Finally, the Standards emphasise that specialised training prepares mediators for validation under the Integrated Qualification System.[24]

However, it should be noted that the Standards discussed above are not binding regulations. They only serve as recommendations, good practices. There is still no sufficient regulation ensuring an adequate level of preparation for the function, both for permanent mediators and for other groups of mediators.

Another obstacle in the area of professionalisation of the mediator occupation in Poland is the ease with which random people can acquire the status of the permanent mediator.[25] The criteria for entry in lists of mediators are too general and not uniform.[26] As a result of that, people who have no adequate qualifications and no mediation experience are included in the lists of mediators.[27]

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[23] See https://www.gov.pl/web/sprawiedliwosc/miedzynarodowe-i-polskie-standardy-dotyczace-mediacji [accessed: 05.10.2024].

[24] See https://kwalifikacje.gov.pl The profession of the court mediator has been included in the Classification of Professions and Specialities (under number 263507) maintained by the Ministry of Labour, Family and Social Policy. Mediator's qualifications, including the conduct of court and out-of-court mediation in civil cases, the conduct of court and out-of-court mediation in business cases, the conduct of court and out-of-court mediation in family cases and the conduct of mediation in criminal and misdemeanour cases are also certified under the Integrated Qualifications System. However, this has not translated so far into statutory requirements set for mediators, in particular not even for judicial mediation conducted within the justice system. Works have been underway to develop a national register of mediators since 2020.

[25] Additional confusion comes from the existence of different lists, e.g. the list of permanent mediators, the list of mediation centres or the list of mediators in the field of collective disputes.

[26] In this study, we will limit ourselves to discussing only the issue of the list of permanent mediators maintained by Presidents of Regional Courts.

[27] The way in which the professional qualifications of the mediator are determined has been criticised by both mediation theorists and practitioners. Both judges and prosecutors as well as a large number of practising mediators negatively assess the current methods used to determine the minimum qualifications of mediators. The criteria are assessed as vague and too liberal [Pękala 2017, 488-502].

The purpose of lists of mediators is also unclear as it comes down to the registration of mediators while not confirming the professionalism of mediators. Lists of mediators are also of no practical significance as it is not uncommon for judges to refer cases to mediators outside the list of permanent mediators. Furthermore, permanent mediators are sometimes given cases in a field of specialisation other than that disclosed in the list of permanent mediators, or judges refer cases only to mediators with whom they have worked previously. Thus, the current regulation is insufficient and the criteria for inclusion in the list of mediators are imprecise, non-uniform and too general [Broński, Dąbrowski, Sławicki, et al. 2021, 17-18].

Another disadvantage of the current regulation is the lack of instruments enabling the president of a regional court to actually verify the applicant for entry in the list of mediators. This particularly applies to the mediator's experience. It is also problematic that the entry is made solely on the basis of documents without a verification process that consists in a personal meeting between the president of a regional court and the candidate for a permanent mediator. There are also no instruments to which mediation coordinators are entitled to verify whether mediators perform their duties correctly. In many cases, the entry is made somewhat automatically [ibid., 18-19]. It is therefore necessary to amend the Regulation of the Minister of Justice of 20 January 2016 on the maintenance of the List of Mediators.[28] The introduction in Article 157a, clause 2 of the Act on the Common Court System Law of the requirement to have knowledge and skills assessed in the light of the documents listed in para. 5, section 1 of the regulation on the maintenance of the list of mediators does not constitute a precise criterion that would allow for a real verification of the level of preparation of permanent mediators and does not guarantee that the level of quality of mediation services provided would increase. In fact, the subjective assessment made by the Presidents of Regional Courts becomes a decisive measure in assessing the level of knowledge and skills. This, in turn, generates a risk of discrepancies in the assessment of the level of preparation of persons applying for entry in the list of permanent mediators. The lack of precise regulations and objective measure tools relating to the level of required knowledge and skills, including a uniform certification system, should be assessed negatively.

CONCLUSIONS

In conclusion, it should be noted that the process of professionalisation of the mediator occupation implies the necessity to have a mediator competency profile, to update it and to develop mechanisms for solutions

[28] Journal of Laws of 2016, item 122.

aimed at filling up competency gaps. It should be shared by all categories of mediators and be reflected in the mediator training programmes and processes of verification of his or her skills and formation of appropriate attitudes. Following the example of some European countries such as e.g. the Netherlands, Germany, Italy, Spain, the profession of the permanent mediator should be comprehensively regulated by precisely defining the mode of acquiring qualifications along with a uniform certification and competency verification system. This will result in an increase in the quality of the mediator, which will unlock the potential of mediation and increase the level of its use.

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CULTURE WARS, ABORTION, AND THE SUPREME COURT

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Abstract. Western societies are at a crossroads, grappling with profound questions of identity, values, and governance. The culture wars that dominate public discourse reflect deeper ideological divides that are unlikely to be resolved in the near future. Constitutional courts, as arbiters of these conflicts, play a critical role in shaping the course of these debates. The author cites the example of abortion as an issue deeply embedded in the culture wars. In American political and legal reality, this issue has been resolved not by popularly elected institutions, but by the Supreme Court, whose decisions have not only failed to defuse cultural disputes, but have, on the contrary, intensified them. However, the reliance on judicial resolution also highlights the limitations of political institutions in addressing contentious issues. As societies become more polarized, the challenge is to find common ground and foster dialogue across ideological divides. Only then can Western democracies navigate the complexities of the modern era and chart a path forward that reflects their shared values and aspirations. Moreover, research conducted shortly after the *Dobbs* decision confirms the commonsense intuition that state legislation is much more in tune with public opinion in a given state and helps defuse one front of the culture war – that of abortion.

Keywords: culture wars; abortion; Supreme Court of the United States; Roe v. Wade; polarization.

INTRODUCTION

It can be argued that virtually all Western societies are currently at a crossroads, facing a prolonged period of deliberation regarding their identity. What was previously regarded as a straightforward generational transition, a gap between the young and the old, has now reached a point where even a minor incident can ignite a widespread reaction, polarize politicians and citizens, and, most significantly, give rise to divisions within society that may take years to overcome. In today's satiated and full Western societies, debates are occurring about issues that were not relevant to previous generations. Their grandparents were not exposed to the same concerns, as they were involved

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in wars and struggled with hunger. The issues currently at the forefront, such as abortion, same-sex marriage, religious freedoms, and state-church relations, have only been prominent during the prolonged period of peace in the most of Western world after World War II. The public discourse on controversial and emotionally charged matters often leads politicians to engage with these topics as well, prompting the constitutional and highest courts of each state to weigh in on the matter. Poland and the United States serve as illustrative cases of how often contentious issues and those evoking strong emotions are not resolved at the level of parliament, but rather through judicial determinations. This was evident in the abortion cases, where the courts played a pivotal role in determining the outcome.

The philosophies that underpin contemporary legal systems are shaped by the prevailing ideologies in these countries and the historical development of the respective nations. Nevertheless, irrespective of the specific routes pursued by individual countries, it appears reasonable to suggest that the majority are well-acquainted with the culture wars, which are primarily waged on the constitutional courts, where contentious matters that elicit strong public sentiment are adjudicated. To illustrate, one might cite a few examples such as abortion or same sex marriages.[1]

These examples showcase the role of the court as a pivotal arena in cultural wars. However, the roots of these conflicts are deeply embedded in society and the philosophies of the people. In the case of the American culture wars, the fundamental tension can be seen as between personal autonomy and the possibility of a paternalistic or perfectionist vision of law.

In order to organize the flow of the argument, it is first necessary to establish the term that will be used throughout the remainder of this discussion: "culture wars". The term, borrowed from sociology, denotes conflicts that have a profound impact on social life. These conflicts pertain to axiological issues that the community is unable to resolve through the methods of dialogue. This inability to reach a consensus through dialogue results in the formation of a consensus, albeit an operative one, on the matter in question. Such a consensus would be, for example, an agreement on the fact that it is a normal state for society to hold different views, share different values, and respect dissent in this regard. Nevertheless, it appears that consensus on matters pertaining to the culture wars is unattainable. It is not possible to reach an agreement on issues that the parties to the dispute define as being fundamentally linked to their moral and value systems. As will be demonstrated shortly, it is not feasible to achieve consensus even on a contentious issue such as abortion, where one side employs moral rhetoric and the other

[1] *Bowers v. Hardwick*, 478 U.S. 186 (1986); *Romer v. Evans*, 517 U.S. 620 (1996); *Obergefell v. Hodges*, 576 U.S. 644 (2015).

invokes the principles of autonomy. It thus appears that only by grasping the nature of culture wars in a context where normative and axiological orders are intertwined can societies learn to navigate current conflicts, as well as those that will inevitably emerge as civilization progresses.

1. CULTURE WARS

In 1991, James Davidson Hunter published a book entitled "Culture Wars: The Struggle to Define America" [Hunter 1991], in which he persuasively argued that previous social categories and divisions relating to economic and ownership issues had been replaced by moral and religious ones. Hunter states that his research was motivated by two fundamental puzzles: "The first was a question about whether seemingly disparate social, moral, and political issues were tied together in some way" [Hunter and Wolfe 2006, 12]. Was there any underlying connection between seemingly disparate issues, such as the potential link between same-sex marriage and smoking in public? The second phenomenon that occurred Hunter was "who was lining up on different sides of different issues and why they were doing so" [ibid.]. How have previously static categories of divisions, predominantly economic, transformed into divisions that polarize societies around cultural issues, frequently merely reflections of broader discrepancies in their value systems? [Bafumi and Shapiro 2009, 3; Bartels 2016, 33ff]. In his 1991 book, Hunter delineated the two principal groups of American society: the Orthodox and the Progressive [Hunter 1991]. These categories continue to resonate in contemporary discourse. "A year after Hunter put *culture wars* on the social science map, Patrick Buchanan popularized the idea in his speech to the 1992 Republican National Convention. He told the audience in Houston that *a cultural war* was taking place, a *struggle for the soul of America*. The defining issues were abortion, homosexuality, school choice, and *radical feminism*. In the aftermath of this address, the idea of a *culture war* became a journalistic staple" [Thomson 2010, 4].

The even more often used term "polarization" overused in both journalistic and academic discourse, only scratches the surface of a much deeper and more complex issue. It provides a convenient label for a phenomenon that is clearly visible in election results on both sides of the Atlantic. In two-party systems, voters are typically divided into supporters of one party or the other. While these divisions fluctuate and evolve over time, most studies reveal a simple pattern: individuals with similar characteristics tend to associate with others who share those characteristics. This tendency explains why certain geographic areas are overwhelmingly dominated by supporters of one political party. It is not that some mysterious natural force magnetically draws Democratic voters to New York or Republican voters

to rural areas [Sussel and Thomson 2015, 3]. Rather, people's social positions, shaped by factors such as occupation, education, or lifestyle, influence their political preferences, which in turn determine where they live and with whom they interact. But this is only the tip of the iceberg. It remains a challenge to identify all the factors that drive these political divisions beyond the most visible markers, such as education, race, or economic status. Even when these elements are taken into account, the underlying causes of polarization remain elusive. Moreover, a growing body of empirical research suggests that polarization may not be as pervasive or as simple as popular narratives suggest. While it serves as a convenient shorthand for journalists to frame societal divisions, the reality is far more nuanced. In many cases, what is labeled polarization may reflect superficial differences or exaggerated perceptions of division rather than a true and fundamental division of society into ideologically entrenched camps. Thus, a number of empirical studies can be cited to show that polarization is more or less a myth of journalistic convenience, but not necessarily true [Fiorina, Abrams, and Pope 2011, 11-33], or that it represents the political class, but not necessarily the division among citizens [Fiorina and Lavendusky 2006, 51].

The term "culture wars" is defined in Polish social science in a manner that aligns with its interpretation in American literature. For example, Wojciech Burszta notes that: "In a deeper sense, culture wars are a permanent state of tension between traditional and postmodern ways of solving moral problems. Culture wars, in a word, are fought in the register of morality and concern not so much material issues (wages, labor, the role of the state), but conflicts related to the normative order of social life and the question of collective identities" [Burszta 2013]. In the case of Poland, however, a more detailed analysis, including an empirical analysis, of specific issues would be required. Some of the American culture wars involve the same issues that have inflamed public opinion in Poland, such as abortion or same-sex unions. However, Polish society is much more homogeneous, which would make it much more difficult to point to factors such as race, gender, or religion as determining the attitudes of certain social categories toward the aforementioned issues. An analysis of the Polish case may be best served by distinguishing between at least four categories, as proposed by Rhys H. Williams [Williams 1997]. Williams suggested differentiating between culture wars in a narrower and broader sense, indicating that only the latter should be of interest to social science. As he claims, "In fact, survey research consistently shows that there are at least two dimensions of political attitudes: one for issues pertaining to economics and political power (what I'll call *justice* issues) and another one for issues of personal behavior and cultural symbolism (what I'll call *morality* issues). And in many cases these dimensions are not related to each other – that is, those who

are *liberals* on one set of issues are not necessarily *liberals* on the other set of issues" [ibid.]. We will sometimes refer to the Polish example here, because in the case of regulating the rules of abortion, the history of Poland and the United States is somewhat parallel, despite all the differences arising from completely separate legal systems – civil and common law.

As the paper follows, we will demonstrate, the phenomenon of political polarization and deepening social divisions can be attributed, at least in part, to the contentious issue commonly referred to as the culture war. However, as the abortion example perfectly illustrates, the culture war problem is much deeper and goes beyond the question of voting for a particular party and political attitudes. According to the definition adopted here, culture wars are about moral issues. Some of these disagreements arise, for example, from the development of civilization. The latter, moreover, is likely to expand the scope of the culture wars to include issues such as human enhancement or cloning. Thus, abortion is an example of an issue in which moral considerations are interwoven. Whether one talks about the autonomy of the individual in its context or considers the ontic and legal status of the fetus, one always weighs values. Moreover, the consequence of this weighing is a certain expectation in terms of state action and appropriate regulation of the issue. The problem, however, is that the state very often tries to regulate these issues not through the mechanisms of deliberative democracy, but through judicial institutions. This is precisely the story of the litigation that has swept the United States since the 1970s. The lawsuits before the court reflected a deep social divide that the political institutions ran away from resolving, ceding their responsibility to the Supreme Court. And into the hands of nine seemingly apolitical justices was placed a decision on an issue that divided citizens.

This dynamic poses a significant challenge to Western democracies because the resolution of these cultural, and therefore moral, social conflicts is not determined through the mechanisms of public debate or the democratic process. Instead, they are often adjudicated by the judiciary, an institution whose legitimacy is often questioned because of its limited accountability and inadequate integration into the system of checks and balances.

2. ABORTION IN THE COURT

Whatever one's personal position on the matter, it is crucial to recognize that judicial authority goes far beyond being a neutral interpreter of the law on the issues that together make up the universe of the culture wars. It is difficult to ask judges to be merely the mouthpiece of the law when it comes to legal issues that are only a reflection of moral ones. Rather, the opinions issued by the courts reflect the underlying social fractures and the balance

– or imbalance – of power among competing political forces. Judicial decisions in such cases are influenced, explicitly or implicitly, by the prevailing social and political climate. As will be shown in the abortion cases below, the Supreme Court, in deciding abortion cases, has been well aware, to say the least, that the judiciary's *Weltanschauung* may have been quite far removed from the prevailing public morality at the time of the decision. Of course, it is fair to say that as the process of appointing Supreme Court justices has become increasingly politicized, majority beliefs and values have begun to shape constitutional interpretation, embedding the judiciary even further in the heart of these contentious divisions. "[M]ajority beliefs and values tend to some extent influence how the constitution is interpreted, because the process through which Supreme Court judges are appointed become highly politicised" [Fanning 2023, 68]. But that means politicized in the sense that it is embodied in the actual political conflicts. And these conflicts are rooted in the culture wars that divide the country and drive political polarization. As a result, the judiciary not only resolves legal disputes, but also becomes a battleground where the deeper cultural and political tensions of society are played out.

The problem of abortion represents a clear and prominent example of the cultural war that has emerged in recent decades. This conflict is evident in a multitude of settings, from the waiting room of a medical practitioner to the local farmers market, from television programmes to the courtroom. The history of the U.S. judiciary encompasses two cases that are widely known among the general public and have attracted the attention of foreign observers. In addition, there have been several attempts before the Supreme Court that have not produced any substantial alterations to the legal *status quo*.

Roe v. Wade[2] is probably one of the most well-known cases adjudicated by the US Supreme Court. The case was brought before the Supreme Court, where the justices were asked to consider whether the Constitution recognized a woman's right to terminate her pregnancy and, if so, to what extent states could regulate or restrict access to abortion. The case was initiated by Jane Roe (a pseudonym for Norma McCorvey), who challenged Texas legislation that criminalized abortion except in cases where the life of the mother was at risk. Roe advanced the argument that the Texas laws violated her right to personal privacy, which she believed was protected by the Constitution. "She claimed that the Texas statutes were unconstitutionally vague and that they abridged her right of personal privacy, protected by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments.[3]"

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[2] *Roe v.* Wade, 410 U.S. 113 (1973).

[3] *Jane Roe, et al., Apellants v. Henry Wade*, 121.

The case of *Roe v. Wade* is inextricably linked to the constitutional concept of a right to privacy, which the Supreme Court had previously acknowledged in cases such as *Griswold v. Connecticut*,[4] which pertained to contraception. In *Roe v. Wade*, the Court extended this right, arguing that a woman's decision to have an abortion falls within the sphere of privacy, which is implicitly protected by the Due Process Clause of the Fourteenth Amendment. In a ruling by the Supreme Court, it was determined that the Constitution afforded a woman the right to privacy which was inferred from the penumbras of the Fourteenth Amendment. This right encompasses a woman's autonomy in matters pertaining to her personal life. In the opinion for the Court, Justice Harry Blackmun asserted that this right to privacy was sufficiently expansive to encompass a woman's decision regarding whether or not to terminate her pregnancy. However, the Court also acknowledged that this right is not absolute and that states have legitimate interests in protecting both the health of the mother and the potential life of the fetus. To reconcile these competing interests, the Court established a trimester framework, allowing states to regulate or prohibit abortion in the third trimester, after the fetus reaches "viability", while imposing limited restrictions in the first and second trimesters.

The most significant allegations concern the Court's conceptualization of *privacy* and the fact that the opinion does not focus on the fetus's rights. But – what is most important from our point of few, after the *Roe*, the Court was accused of being "guilty of *Lochnering*, that is of superimposing its own views of wise social policy on those of legislature" [Rossum, Tarr, and Muñoz 2020, 730].

The Supreme Court reaffirmed its decision in the cases adjudicated years later, among which the most notable is probably *Planned Parenthood v. Casey*.[5] The case was a landmark decision that reaffirmed the constitutional right to abortion established in *Roe v. Wade* while fundamentally altering the legal framework for regulating abortion. In this case, the Court undertook a review of the Pennsylvania Abortion Control Act of 1982, which imposed a number of restrictions on the availability of abortions. These included requirements for informed consent, a twenty-four-hour waiting period, parental consent for minors, and spousal notification. These provisions were contested by Planned Parenthood of Southeastern Pennsylvania on the grounds that they infringed upon the right to abortion as established in *Roe*. The Supreme Court's decision in *Casey* ultimately upheld the majority of Pennsylvania's restrictions, with the exception of the spousal notification requirement, marking a notable shift in the Court's approach to abortion rights.

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[4] *Griswold v. Connecticut*, 318 U.S. 479 (1965).

[5] *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

One of the most significant aspects of the *Casey* decision was the Court's introduction of the "undue burden" standard, which was established to assess the constitutionality of abortion regulations. It can be reasonably argued that this phrase, associated with Justice Sandra J. O'Connor, had a profound and enduring impact on the evolution of abortion legislation in the United States [Toobin 2014]. In accordance with this standard, states are permitted to impose restrictions on abortion procedures, provided that they do not create a "substantial obstacle" for women seeking abortions after the fetus has reached a viable state. This replaced *Roe's* rigid trimester framework with a more flexible, yet somewhat ambiguous, standard that permitted states greater latitude in regulating abortion. The undue burden standard was designed to balance the rights of women to seek abortions with the states' interest in protecting potential life, shifting the framework from a strict protection of privacy to a more nuanced approach that allowed for greater regulation.

It was not until 2022 that the legal standards delineated by Roe and subsequent cases were overturned. The *Dobbs v. Jackson Women's Health Organization* case, decided by the U.S. Supreme Court on June 24, 2022, signified a pivotal shift in American abortion law, as it effectively overturned *Roe v. Wade* and *Planned Parenthood v. Casey*. The case concerned Mississippi's Gestational Age Act, a state law that prohibited the majority of abortions after the fifteenth week of pregnancy, with exceptions only permitted in instances of medical emergency or severe fetal abnormality. This legislation was in direct contravention of the viability standard established in Roe and reaffirmed in Casey, which prohibited states from banning abortions before fetal viability (approximately twenty-four weeks). In the 1983 opinion in *Akron v. Akron Center for Reproductive Health*,[6] the Court on several occasions invoked the concept of a "fundamental right" to abortion. However, the majority opinion in the *Dobbs* decision ultimately concluded that there is no constitutional right to abortion, effectively returning the power to regulate abortion to individual states.

The majority opinion, drafted by Justice Samuel Alito, posited that the Constitution does not explicitly mention abortion rights and that such rights are not "deeply rooted in the nation's history and traditions" a criterion frequently employed to identify fundamental rights. The Court determined that the holdings of *Roe* and *Casey* were erroneous, criticizing the framework established in *Roe* as vague and unworkable and stating that the undue burden standard articulated in *Casey* was inconsistent and had resulted in confusion in lower courts. By overturning *Roe* and *Casey*, the *Dobbs* decision asserted that decisions regarding abortion should be left to "the people and their elected representatives".

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[6] *Akron v. Akron Center for Reproductive Health*, 462 U.S. 416 (1983).

Most significantly, the Supreme Court only seemingly positioned itself as an arbiter in the abortion debate. In practice, its intervention in *Roe v. Wade* exacerbated rather than resolved the conflict. By the time *Roe* was decided, most states had restrictive abortion laws that reflected the era's conservative stance on the issue. Importantly, public opinion polls at the time did not suggest that abortion was a matter of intense national polarization or the subject of fierce ideological battles between pro-choice and pro-life camps. The ruling, however, fundamentally changed the landscape.

From a legal perspective, the reasoning underlying Roe has often been criticized for its lack of sophistication. The case relied on a somewhat tenuous interpretation of constitutional privacy rights, an approach that many legal scholars found underdeveloped and unconvincing. This pattern continued in *Planned Parenthood v. Casey*, where the "undue burden" standard (though heralded by some as a compromise) also failed to present a particularly rigorous or compelling intellectual framework. Evaluating these decisions through the lens of the more recent *Dobbs v. Jackson Women's Health Organization*, it becomes clear that the earlier justifications for federal intervention in abortion rights were built on shaky ground. The Court in *Dobbs* ultimately concluded that such matters should not be decided at the federal level at all, arguing that they fall within the domain of state governance.

3. PUBLIC REACTION

The social impact of *Roe* was profound. Opinion polls conducted in the years following the decision revealed a marked shift in public attitudes toward abortion [Arney and Trescher 1976, 117ff; Evans 2002]. This suggests that the Supreme Court's decision not only reflected existing societal divisions, but actively influenced and exacerbated them. Rather than quelling disagreement, the decision ignited a broader cultural battle, transforming abortion from a relatively niche political issue into one of the most enduring and contentious fault lines in American politics. What was once a smoldering disagreement became a full-blown conflagration, fueled by the Court's attempt to impose a definitive resolution on an issue fraught with moral, ethical, and cultural complexities. "Polls taken in the days after *Roe v. Wade* show that Americans had sense that abortion was bad, but lacked a moral framework that would allow them to think about abortion logically and confidently" [Caldwell 2020, 55]. Thus, in the first case, the Supreme Court not only failed to become an arbiter attempting to level the culture war, but directly intensified it [Hartman 2019, 150]. "By declaring that «the personal right to privacy includes the abortion decision», *Roe*, together with the companion

case of *Doe v. Bolton* (1973),[7] generated a firestorm of controversy that has enveloped the Court ever since" [Rossum, Tarr, and Muñoz 2020, 731].

Interestingly, this critical view-both of the quality of *Roe v. Wade* and of its broader social impact-was shared by none other than Ruth Bader Ginsburg, even before her tenure as a Supreme Court justice. Known for her meticulous legal reasoning and progressive outlook, Ginsburg recognized the weakness of the decision's legal foundation and its disruptive social impact. She noted, "*Roe v. Wade*, on the other hand, became and remains a storm center. *Roe v. Wade* sparked public opposition and academic criticism, in part, I believe, because the Court ventured too far in the change it ordered and presented an incomplete justification for its action" [Ginsburg 1985]. Her critique underscored that the Court's approach in *Roe* was not only legally controversial, but also poorly calibrated to navigate the social sensitivities surrounding abortion.

From both a legal and a social perspective, Ginsburg's assessment highlights a profound misstep by the Court. By framing abortion as an extension of the right to private – an argument that many saw as tenuous – the Court sidestepped public sentiment and ethical complexity, opting instead for a sweeping solution that many perceived as judicial overreach. The decision not only provoked fierce public opposition, but also sowed seeds of distrust in the judiciary's role in mediating divisive issues.

Had the Court been more cautious in *Roe*, perhaps issuing a narrower decision or deferring more authority to the states, the cascade of events that led to the *Dobbs* decision might never have unfolded. The intense public protests and political polarization that erupted in response to *Dobbs* were, to some extent, a delayed consequence of the Court's initial decision to regulate an ethically fraught issue with inadequate legal justification and little regard for public opinion. In attempting to impose a definitive solution, the Court inadvertently inflamed divisions and transformed abortion into a central and enduring battleground of cultural and political conflict. Moreover, research conducted shortly after the *Dobbs* decision confirms the common-sense intuition that state legislation is much more in tune with the public mood in a given state and helps to defuse one front of the culture war – that of abortion [Scoglio and Nyak 2023, 4].

Nevertheless, it is important to recognize that, like the concept of "polarization", the notion of "culture wars" is an abstract and theoretical construct that can be subjected to empirical scrutiny and potentially challenged by empirical evidence. This is, of course, a topic for a separate sociology paper. It would require an attempt to operationalize both concepts so that they can be grasped, in Durkheim's language, "like things". In this context, it

[7] *Doe v. Bolton*, 410 U.S. 179 (1973).

is pertinent to consider the potential insights that the US Supreme Court's rulings on abortion issues might offer with regard to the culture wars. Moreover, it raises the question of whether the courts are the optimal venue for resolving such disputes. It is also worth considering whether fundamental issues that divide entire societies should not be decided at the judicial level, rather than being left to arbitrary decision-making.

From a philosophical and legal perspective, the ongoing tension between a form of paternalism, or a vision of law as an instrument in the hands of the state through which appropriate moral attitudes are formed, and various forms of liberalism, emphasizing the question of individual freedom and autonomy, is a long-standing and enduring phenomenon. The debate surrounding the existence and desirability of a public morality, with the state assuming responsibility for its formulation, has been extensively documented. However, the cases of both the Polish abortion controversy and the recent decision of the Polish Constitutional Court, along with the two American cases regulating abortion, illustrate that this dichotomy does not fully align with the actual dynamics at play.

From the perspective of those identified by Hunter as "progressives", it is reasonable to assume that the overarching goal would be to reach a compromise solution that prioritizes individual autonomy and liberty. Concurrently, however, this liberty should be – in a benevolent gesture – ensured by the state. It is the responsibility of the state to provide citizens with the necessary education to understand the value of freedom and autonomy. In the case of abortion, this is clearly not feasible. The *Dobbs* ruling is essentially of this nature. At the federal level, the Supreme Court effectively concluded the case, thereby transferring the matter to the discretion of state legislatures and courts. This, however, is an inadequate solution (or, depending on one's perspective, an excessive one) because it allows for an unacceptable degree of flexibility for the liberal part of the argument to be regulated by more conservative legislatures, elected by more conservative societies, in a manner that aligns with the prevailing public morality in the state. The assumption has emerged that it is the federal government's or the Supreme Court's responsibility to ensure the protection of freedom, even if this entails the infringement upon the autonomy of not only individuals but also entire communities. Consequently, the same groups that, in the culture war, tend to favour the democratic order – a considerably more reticent state that does not intervene in the sphere of individual freedom but merely safeguards it – anticipate that the state will take paternalistic measures aimed at molding citizens in accordance with the value system of one of the parties involved in the dispute.

CONCLUSION

It appears that the rulings of the U.S. Supreme Court (once more, an analogy can be drawn with the Polish Constitutional Court) result in at least three distinct types of social consequences. These consequences, which extend beyond the scope of this text, warrant mention as they are integral to understanding the context in which this text is situated. Firstly, it can be observed that landmark rulings do not merely reflect a division in public life; rather, they appear to serve to exacerbate it. This is largely due to the fact that the finality of judicial decisions, by definition, rather than fostering resolution, often intensifies emotional responses and exacerbates existing tensions. Secondly, the question of the Supreme Court's impact on the ad hoc policies of the two dominant political parties in a two-party system. The apolitical nature of judges, which is a deeply entrenched myth in Europe, appears to be eroding with each passing year. In the United States, the notion of judicial impartiality has already been significantly eroded. The final issue pertains to the perception and legitimacy of the Supreme Court in the public sphere. In the *Planned Parenthood v. Casey* case, Justice O'Connor observed that a potential decision could negatively impact the public perception of the Court's institution and explicitly stated in her opinion that "A decision to overrule *Roe's* essential holding under the existing circumstances would address error, if error there was, at the cost of both profound and unnecessary damage to the Court's legitimacy, and to the Nation's commitment to the rule of law. It is therefore imperative to adhere to the essence of *Roe's* original decision, and we do so today."[8] This observation is analogous to statements often made by politicians. Consequently, it is worth questioning whether it would be more beneficial for the judicial system and for the maintenance of the public image of courts as an independent authority if the culture wars were to shift from courtrooms to parliaments.

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RISKS RELATED TO THE USE OF DIETARY SUPPLEMENTS IN THE LIGHT OF INSUFFICIENT LEGAL REGULATIONS AND LOW PUBLIC AWARENESS

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Abstract. In recent years, we have observed a dynamic development of the dietary supplements (SD) market in Poland has undergone a period of significant expansion and evolution. This is facilitated by the form of the products, the declared properties and the method of presentation, which includes advertising in mass media such as radio, television, press and the Internet. SDs contain mainly vitamins and minerals, as well as amino acids, fatty acids, fibre and other plant products. Their popularity and widespread use may raise a number of doubts. In Polish and European legislation, dietary supplements are classified as foodstuffs. Consequently, they are not subjected to the same rigorous testing procedures as medical products, which include assessments of potential interactions, side effects and durability. A substantial body of evidence attests to the fact that dietary supplements may contain undeclared substances or substances in doses that differ from those indicated by the manufacturer. It is therefore imperative to implement suitable quality standards and to highlight the issues pertaining to the regulatory framework governing dietary supplements.

Keywords: dietary supplements; public awareness; illegal sources; Poland.

INTRODUCTION

Dietary supplements (SDs) are a broad category of products containing "dietary ingredients" such as vitamins, minerals, herbs, botanicals, amino

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acids, fatty acids, and others, which may be used individually or in combination. They are intended to be consumed to supplement the diet and meet basic nutritional needs and are categorized according to their function or type. Consumers are offered a large number of products, brands and preparations, distributed through many different marketing channels [Djaoudene, Romano, Bradai, et al. 2023, 3320]. Growing consumer awareness regarding nutrition, health and well-being is driving the growth of the dietary supplements (SD) market globally. The global SD market size was estimated at 164.0 billion USD in 2022 and is expected to grow at a compound annual growth rate (CAGR) of 9.0% from 2023 to 2030. Consuming products with a high nutritional content is considered in many countries as a symbol of high social status.[1] Additionally, sales of dietary supplements increased dynamically during the COVID-19 pandemic in most countries, including Poland. Approximately 50-75% of the population take them routinely, and almost half of them regularly [Hamulka, Jeruszka-Bielak, Górnicka, et al. 2021, 54]. Concerns about dietary supplements are that there is insufficient data to support their widespread use. Numerous scientific studies have demonstrated their beneficial properties, as well as some adverse and even toxic effects. Therefore, it is necessary to introduce global quality standards and pay more attention to the regulatory challenges related to SD [Djaoudene, Romano, Bradai, et al. 2023, 3320].

1. DIETARY SUPPLEMENTS IN POLAND

Article 3(3)(39) of the Act of 25 August 2006 on food and nutrition safety[2] defines the concept of dietary supplement in the Polish law. According to the Act, a dietary supplement is a food product intended to supplement a normal diet, being a concentrated source of vitamins or minerals or other substances having a nutritional or other physiological effect, single or complex, placed on the market in a form enabling dosing, in the form of: capsules, tablets, dragees and other similar forms, sachets of powder, ampoules of liquid, dropper bottles and other similar forms of liquids and powders intended for consumption in small, measured unit quantities, excluding products having the properties of a medicinal product within the meaning of pharmaceutical law. In Polish and European Union legislation, dietary supplements are classified as food/foodstuffs. However, it should be noted that due to their purpose and form, these are not products commonly

[1] Dietary Supplements Market Size, Share & Trends Analysis Report By Ingredient (Vitamins, Botanicals), By Form (Tablets, Soft gels), By End – user, By Application, By Type, By Distribution Channel, By Region, And Segment Forecasts, 2023-2030, https://www.grandviewresearch.com/industry-analysis/dietary-supplements-market [accessed: 29.09.2024].

[2] Journal of Laws of 2023, item 448.

used to nourish the human body, which are usually derived from agricultural products. They can only supplement the normal human diet, not replace it. At the same time, the concept of a "normal diet" has not been defined in any way. The literature indicates that the standard of a "normal diet" is a derivative of nutritional standards, i.e. standards developed in medical sciences defining demand and its variables [Łata 2022, 119-135]. The condition for introducing SD on the market is the notification to the Chief Sanitary Inspector by the manufacturer and the presentation of the product label design [Starek, Gumułka, and Dąbrowska 2023, 1650]. In 2007, the first product in the "dietary supplement" category was registered in the territory of the Republic of Poland. Since then, the number of dietary supplements introduced to the market has been systematically increasing. In the years 2017-2020, the Chief Sanitary Inspector received 62,808 notifications, while in 2021 there were 21,993. According to the report of the Polish Economic Institute, published in 2019, as many as 72% of Poles declared taking dietary supplements. Almost half of the respondents confirmed the regular use of this type of products. It is worth noticing that SDs are consumed by people without any clinical signs or symptoms of nutrient deficiency, and their effectiveness in such conditions is questioned. Nearly 40% of the respondents were convinced that the effectiveness of SDs is being tested and assessed. Half of the respondents believed that dietary supplements are subject to a similar control regime as medicines. Moreover, consumers did not distinguish between dietary supplements and over-the-counter (OTC) drugs or even prescription drugs [Kowalska-Olczyk 2023, 169-78]. The SD form (e.g. capsules, tablets) and the fact that their main place of sale is a pharmacy make consumers attribute medical properties to them. In fact, the requirements and marketing authorization procedures for medicinal products and SDs differ significantly. SDs are classified as foodstuffs and should not be used as a substitute for medicines [Starek, Gumułka, and Dąbrowska 2023, 1650]. Dietary supplements are eagerly used by people not only because of their easy availability, but also because of the circulating "medical myths" about the possibility of replacing drugs in some diseases. Potential consumers purchasing various vitamin preparations are often unaware of their composition or content of active substances. The diversity of preparations available on the market results from the fact that legal requirements for dietary supplements are less stringent than for drugs. The above facts prove the low awareness of Polish society regarding SDs. Attention is also drawn to the low safety of dietary supplements, resulting from insufficient supervision of these products, lack of restrictive controls before new dietary supplements enter the market and insufficient legal protection of consumers [Kowalska-Olczyk 2023, 169-78]. The imprecise definition of a dietary supplement results in frequent attempts to change the status of some medical products to dietary supplements, dictated by the desire to exempt them

from the Pharmaceutical Law[3] which introduces significant restrictions on the functioning of pharmaceuticals on the market [Olszewski 2010].

2. SELECTED MINERALS IN DIETARY SUPPLEMENTS – ROLE IN THE HUMAN BODY AND THE EFFECTS OF DEFICIENCY AND EXCESS

Minerals, next to vitamins, are among the most popular ingredients of dietary supplements. Mineral ingredients and their chemical forms that may be used for SDs are determined by legal regulations. Minerals that may be present in dietary supplements include: calcium, magnesium, iron, copper, iodine, zinc, manganese, sodium, potassium, selenium, chromium, molybdenum, fluorine, chlorine, phosphorus, boron and silicon [Jarosz, Rychlik , Stoś, et al. 2020]. SDs play an important role in preventing nutrient deficiencies in the human body, reducing the risk of developing some chronic diseases. Deficiency of macro- and microelements may lead to morphological or physiological changes that cause deterioration of the body's ability to function, reduced resistance to stress, increased sensitivity to the harmful effects of other environmental factors, disturbances in growth, development or life expectancy [Bojarowicz and Dźwigulska 2012a, 433-41]. However, it should be remembered that incorrect and unjustified intake of SDs may cause serious health disorders. The most important way to maintain health and reduce the risk of diseases (malignant tumors, cardiovascular diseases, obesity, diabetes and others) is a balanced diet containing all the necessary nutrients in appropriate proportions. The decision to take SDs to support pharmacotherapy or prevent lifestyle diseases should be consulted with a doctor or dietitian [Jarosz, Rychlik, Stoś, et al. 2020].

The effects of deficiency, but also excess of selected minerals in the human body are summarized below.

2.1. Iron

Iron (Fe) is intimately involved in a number of biological processes in the human body, including oxygen transport by hemoglobin in red blood cells, DNA synthesis, cellular respiration and electron transfer, as well as general metabolism [Ravingerová, Kindernay, Barteková, et al. 2020, 7889]. Iron deficiency remains one of the major nutritional disorders worldwide, and low iron intake and/or bioavailability are now the leading causes of anemia [Liberal, Pinela, Vívar-Quintana, et al. 2020, 1871]. The most characteristic symptoms of anemia are: pale mucous membranes and conjunctiva,

[3] Act of 6 September 2001, the Pharmaceutical Law, Journal of Laws of 2024, item 686.

black spots in the corners of the mouth, rough skin, brittle hair and nails, decreased physical fitness and ability to concentrate, and immune deficits. Anemia in the first and second trimester of pregnancy increases the risk of premature delivery and the birth of a child with low birth weight [Wojtasik, Jarosz, and Stoś 2017, 203-28]. The unique characteristics that make iron valuable for standard cellular functions also make it able to catalyze reactions that lead to the formation of reactive oxygen species (ROS), which occur when iron levels are very high. Therefore, although iron is an essential trace element in the human body, it can also be toxic when present in excessive concentrations [Liberal, Pinela, Vívar-Quintana, et al. 2020, 1871]. The increase in free radical production, caused by Fe excess increases the of risk cancer and coronary heart disease. There are no cases of iron toxicity observed in food. Acute poisoning has been observed in children due to an overdose of iron from pharmaceutical preparations. The first symptoms of iron poisoning are nausea, diarrhea and vomiting. Then, disorders of the cardiovascular system, central nervous system, kidneys, liver and circulatory system appear [Wojtasik, Jarosz, and Stoś 2017, 203-28].

2.2. Calcium

Calcium (Ca) is a bioelement necessary for the proper functioning of the human body. It influences many intracellular and extracellular processes and is necessary for the development, growth and maintenance of bones and the stability of the cellular cytoskeleton [Ciosek, Kot, Kosik-Bogacka, et al. 2021, 506]. Correct calcium levels bring many health benefits, such as lowering blood pressure, reducing hypertensive disorders during pregnancy, preventing osteoporosis and colon adenomas, and lowering cholesterol levels [Cormick and Belizán 2019, 1606]. The consequence of chronic calcium deficiency in adults is osteomalacia and an increased risk of osteoporosis, and in children – rickets. Ca deficiencies also cause increased body excitability, neurological disorders, tetany, and increased blood pressure. Excessive calcium intake may cause kidney diseases (failure, urolithiasis, milk-alkaline syndrome), vascular calcification, damage to the structure of organs or disturbances in the functioning of various systems in the body, as well as an increased risk of cardiovascular diseases and prostate cancer, or disturbances in the absorption of other minerals, e.g. iron, magnesium and zinc [Wojtasik, Jarosz, and Stoś 2017, 203-28].

2.3. Magnesium

Magnesium (Mg) is a nutrient essential for maintaining important physiological functions. This ion plays a key role in cellular homeostasis and organ functioning. Mg is a cofactor in over 600 enzymatic reactions and is necessary for the activity of protein kinases, glycolytic enzymes,

phosphorylation processes and ATP-related reactions [Barbagallo, Veronese, and Dominguez 2021, 463]. It takes part in the synthesis of RNA and DNA, the metabolism of proteins, carbohydrates and lipids. It plays an important role in the stability of cell membranes, bone and calcium metabolism, and the functioning of the nervous and immune systems. Symptoms of Mg deficiency are common non-specific. Additionally, the clinical diagnosis of Mg deficiency is problematic because its concentration in serum does not reflect the total content in the body. Mg deficiency is associated with a number of diseases, such as neurological diseases (headaches, convulsions, stroke), circulatory system diseases (arrhythmia, preeclampsia, heart failure), respiratory diseases (bronchial asthma, chronic obstructive pulmonary disease) and depression. Recent research suggests that chronic Mg deficiency may be responsible for an increased risk of overweight and obesity, insulin resistance and type 2 diabetes, hypertension, lipid metabolism disorders and atherosclerosis [Pelczyńska, Moszak, and Bogdański 2022, 1714; Alawi, Majoni, and Falhammar 2018, 9041694]. Excessive supply of magnesium may occur when consuming large amounts of products enriched with this ingredient and dietary supplements. Large doses of magnesium salts have laxative properties and their chronic consumption may cause poisoning. Adverse reactions include alkalosis, dehydration, breathing difficulties, and changes in the heart's electrocardiogram, sleep disorders, muscle weakness and disorientation [Jarosz, Rychlik, Stośet al. 2020].

2.4. Zinc

Zinc (Zn) is an essential trace element for human health, known for its role as a regulatory, structural and catalytic component of at least 3,000 proteins, including enzymes and transcription factors. Approximately 10% of the human proteome is associated with Zn ions to regulate gene expression, DNA metabolism, chromatin structure, cell proliferation, maturation, death, immune responses and antioxidant defense [Maret 2013, 82-91]. Efficient homeostatic systems precisely regulate intracellular concentrations of this bioelement. However, disturbed Zn homeostasis is important in the pathogenesis of some chronic diseases, such as cancer, diabetes, depression, Wilson's disease, Alzheimer's disease and other age-related diseases [Costa, Sarmento-Ribeiro, and Gonçalves 2023, 4822]. Recent studies have shown the important role of zinc in the fight against COVID-19. Zinc was found to prevent SARS-CoV-2 from entering cells by downregulating the expression of ACE-2 receptors and inhibiting the SARS-CoV-2 RNA-dependent RNA polymerase. Zinc, thanks to its anti-inflammatory properties, also prevents the cytokine storm that occurs after SARS-CoV-2 enters the cell [Imran, Fatima, Alzahrani, et al. 2022, 1227].

The daily requirement for Zn according to the Institute of Nutrition and Food is 5 mg for infants up to 1 year of age, 10 mg for children aged 1 to 9, girls and women 10-13 mg, pregnant women 12-16 mg, breastfeeding women 16-21 mg, boys and men 14-16 mg daily. It is supplied to the body mainly through the alimentary route, with food of plant and animal origin, and to a lesser extent through the respiratory system and skin [Gertig and Przysławski 2006; Szcześniak, Grimling, and Meler 2014]. Zinc deficiencies cause skin lesions, problems with proper wound healing, weakened senses of taste and smell, weakened immune system and increased susceptibility to infections. The excess of this microelement is manifested by symptoms such as: abdominal pain, diarrhea, nausea and vomiting, headaches, disturbed copper metabolism in the body, reduced iron absorption, reduced HDL levels in the blood, as well as disturbed functioning of the heart and pancreas [Abendrot, Merks, and Kalinowska 2019, 510-18].

2.5. Chrome

Chromium (Cr) can exist in various oxidation states: Cr(0), Cr(III) and Cr(VI), with Cr(III) and Cr(VI) being relatively stable and largely dominant. While Cr(III) is an essential trace element for human health, found in soil and rocks (easily absorbed by plants), hexavalent chromium is mainly an industrial pollutant. Cr(VI) compounds are widely used as pigments for textile dyes, paints, inks, plastics, corrosion preventives and wood preservatives. Cr(VI) is classified by IARC (International Agency for Research on Cancer) as a human carcinogen (class I) [Genchi, Lauria, Catalano, et al. 2021, 638]. Cr(III) is a trace element that facilitates the metabolism of carbohydrates and lipids. It plays an important role in glucose homeostasis as a critical cofactor for insulin action and as a component of the glucose tolerance factor [Chen, Kan, Ratnasekera, et al. 2022, 2687]. Cr(III) improves the activity of insulin by binding to it and intensifying its action approximately threefold [Genchi, Lauria, Catalano, et al. 2021, 638]. The results of cross-sectional and case-control studies prove that people with diabetes have lower serum chromium levels compared to healthy people. Decreased plasma Cr levels have also been observed in patients with cardiovascular diseases (e.g. coronary heart disease, myocardial infarction). Additionally, plasma chromium levels have been found to be negatively correlated with blood pressure and low-density lipoprotein levels [Chen, Kan, Ratnasekera, et al. 2022, 2687].

Due to the suggested ability of Cr to control carbohydrate-lipid metabolism and to reduce body weight, it is often used as an ingredient of supplements used in the treatment of obesity [Juśkiewicz, Ognik, Fotschki, et al. 2023, 3962]. Trivalent chromium compounds are also popular ingredients of SDs used by diabetics [Staniek, Król, and Wójciak 2020, 3070]. The most popular chromium compounds included in SD include: chromium

picolinate, chromium histidinate, chromium dinococysteinate and chromium bound to niacin. Cr deficiency can cause blood sugar spikes, elevated cholesterol and blood pressure. In addition, it may cause reduced resistance to infections, atherosclerosis, hormonal disorders, nervous system disorders and fatigue. However, a too high level of chromium may lead to pathological conditions. Long-term exposure to Cr(III) may cause skin allergies and cancer. Moreover, the accumulation of dietary supplements based on Cr(III) may cause genotoxic effects [Genchi, Lauria, Catalano, et al. 2021, 638].

3. INTERACTIONS BETWEEN DIETARY SUPPLEMENTS CONTAINING MINERALS AND DRUGS

Medicine packaging contains important information about the product and its potential side effects. However, the packaging of dietary supplements often lacks information about side effects, contraindications to use, as well as interactions that may occur when using a given SD with prescription or over-the-counter drugs [Bojarowicz and Dźwigulska 2012b, 442-47]. Additionally, patients often do not provide information about the SDs they take during consultations with a doctor or pharmacist, which may result in serious health risks [Stępień, Niewiarowski, and Harasimiuk 2019, 51-59]. Drug interactions occur when the pharmacological effects of a given drug are altered by the presence of another drug or xenobiotic, as well as bioactive ingredients in food or beverages, and other chemicals. Clinically significant interactions pose a health risk because they can influence the outcome of treatment and even cause life-threatening side effects of medications. Traditionally, interaction mechanisms are classified as pharmacokinetic or pharmacodynamic, depending on the nature of the interaction [Petric, Žuntar, Putnik, et al. 2021, 33; Thanacoody 2019, 53-65]. Pharmacodynamic interactions occur when two preparations (dietary supplements and/or drugs) are administered simultaneously, with one product influencing the action of the other without changing its concentration in the body. These types of interactions occur less frequently than pharmacokinetic interactions, in which the interaction is caused by a changed concentration of the active substance in the body [Kreft 2015, 127-35]. The bioelements that are most often included in SDs and are the most important from the point of view of drug interactions are iron (Fe), calcium (Ca) and magnesium (Mg) [Abendrot, Merks, and Kalinowska-Lis 2019, 510-18].

3.1. Iron

Drug interactions of iron-containing SDs may occur in many patients and involve a large number of therapies. Iron ions cause a significant reduction in the bioavailability of many drugs, such as: tetracycline, tetracycline

derivatives (doxycycline, methacycline and oxytetracycline), penicillamine, methyldopa, levodopa, carbidopa and ciprofloxacin. The primary mechanism of these drug interactions is the formation of iron-drug complexes (chelation or binding of iron by the drug involved). Also many other important and commonly used drugs, such as thyroxine, captopril and folic acid, form stable complexes with iron [Campbell and Hasinoff 1991, 251-55].

3.2. Calcium

Calcium, like most minerals, may reduce the absorption and effect of most antibiotics, including: tetracyclines and fluoroquinolones used in respiratory and urinary tract infections. The reduction in the concentration of antibiotics in the blood can reach up to 50%, which is associated with the lack of effectiveness of the treatment. Moreover, calcium ions may increase the toxicity of cardiac glycosides (digoxin and methyldigoxin) used in cardiac arrhythmias. When using calcium supplements and calcium channel blockers (e.g. verapamil) to treat hypertension, blood pressure should be monitored regularly. This mineral may reduce the effect of the drug [Bojarowicz and Dźwigulska 2012b, 442-47].

3.3. Magnesium

Magnesium ions contained in SDs may form complex compounds with low solubility (bioavailability), reducing the effect of pharmaceuticals such as: anticoagulant drugs (e.g. ticlopidine), antifungal drugs (ketoconazole), antipsychotic and anxiolytic drugs (chlorpromazine, clonazepam), cardiac glycosides (digoxins), methyldigoxin, antihypertensive drugs (e.g. captopril) and antibacterial drugs (tetracyclines). They may also increase the bioavailability of bronchodilators (theophylline) or drugs used in Parkinson's disease (levodopa), increasing the risk of side effects such as nausea, vomiting, heart disorders, headaches and insomnia [Abendrot, Merks, and Kalinowska-Lis 2019, 510-18].

4. THREATS RESULTING FROM THE LACK OF QUALITY CONTROL OF DIETARY SUPPLEMENTS

Dietary supplements, unlike medical products, are not subject to stringent quality requirements. This means that people using this type of preparations are not sure whether they contain the declared active substance and whether this substance is present in the amount declared by the manufacturer [Stępień, Niewiarowski, and Harasimiuk 2019, 51-59]. Differences can be found both in different products containing a given ingredient and in

different batches of the same supplement from one manufacturer [Starek, Gumułka, and Dąbrowska 2023, 1650]. Additionally, there is a risk of the presence of substances in the preparations that are prohibited for dietary supplements. The pharmaceutical availability of active substances is also undetermined [Stępień, Niewiarowski, and Harasimiuk 2019, 51-59].

In many countries, the illegal production of counterfeit medical products and dietary supplements (including products containing false information about their composition, origin, action and use) is increasing, especially in online offers and in non-pharmacy markets (markets, oriental medicine clinics, gyms). There is also more documented information about hospitalizations and deaths of people who used preparations of unknown origin purchased from illegal sources [Fijałek, Sarna, Błażewicz, et al. 2010, 227-35].

Quality studies of dietary supplements indicate numerous irregularities. The analysis of slimming preparations revealed the presence of sibutramine, monodesmethylsibutramine and didesmethylsibutramine, which are prohibited by Polish law. Preparations for athletes, which, according to the manufacturer's declaration, should contain vitamins and amino acids, contain anabolic steroids and beta-methylphenylethylamine contamination – a substance with an effect similar to amphetamine. In preparations with a declared effect on relieving joint pain and neuralgia, the presence of the corticosteroid dexamethasone and phenylbutazone, classified as non-steroidal anti-inflammatory drugs with a very strong effect, was found [Stępień, Niewiarowski, and Harasimiuk 2019, 51-59].

As a result of microbiological purity tests of dietary supplements conducted at Poznań University of Medical Sciences, it was found that 6.5% of 1,165 tested samples of preparations produced by pharmaceutical plants in Wielkopolska did not meet the applicable requirements. The most common abnormalities concerned the presence of aerobic bacteria and fungi. In several cases, the presence of Escherichia coli bacteria, causing infections of the digestive and urinary systems, was detected [Ratajczak, Kubicka, Kamińska, et al. 2015, 383-87].

CONCLUSION

Dietary supplements are a category of products intended for consumption to supplement the diet as well as to meet basic nutritional needs. In recent years, there has been a trend of increased consumption of dietary supplements, although there is still insufficient data to support their widespread use. Numerous studies indicate both the positive impact of taking dietary supplements, as well as the unfavourable and even toxic effects of taking them. This is mainly related to the lack of strictly defined indications

for taking dietary supplements and, above all, to their classification as foodstuffs, which results in the lack of obligation to test them for interactions, potential side effects and durability. Attention is drawn to the low safety of dietary supplements, resulting from insufficient supervision of these products, lack of strict controls before new dietary supplements enter the market, and insufficient legal protection of consumers. Attention should also be paid to the low public awareness of the effects of taking dietary supplements to the insufficient research on their effectiveness and to the need to take them. Many people still see dietary supplements as substitutes for medicines, even though dietary supplements, unlike medical products, are not subject to strict quality requirements. This means that people using this type of preparations cannot be sure whether they actually contain the declared active substance or whether this substance is present in the amount declared by the manufacturer. Additionally, patients often do not provide information about the dietary supplements they take during consultations with a doctor or pharmacist, which may result in serious health risks, including- among others – the possibility of interactions that may occur when using a given SD with prescription or over-the-counter drugs.

In connection with the above, attention should be paid to the need of introducing appropriate quality standards and to changing legal regulations regarding dietary supplements, so as to increase control over their quality and the effects of taking them. It is also necessary to provide information aimed at increasing public awareness of the properties of dietary supplements, their composition, as well as the content of active substances.

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THE RIGHT TO EDUCATION OF UKRAINIAN REFUGEE CHILDREN IN POLISH SCHOOLS AFTER FEBRUARY 24, 2022*

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Abstract. It should be emphasized that the method of preparing the Polish education system to accept children of Ukrainian refugees, developed in cooperation with education superintendents, school principals and the governing bodies (local governments) has proven to be almost foolproof. Nowhere in Poland have there been any problems related to this over the past 2 years. Moreover, the presence of Ukrainian students in Polish schools does not generate any conflicts on the grounds of nationality, nor does it negatively impact the quality of education. It is hoped that the recently proposed solutions, including the exemption of Ukrainian students from the mandatory Polish language exam and the introduction of Ukrainian elements into the core curriculum in Polish schools, will not have a detrimental effect on this positive outcome.

Keywords: right to education; children of Ukrainian refugees; compulsory schooling; preparatory classes; exam; hiring teachers.

INTRODUCTION

During the night hours of February 24, 2022, Russia launched a full-scale war against Ukraine. Especially the first weeks of this brutal war were characterized by constant rocket attacks throughout Ukraine, including on cities near the Polish-Ukrainian border. These are also brutal acts of genocide and brutality by Russian troops who were already approaching Kiev. All this intensified the migration movement. The number of refugees, mainly women and children, who came to Poland at that time reached up to 2.5 million. It was estimated that up to 1 million school-age children came to Poland.[1] This generated the need to organize educational care for them. Pursuant to Article

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[1] See https://atlas2022.uw.edu.pl/mapa-tygodnia-uchodzcy-z-ukrainy-od-poczatku-wojny-do-konca-marca/ [accessed: 30.09.2024].

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70 of the Constitution of the Republic of Poland,[2] everyone, including refugee children located on the territory of the Republic of Poland, has the right to education. Moreover, this education is compulsory until the age of 18.

1. EDUCATION IN THE ACT ON ASSISTANCE TO CITIZENS OF UKRAINE

On March 12, 2022, the Sejm of the Republic of Poland adopted the Act on assistance to citizens of Ukraine in connection with the armed conflict on the territory of this country.[3] Pursuant to the provisions of Article 50 et seq. of this Act in 2022 in order to support local government units in the implementation of additional educational tasks related to education, upbringing and care of children and students who are citizens of Ukraine, whose stay in the territory of the Republic of Poland is considered legal pursuant to Article 2(1) of the Act, full financing of the costs incurred by local governments in connection with admitting Ukrainian refugee children to schools was ensured. Funds were also guaranteed for the purchase of textbooks, educational materials and exercise materials for students of public and non-public primary schools for children and youth and art schools providing general education in the field of primary school, who are citizens of Ukraine, whose stay in the territory of the Republic of Poland is considered legal, or who reside legally on the territory of the Republic of Poland, if they arrived on the territory of the Republic of Poland from the territory of Ukraine from February 24, 2022.

The entire costs incurred by the managing bodies in connection with the education of refugee children from Ukraine are paid from the funds launched pursuant to Article 14(1) of the aid act: "An Assistance Fund, hereinafter referred to as the Fund, is established at the *Bank Gospodarstwa Krajowego* in order to finance or co-finance the implementation of tasks to assist Ukraine, in particular to Ukrainian citizens affected by the armed conflict on the territory of Ukraine, including tasks carried out both within and outside the territory of the Republic of Poland."

There were many opinions immediately, also from teaching circles, especially from the Polish Teacher's Union, expressing fear, that there will be not enough space in Polish schools for all the students who came from Ukraine. These fears were not only exaggerated, but also did not take into account the fact that over the last 20 years the Polish education system has lost approximately 2.2 million children and young people, while the school infrastructure has significantly improved. However, in order to calm down

[2] Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended.

[3] Journal of Laws of 2022, item 583.

these negative emotions, which also had an impact on the atmosphere in Polish schools and among parents, on the initiative of the Minister of Education and Science, the provision of Article 51 of the Act, according to which, in order to ensure education, upbringing and care for the children of Ukrainian refugees, "other locations for conducting teaching, educational and care activities may be created, subordinated organizationally to schools or kindergartens," and the provision of Article 39(5a), Article 89 of the Act of December 14, 2016 – Education Law,[4] and Article 71 of the Act of July 7, 1994 – Construction Law,[5] providing a complicated and lengthy procedure on this occasion and specific requirements, are excluded. It was also indicated that the creation of another location for classes subordinated to a school run by a local government unit or a kindergarten run by a local government unit takes place by way of a resolution of the decision-making body of this local government unit, after obtaining a positive opinion from the education superintendent. The opinion is issued within 7 days from the date of receipt of the request for its issuance, and the resolution is not subject to publication in the provincial official journal.

Subsequent regulations also provide for the possibility of organizing free transport for Ukrainian refugee children and students to a place where they are provided with education, upbringing and care. If such transport is organized, the local government unit is obliged to provide care during transport to children receiving pre-school education and to students who are provided with education, upbringing and care at a primary school for children and youth.

The problem indicated by school authorities, teachers and parents, was the knowledge of the Polish language among refugee children. This is an extremely important issue, because having Ukrainian children participating in Polish classes without knowing our language would not only be very ineffective for them, but would also disorganize the lessons for Polish children. For this reason, the then Minister of Education and Science and the management of the ministry focused on the creation and promotion of Ukrainian classes preparing, primarily linguistically, for full participation in the Polish education system. Therefore, in accordance with Article 55 of the Act, teaching in a preparatory class may be conducted in an inter-school group, and in cases justified by demographic conditions, the executive body of the local government unit that is the body managing the school in which the preparatory class is organized may direct students of other schools of the same type, run by the same school, to this class local government unit. Moreover, local government units running schools may conclude agreements for the executive body of the local government unit to transfer students of the school it runs

[4] Journal of Laws of 2024, item 737, 854.

[5] Journal of Laws of 2024, item 725, 834, 1222.

to a preparatory unit organized in a school of the same type run by another local government unit. Curriculum issues were also regulated, indicating that teaching in the preparatory class is based on general education curricula implemented at school, adapted in terms of the scope of teaching content and the methods and forms of its implementation to the developmental and educational needs and psychophysical capabilities of students.

The provisions of the Act also addressed concerns regarding the potential shortage of teachers and the impossibility of employing them for more than 1.5 full-time positions. Pursuant to Article 56 of the Act, in a school where an additional department has been established to provide education, upbringing and care for refugee children and students, a teacher may be assigned, with his or her consent, overtime hours exceeding those specified in Article 35(1) of the Act of January 26, 1982 – Teacher's Card (27 teaching hours).[6] The same solution is also provided for Polish language teachers, with their consent, also in schools where no additional department has been established to provide education, upbringing and care to children and students of Ukrainian refugees.

The requirements for employing Ukrainian teachers in Polish educational institutions have also been significantly reduced. Pursuant to Article 57 of the Act in the position of teacher's assistant referred to in Article 165(8) of the Act of December 14, 2016 – Education Law, a person without Polish citizenship may be employed if he or she has knowledge of the Polish language in speech and writing to the extent enabling assistance to a student who does not know the Polish language or knows it at a level insufficient to use science. The requirement of knowledge of the Polish language confirmed by a document has been waived. It is clear that such documents could have been destroyed during the war.

Responding to allegations about a potential lack of teachers due to the wave of refugee children in Polish schools, the Ministry of Education and Science also proposed the solution adopted in Article 58, according to which the prohibition provided for in Article 9(2) of the Act of May 22, 2009 on teachers' compensation benefits[7] when employing the recipient of such a benefit as a teacher's assistant, a Polish language teacher or a teacher conducting additional Polish language classes.

2. REGULATION OF THE MINISTER OF EDUCATION AND SCIENCE

In order to implement all these solutions, in Article 59 of the Act, the Minister of Education and Science was authorized to issue an appropriate

[6] Journal of Laws of 2023, item 984.
[7] Journal of Laws of 2022, item 301.

implementing regulation. Such a regulation was issued immediately after the entry into force of the discussed Act on assistance to citizens of Ukraine, i.e. on March 21, 2022.[8] In this regulation, the minister in particular defined the rules for Ukrainian students in eighth grades and secondary school leaving examinations to take the eighth-grade exam, the material exam, and vocational exams. However, the Minister of Education and Science did not succumb to pressure and did not exempt these students from the obligation to take the Polish language exam. It only allowed to extend the time for solving tasks in the Polish language exam (§ 1-3).

A change in this respect occurred only this year. On the initiative of the new Minister of Education, Ukrainian refugee students were exempted from the compulsory Polish language exam. According to many parents and experts, this change is unfavorable because it demotivates Ukrainian students to learn Polish literature and poetry, but it will also privilege these students when it comes to applying to the best secondary schools and may increase misunderstandings and reluctance towards the Ukrainian minority in Poland. Such voices are very common, despite the fact that the same amendment adopted a revised system for converting the lack of a Polish language exam into appropriate points for recruitment to secondary schools.[9]

In the subsequent provisions of the regulation, the minister decided that in the school years 2021/2022-2024/2025, a student who is a citizen of Ukraine and attends a preparatory department is not subject to annual classification if the pedagogical council decides that: 1) the student does not know the Polish language or the student's knowledge of the Polish language is insufficient to benefit from the education or 2) the scope of educational activities carried out in the preparatory department makes it impossible to carry out the student's annual classification. In such cases, the student receives a certificate of attendance at the preparatory department.

Clear rules for completing primary school by children of Ukrainian refugees have also been established. Such a student completes primary school if: 1) he or she received positive annual classification grades for all compulsory educational activities carried out in the 8th grade, referred to in the regulations issued pursuant to Article 44zb of the Act of September 7, 1991 on the education system; 2) he also took the eighth-grade exam. However, in the grade sheet and on the student's primary school leaving certificate, a horizontal line is inserted in the space intended for entering grades for compulsory educational activities: music, art, nature and technology.

Due to the limits on the maximum number of children and students in kindergartens and schools, which block the possibility of accepting Ukrainian

[8] Journal of Laws of 2022, item 645.

[9] Journal of Laws of 2024, item 854. See also Fidler 2024.

refugee children, these limits have been increased. Thus, in accordance with § 7 of the regulation in question, the number of children in a kindergarten class may be increased by no more than 3 children who are citizens of Ukraine. In turn, based on § 8, the number of students in a class of grades I-III of primary school may be increased by no more than 4 refugee students, and in subsequent years the number of students in a class of grades I, II or III of primary school operating with an increased number of students cannot exceed 29. In subsequent regulations, the limits of students in integrated schools and special schools, as well as in special educational and educational centers and in special educational centers were also increased by 2 (§ 9-10).

The addition of a large group of children from Ukraine to schools made it necessary to increase the allowed group size for after-school activities. As a rule, no more than 25 students may attend club classes in a public primary school under the supervision of one teacher. However, in the case of admitting students who are victims of the conflict in Ukraine, this number may be increased by a maximum of 4 students. Importantly, one teacher in a mainstream and integrated school may have not 5, but as many as 7 students with disabilities (§ 11).[10]

Since the beginning of the full-scale war, it has become clear that in many cases it will be impossible for Ukrainian refugees to present documents confirming both their rights of all kinds and their degrees of disability. Therefore, a solution was adopted in § 12, according to which the director of a special kindergarten, a special school, a special educational center or a special educational center may accept a disabled child or a disabled student who is a Ukrainian refugee on the basis of a declaration by the parent or person caring for the child or student about submitting an application to a public psychological and pedagogical counseling center, including a public specialist counseling center, for a decision on the need for special education.

For a similar reason, it was also assumed that in justified cases, in a public educational institution and a public institution providing care and upbringing for students during the period of receiving education outside their place of permanent residence, in order to conduct classes for children and youth who are refugees from Ukraine, it may be possible, with the consent of education superintendent, an employed person who is not a teacher and has preparation recognized by the director of the institution as appropriate to carry out the tasks specified by the director of the institution in this respect.

Due to the expected housing problems, which ultimately occurred only in the centers of several largest cities, the Minister of Education and Science also flexibly established detailed conditions for accepting another location for teaching, educational and care activities in kindergartens and schools.

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[10] See also Wysocka 2022.

3. AMENDMENT OF REGULATIONS AFTER THE CHANGE OF MANAGEMENT OF THE MINISTRY OF NATIONAL EDUCATION – COMPULSORY SCHOOLING

The problem that was widely discussed from the beginning in the ministry and in teaching circles, but also among parents of refugee children, was compulsory schooling for these children. Due to the initial very large fluctuation in migration – especially in the first months, millions of Ukrainians came to Poland and then went to other countries or, no less often, simply returned to Ukraine – it was decided not to make school compulsory for these children, provided that they continue to study. distance learning in Ukrainian schools. Although this teaching was often fiction, especially in schools in areas bombed and destroyed by Russia, there was no other, better solution at that time. Therefore, it was finally decided that students from Ukraine who are under 18 years of age are obliged, according to the constitution, to fulfill the obligations of one-year pre-school preparation, compulsory schooling and compulsory education, but it is not necessary to attend a Polish unit of the education system. Ukrainian students could still complete the above-mentioned activities. obligations by receiving education in a kindergarten or school operating in the Ukrainian education system using distance learning methods and techniques. Importantly, however, the parent (or person providing care) submitted a declaration of continuing education in the Ukrainian education system [Wysocka 2022].

Due to a number of irregularities and the possibility of abuse (arguments raised mainly by the local government), it was not decided that the obligation to educate and learn could be fulfilled by refugee children from Ukraine in the form of the so-called home education.

After a few years, when refugee immigration from Ukraine stabilized, it was time for changes in this area. Thus, in accordance with the amendment to the Act on Assistance to Citizens of Ukraine, from September 1, 2024, refugee children have been covered by compulsory one-year pre-school preparation, compulsory schooling and compulsory education (secondary schools) in the Polish education system – similarly to Polish students. Only students who, in the 2024/2025 school year, study in the highest class in a school operating in the Ukrainian education system will be able to study online.

In order to fully enforce compulsory schooling, it was combined with the 800+ and Good Start family benefits, which are paid to refugees from Ukraine provided that their child attends the so-called kindergarten, primary school or secondary school.

As the authors of the amendment rightly point out, "education is the right of every child. Good education is a chance for a good future. The Polish school is properly prepared to accept children coming from Ukraine

and provide them with appropriate support, care and safety. Lack of education is not only a lack of knowledge, it also means difficulties with integration, with finding one's place in the country of residence, as well as, in the future, problems with finding a job and functioning properly in society. We cannot allow children to be deprived of their chance for a good life, we must take care of their education, safety and well-being. These children can build both Ukraine and Poland in the future."[11]

While the above change is completely justified, the exemption of Ukrainian students from the Polish language exam in the eighth-grade exam is a breach in our education system. This solution is not only harmful to Ukrainian students – it allows them to graduate from Polish schools without sufficient knowledge of both the Polish language and Polish literature and poetry, but it also raises suspicions of discrimination against Polish students who, having obtained different results in the Polish language exam, may be in worse situation when recruiting to the best secondary schools.

4. ACTIVITY OF THE MINISTER OF EDUCATION AND SCIENCE ON THE THRESHOLD OF A FULL-SCALE WAR

Since the beginning of the war and the refugee crisis, the Minister of Education and Science has been extremely active in relations both with the local government, representing the overwhelming majority of bodies running kindergartens and schools in Poland, and also in relations with the Ukrainian side. This activity was also accompanied by information activities.

On February 28, 2022, the Ministry of Education and Science has prepared information for students and scientists coming from Ukraine. The material presents the most important issues related to continuing studies and a scientific career in Poland. The information has been prepared in Polish and Ukrainian.[12] The day before, the Ministry of Education and Science prepared information for teachers and educators regarding psychological and pedagogical assistance. The material includes recommendations and tips on supporting Polish students, as well as children from Ukraine currently studying in Poland, as well as those who will reach our country as a result of military operations carried out beyond the eastern border.[13]

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[11] See https://www.gov.pl/web/edukacja/uczniowie-z-ukrainy-w-polskich-szkolach-wazne-informacje-dla-rodzicow [accessed: 30.09.2024].

[12] See https://www.gov.pl/web/edukacja/informacja-dla-studentow-i-naukowcow-przybywajacych-z-ukrainy [accessed: 30.09.2024].

[13] See https://www.gov.pl/web/edukacja/jak-rozmawiac-z-dziecmi-i-uczniami-na-temat-sytuacji-w-ukrainie--rekomendacje-dla-nauczycieli-i-pedagogow-szkolnych [accessed: 30.09.2024].

On February 25, 2022, a day after Russia's attack on Ukraine, due to bombs falling also near the border with Poland and clearly audible by Poles living along the border with Ukraine, the Minister of Education and Science introduced regulations according to which in the area Bieszczady, Chełm, Hrubieszów, Jarosław, Lubaczów, Przemyśl, Tomaszów and Włodawa counties and cities with county rights: Chełm and Przemyśl, directors could, if necessary, suspend stationary classes in schools and educational institutions.[14]

On March 1, 2022, five days after the outbreak of full-scale war, the Minister of Education and Science of the Republic of Poland had a long conversation with the Minister of Education and Science of Ukraine, Serhiy Shkarlet. The online meeting covered, among others: preparing the education and science system in Poland to accept refugees from Ukraine. As he pointed out, "for 380 thousand people who crossed the Polish-Ukrainian border, half of them are school-age children." The head of the Ministry of Education and Science informed that during the meeting he discussed with the Minister of Education of Ukraine the issue of preparing the Polish education system to accept refugees. He emphasized that he is open to accepting students who are fleeing areas affected by armed conflict. – I told the minister how this system is prepared. We are open, this friendship will be shown to Ukrainian children and youth fleeing the war, said the Minister of Education and Science. He added that the education system should provide support to students from Ukraine so that they can take a break from the dramatic experiences.[15]

A few days later, Secretary of State in the Ministry of Education and Science, Dariusz Piontkowski, announced at a press conference that in recent days the ministry's management had been meeting with education superintendents and representatives of local governments. As a result of these meetings, it was agreed that "it will be possible to increase the number of children in the preparatory department to a maximum of 25 students. Now the number of students is 15. In addition, school governing bodies will be able to create inter-school classes." The Secretary of State at the Ministry of National Education and Science added that in rural communes there will be funding for transporting children to schools. The deputy minister also announced that the Ministry of Education and Science is preparing regulations that will allow the school principal to employ a teacher's assistant – a person who knows Ukrainian and Russian. There will also be changes to the Teacher's Card Act, so that teachers who want to work more will have the opportunity to receive overtime hours beyond half-time. However, teachers receiving

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[14] See https://www.gov.pl/web/edukacja/mozliwosc-zawieszenia-zajec-stacjonarnych-w-szkolach-i-placowkach-oswiatowych-na-terenie-8-powiatow-przygranicznych-z-ukraina--rozporzadzenie-mein [accessed: 30.09.2024].

[15] See *Rozmowa szefa MEiN z ukraińskim Ministrem Oświaty i Nauki*, Ministerstwo Edukacji Narodowej – Portal Gov.pl (www.gov.pl).

compensatory benefits will be able to work at school with Ukrainian students as teachers or teacher's aides. He also informed that schools have recently received PLN 180 million of additional funds for specialist assistance for additional classes as part of psychological and pedagogical assistance.[16]

Two days later, the ministry provided comprehensive information on the legal provisions adopted on those days and the solutions resulting from them: 1) possibility of transferring an additional subsidy from the state budget to local government units; 2) possibility of creating other locations for teaching, educational and care activities, organizationally subordinated not only to schools, but also to kindergartens; 3) possibility for the school principal to assign overtime hours to a teacher (with his/her consent) exceeding 1/2 of the weekly mandatory teaching hours; 4) facilitating employment as a teacher's assistant for citizens of Ukraine who know the Polish language in speech and writing to a degree that allows them to help a student who does not speak Polish; 5) enabling you to start work without suspending your right to compensation benefits; 6) exemption from fees for people from Ukraine, injured as a result of hostilities, for submitting an application to the education superintendent for recognition of the level of education in Poland and for having the right to continue education at university.[17]

The day before, on March 8, 2022, the Ministry of Education and Science prepared a list of available educational materials that can be used when working with students admitted to Polish schools in connection with the armed conflict in Ukraine.[18]

In the face of incomprehensible and harmful disinformation activities, the Ministry of Education and Science has undertaken an action to promote preparatory classes in schools for students from Ukraine who do not know the Polish language or who know it insufficiently to participate in lessons conducted in Polish. The Ministry explained that a much more beneficial form of education for such children and young people is a preparatory class, where students are in their Ukrainian group and learn primarily Polish, which will allow them to join classes in classes with Ukrainian students after a few months without excessive stress. Polish students and conducted in Polish. In addition to organizational improvements consisting in the possibility of creating inter-school and even inter-municipal preparatory units, the ministry has also prepared increased financing for the operation of such units.[19]

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[16] See https://www.gov.pl/web/edukacja/konferencja-wiceministra-dariusza-piontkowskiego-o-pomocy-dla-uchodzcow-z-ukrainy

[17] See https://www.gov.pl/web/edukacja/pomoc-ukrainie-rozwiazania-dotyczace-oswiaty-i-szkolnictwa-wyzszego-w-projekcie-tzw-specustawy [accessed: 30.09.2024].

[18] See https://www.gov.pl/web/edukacja/materialy-edukacyjne-do-wykorzystania-w-pracy-z-uczniami-z-ukrainy [accessed: 30.09.2024].

[19] See https://www.gov.pl/web/edukacja/zasady-organizacji-oddzialow-przygotowawczych

For this reason, special emphasis was placed on learning Polish. Therefore, not only students from Ukraine, but all students subject to compulsory schooling and compulsory education, who do not know the Polish language or know it at a level insufficient to benefit from education, have the right to additional, free Polish language learning for a period of up to 24 months (Article 165(7) Education Law). From the 2022/2023 school year, additional Polish language classes should be conducted for no less than 6 hours per week. These classes may be conducted individually or in groups, but the group cannot consist of more than 15 students. A very important solution that is valid in the 2022/2023 school year is the possibility of organizing Polish language learning in inter-school groups. In cases justified by demographic conditions, the commune head (mayor/president of the city) may refer students attending other schools run by the same authority to a school providing additional Polish language instruction in order to receive additional Polish language instruction (Article 55b of the Act on assistance to citizens of Ukraine). The Act on the Education System also states that students who are entitled to additional free Polish language learning are also entitled to assistance provided by a person who speaks the language of their country of origin (for a period of 12 months). Such a person is employed as a teacher's assistant by the school principal (Article 165(8) Education Law).

Due to the need to employ Ukrainian teachers arriving as part of the refugee movement in Polish schools, on March 23, the Ministry of Education and Science launched accelerated Polish language courses for these teachers. In a statement from that day, the ministry encouraged people to sign up for an intensive Polish language course at the primary level (A1) intended for teachers and educational workers from Ukraine. The aim of the project was to facilitate the start of work in a Polish school as a teacher/teacher's assistant for all people who applied who had previously worked as a teacher or were associated with education in Ukraine.[20]

A week later, on March 30, 2022, a press conference was held in the MEiN building with the participation of the Minister of Education and Science, the president of Poczta Polska, Tomasz Zdzikot, and the president of the Digital Poland Association, Michał Kanownik. During the event, details about the #SchoolForYou campaign were presented and information was given about the involvement of Poczta Polska and the Digital Poland Association in this initiative. The "School for You" campaign was addressed to Ukrainian students who did not decide to study in Polish schools and remained in the distance learning system in Ukrainian schools: "The head of the Ministry of Education and Science pointed out that the vast majority of Ukrainian

[accessed: 30.09.2024].

[20] See https://www.gov.pl/web/edukacja/nauka-jezyka-polskiego-dla-nauczycieli-oraz-pracownikow-oswiatowych-z-ukrainy--intensywny-kurs-osrodka-rozwoju-edukacji [accessed: 30.09.2024].

children are still outside the Polish education system. Some of them use remote learning and connect with their classes. These students – in accordance with applicable regulations – are exempt from compulsory schooling. To enable distance learning for these students, the Ministry of Education and Science is implementing the #SchoolForYou initiative: as part of this campaign, we have already collected several thousand pieces of used computer equipment – said the Minister of Education and Science, presenting the assumptions of the project. – This equipment will be distributed to all children who need this equipment to connect with Ukrainian classes – he emphasized." In turn, Michał Kanownik, president of the Digital Poland Association, added: "We actively collect used computer equipment. The equipment is cleaned, properly prepared for reuse and secured to be a reliable tool for distance learning in the Ukrainian education system. Our networks have dedicated their service lines to prepare this equipment for reuse."[21]

As already mentioned above, in connection with Russia's aggression against Ukraine and the inflow to Poland of refugees from the territory of the Ukrainian state, the Ministry of Education and Science has undertaken a number of actions aimed at facilitating the functioning of Ukrainian children in Polish schools and the employment of Ukrainian citizens. The ministry posted a detailed and comprehensive message summarizing these activities and informing Ukrainian refugees on March 29, 2022.[22]

On May 4, 2022, the Minister of Education and Science once again spoke with the Ukrainian Minister of Education and Science Serhiy Shkarlet. The next online meeting concerned, among others: organization of the secondary school leaving examination for Ukrainian students staying in Poland. The education ministers of Poland and Ukraine also talked about the "Solidarity with Ukraine" conference, organized by the National Agency for Academic Exchange in cooperation with the University of Gdańsk.[23] A similar conversation took place on August 26, 2022 and concerned preparations for the new school year.

CONCLUSIONS

The number of Ukrainian students – children of Ukrainian refugees in Polish schools initially reached 200000. In the previous school year 2023/2024, 183.9 thousand students attended Polish educational institutions.

[21] See https://www.gov.pl/web/edukacja/szkola-dla-was--wsparcie-ukrainskich-uczniow [accessed: 30.09.2024].

[22] See https://www.gov.pl/web/edukacja/zatrudnianie-kadry-pedagogicznej-i-pomocy-nauczyciela-w-szkolach--informacja-dla-obywateli-ukrainy [accessed: 30.09.2024].

[23] See https://www.gov.pl/web/edukacja/kolejna-rozmowa-ministra-przemyslawa-czarnka-z-ukrainskim-ministrem-oswiaty-i-nauki [accessed: 30.09.2024].

children and youth from Ukraine who arrived after the outbreak of the war in 2022, including 154.3 thousand in schools, and 29.6 thousand in kindergartens and kindergarten points (approx. 4% of all students). It is estimated that as a result of the introduction of compulsory schooling for all Ukrainian students residing in the Republic of Poland, approximately 40-70 thousand additional students will attend schools. children of Ukrainian refugees.[24]

It should be emphasized that the method of preparing the Polish education system for the reception of Ukrainian refugee children, developed in cooperation with education superintendents, school principals and the governing bodies (local government), turned out to be almost foolproof. No major problems related to this have been reported anywhere in Poland over the past 2 years. This is due to the high flexibility of the regulations, which provide a large slack of competence in this area to the governing bodies and school principals. This is also the result of the full and systematic transfer of financial resources from the Assistance Fund to the managing bodies, covering one hundred percent of the costs. These are internal, national funds, estimated at several billion zlotych

Moreover, the presence of Ukrainian students in Polish schools does not generate any ethnic conflicts, nor does it reduce the level of teaching in schools. Let's hope that new solutions – exempting Ukrainian students from the compulsory Polish language exam, as well as new, absurd ideas of the new management of the Ministry of National Education – introducing Ukrainian elements into the core curriculum in Polish schools, do not spoil this effect. Especially in the latter case, it is worth emphasizing that while fully respecting the rights of national minorities, exactly as in the entire civilized world, in accordance with Article 165(15) of the Education Law, for students who are not Polish citizens and are subject to compulsory school attendance, a diplomatic or consular mission of their country of origin operating in Poland or a cultural and educational association of a given nationality may organize at school, in consultation with the school principal and with the consent of the governing body, language learning and culture of the country of origin. The school provides rooms and teaching aids free of charge. However, the school principal is not obliged to organize Ukrainian language learning for students from Ukraine. It may only be obliged to provide rooms and teaching aids necessary to organize such learning. This in no way means changes to the curriculum in Polish schools, taking into account the Ukrainian curriculum. And it should stay that way.

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[24] See https://wszystkoconajwazniejsze.pl/pepites/ile-dzieci-i-mlodziezy-z-ukrainy-uczy-sie-w-polskich-szkolach/ [accessed: 30.09.2024].

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THE CONCEPT OF A SECULAR STATE IN THE POLITICAL THOUGHT OF THE PRESIDENCY OF MUSTAFA KEMAL ATATÜRK

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Abstract. The concept of the secular state has been discussed in the academic literature for decades. However the term "secularism" is typically employed to denote the French or American conceptualisation of the relationship between state and religious associations, it may also have different connotations. In this context, the main aim of the article is to prove that terms such as "secularism" or "laicisation" do not have a universal meaning, but rather their interpretation depends on the historical and cultural conditions. To this end, the author illustrates the process of creation the concept of secular state in the Republic of Turkey during the presidency of Mustafa Kemal Ataturk. The article posits that the Kemalist concept of the secular state was not only the original one, but it was also the basis of the modern concept of secularism in Turkey.

Keywords: secularism; laicism; Turkey; secular state.

INTRODUCTION

Specification of mutual relations of the state and religious associations is one of the most difficult tasks placed before modern legislators. Cultural limitations and binding standards of rights of individuals force them to search for new solutions that balance between historical models and challenges set by an externally diversified society. The common presence of this subject matter makes it an attractive comparative law subject, because current solutions in other countries may often serve as a valuable model of assessment of national regulations.

Following this line of thought, this study intends to outline the concept of a secular state that was developing in the beginnings of the Turkish Republic, that is during the presidency of its creator – Mustafa Kemal Atatürk. Therefore, it seems reasonable to assume that it was the organizational and political measures in place at that time that were the closest to the model organizational system and, in consequence, most cohesive and consistent.

The entire discussion presented here is built around an assumption that secularism is a culturally determined concept, the content of which depends

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not only on current normative solutions but also on historical and social factors. I consistently assume that there is no point looking for one, entirely universal approach to "secularism" as a name for a specific model of the relation between the state and religious associations. This does not mean that certain features of secularism cannot be shared in various countries, but at the same time detailed definitions of this name may differ significantly [Aydin 2007, 12].

Treating the above assumptions as a starting point for a further discussion, I assume that they intend to prove a thesis that – at least in Kemalists' beliefs – the Turkish take on secularism – also called "laikik" – should not be equalled with the French concept of the secular state because it is a separate and original model of the relation of the state and religion. And although it needs to be recognized that the Turkish concept of secularism was not built in a void, with time it developed independently, ultimately to take on its own shape [Rear 2014, 1]. It is worth noting with extreme caution that the terms laicisation and secularisation will be used as synonyms in this study.

1. FROM TANIZMAT TO KEMALISTS – BORN OF THE IDEA OF TURKISH SECULARISM

The concept of separation of the sphere of the state and religion appeared in the Turkish political thought as early as the beginning of the 19th century, when reforms initiated by Mahmud II and furthered under the Tanzimat started the process of a gradual separation of the realm of the state and religion. Establishment of the secular education system, the core of state control over the property allocated to religious purposes (*waqf*) or changes in the sphere of commercial and criminal law opened up the way to the formulation of a secular apparatus of public administration [Adamczyk 2005, 158; Daver 1988, 31]. An assumption about the need – independent of religion – to categorise residents of the Ottoman Empire as Ottomans, developed in parallel and then confirmed by the 1876 Constitution, allowed a construction of a corpus of officials among persons of various faiths [Burak 2021, 59]. And although religion was still one of the criterion of selection of individuals to self-governing state authorities and the selection of non-Muslim members was often done by millet authorities, the guarantee of representation of other religions, both locally (in administrative councils in eyalets, sanjaks and kazas) and centrally (under the Court Ordinances Council, and later also the parliament) was a significant breakthrough in the organization of the state and its administration [Adamczyk 2013, 27-31]. Indeed, Islam was still the state religion and the sultan himself was referred to as the leader of all Muslims [Daver 1988, 32; Toprak 2005, 28; Potera 2020, 97].

The Young Ottomans was a peculiar response to these reforms; opposing the sultan's absolutism, they referred to the concept of constitutionalism and

sovereignty of the state. And although its leaders did not formulate the postulate of secularisation of the country, they still assumed certain separation of the sphere of the state and religion, at the same time pointing out that only a universal constitutional regulation may legitimize any authority in Turkey [Berkes 1999, 209]. Criticising reforms of the Tanzimat, due to its omission of the need of separation and social control of the authority, they emphasized cohesion of the promoted idea, including in particular sovereignty of the nation, with Islam's tradition and attachment to the Ottoman dynasty [ibid., 210-11; Adamczyk 2013, 32]. Not rejecting the role of religion in the political life of the state completely, certain authors, such as Namik Kemal, treated the proposal to introduce the western concept of secularism to the empire actually as a grave error [Berkes 1999, 217-18]. Thus, even though in the spirit of the idea of liberalism the Young Ottomans did point to the need of separation of secular authority from religion, they used this postulate renter instrumentally to weaken the absolutism of the sultan's power.

Mehmed Gölkap's arguments were also significant for the budding idea of secularism of the state in the Turkish political thought. Criticising the historical coupling of the institution of the state and religion and emphasizing the process of evolutionary transformations within nations, he postulated that all manifestations of theocracy and clericalism be eliminated from political life. Invoking the purpose of separating the state, religion, Islam and oriental civilization, he pointed to the need of reconciling fundamental Islamic values, western civilisation and Turkish culture as a special guarantee of maintaining full sovereignty of the Turkish nation [Adamczyk 2005, 162]. Thus, accepting the essential role of Islam in modelling Turk's national identity, the author postulated that religion be removed only from the sphere of organization of the state, but not from the conscience and culture of individuals.

Treating these comments as a starting point for the postulate of secularism of the state formulated by Mustafa Kemal Atatürk, it needs to be noted that it did not have a broad philosophical and legal basis and although it did on occasion appear in political discussions, it was not an independent value there but rather a means to achieve other goals [Daver 1988, 29]. Neither was it a manifestation of society's objection against privileges of the clergy, since a division into secular and clerical individuals is, in essence, alien to non-Shia Islam [Adamczyk 2005, 151]. This is why Atatürk's reform may be read not only as an example of institutionalisation of bottom-up social movements, but as an attempt to reform social ideals in line with the vision of the state shared by the then political elites [Rear 2014, 4; Aydin 2007, 14]. Even though the postulate of secularism of the state formulated at the same time was one of separate pillars of Kamilism, one must but admit that how it was understood was in essence determined by the implementation of other social, political and organizational goals.

First of all, secularisation of community life was an instrument of building national identity. While the identity of the Ottoman Empire was developed through the prism of religion followed by its residents, the new Turkish state needed to find its own values that would bring its nation together [Toprak 2005, 28; Turan 2015, 53]. One cannot disregard the fact that the population of the emerging Republic was multi-ethnic and diversified religion-wise, which undoubtedly also made it difficult to build a community. Thus, corresponding with Kamalism's principle of "one language, one culture, one ideal" [Potera 2020, 99-100], the postulate of secularism made it easier to unify the Turkish society and also to replace religious sentiments with nationalistic ones [Mohd and Ibrahim 2023, 92]. In effect, secularisation was a mechanism to model a new take on the nation, that, importantly, had to de markedly different from the Islamic vision of society characteristic to the Ottoman Empire, still formally in place in the beginnings of the Republic.

Secondly, the postulate of secularism of the state may be read as an element of democratisation of the state and society. It was assumed that democracy may develop only within a system of a secular state whose society will develop not so much in the spirit of a specific religion, but in the spirit of directions of science [Aydin 2007, 16]. It was believed that like in the west, where secularisation proceeded through the development of certain social ideas and values as well as institutions, in the emerging Republic identical reforms may also be made in the opposite direction, that is modernisation and democratisation of society by secularisation [ibid., 15]. One cannot disregard the fact that it was Islam that was in fact the political thought that restricted the development of the idea of liberalism, democracy and autonomy of an individual by forcing a certain shape of the organization of the state and its society. In this light, the postulate of secularisation of the state was, therefore, a form of social engineering serving to modernise not only the state but also the way of thinking of its residents who, rejecting religious fanaticism, will oppose seeing Islam as the main political category [Mohd and Ibrahim 2023, 104; Adamczyk 2005, 168; Daver 1988, 29]. It was believed that rejection of religious conservatism and allowing a universal reflection on Quran translated into the Turkish language will also open up Islam itself to progress and modernity and will also restrict its political force [Şükrü Hanioğlu 2012, 43].

The awareness of the described goals of secularisation lends itself at the same time to drawing an interesting perspective of the assessment of many of its detailed instruments. It may be puzzling to what extent the reforms covering, inter alia, exchanging the Arabic alphabet with the Latin script or dissolution of religious schools, were the consequence of the idea of secularisation and to what extent they served other pillars of Kemilism or momentary political goals. Streamlining the education system and giving it a secular nature may be not only a consequence of the postulate of secularisation, but also

a tool of unification of society and values it adhered to, formulated around state-promoted nationalistic and republican ideas [Aydin 2007, 14; Mohd and Ibrahim 2023, 90]. The same was true about the alphabet reform. Even though it certainly limited accessibility to many elements of religious tradition, it did undoubtedly also serve to build Turkish national identity and to limit its associations with the culture of the Ottoman Empire. Even the assessment of the abolition of the caliphate does not seem entirely clear. While, undeniably, it was associated with the adopted concept of the secular state, one cannot disregard its motives that included both consolidation of Kemalists' authority and building Turkish national identity [Adamczyk 2013, 94-95].

The same doubts also appear when assessing the Diyanet. Even though apolitical in assumption, it cannot be attributed such a character where it answered directly to the Chancellery of the Prime Minister and members of its board were appointed by a secular president [Cinar 2006, 88]. And while it was supposed to hold technical functions organizing the society's religious life – filling the lacunae left after the Ottoman Ministry of Religion, in practice its role was not confined to just that. It had the power to appoint religious officials and to manage places of worship. Thus, the Diaynet's role focused primarily on controlling interpretation of religion in line with the state's interest in order to integrate and protect society against the influence of fanatical religious movements often recognized as sects [Mohd and Ibrahim 2023, 99; Wasilewski and Zemła 2021, 438; Yildirim 2017, 209]. Representing in parallel solely Sunni Islam, the activity of Diaynet contributed to building Turkish national identity in line with the dominant faith [Burak 2021, 63]. And even though the Diaynet's activity did not mean complete resignation from the postulate of surrogacy of religion with secular values, the activity of Kemalists concentrated then most of all on derogation of its thought, values and symbols from public life [Mohd and Ibrahim 2023, 95; Cinar 2006, 86; Toprak 2005, 31].

Therefore, in this light, Kamalists' reforms were not so much about separation of the sacred from the profane, but about gradual limitation of the impact of religion on the Turkish society. Atatürk's secularism did not only intend to separate the state from the religion, but also to free society from Islam's rigid framework to create a new sphere of freedom of individuals [Daver 198, 36]. These reforms aimed to create such conditions that would allow individuals to freely satisfy their spiritual needs without being enslaved by its religious dogmas and set rituals [Adamczyk 2005, 169]. This may also be used to explain an array of reforms that included, i.a., an order to use the Turkish language for religious purposes, prohibition of wearing a head covering in public places, introduction of the Gregorian calendar, giving women the right to inherit and to divorce, establishing Sunday as a day off in place of Friday, traditional to Islam, legalisation of alcoholic beverages, prohibition of using

non-military titles and decorations or conditioning the teaching of religion in public schools on prior written consent from parents [Szkudlarek 2014, 53-54; Cinar 2006, 89; Toprak 2005, 32; Daver 1988, 32; Adamczyk 2013, 166-67]. Many of those, at the same time, also had important symbolic functions. For example, reception of the Gregorian calendar that relied on the division of time into before and after the birth of Christ, was also a conformation of legal acceptance of religious diversity [Şükrü Hanioğlu, 2012, 44].

The idea of secularism promoted by Kamalists was also reflected at the level of constitutional norms. And although initially the 1924 Constitution identified Islam as the state's religion, this provision was repealed by amendments of 10 April 1928. This manoeuvre corresponded with the Act on treason adopted in 1920, which forbade the use of religion for political purposes [Adamczyk 2005, 168]. However, resignation from invocation to God in the oath taken by the president and deputies and also upholding the constitutional provision on the freedom of religion and defining nation as all citizens irrespective of their faith, the 1924 constitution did not prejudge a binding model of the state-religion relationship. Despite that, the very fact of resigning from Islam as an official state religion could have been understood not only as rejection of the model of a confessional state, but also as confirmation of the rightness of the secular direction of statutory reforms. This exegesis was confirmed in the 5 February 1937 amendment that expressly named secularity among the pillars of Turkey's political system. However, it needs to be noted that though secularism in the light of the amendment was a principle of the system of the state as early as in the amendment, the constitution, not laying down directly the principle of separation of the state and religion, still did not rule out the former's control over religious associations.

2. CONCLUSIONS – MAIN FEATURES OF TURKISH SECULARISM AT THE ORIGIN

This discussion, albeit now mostly of a historical value, helps imagine the starting point of the Turkish concept of a secular state. Still, it is not irrelevant. Despite not being formally in force, it may still provide an important model for interpretation of the general concept of laikik. This conclusion is confirmed in the case law of the ECtHR, which directly invoked the historical justification of secularity as a foundation to delegalize the Welfare Party in its judgment of 31 July 2001. A parallel discussion also encourages formulation of a few more detailed comments and opinions.

First of all, the Turkish model of a secular state assumes not so much a complete separation of the state and religion, but isolation of religion from the realm of the state. Giving the state legitimization to interpret religious questions, this model excludes state's complete passivity in religious matters

and its organizational separation from the realm of religion. Therefore, allowing instrumental treatment of secularism by the state, this approach allows, at least to a certain degree, the use of religion in the interest of the state. Thus, it is in opposition to the fundamental principle of French secularism that assumes, i.a., absence of state's competence in religious matters [Borecki 2016, 9]. Admissibility of instrumental treatment of secularism encourages a question of whether the current changes in how it is understood result from an attempt to re-define its goals rather than from rejecting it entirely. The fact that Kemalists did not leave a clear definition of secularisation means that it may be understood differently depending on the circumstances, beliefs of political elites or particular interests and advantages [Bulaç 2015, 11].

Second of all, it needs to be noted that although one of the goals of secularisation involved an increase of the sphere of freedom of individuals, a number of its reforms were anti-democratic and anti-equality. By disallowing head covering in the public sphere, the Kemalists in fact made it impossible for religious women to undertake employment in public institutions or to hold functions in exposed posts [Szkudlarek 2014, 56]. Similarly, seeing the army in the categories of a guarantor of secularism, it excluded a number of individuals who were faithful to religious instructions (even if in their private life) from high-level military positions. Thus, an unequivocally positive assessment of these reforms does not seem possible. Related doubts may be seen even today. It is shown in, for example, the decisions of the Turkish Constitutional Court, which sometimes allows restriction of freedom of religious manifestations due to the secular nature of the state and the related protection of rights and freedoms of other persons. However, in other judgements, it held that restrictions on wearing religious head covering by public officials to manifest their religious beliefs violates the principles of democracy and pluralistic secularism.

Thirdly, it needs to be emphasized that even though one may indeed find the seeds of the idea of secularism in the philosophical and legal thought of the Ottoman times, the concept of a secular state was in fact imposed top-down in the majority of society. And while it was to affect mostly the public sphere, due to the difficulty in precise separation of the private and public sphere, it also stepped into questions of individuals' personal beliefs [Mohd and Ibrahim 2023, 103]. Therefore, adopting the form of active secularism, it became not only a model of organization of the state, but also of the private life of individuals [Sevinc, Hood, and Coolman 2017, 16]. Secularism – in the Kemalists' approach – intended to privatise faith that it saw as a personal relation of an individual with God and which did not need mediation of clerics. As pointed out by one of the representatives of those requesting constitutional amendments in 1937, "[…] we want to ensure that religion is not effective in charge in state affairs. This is our framework and limit for

laicism. We want religion to stay in the conscience and houses of worship" [Bulaç 2015, 22]. Now, on the other hand, secularisation is seen primarily in categories of religious freedom understood not only as applying to private life of individuals, but also as the possibility to express one's religious beliefs in the public sphere [Szymański 2015, 28]. Thus, one may wonder whether Turkish secularisation today is an evolution of the Kemalists' original thought or whether it is a new, separate legal category.

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SINGAPORE CONVENTION AS A FLEXIBLE PROTECTIVE UMBRELLA FOR ENFORCEMENT OF SETTLEMENT AGREEMENTS

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Abstract. The article analyses the provisions of the Singapore Convention relating first, to the prerequisites for its applicability, second, to the evidence necessary to prove that a settlement agreement has been entered into before a mediator, and third, to the conditions for its effectiveness determined by objections aimed at refusing to enforce the settlement agreement. The purpose of this article is to assess the indicated regulations of the Convention and their potential imperfections and the difficulties they may generate in the course of the proceedings aimed at ensuring the enforceability of the settlement agreement. In the conclusion, it is pointed out that, despite its many imperfections, the Convention may constitute an important "protective umbrella" for international settlement agreements, the potential of which depends on the parties to the settlement and the legal solutions developed in the legal systems of the Parties to the Convention. The Convention will then not become a proverbial Trojan horse in the hands of a party bent on litigation obstruction.

Keywords: cross-border mediation; commercial disputes; international commercial mediation.

INTRODUCTION

Economic globalisation, which is characterised by the increasing interdependence of economies based on trade, calls for an adequate level of security in legal transactions, including simple, rapid and non-costly methods of dispute resolution that enable reaching an agreement and establishing mechanisms to enforce the international agreements reached. Therefore, the ideas of creating an international legal framework that optimises the time, cost and ease of redress in a global economy by providing precise and at the same time effective enforcement tools in the event of unwillingness to voluntarily meet an obligation constitute an essential "umbrella" in fostering international economic cooperation. Within this cooperation, a central position with regard to alternative dispute resolution (ADR) of international disputes is occupied by arbitration and, more specifically, the legal effects produced by arbitral awards under the Convention on the Recognition and Enforcement

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of Foreign Arbitral Awards of 10 June 1958.[1] And although the ADR system has historically also included mediation, based to the greatest extent on the autonomy and self-determination of the parties and at the same time providing a broader opportunity to regulate the principles of cooperation through creative dispute resolution [Clark and Sourdin 2020, 493] rather than limiting itself to such resolution, it did not see a regulation analogous to settlement agreements resulting from mediation for many years after the adoption of the New York Convention. The main disadvantage of international mediated settlements was that, as standard agreements, they were not covered by an international mechanism for their recognition and enforcement, generating the need to initiate court or arbitration proceedings to obtain an arbitral award and then enforce it. Settlements reached in international mediation were therefore based on the mutual trust of the partners to deliver the settlement performance without regulation in the form of a simple, quick and effective procedure to ensure enforceability.

The attempt to fill a gap in the international ADR system by extending settlement agreements resulting from mediation to a mechanism analogous to the New York Convention, which is used by arbitral awards, was reflected in the United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018), which was initially received with great enthusiasm.[2] The Singapore Convention is a private international law agreement that entered into force on 12 September 2020 and which by July 2024 has been signed by 57 states, of which 14 have ratified it. It creates a harmonised framework, requiring signatories to recognise international settlements reached in commercial mediation to ensure their enforceability before a "competent authority" of a Party to the Singapore Convention. To date, neither the European Union nor its constituent Member States have signed the Singapore Convention, which does not operate on the basis of reciprocity, and settlement agreements resulting from mediation entered into have no state affiliation under the Convention. This therefore warrants the analysis and the attempt to answer the question of whether the provisions of the Singapore Convention are precise enough to "successfully", unobjectionably, and more simply and quickly ensure the enforcement of international mediated settlement agreements than it is possible before its ratification, or whether, due to the nature of its provisions, the Convention may prove to be a "Trojan horse", opening the way to procedural and formal review of the settlement, ultimately leading to its undermining, while nullifying the attributes of efficiency and simplicity of the procedure. In the context of the question posed and due to the limited scope of this article, the aim

[1] Journal of Laws of 1962, No. 9, item 41 [hereinafter: New York Convention].

[2] See https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements [hereinafter: Singapore Convention or Convention].

is not to analyse the provisions of the Singapore Convention in its entirety but to limit the analysis to selected practical aspects and key problems related to the prerequisites for the applicability of Convention provisions, the documentation of the fact of settlement and the defence objections that also determine the effectiveness of a settlement resulting from mediation.

1. PREREQUISITES FOR THE APPLICABILITY OF THE CONVENTION

According to a survey conducted by the International Mediation Institute,[3] more than 93 per cent of respondents would be "significantly more likely" or "likely" to mediate a dispute with a party from another country, as long as that country had ratified a convention allowing for the enforcement of international settlements reached through mediation. In turn, 90 per cent of respondents felt that the lack of an international settlement enforcement mechanism was an obstacle to the development of mediation for cross-border dispute resolution. Analysing the content of the Singapore Convention in the context of the cited survey results, one wonders whether its purpose was to strengthen the importance and spread of mediation as an international dispute resolution instrument. Or whether, due to the deformalised and thus flexible nature of mediation and its extremely capacious scope of meaning, it has merely become an accidental tool responding to the international demand for simple, quick and effective tools to ensure the protection of the self-determination process, simplifying the procedure for enforcing settlements by entrusting the mediator with the role of guardian of the mediation stamp, which distinguishes in its effects the settlement reached before it from other agreements, including those reached through ordinary negotiations. There is no doubt that the Singapore Convention achieves both of the stated objectives and represents an important step towards harmonising the international framework for different legal, social and economic systems to facilitate the building of international trade cooperation.

The Singapore Convention establishes four requirements for its provisions to be invoked in a country that has ratified it: a mediated settlement; in a recorded form (not necessarily in writing); in commercial disputes; of an international nature. In accordance with Article 1 of the Singapore Convention, it applies to written settlements reached in mediation to resolve a commercial dispute which are international at the time of their conclusion.

The first requirement, therefore, is the conclusion of a mediated settlement. The concept of mediation contained in Article 2(3) of the Singapore

[3] See UNCITRAL, Report of Working Group II (Dispute Settlement) on the work of its sixty-fifth session, New York, February 2-6, 2015, U.N. Doc. A/CN.9/896, p. 6.

Convention has been harmonised with the definition of mediation contained in the 2018 UNCITRAL Model Law on International Commercial Mediation,[4] updated for consistency with the Singapore Convention. Thus, mediation means a process, regardless of the wording used or the basis on which it is initiated, whereby the parties attempt to reach an amicable resolution of their dispute with the assistance of a third party or parties (the mediator) who do not have the power to impose a solution on the parties to the dispute. The cited definition of mediation is constructed in the most universal and capacious way. It refers neither to rules relating to standards for the conduct of mediation nor to types of mediation. It also defines the mediator in a general manner, excluding the possibility of imposing a solution on the parties. However, this does not exclude the possibility for the mediator to make a non-binding proposal for the resolution of the dispute in an evaluative mediation. Furthermore, the definition of mediator also does not exclude the possibility of an AI robot playing the role of mediator, especially since Article 4 of the Convention does not require the mediator to draw up any documents and the signature of the settlement agreement is only optional. This is all the more so as mediation may be conducted using electronic communication and through ODR platforms [Alexander and Chong 2022, 24-25] and the settlement agreement may also be recorded in such a format. Definitions of mediation and mediator formulated in such general terms make the Convention a legal instrument supported by model law [Kożuch 2023, 279] through a tentative reference to UNCITRAL Model Law 2018, especially for Parties to the Convention that do not have developed mediation regulations or to the norms of mediation in force in the state where the party seeks to enforce the settlement. In the latter case, this opens the way to a number of interpretative doubts compounded by the content of Article 5(1)(e) and (f) of the Convention creating a risk of uncertainty in assessing and ensuring the enforceability of the mediated settlement agreement. They are also compounded by the risk that the settlement agreement may be challenged, which may be greater the further the mediation process deviates from the standards applicable in the State where the party seeks enforcement of the settlement agreement. This is especially the case since, on the basis of Article 3(1) of the Convention, each Party to the Convention shall enforce the settlement in accordance with its own rules of conduct.

The second requirement for the admissibility of invoking the provisions of the Convention in a signatory State is that the settlement agreement must

[4] UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation with Guide to Enactment and Use (2018), U.N. Vienna 2022 [hereinafter: UNCITRAL Model Law 2018], https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/22-01363_mediation_guide_e_ebook_rev.pdf [accessed: 10.06.2024].

be consolidated. Pursuant to Article 2(2) of the Singapore Convention, a settlement agreement is in writing if its content is recorded in any form. The requirement that the settlement agreement be in writing is also satisfied through the use of electronic communication if the recorded information is available in a manner that allows for subsequent use. The provisions of the Singapore Convention are disorderly in this respect because Article 1(1) and Article 2(2) of the Convention explicitly indicate the requirement of writtenness juxtaposed with the obligation of the parties to sign the settlement agreement under Article 4(1)(a) and the regulation contained in Article 4(2)(a), (b), which treats any reliable method that allows the parties or the mediator to be identified with an indication of intent with regard to the information contained in the electronic communication on an equal footing with the affixing of a signature and the written form. It therefore allows not only for electronic signatures but also for the use of other equivalent means from which it is clear that the parties have reached a settlement.[5] The requirement of writtenness may therefore be replaced by a reliable video and audio recording that identifies the parties, the mediator and the content of their statements.

The third requirement relates to settlements concluded to resolve commercial disputes involving pecuniary and non-pecuniary considerations [Schnabel 2019, 12], which in Article 1(2) of the Singapore Convention is defined negatively by excluding from the scope of the Convention settlements entered into by a consumer for personal, family or household purposes, as well as settlements under family, inheritance or labour law. Furthermore, the scope of the Convention does not include settlements that have been approved by a court or concluded in the course of proceedings before a court, provided that they are enforceable as judgments in the state of that court or have been registered and are enforceable as an arbitral award. In Poland, settlements that have been concluded before a mediator in the course of pending proceedings before a court, as long as they have not been approved by a court and are not enforceable, do not meet this requirement.

Under the Convention, a settlement is international provided that (a) at least two of the parties to the settlement have their places of business in different countries; or (b) the country in which the parties to the settlement have their places of business is different from the country in which a substantial part of the obligations under the settlement is performed; or the country with which the subject matter of the settlement is most closely connected. However, pursuant to Article 2(1) (a) of the Convention, if a party has more than one place of business, the relevant place of business is the one which bears the closest relationship with the dispute to be

[5] See UNCITRAL, Report of Working Group II (Arbitration and Conciliation) on the work of its forty-ninth session, New York, 27 June – 15 July, 2016, U.N. Doc. A/CN.9/861, p. 11.

settled pursuant to the settlement, having regard to the circumstances known to or contemplated by the parties at the time of settlement; or (b) if a party has no place of business, reference should be made to the party's habitual residence. The construction adopted in the Singapore Convention entails potential complications particularly where a party has more than one place of business and the parties are domiciled in the same country, and it is then necessary to consider the "closest relationship" and to do so having regard to the circumstances known or contemplated by both parties at the time of settlement. The premises determining the prerequisite of the international character of the settlement agreement justified by the flexibility of mediation including, in particular, the possibility to conduct it online, make the country in which the settlement agreement was concluded irrelevant for the assessment of that settlement's international character. What is decisive is the fulfilment of the prerequisites of "internationality" at the time the settlement agreement was concluded. This therefore implies a lack of state affiliation of the settlement, ruling out the possibility of identifying the jurisdiction to which the settlement agreements resulting from mediation is subject, contrary to the provisions of Article 1(1) of the New York Convention. This is because that convention adopts the concept of a place of issuance of the arbitral award other than the place where recognition and enforcement of the award is sought while ensuring under Article 5(1)(e) a procedure for reviewing the award through the possibility of revoking it or suspending its enforcement in the country of its issuance. The statelessness of the settlement agreement resulting from mediation, on the other hand, excludes the possibility of its review in the country of origin[6] [Staute and Wansac 2021, 40-55] since that place is undetermined or extremely difficult to determine. Thus, a settlement agreement resulting from mediation does not have to comply with the law of the country in which it is concluded, including in terms of standards relating to the conduct of mediation and the mediator.

The above prerequisites for the admissibility of the provisions of the Singapore Convention constitute the first stage of the review conducted by the "competent authority of the Party to the Convention"[7] to which

[6] "During the discussion, a view was expressed that a court of the originating state might be better suited to review some of the defences mentioned above for procedural efficiency, and it was suggested that a review mechanism should be incorporated at the originating state. In response, the difficulties in determining the originating state were reiterated", see UNCITRAL, Report of Working Group II (Arbitration and Conciliation) on the work of its forty-ninth session, New York, 27 June – 15 July, 2016, U.N. Doc. A/CN.9/861, p. 18.

[7] The competent authority shall be a court or other competent authority in accordance with the law of the Signatory State in which the application is lodged analogous to the regulation of Article 6(2) of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ L 136, 24.5.2008, pp. 3-8) [hereinafter: Directive 2008/52/EC].

the enforcement of the settlement agreement has been requested. Contrary to what one may think, the assessment of the said prerequisites may prove to be an immensely time-consuming process, requiring "all the necessary documents", which under Article 4(4) of the Singapore Convention, the "competent authority" may request in order to verify that the requirements of the Convention have been met, in particular omitting Article 4(5) of the Convention, which provides that the application should be examined promptly. It should be noted that among the documents/evidence to be produced to the competent authority to ensure the enforcement of the settlement, as indicated in Article 4 of the Singapore Convention only includes evidence of the fact that a settlement has been reached in mediation and before a mediator. Among them, there is no mention of evidence of meeting the prerequisite of "internationality". Therefore, it can be assumed that they should be apparent from the content of the settlement agreement or from the documents attached to the settlement agreement facilitating and expediting the assessment of this prerequisite by the competent authority of a Party to the Convention, but this should be taken care of by the parties to the settlement agreement.

2. PROOF OF A MEDIATED SETTLEMENT AGREEMENT AND CONDITIONS FOR ITS EFFECTIVENESS

Article 4 of the Singapore Convention contains a catalogue of evidence to be submitted to the "competent authority" of a Party to the Convention to ensure its enforcement. The jurisdiction of the authority to which a party to a settlement agreement may apply should be derived from the internal regulations of the Party to the Convention which, in addition to the provisions of the Singapore Convention under Article 3(1) will apply to the procedure for securing enforcement of the settlement agreement. This will require the Parties to the Convention to regulate an internal procedure which in the member states of the European Union could be similar to the procedure for ensuring the enforcement of settlements concluded before a mediator by analogy with the regulations from the transposition of Directive 2008/52/EC.

The essential evidence to be presented to the competent authority is the settlement document signed by the parties (Article 4(1)(a) of the Convention) together with proof that the settlement was concluded before a mediator (Article 4(1)(b) of the Convention). Evidence that the settlement was concluded before the mediator may be the mediator's signature on the settlement agreement (Article 4(1)(b)(i) of the Convention), a document signed by the mediator indicating that the mediation was carried out (Article 4(1)(b)(ii) of the Convention), an attestation by the institution that administered the mediation (Article 4(1)(b)(iii) of the Convention) and only in the absence of the above-mentioned evidence – any other evidence

acceptable to the competent authority of a Party to the Convention (Article 4(1)(b)(iv) of the Convention). The last possibility is the "lifeline" thrown by the Singapore Convention, opening the way to confirm the fact of mediation by any means that corresponds to the internal regulations of a Party to the Convention. Perhaps a better solution, however, would be the wording of Article 4 of the Singapore Convention, starting by indicating that evidence of concluding a settlement before a mediator may be any evidence acceptable to the competent authority of a Party to the Convention including, in particular: the mediator's signature on the settlement agreement; a document signed by the mediator indicating that mediation was conducted; an attestation from the institution that administered the mediation. This wording would reverse the hierarchy, bringing to the fore the requirements of the relevant legal system of the Parties to the Convention since, in any case, the fact that a settlement agreement was concluded before a mediator will be subject to verification and the competent authority will be able to request under Article 4(4) of the Convention all necessary documents to verify whether the requirements of the Convention have been met. Indeed, at present, the mediator's signature on a settlement is of dubious validity as evidence that the settlement was reached as a result of mediation and that the person who signed was indeed acting as a mediator. This does not remove concerns about the potential formalisation of agreements reached in ordinary negotiations by obtaining the signature of a random person whose signature will open the door to the possibility of claiming enforcement of the settlement in the legal system of the Parties to the Convention. This is because the level of involvement was not specified for the mediator, nor even the obligation to draw up a protocol of the actual involvement in the process of its conduct giving credence to the formal, rather than substantive, conduct of the mediation. The possibility of affixing the mediator's signature on the settlement agreement, as a sufficient form of activity, is the simplest imaginable way of giving the agreement the effect of a settlement reached before a mediator, and at the same time the easiest to obtain and devoid of any control. The mediator's signature can sometimes become more sought after than the mediator's involvement and the very idea of mediation, allowing ready-made settlements to be submitted to the mediator for signature in order to give them the effect of a "mediation stamp". Thus, the Singapore Convention does not establish a requirement for a mediation protocol, as it is only optional (Article 4(1)(b)(ii) of the Convention). This can be seen not so much as a manifestation of the desire to ensure the maximum level of deformalisation of mediation, but rather as a defect that shifts the burden of determining all the grounds for the admissibility of the Convention's provisions to the competent authority, and ultimately to the party, based on the body of evidence provided by the party seeking to secure the enforcement of the settlement agreement while facing potential

opposing objections from the other party. It should therefore be pointed out that evidence of the fact that a settlement agreement was concluded before a mediator should, in the interests of the parties, show beyond doubt that mediation was carried out before specific persons in a specific case and on a specific date, together with a statement that a settlement covering all or part of the dispute was concluded before a mediator and not, for example, in the context of subsequent negotiations. This procedure can, in practice, prevent potential evidentiary problems associated with seeking to enforce a settlement, saving time and costs. In the case of an AI acting as a mediator, corroborating evidence could be an attestation from the institution that managed the mediation or, under Article 4(1)(b)(iv) of the Convention, a record of the course of the mediation, e.g. in the form of electronic correspondence on the ODR platform.

The above evidence of the fact that a mediated settlement agreement has been concluded, in addition to the discussed prerequisites for the application of the Convention is, counter-intuitively, not exhaustive for the conclusion of a valid and effective settlement agreement that would make it enforceable. Indeed, the other conditions are catalogued in the form of negative grounds indicated in Article 5 of the Convention. Although they constitute a catalogue of objections whose consideration by the competent authority may lead to the refusal of enforceability of a settlement agreement, they nevertheless need to be taken into account in advance during the mediation and settlement process to prevent potential objections formulated at the request of a party or taken into account by the competent authority of its own motion in the State of enforcement.

Article 5 of the Singapore Convention regulates a catalogue of grounds for refusal to enforce a settlement agreement, which may be taken into account by the competent authority of the Parties to the Convention upon request and based on evidence presented by the party against whom enforcement is sought (Article 5(1) of the Convention) or of its own motion (Article 5(2) of the Convention). It is both exhastive and general in nature, providing the enforcement authority with the flexibility to further specify the grounds it contains.[8] This is because the competent authority first assesses of its own motion the grounds for the admissibility of the Convention's provisions, arising from Article 1(1), then the formal requirements set out in Article 4 and finally, either of its own motion or at the request of a party, the conditions under Article 5 of the Convention.

The first reason for refusal to enforce a settlement upon application is the lack of legal capacity of a party to the settlement agreement (Article 5(1)

[8] See UNCITRAL, Report of Working Group II (Arbitration and Conciliation) on the work of its forty-ninth session, New York, 27 June – 15 July, 2016, U.N. Doc. A/CN.9/861, p. 17.

(a) of the Convention). The second reason is related to the defectiveness of the legal transaction when it is null and void, inoperative or incapable of being performed under the law to which the parties have validly subjected it or, failing any indication thereon, under the law deemed applicable by the competent authority of the Party to the Convention (Article 5(1)(b)(i) of the Convention). A further reason is the allegation that the content of the settlement agreement is not binding or final according to its terms (Article 5(1)(b)(ii) of the Convention), e.g. as a result of the non-fulfilment of a condition[9] or deadline. What matters is therefore only the express statements of the parties included in the content of the settlement agreement and not external circumstances relied upon by the parties and not directly apparent from the content of the agreement [Schnabel 2019, 46-47], such as the belief that the negotiation process has not been concluded so far and the settlement agreement is only part of an ongoing mediation. Raising the allegation that the settlement agreement would not be binding and final, even though this is not apparent from its content, would not fall within the aforementioned grounds. The allegation would then be destructive, resembling an action to establish the existence or non-existence of a legal relationship (concluded settlement agreement) in the course of ensuring its enforceability. The only exception relating to extrinsic circumstances not mentioned in the content of the settlement agreement, which is another premise indicated in Article 5(1)(b)(iii) of the Convention, is the invocation of the fact that a subsequent settlement agreement modifying the original content of the document has been concluded. The competent authority should in such a case, in accordance with the aforementioned provision, admit evidence of a final settlement. Further grounds are related to the allegation of the fulfilment of the obligations arising from the content of the settlement agreement (Article 5(1)(c)(i) of the Convention) and the interpretation of its provisions to the extent that they are not clear or comprehensible (Article 5(1)(c)(ii) of the Convention). The interpretation of the provisions of the settlement agreement is objective in nature and should be undertaken from the perspective of the competent authority not only at the request of a party but, above all, of its own motion in order to ensure that the agreement can be implemented precisely and without the possibility of modifying unclear provisions of the content of the agreement before the competent authority, which would deprive the agreement of its initial character – concluded before a mediator and not before the competent authority by way of modification. It should only be mentioned that this condition does not entitle the competent authority to refuse to ensure the enforceability of a settlement agreement which is formulated in a language other than an official

[9] See UNCITRAL, Report of Working Group II (Dispute Settlement) on the work of its sixty-eighth session, New York, 5-9 February, 2018, U.N. Doc. A/CN.9/934, p. 9.

language of a Party to the Convention, as Article 4(3) of the Convention allows the competent authority to require a translation into such a language. The next prerequisite indicated in Article 5(1)(d) of the Convention allows a party to raise an objection that enforcement of the settlement agreement would be contrary to its terms. It thus introduces a further ground in addition to non-binding or non-final provisions of the settlement agreement the allegation that it would be contrary to the terms of the settlement agreement to make it enforceable. The reference to the provisions of the settlement agreement makes it clear that what is at issue are circumstances indicated in and arising solely from the content of the settlement agreement and not from extrinsic circumstances raised by a party. Undoubtedly, the indicated premise is of a highly general nature[10] and thus laying the foundations for an unforeseen catalogue of consequences determined by the different legal solutions in force in the legal systems of the various Parties to the Convention. However, it is indicated that it refers to dispute settlement clauses included in the content of the settlement agreement and referring, for example, to arbitration or excluding the application of the provisions of the Singapore Convention[11] [ibid., 49].

The last two grounds listed in Article 5(1)(e) and (f) of the Convention are essentially duplicative. On the one hand, they refer to a "serious breach" by the mediator of an unspecified catalogue of standards relating to the mediator's function or to the mediation conducted, without which a party would not have concluded the settlement agreement (Article 5(1)(e) of the Convention). On the other hand, they concretise two standards relating to the mediator, pointing to a breach of the principle of impartiality and independence as grounds for a party to raise an objection of a failure by the mediator to disclose circumstances raising "justifiable doubts", the non-disclosure of which materially impacted or unduly influenced the party, and without which failure that party would not have reached a settlement (Article 5(1)(f) of the Convention). The principle of impartiality and independence establishes an independent standard relating to the mediator in the event that the mediator is not included in the "standards applicable to the mediator or mediation" referred to in Article 5(1)(e).[12] Both prerequisites are highly vague and thus unpredictable in their

[10] With regard to the rationale, the enforcement of the settlement agreement would be contrary to its terms and conditions – "it was agreed that that the wording was acceptable but might need further elaboration to provide a clear meaning and scope in accordance with the deliberations, as it should not inadvertently introduce defences not contemplated", see UNCITRAL, Report of Working Group II (Dispute Settlement) on the work of its sixty-fifth session, Vienna, 12-23 September, 2016, U.N. Doc. A/CN.9/896, p. 18.

[11] Ibid., pp. 17-18.

[12] See UNCITRAL, Report of Working Group II (Dispute Settlement) on the work of its sixty-sixth session, New York, 6-10 February, 2017, U.N. Doc. A/CN.9/901, p. 16.

effect, providing an open door to challenge the fact that a settlement has been reached by invoking procedural failures in the correctness of the mediation and the mediator's function. This may raise concerns about the steps taken by the competent authority to establish the validity of the allegations raised, not to mention the time required and the complexity of the issues to be resolved. Their determination calls for a series of evidence-gathering measures to be taken, ranging from the determination of the standards applicable at the time of the mediation and settlement, which is almost impossible unless indicated by the parties, to the fact and degree of their breach, to the determination of the causal link between their breach and the conclusion of the settlement, including the examination of the level of "material impact" of the fact of breach on the party's decision to enter into the settlement agreement. This procedure would require interviewing the parties as well as the mediator breaching the fundamental, especially from the point of view of trade secrets, principle of confidentiality of mediation in order to establish a breach of standards. It should be noted that the two grounds mentioned are extremely capacious and restrictive in their potential effects, potentially leading to a refusal to ensure the enforceability of the settlement agreement, becoming a tool of procedural obstruction with immense potential. No analogous grounds are provided for in the text of Directive 2008/52/EC, which refers to mediation standards such as voluntariness (Article 3(a)) impartiality (Article 3(b)), confidentiality (Article 7) and the rest to the internal regulations in force in the Member States by imposing an obligation on them (Article 4) to ensure apropriate quality of mediation [Dąbrowski 2022, 5-19] without specifying sanctions for violation of such standards. The question is whether or not the autonomy of the will of the parties and the need to protect the process of self-determination, as well as the permissible minimum function of the mediator in the mediation process, are limited by being ranked lower than the standards of the conducted proceedings. The view that "grounds for refusing enforcement should focus on the conduct of the parties and not on the conduct of the conciliators"[13] is justified. It seems that how the grounds expressed in Article 5(1)(e), (f) of the Convention are formulated constitutes an excessive and at the same time unnecessary formalism, which in practice may become a key tool in the event of a desire to undermine an effectively concluded settlement agreement or a tool of procedural obstruction, and which could be replaced by the content of Article 5(1)(b)(i) referring to defects in the declaration of intent. The extensive catalogue of grounds contained in Article 5(1) of the Singapore Convention, despite its exhaustive catalogue, may be a gateway to turning the procedure for ensuring the enforceability of a settlement agreement into a formalised and costly process that will be more

[13] Ibid., p. 14.

time-consuming than ensuring the enforceability of a pre-Convention settlement [Abramason 2019, 11].

The last two grounds for refusing to enforce a mediated settlement are taken into account routinely and are not questionable because of their reference to the law applicable in the state where the party seeks enforcement of the settlement. Pursuant to Article 5(2)(a), the competent authority of a Party to the Convention may refuse to enforce a settlement agreement when enforcing it would be contrary to the public policy of that Party or when the dispute lacks the capacity to be settled and cannot be settled through mediation in accordance with the law of a Party to the Convention. Naturally, this may lead to a discrepancy related to the possibility of enforcing a settlement in one Convention signatory State and refusing to enforce it in another, due to the violation of the different values in force there on which the legal order of the country is based.

Article 6 of the Convention does not establish a stand-alone ground for refusing to enforce a settlement agreement, but it does create the possibility of deferring a decision on its enforcement where an application or claim relating to the settlement agreement that may affect its enforcement has been made to a court, arbitral tribunal or another competent authority. Although it is not implicit in the Singapore Convention, the application or claim may relate to the substance or content of the settlement, its annulment, the enforcement of the same settlement but in another country, or be a parallel enforcement application.[14] This provision is therefore not limited to situations where the application or claim is made in the same State that is Party to the Convention, although it does not regulate the effect of a postponement. It should be borne in mind, however, that a settlement under Article 3(2) of the Convention enjoys the force of res judicata having regard to the regulations applicable in the legal system of a Party to the Convention. Subsequent procedure as a result of the postponement may be determined by the private international law rules on the recognition of foreign judgments [Chong and Steffek 2019, 478] deciding an application or claim related to a settlement or the recognition of arbitral awards under the New York Convention.

CONCLUSION

Working out a settlement agreement acceptable to the parties in the mediation increases the probability of its implementation. However, the Singapore Convention constitutes a useful "protective umbrella" in the hands of the parties

[14] UNCITRAL, Report of Working Group II (Dispute Settlement) on the work of its sixty-fifth session, Vienna, 12-23 September, 2016, U.N. Doc. A/CN.9/896, p. 21-22.

to the settlement, in the event that cooperation based on mutual trust fails. It is an instrument that might not be used in the States that are Parties to the Convention, but not because its provisions generate legitimate uncertainty, but exactly because it can be a sufficiently effective deterrent mechanism, safeguarding the certainty of international trade in commercial disputes resolved through settlement agreements resulting from mediation. Unlike in the case of Directive 2008/52/EC, it is not aimed to create a legal framework and standards for mediation but an exhaustive yet flexible mechanism that takes into account, as far as possible, the dissimilarities of different legal systems, providing protection for the parties to the settlement agreement. The creation of an international legal instrument and the lack of established practice in its application naturally generates a number of potential uncertainties, which tend to become apparent in the insufficient precision resulting from the flexibility of its provisions. This flexibility is determined by the attempt to take into account different legal traditions, giving rise to the temptation to formulate ever new uncertainties on the basis of its provisions, as if in search of creative solutions in mediation. Whilst this cannot be denied, as this article also confirms, any precise, "rigid" mechanism that does not provide a flexible margin adapted to the specificities of the legal systems concerned would be more likely to come under fire than a common position developed through consultation. Therefore, how the potential of the Singapore Convention is realised depends on two factors. The first is the adequate approach of the parties to the settlement agreement and the mediator with regard to properly preparing, conducting and documenting the mediation process, together with the precise wording of the settlement agreement that does not raise doubts and at the same time does not involve the subsequent waste of time in proving that a party has met the prerequisites for the application of the Convention, closing the door to potential evidentiary difficulties or objections possible under Article 5 of the Convention. This would be regardless of whether this takes the form of institutionalised mediation or of considering the reasonableness of the choice of law to which the settlement will be subject. Obviously, there would be added value in taking into account the regulations contained in the legal system of the Party to the Convention where a party to the settlement could seek enforcement, which, incidentally, is in accordance with Article 5(2) of the Convention, although this may seem additional time-consuming formalism and an argument against the Singapore Convention. The second factor on which its potential depends is the provision of an adequate domestic legal framework to establish the procedure for invoking the settlement agreement and ensuring its enforceability in accordance with the rules of procedure applicable in a state that is a signatory of the Singapore Convention and under the terms of the Convention (Article 3). Given the activity of the parties to the settlement and the Parties

to the Singapore Convention, and leaving aside any shortcomings of the that Convention, the increase in the number of settlement agreements resulting from mediation and the decrease in the number of court cases for non-performance before the competent authorities of the Parties to the Convention will be indicative of its ultimate success. Indeed, the Convention cannot be regarded as the proverbial "Trojan horse" as long as the parties take care of the quality of the mediation themselves, taking into account all the evidence of the settlement before the mediator and the conditions for its effectiveness.

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THE DISPUTE OVER THE TEACHING OF ROMAN LAW IN POLAND DURING THE ENLIGHTENMENT

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Abstract. The paper is devoted to the discussion that took place in the legal community in Poland during the Enlightenment on the advisability of teaching Roman law during law studies. The author presents the views of legal theorists and practitioners, speaking both for and against the presence of Roman law, taught since the Middle Ages as one of the basic university disciplines, in forming future lawyers. An attempt will also be made to answer whether this discussion influenced limiting or eliminating Roman law teaching at Polish universities until the loss of independence and at the beginning of the partition period.

Keywords: Roman law; legal studies; Enlightenment in Poland; Kraków Academy; Vilnius Academy; Zamość Academy.

INTRODUCTION

In the 18th century, as a result of the increased interest in the law of nature and nations and national laws, the position of Roman law, which had been unquestionable in the Middle Ages and the Renaissance, as a factor influencing the formation of law in a number of European countries and the general European legal culture, and as one of the two legal disciplines taught at universities, alongside canon law, was undermined. The law of nature was considered the third basis of university law teaching, which was reflected in the establishment of separate departments of this law. The lack of recognition of Roman law was partly caused by the postulates of a complete break with feudalism, and the source of many principles of feudal law was seen in Roman law [Jakubowski 1984, 16]. The connections between Roman law and feudalism led to its criticism as a law full of imperfections, and even immoral, if only because of the despotism of the emperors or the support for slavery [Wołodkiewicz 1986b, XI]; Roman law also did not provide sufficient support for the concept of subjective rights, which was the basis of the entire system of natural law

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[Sójka-Zielińska 1975, 110].[1] Finally, Roman law was seen as a cosmopolitan factor that hindered efforts to develop national laws, which intensified in the 18th century. Efforts to create national laws were supported by universities, which attempted to develop a theoretical basis for the application of native law in the form of a new field: the science of national law. This science contributed to the weakening of the position of Roman law at universities [Luig 1970, 68-71]. The interest in national laws was expressed through significant transformations in university law programs, which increasingly took into account national laws; this was accompanied by the commencement of lectures on specific legal subjects, such as civil, criminal, procedural and public law, which was associated with the general tendency to give law studies a practical and useful character in the name of the principle of utilitarianism – social utility [Sondel 1988, 11]. Such changes constituted the content of the reform of the curriculum at the universities of Göttingen and Vienna around the mid-18th century, and the slightly later reform carried out in Padua (1768).

1. CRITICAL OPINIONS ABOUT THE ROMAN LAW AMONG SOME POLISH THINKERS

The hostile attitude towards Roman law could also be noticed in Poland, where new ideas and philosophical systems began to reach from the 1740s. The period of strong influence of the French Enlightenment resulted in the creation of a program of reforms aimed at modernizing the state and ensuring its independent existence. The idea of the law of nature had a great influence on the efforts to reconstruct society and strengthen the system of government, and its most prominent supporters: Hugo Kołłątaj, Antoni Popławski and Hieronim Stroynowski, although questioning the thesis of the supremacy of the law of nature over positive law, considered it to be a set of principles constituting the basis for thinking about public matters [Hubert 1960, 90].[2] The concept of "natural freedom", expressing "the independence of man in the use of his property"

[1] The author notes that the attitude of natural law philosophers towards Roman law depended on the area of their activity. Particular reluctance was shown towards Roman law in the Reich, where it was combated with the help of natural law as binding *ratione imperii* and previously beyond any criticism. In France, however, there were no conditions for such opposition to arise, and Roman law was assessed in terms of its actual usefulness and compliance with the laws of nature, without being guided by political reasons.

[2] These concepts were used by Hieronim Stroynowski in his work *Nauka prawa przyrodzonego, politycznego, ekonomii politycznej i prawa narodów* (The study of natural law, political law, political economy and the law of nations – first published in Vilnius, 1785). See more: Hubert 1960, 61; Marchwiński 1930, 37.

and the sovereignty of states, played a special role in defending the violated rights of the Republic. The principles of the law of nature that penetrated Poland influenced the development of a new attitude towards the law of the Romans. The critical trend towards all areas of social and political life, breaking with previous authorities, also encompassed Roman law, perceived especially as affected by the symptoms of the decadence of Rome during the imperial period [Salmonowicz 1971, 361]. One example of Polish criticism of this law is the dialog published in 1770 in the Warsaw journal *Zbiór różnego rodzaju wiadomości z nauk wyzwolonych, filozofij, prawa przyrodzonego, historyi, polityki moralney, tudzież innych umiejętności y rozmaitych uwag do pożytku y zabawy publiczney służący* (*A Collection of Various Types of Information from the Liberal Sciences, Philosophy, Natural Law, History, Moral Politics, and Other Skills and Miscellaneous Remarks on the Use and Public Entertainment*) between two famous legislators of antiquity, Solon and Justinian, by François Fénelon. The author puts into Solon's mouth the words that negate the achievements of Roman law in the imperial period, especially Justinian's law: Roman law, which expressed the will of emperors devoid of ethical principles, made no one better or happier [Wołodkiewicz 1988, 249-60]. The inconsistency of certain solutions of Roman law with morality was also emphasized by Franciszek Salezy Jezierski: "The Romans and Greeks, despite the light of truth, despite the feeling of the heart and despite even a stirring of virtue, decreed the slavery of people in the form of the authority of law, deprived man of his freedom (if the misery of slavery can deprive man of the qualities of his nature) and transformed a neighbor similar to themselves into a thing of their own. People were sold for money like cattle, given away as a gift, and sometimes freedom was restored, calling it Emancipation or Manumission" [Jezierski 1791, 39]. Casuistry and the not always clear provisions of Roman law were contrasted with the simplicity and comprehensibility of natural law. Hieronim Strojnowski, a staunch supporter of the law of nature, and knowing Roman law as *doctor utriusque iuris*, put it as follows: "Whoever in Roman law, in feudal law [...] and even in the science and books of learned lawyers sees dark, inaccurate, contradictory and often clearly false ideas on which the established or given order of succession is based, cannot doubt that, as in others, so also in this matter, in order to find a sure path, one must go to the pure source of natural justice and draw from it those clear truths that certainly show what is due to whom, what is permitted and what is not" [Strojnowski 1938, 175]. A similar view was expressed by a lecturer of Roman law at the Kraków Academy, Bonifacy Garycki: "testamentary laws, founded at the beginning of the false and arbitrary Roman law, should be erased from the legislation applied to nature, as they are of no use only to lawyers themselves" [Garycki 1938, 95].

2. THE PLACE OF ROMAN AW IN THE PLANS FOR THE REFORM OF LEGAL STUDIES

One of the conditions for the success of the idea of systemic and political reforms was considered, in addition to the codification of Polish law, to be the modernization of education, especially secondary and higher education. At universities and secondary schools, there was no shortage of statements hostile to the principles of Roman law, opposing its dominant role in the teaching process. Father Hugo Kołłątaj spoke in favor of completely eliminating Roman law from the curriculum at the Faculty of Law of the University of Kraków; being an ardent supporter of the law of nature, he wanted to reform the University, where he received his education, in this spirit.[3] In his writing *Opis stanu Akademii Krakowskiej* (the Description of the State of the Kraków Academy) from 1776, he made the following observations on the subjects taught at the "Academy of Jurists": "The most profitable lesson [...] legal procedure, the most useless science, and the most famous in the Kraków Academy, is also the lesson of spiritual and civil law, i.e. ancient Roman law, in addition to the study of domestic law, the law of nations and the law of nature. The science of natural law, the law of nations and national law is so neglected that it is given in a theatrical rather than academic manner, everyone prefers to learn juridical process, spiritual law and ancient Roman law, while other lessons are completely abandoned" [Kołłątaj 1967, 91]. He expressed his position in *Raport z wizytacji Akademii Krakowskiej, odbytej w r. 1777* (the Report on the visit to the Kraków Academy, held in 1777), accusing Roman law of excessive complexity, which did not go hand in hand with practical usefulness: "When Legal Science began at the Kraków Academy, no other law was known in the whole of Europe than the rest of Roman law, the Decretal Letters of the Popes and the book collected by Gratian the Monk [...] It seemed to all legislators that it was impossible to depart from Roman laws and Justinian's decree and that nothing better in administration and justice could be invented. This prejudice can be seen in later

[3] The first attempt to introduce changes was made during the visitation of the Academy in 1741 by the Bishop of Kraków, Cardinal Jan Lipski, as its chancellor, but the results of this action did not lead to the modernization of the curriculum and work methods. The attempts at transformation initiated by Bishop Andrzej Stanisław Załuski proved more lasting, thanks to whom a chair of the law of nature and nations was established at the Faculty of Law. The intention to establish a chair of national law did not succeed; it was not until 1761 that ius Regni was introduced to legal lectures. Finally, in 1765, the Academy was visited by its chancellor, Bishop of Kraków Kajetan Sołtyk, but at least at the Faculty of Law, it did not cause any significant changes in the program. It is worth noting, however, that the visitation resulted in a project to establish, among other things, a chair of the law of nature at the Faculty of Philosophy. This project was to be submitted to the Marshal's Office at the Sejm in 1776, but this did not happen [Bartel 1970, 194-95; Chamcówna 1965, 8-11; Tokarz 1924, 31].

laws, which either monarchs or magistrates wrote for their nations. The ancient Roman law, filled with jurisprudence, terms and unnecessary subdivisions from the evasive patrons of Greece, was given to the Academy of Bologna, which until our times difficult terminology rather was preferred to teach than work on the invention of simple justice and its easy administration. It is a common defect of all Italian academies that the teachers of law are mostly advocates, who do not even forget about their own interests in the School and to whom the simplicity and clarity of the law are often unpleasant. The Academy of Cracow, on the other hand, at the beginning of its establishment, until now had no communication with any other nation except the Italians, nor could it, because when the science of Law in Germany and France began to improve, at that time the Academy of Cracow was in the greatest decline and for this reason its School of Law is nothing else but a true copy of Roman sapience…" [Kołłątaj 1953b, 161-62]. In the memorandum *O wprowadzeniu dobrych nauk do Akademii Krakowskiej* (*On the introduction of good sciences to the Kraków Academy*), Kołłątaj postulated replacing lectures on Roman law with the history of ancient law, because "ancient Roman law should be fundamentally neglected and consist only of a part with others in legal history" [ibid., 183]. In this memorandum, Kołłątaj presents the following vision of a lecture on the history of law: "The sixth lesson may consist of the history of all laws; having described the history of ancient laws for us, it will briefly describe the knowledge of the laws of all countries, their similarities, connections and equality among them [...] This lesson, I believe, will be more useful than the one given under the name of civil law, which bored the youth for several years with an enumeration of the laws of that Republic that fell long ago" [ibid.]. Such views were similar – as noted by I. Jakubowski [Jakubowski 1984, 44] – to the view of J.J. Rousseau, who believed that Roman law should be removed in Poland from schools and tribunals [Rousseau 1966, 248-49].

3. THE RELATIONSHIP BETWEEN LEGAL EDUCATION AND LEGAL PRACTICE IN OLD POLAND

The statement above encourages us to draw attention to the connections between legal education and the practice and legal culture of the noble society of this time. The poor functioning of courts, with tribunals at the forefront, causing the most voices of criticism, especially in the first half of the 18th century, was largely related to the lack of significant legal education among practicing lawyers [Michalski 1958, 276].[4] According to H. Kołłątaj, the study

[4] Based on the opinions of H. Kołłątaj, the author states that the lack of social demand for people educated in law was the fundamental reason for the decline of the science and importance of law in the first half of the 18th century. Kołłątaj explained this lack of demand by the anarchy prevailing in the Republic of Poland, because in other countries

of law at the University of Kraków, covering primarily Roman and canon law, was used by clergymen – future canonists, as well as candidates for the career of attorney in city courts; these specializations required knowledge of Roman law.[5] However, Roman law did not give prestige to representatives of the city bar,[6] while attorneys of noble origin, who had only superficial knowledge of it, not supported by university education, used Roman terms rather as a stylistic ornament, often without understanding their content. Józef Wybicki admits to this, recalling his youthful legal practice: "I pronounced Roman laws, the Magdeburg statutes like a parrot by habit, because that is what my whole worthy congregation did" [Wybicki 1927, 15; Jakubowski 1981, 64]. I. Jakubowski states that in the 18th century in Poland the authority of Roman law fell, but this law was not criticized as harshly as in other countries of Europe at that time [Jakubowski 1984, 45]. Despite attacks, mainly from supporters of the law of nature, Roman law also managed to resist them in these countries, although it lost its primary importance as the basis of all legal knowledge [Sondel 1988, 17]. In France, where there were no particularly sharp attacks on Roman law, it was precisely the representatives of the law of nature who saw in it its compliance with the requirements of reason and natural justice, and in Roman solutions they tended to see the best expression of the laws dictated by nature [Sójka-Zielińska 1975, 112].[7] The seventeenth- and eighteenth-century concepts of the law of nature

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the governments were interested in supporting the science of law. In Poland, on the other hand, lawyers in the courts of the nobility had enough of bar practice, while judges did not have to care about their legal education at all, because in them "they did not look for knowledge of law, but rather birth and flexibility in conscience", and "the science of law seemed, indeed, completely unnecessary in this universal confusion" [Kołłątaj 1953a, 79-80]. This state of affairs also raised concerns of Stanisław Leszczyński, who, emphasizing that even in rural courts abroad a judge was required to have a university law education, lamented: "... in other countries people spend their whole lives studying jurisprudence, here it seems that it is *scientia infusa*, there is no other school for this science, only chancelleries" [Leszczyński 1903, 90].

5 "…the Main School of Kraków should be considered as working on law only for the purpose it saw as necessary and accepted in the country, that is, on canon law and its practice, as well as on Roman law, useful for canonists and city patrons [...] For those willing to become a good patron in the assessory, it was not enough to know domestic law, but also Roman, civil and municipal law, diplomatic science in general and, in particular, privileges serving many cities; all this could not be dismissed with practice alone: it was necessary to know theory" [Kołłątaj 1953a, 102, 114].

6 "...however, such people, apart from the interests of the starosty, meant very little to us. There was no promotion for them in the country, and the noble bar despised them everywhere" [Kołłątaj 1953a, 114].

7 The author cites as an example the work of one of the leading French naturalists, Jean Domat, Les lois civiles dans leus ordre naturel, which is in fact a textbook of Roman law, but arranged according to the "natural order". J. Domat, as J. Sondel notes [Sondel 1988, 16], was not far from practically identifying the main maxims of Roman private law with the principles of natural law. The most outstanding French jurist of that era, R.J. Pothier [Arnaud 1969, 69, 111], also based his work on Roman law.

were eager to use Roman texts, and the law of nature was even identified with Roman law, or more precisely: with the spirit of Roman law, understood quite freely, treated as *ratio scripta* [Kodrębski 1986, 135]. A similar point of view was not characteristic only of French naturalists; it was also shared by numerous lawyers associated with the German Empire. Apart from H. Grotius, Samuel Pufendorf and Christian Wolff were thorough experts in Roman law, appreciating its practical significance; even Christian Thomasius, who was most openly hostile to this law, referred to it for practical purposes, finding no substitute system, although he saw its significance only in comparative studies [Luig 1967, 203]. Finally, Roman law was not supplanted by the law of nature and nations from the curricula of the reformed universities, retaining its significance as a propaedeutic for private law. J. Sondel emphasizes that although during the Enlightenment national legal systems gained the significance of separate subjects taught, nevertheless lectures and textbooks on these subjects were still based on the system of Justinian's Institutions, and in the case of gaps in national law, references were made to Roman law [Sondel 1988, 37]. Moreover, Roman law still remained one of the subjects taught, and what is more, in some universities its position was almost unshaken. An example is the Protestant university in Strasbourg, where studies consisted primarily of listening to lectures on Roman and canon law, supplemented by French and German law [Zdrójkowski 1956, 28].

4. SOME VIEWS SOME ON THE ROLE OF ROMAN LAW IN LEGAL EDUCATION AT THE END OF THE 18TH CENTURY

A favorable attitude towards Roman law also prevailed in Poland. The fascination with the culture of ancient Greece and Rome, characteristic also in other European countries, resulted in interest in the history and therefore in the legal systems of both of these countries. German influences, strong in the years 1750-1770, were of particular importance [Salmonowicz 1962, 60], because in Germany Roman law still enjoyed great respect. Although the popularity of the doctrine of the law of nature in Poland resulted in Roman law being deprived of the character of a leading discipline in legal studies, it was still the subject of scientific research. However, the modest scope of Roman studies in eighteenth-century Poland makes us reflect that in this field the distance that separated Polish and European science at that time was much greater than in other legal disciplines [Sondel 1988, 88]. According to S. Salmonowicz, "knowledge of Roman law still constituted […] the basic and almost the only theoretical resource of knowledge about law for every educated lawyer, but this was not tantamount to the development of Roman studies. Although the older generation of professors of the Kraków Academy (Lipiewicz, Mamczyński, Toryani, and especially

Franciszek Minocki) published legal dissertations until the 1780s, but rather Romanesque than strictly Roman […] Interest in Roman law therefore focuses rather according to some civil issues, and only in terms of the usefulness of this issue in reformist works: however, there are no representatives of classical elegant jurisprudence in Poland, and there are no works devoted exclusively to research on Roman law" [Salmonowicz 1962, 131].

The Polish drafters of the codes at that time, appreciating the influence of Roman law on the content of the projects, drew attention to its importance as an element of the intellectual formation of Polish lawyers. Andrzej Zamoyski required knowledge of this law in particular from patrons (attorneys),[8] and Hugo Kołłątaj, the chairman of the Crown Deputation preparing the Code of Stanisław August, stated that Roman law was taught in Poland, among others, for the needs of city patrons [Kołłątaj 1953a, 81].[9] These statements indicate that the importance of Roman law was noticed in the process of university education, and this subject, despite the great emphasis placed on the law of nature and national law, did not disappear from the curricula. Hugo Kołłątaj himself, as a reformer of the Kraków Academy, who was reluctant to lecture on Roman law at the Faculty of Law, considered it essential for canon studies at the Faculty of Theology. In the letter *Regarding the execution of the laws* prescribed for the academic state and resolving the inevitable problems of the Main Crown School from December 1782 addressed to the bishop of Płock Michał Poniatowski, president of the Commission of National Education, he wrote about the importance of law departments for theology students: "Collegium Iuridicum has just established two departments: the first of natural, economic, political and national law, the second of ancient Roman law and the history of ancient laws; both of these departments were started before the others because the students of Collegii Theologici cannot do without them, because the first is the foundation of all moral sciences, without the second one cannot thoroughly possess canon law" [Kołłątaj 1967, 172]. He also required the candidate for the Department of National Law at the Kraków Academy, Józef Januszewicz, to examine the influence of Roman law on Polish law, and in his opinion, a law teacher "should […] have good knowledge of ancient Roman law and its

[8] "A person who wants to be a patron must know at least and perfectly the Polish language and Latin, must be of good morals, should be familiar with public and civil domestic laws, and must also have knowledge of national history, as well as the laws of nature and common Roman laws," see *Zbiór praw sądowych przez ex kanclerza Andrzeja Ordynata Zamoyskiego ułożony i w roku 1778 drukiem ogłoszony, a teraz przedrukowany, z domieszczeniem źródeł i uwag, tak prawoznawczych, jak i prawodawczych, sporządzonych przez Walentego Dutkiewicza*, Skład Główny w Księgarni Gebethnera i Wolffa, Warszawa 1874, p. 95.

[9] I. Jakubowski assumes that Kołłątaj suggested in this statement that it was in the city law that the influence of Roman law could be seen, the knowledge of which was necessary for lawyers appearing before city courts [Jakubowski 1984, 58].

history, because it […] later became a model for all nations" [Sondel 1988, 50]. Also in a letter of 12 December 1805 to Tadeusz Czacki, who was organizing the grammar school in Krzemieniec, he wrote about teaching canon law: "Wherever it would be appropriate to give it, there a separate department of Roman law should be established; because canon law is its copy and in many places, both in institutions and in the process, it would be difficult to understand, without first understanding the institutions of Justinian and the old civil process" [Kołłątaj 1953b, 323-24]. In the same letter, giving advice to Stanisław Kudlicki, the future professor of that gymnasium, sent by Czacki to Hamburg to complete his education, he recommends: "he should listen to Roman law and commit himself to the same or another teacher who would give him a separate course in the history of law", because in German academies "he will find many departments of Roman law", which in Krzemieniec will be taught as part of historical and legal subjects [Kołłątaj 1953b, 338-39; Jakubowski 2015, 89]. We can therefore see the evolution of Kołłątaj's views on *ius Romanum*: from decidedly unfriendly to perceiving some of its advantages as a model system and an indispensable element of the education of canonists and law lecturers [Sondel 1988, 50; Jakubowski 1978, 86]. Moreover, his initially hostile views towards Roman law were not recognized by the National Education Commission, and the chair of ancient Roman law and its history was maintained within the Collegium Iuridicum. In practice, due to difficulties with staffing, this chair began to function only in 1782/83, and Fr. Bonifacy Garycki was appointed professor of Roman law [Patkaniowski 1964, 44; Sondel 2013, 100-101]. Of course, lectures on Roman law were held – although not always systematically – even before the Kołłątaj reform, but, as W. Bartel emphasizes, they did not play a major role in legal studies, because the ancillary nature of *ius civile* in relation to canon law was too strongly emphasized [Bartel 1970, 205]. It should be added that the Vilnius Academy did not cease to conduct lectures on Roman law, although in the years 1712-1721 (i.e. after the death of Professor Stanisław Paszkiewicz), which were exceptionally difficult due to war, epidemics, famine and fires, the chair of this subject remained vacant. Breaks in lectures, although not as long, occurred several times [Piechnik 1983, 62],[10] and at the end of 1759 the most famous professor of Roman law at the Academy, Antoni Ostoja Zagórski, began his lectures. In a speech delivered in 1761 entitled *The Speaker on the Righteousness, Need and Benefit of Jurisprudence*, he emphasized the importance of this law, which "of almost

[10] L. Piechnik refutes the belief prevailing in Polish historiography that after the period of the "Deluge" lectures on civil law were suspended at the Vilnius Academy until 1760; he states that despite the interruptions in lectures, the department of civil law basically existed. In the event of a vacancy, the rector received a warning from the provincial and an order to find a suitable professor [Piechnik 1983, 59].

the entire human nation from the most ancient wisdom of all ages and times gathered is a law for the eradication of rudeness and for the unification into one, as if by a single bond, of all the opinions, thoughts and hearts of all nations" [Sondel 1988, 56].

The law of the Romans was finally taught at the Zamość Academy. The curriculum of this subject was indeed specified in the foundation act of 1600, and the content of the lectures on Roman law, expanded by Tomasz Drezner to include other ancient laws and comparative law elements, testified to their high level, but the findings current in the first decades of the 17th century cannot be transferred without reservation to the situation a hundred years later. The crisis that hit the Academy in the second half of the 17th century must have caused a decrease in the level and perhaps also in the number of lectures. The stagnation and neglect prevailing at the Zamość Academy until the mid-18th century certainly did not contribute to improvement in this area or to the systematic conduct of classes. Although the lack of information about civil law professors in the rector's files for some years does not necessarily mean that lectures were actually discontinued, the signs of a serious crisis [Dyjakowska 2000, 53-64], and sometimes even the cessation of the Academy's functioning, do not encourage optimistic assumptions. Available sources do not allow us to determine the place of Roman law in the Academy's curriculum, at least until the mid-1750s. The requirement to print and distribute lesson plans (*horarum dispositiones*) was clearly imposed on the deans of individual faculties only by the reform decree of Bishop Laskaris from 1764 [ibid., 114]. Such plans, used to familiarize students with the scope and topics of lectures, were certainly also announced before the reform; they would have allowed for the determination of, among other things, the duration of lectures on Roman law, and perhaps also the order of the topics discussed. However, not a single preserved copy is known; probably the outdated university lesson plans were not considered worth keeping. Interesting information is contained in the curriculum published in the academic printing house and announced on the occasion of the opening of the boarding house for noble youth (Convictus Nobilium) in 1760, entitled The Laws of the Zamość Academy with a description of various Sciences for the benefit of Polish Youth Attending, collected and now, at the opening of the new Convict, upon the persuasion of many Worthy Persons, given for public information. In point III entitled *On the description of sciences and their benefits*, the scope of individual legal sciences and the goals of education in them are presented, among other things. The title of the curriculum suggests that it contains general academic regulations, and the opening of Convictus Nobilium is only an opportunity to remind them; it can therefore be assumed that this curriculum corresponded to the actual lectures given at the Academy. The lack of Roman law

in it is intriguing. Perhaps this subject was squeezed as the general foundations of private law into a lecture called "secular law"; the latter term should be understood as Polish judicial law (civil and criminal).[11] Although Roman law was not listed as a separate discipline, it was certainly taught, as evidenced by notes in the rector's files, providing the names of professors of individual subjects [Dyjakowska 2000, 121-29]. Another piece of evidence is the lecture script by Wawrzyniec Żłoba, probably written in the 1970s. Its subject is Roman law presented in the order of Justinian's Institutions, supplemented with information on Polish law. It is worth noting that despite separate lectures on Polish judicial and public law (referred to in the above-mentioned program as crown law and secular law), Polish law also served as a supplement to the discussion of the institutions of Roman law. Comparing the norms of Roman law with native law had its tradition at the Zamość Academy, to mention just a few works by Tomasz Drezner; in Polish science in the 17th century, this method was often used to enrich studies of Polish law with a description of Roman institutions, and the division of material into *personae – res – actiones*,[12] characteristic of Justinian's Institutions, was also in common use. In eighteenth-century European universities, the comparative method was used in lectures on Roman law. At the University of Turin, the professor of Pandects was also supposed to deal with native law in addition to his subject [Sondel 1988, 37], while the counsellor at the Châtelet in Paris, Andre-Jean Boucher d'Argis, when creating a project for the program of legal studies in France, emphasized the need to link Roman law with the history of French law [Wołodkiewicz 1986a, 166]. Also at the Faculty of Law of the University of Kraków, in accordance with the statutes adopted in 1742, a lecture on Roman law was provided for by a professor called Justinianeus, who was to show students *viam ad arcana legalis scientiae* based on Justinian's Institutions. In his lectures, however, he should go beyond pure ius civile, also taking into account the norms of customary and statutory law in force in the Republic of Poland, i.e. both land and city law, based on German law [Bartel 1970, 197]. As M. Patkaniowski supposes, this lecture consisted in mechanically comparing the provisions of Roman law with Polish law [Patkaniowski 1964, 19]; in practice, Professor Justinianeus also included provisions of canon

[11] "Secular law (the aim of which is peace in the Republic and the alleviation of upcoming controversies between citizens) not only designates and describes the prerogatives and privileges of various states, rewards for the deservings and punishments for the delinquents, but also provides effective methods for a just judgment and for maintaining one's rights" [Kuryłowicz and Witkowski 1980, 53; Kuryłowicz 1994, 43].

[12] Among Polish writers of the 15th and 17th centuries, the Romanist method was observed by, among others, Jakub Przyłuski, who included his knowledge of Roman law primarily in the prefaces and theoretical commentaries on the extracts from Polish laws he prepared, and Mikołaj Zalaszowski.

law in his lectures [Bartel 1970, 197]. The practice at the Zamość Academy of supplementing the Roman law taught with native law was therefore in line with modern methods of teaching this subject, also used at many other law faculties.

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IMPLEMENTATION OF PATIENTS' RIGHTS

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Abstract. The institution of the Ombudsman appeared in Poland as late as in 2008 as a result of the enactment of the Act of 6 November 2008 on Patients' Rights and Patients' Ombudsman. This was the result of conducting many studies and recommendations, which recognised the need to institutionalize patients' rights and thus appoint a patients' representative that will uphold their rights. It should be noted that the Act on Patients' Rights and Patients' Ombudsman was part of the so-called health bill package, aimed at reforming the health care system and supporting patients in enforcing their rights. The Patients' Ombudsman was established to effectively protect the rights of patients in the health care system. This follows directly from the basic duties of public authorities to protect the health of citizens. In general, the duties of public authorities to protect health and act in the health care system derive from Article 68 of the Polish Constitution. This provision is fundamental to determining the scope of the obligations of public authorities, but also of those required to interpret and apply the provisions of patients' rights. On this basis, the Ombudsman for Patients' Rights, as the central body of government administration in Poland, is competent for the protection of patients' rights (Act of 6 November 2008 on Patients' Rights and Patients' Ombudsman). His activities are focused on respecting patients' rights concerning the individual patient, as well as the collective rights of patients.

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Keywords: Ombudsman; patients' rights; Polish Constitution; protection of citizens' health.

1. INTRODUCTORY REMARKS

The institution of the Ombudsman only appeared in Poland in 2008 as a result of the enactment of the Act of 6 November 2008 on Patients' Rights and Patients' Ombudsman.[1] This was the result of conducting many studies and recommendations, which gave rise to the need to institutionalize patients' rights and thus appoint a patients' representative that will uphold his rights. It should be noted that the Act on Patients' Rights and Patients' Ombudsman belonged to the so-called health bill package, aimed at reforming the health care system and supporting patients in enforcing their rights.

The Patients' Ombudsman was established to take efficient and effective action to protect the rights owed to patients in the health care system. This follows directly from the basic duties of public authorities to protect the health of citizens. In general, the duties of public authorities to protect health and act in the health care system derive from Article 68 of the Polish Constitution.[2] This provision is fundamental to determining the scope of the obligations of public authorities, but also of those required to interpret and apply the provisions of patients' rights. On this basis, the Ombudsman for Patients' Rights, as the central body of government administration in Poland, is competent for the protection of patients' rights. Its activities are focused on respecting patients' rights concerning the individual patient, as well as the collective rights of patients.

"Patients' rights" is a phrase that has been accepted both in the Polish legal language and in other European Union countries. There is no legal definition of the term "patients' rights". However, it belongs to the category of human rights and has a straightforward legal regulation that indicates the rights shown here (PRPO). Nevertheless, it is possible to demonstrate the main purpose and goal of "patients' rights", which is both to protect the patient from interference by others in his freedom, as well as a guarantee to demand respect for various rights granted to him by law [Bach-Golecka and Stankiewicz 2020, 780].

Because of this, the term "patients' rights" refers to the dedicated Act on Patients' Rights and the Patients' Ombudsman, defining "patients' rights and freedoms" [Banaszczyk 2018, 788]. The Patients' Ombudsman takes up cases of observance of patients' rights, reported directly by patients to the Office of the Patients' Ombudsman, but also to the Minister of Health, the President of the National Health Fund, as well as analyzes administrative data collected by health care institutions and information appearing in the public space

[1] Act of 6 November 2008 on Patients' Rights and Patients' Ombudsman, Journal of Laws of 2024, item 581.

[2] Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended.

and media reports. On several occasions, the Patients' Ombudsman conducts investigations into irregularities in the operation of medical entities that require further monitoring for compliance with patients' rights.[3] The Patients' Ombudsman takes the position that patients' rights should be the subject of ongoing education and dissemination among medical personnel and other participants in the health care system.

From the annual activities of the Patients' Ombudsman, the level of compliance with patients' rights can be assessed. The Patients' Ombudsman received 124,861 total signals and reports coming in from patients in 2022.[4] Included in this figure are all contacts made with the Office through various communication channels. The number of signals to the Ombudsman decreased compared to 2020-2021, the period of the COVID-19 epidemic, but was still more than 43% higher than in 2019. In 2022, of the signals received by the Ombudsman, 101,154 notifications and cases were recognized. This figure includes written submissions from patients, including those sent electronically, cases received via Patients' Telephone Information, or chat, and cases reported to Psychiatric Hospital Patients' Ombudsmen. Of all reports to the Ombudsman, 80% were directly related to patients' rights. Other submissions include inquiries about cases already in progress, as well as submissions and inquiries about institutions indirectly related to the health care system. The Office's staff directs callers to the right place, provides guidance on methods to solve a specific problem, or supports them through information and education activities.

Summary of highlights of the Patients' Ombudsman's activities in 2022.

Data from the Ombudsman's activities	2019	2020	2021	2022
Number of reports sent to the Ombudsman	86,114	135,625	163,910	124,861
Number of calls answered at the Patients' Telephone Information Service	66,650	110,025	133,212	98,910
Number of investigations conducted in individual cases	1,683	1,861	2,705	2,870
Number of completed investigations in individual cases	979	1,345	1,512	1,332
Number of initiated proceedings for practices violating the collective rights of patients	78	138	181	279
Number of decisions issued in proceedings on practices that violate the collective rights of patients	48	136	191	281
Number of pending civil proceedings involving the Ombudsman	48	74	93	99
The number of cases handled by the Department of Health and Human Services. Mental Health	12 123	10 188	9 610	7 276
Number of systemic measures taken	162	191	148	110

Source: https://www.gov.pl/web/rpp/sprawozdanie-za-2022-rok [accessed: 15.07.2024], p. 14.

[3] See www.gov.pl/web/rpp/raport--postepowania-wyjasniajace-prowadzone-przez-rzecznika-praw-pacjenta-w-sprawach-indywidualnych-w-latach-2019-2021 [accessed: 15.07.2024].

[4] See https://www.gov.pl/web/rpp/sprawozdanie-za-2022-rok [accessed: 15.07.2024], p. 7-14.

The Patients' Ombudsman received 79,157 reports, signals, and requests regarding patients' rights in 2022,[5] including those concerning the right to health services – 53,631; the right to information – 8,947; the right to medical records – 5,220; the right to mental health protection – 4,647; the right to respect for intimacy and dignity – 2,949; the right to respect for private and family life – 1,651; the right to consent – 777; the right to object to a doctor's opinion or ruling – 576; the right to report adverse reactions to medical products – 291; the right to confidentiality of information – 227; the right to keep things in escrow – 195; the right to pastoral care – 48. An analysis of the execution of patients' rights in 2022 can be conducted.[6] Among the very often violated patients' rights is the right to health services. The right to information, the right to consent to health services, and the right to medical records were frequently violated. The right to respect for the patient's intimacy and dignity and the right to respect for private and family life were sometimes violated. In contrast, the right to report adverse drug reactions, the right to pastoral care, and the right to keep valuables on deposit were very rarely violated. The patient's right that was not violated is the right to object to a doctor's opinion.

More than two-thirds of all reports to the Patients' Ombudsman concerned the right to health care services. This law was very often violated in 2022. At this point, it should be emphasized that the right to health care services is the most important right patients have. The right to health care services includes the provision of services with due diligence, corresponding to current medical knowledge, while observing the principles of professional ethics by medical personnel in premises that meet professional and sanitary requirements. It is worth emphasizing that a patient's right to health services is directly related to three aspects of it, such as the availability of health services, the quality of health services, and the safety of health services. Ensuring proper accessibility to health care services is certainly the main problem of ensuring compliance with the right to health care services. It is also one of the main problems of the healthcare system. This right includes the provision of immediate health services due to a threat to the patient's health or life. However, it should be underlined that despite the removal of limits on the provision of health care services in outpatient care, this has not significantly improved access to health care services. When analyzing 2022, it is worth remembering that the limited availability of health services was caused by the COVID-19 pandemic. It, therefore, seems crucial to increase the number of medical staff to ensure proper accessibility to health services. It also seems important to ensure equal access to health services. This is especially true for quick access to admission directly through the GP.

[5] Ibid., p. 6-7, 30.

[6] Ibid., p. 9-10.

Primary health care should provide comprehensive and coordinated health care for patients close to home. Transparent procedures establishing the order of access to health services based on medical criteria are also becoming important. Undoubtedly, an important element here is the waiting time for an appointment, surgery, or diagnostic test. Equally important is the removal of purely technical, organizational, financial, and personnel constraints in ensuring equal access to health services. It is worth remembering to ensure the quality and safety of health services, which play a key role in an effective healthcare system. Of course, ensuring the quality of healthcare services requires improving medical staff and healthcare delivery procedures. An important element here is the insufficient number of organizational standards and the lack of definition of the therapeutic activities that are required for a specific condition. The issues of hospital infections, post-operative deaths, the quality of diagnostic tests, as well as pharmacological problems in hospitals should also be recognized here.[7] It is therefore necessary to introduce regulations that will directly contribute to significant changes in the way medical entities operate and focus on safety and quality of services.

Another patients' right often violated was the right to information. This is a rather broad patients' right that refers to information about a patient's health condition, information about a patient's condition for an authorized person, consent to medical treatment, information about a doctor's withdrawal of treatment, information about rights owed to the patient, and information about other benefits owed to patients, especially during hospitalization. The most frequently violated was the right to information about the patient's condition directed to the patient himself and an authorized person about the patient. This was especially true of the difficulty or lack of information about the patient's condition, especially during hospitalization was the most important element of the violation. And yet, information about the patient's health condition and the treatment methods proposed to him is the basis further for the patient's informed consent to the provision of health services, consent to surgery, treatment methods, or diagnostics that pose an increased risk of complications. It is worth noting that the patient's consent to a medical procedure is a condition for the legality of the doctor's action [Banaszczyk 2018, 786]. Consenting to the provision of health services, it should be pointed out, constitutes respect for patients' autonomy. Undoubtedly, the patient's knowledge of the state of health and the proposed therapeutic measures is the basis of and links directly to the right to provide health care. At the same time, respecting the right to information serves better cooperation and mutual relations between patients and medical staff, based on respect and trust, as well as better therapy results [Cianciara 2017,

[7] See https://www.nik.gov.pl/plik/id,20223,vp,22913.pdf [accessed: 15.07.2024].

123]. The most common reports to the Patients' Ombudsman concerned errors in the use of the consent form, the inclusion of content that was not understood by the patient, the lack of a defined scope of the procedure, the failure to specify possible typical complications after the procedure, or the use of blank forms.[8]

Another frequently violated patients' right was the right to medical records. This right includes, in particular, access to medical records, which are the basis for depicting the treatment process, as well as being a source of evidence in legal proceedings and further the basis for claiming various types of benefits from the social security system. The obligation to keep medical records and the patients' right to access these records perform many functions. First, knowledge of the history of treatment is an important guide for the doctor, allowing him to select the right method of treatment, especially in the event of a change of doctor; second, the obligation to disclose in the records the treatment procedures used is a guarantee of the doctor's use of procedures consistent with current medical knowledge and accepted standards; third, medical records can be used in a possible trial as a means of evidence [Boratyńska and Konieczniak 2001, 361]. The most common violations were refusal to release medical records, erroneous record keeping, and lost medical records.[9]

The right to respect for the patient's intimacy and dignity, which refers to the patient's ability to talk to medical personnel and the presence of only the necessary medical personnel during the provision of health care, was sometimes violated. At the same time, it is worth noting here the patient's right to have a person close to the patient present during the provision of health care. Often, this right is related to a sense of security by the patient, who participates in the treatment process with someone close to him. The right to respect for a patient's intimacy and dignity is also extended to dying in peace and dignity and alleviating the patient's pain. There have been situations of disrespectful behavior by medical staff in conversations with patients, as well as inappropriate behavior by staff toward patients and restrictions on family births. One element of such a situation was the COVID-19 pandemic.

Similarly, the right to respect for private and family life, which includes the right to contact in person, by telephone, or by correspondence, was rarely violated. The most common proceedings for violations of this right involved preventing patients from contacting their families, separating the newborn from the mother, preventing the implementation of additional

[8] See https://www.gov.pl/web/rpp/sprawozdanie-za-2022-rok [accessed: 15.07.2024], p. 51.
[9] Ibid., p. 52-53.

nursing care for the patient, contact with relatives only in the presence of staff, time restrictions, and limiting contact to phone calls only.

A rarely violated right was the right to medical confidentiality, which covers all information related to the patient. Of course, doctors here are covered by medical confidentiality. However, there are situations in which medical confidentiality may be broken, and these situations involve the transfer of necessary information about the patient to other medical professionals at the time of the patient's transfer or consultation, and when maintaining confidentiality could pose a danger to the life or health of the patient or another person. Irregularities here included the transfer of patient information to unauthorized persons, information about a patient's health in the presence of other patients, and the transfer of medical records to persons or institutions not authorized to do so.

Among the very rarely violated patients' rights, the Patients' Ombudsman included the right to report adverse reactions to medicinal products, the right to pastoral care, and the right to keep valuables on deposit. Directly, the patient has the right to report adverse effects of a medicinal product to medical professionals, the President of the Office for Registration of Medicinal Products, Medical Devices and Biocidal Products, or the entity responsible for placing the drug on the market. Reports of adverse reactions to medicinal products particularly concerned adverse vaccine reactions carried out in the COVID-19 pandemic. Other violations of these rights were related to lack of access to pastoral care, or restriction or denial of use of the depository.

2. THE PATIENT'S RIGHT THAT WAS NOT VIOLATED IS THE RIGHT TO OBJECT TO A DOCTOR'S OPINION

It is worth noting that violations of patients' rights are only disclosed or reported when the patient suffers the consequences, such as in the case of a medical error. Simultaneous violations of several patients' rights were also often found. Taking into account that the rights owed to patients are an important issue, but also require adaptation to a new legal and institutional reality that considers the emergence of new challenges throughout their validity and evolution as a consequence of epidemiological, technological, institutional, and social changes, the Polish Academy of Sciences issued recommendations for the period 2023-2027, identifying four directions of intervention that seem particularly significant for more effective functioning of the health system that guarantees the fullest possible observance of patients' rights, which concern expanding the catalog of patients' rights and clarifying terminological issues; introducing an out-of-court model for the compensation of medical damages based on the absence of fault (i.e., no-fault);

changing the mode of appointment to the position of Ombudsman; processing and security of personal data sharing in the medical sector.[10]

CONCLUSIONS

Summarizing the considerations, the Patients' Ombudsman plays a very important role. It is the Ombudsman who makes sure that patients' rights, guaranteed by the Constitution and other legal acts, are duly respected by clinics, hospitals, doctors, and all facilities that carry out tasks in the field of patient treatment. Patients are expected to be as safe and comfortable as possible during treatment.

As the above discussion shows, every year there are more and more reports of violations of patients' healthcare rights. The task of the Patients' Ombudsman is therefore, to take effective measures to protect patients' rights to sustainably increase the degree of respect for patients' rights in Poland. It's also about raising awareness of patients' rights and continuous development to ensure that patient satisfaction is achieved.

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[10] See https://pan.pl/wp-content/uploads/2023/06/Rekomedacje_I_6.pdf [accessed: 15.07.2024].

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THE IMPACT OF COMPUTERIZATION IN ADMINISTRATIVE PROCEEDINGS ON THE RECTIFICATION OF ADMINISTRATIVE DECISIONS FROM THE PERSPECTIVE OF LEGAL SECURITY OF THE PARTIES

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Abstract. The article aims to verify the impact of computerization in administrative proceedings on the rectification of administrative decisions from the perspective of legal security of the parties. The author proves that computerization is an opportunity to popularize and, above all, to demand rectification by the parties to administrative proceedings. As a result, computerization positively affects the improvement of legal security of the parties. Attention is also drawn to the risks arising from computerization by proposing a number of legal and organizational solutions. The author uses the legal-dogmatic research method, analysing the content and the relationships between the provisions of the Code of Administrative Procedure and other acts affecting the computerization of the discussed procedures, with particular emphasis put on the rectification of administrative decisions. The conducted research and conclusions also include the practice of applying the provisions on the computerization of administrative proceedings and the impact of computerization on the legal security of the parties.

Keywords: rectification; computerization; administrative proceedings; legal security; decision.

INTRODUCTION

The 21st century is a time of significant dynamics and change. This is largely due to the progressive computerization and electronization of many life activities and processes in which we participate or which simply concern us. This also applies to administrative proceedings and the powers of the parties to these proceedings. Electronization is important not only for the available forms of exercising the rights and obligations of the parties, but also for the effectiveness, efficiency and correctness of legal mechanisms. It directly affects the legal security of the parties. Meanwhile, the doctrine as well as the practice of applying the law pay insufficient attention to the impact of implemented ICT solutions on particular legal solutions provided for in the applicable legal

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acts. There is also no precise reflection on the legal security of the participants in electronic legal events and acts that takes into account not only external threats, but also those coming from the structures of administrative bodies.

The purpose of this text is to examine the impact of computerization of administrative proceedings on the rectification of administrative decisions in the context of legal security of the parties. It should be argued that computerization is an opportunity to popularize and, above all, to demand rectification by the parties to administrative proceedings, which positively affects the improvement of legal security of the parties. At the same time, computerization becomes a threat to the aforementioned legal security of the same parties by downplaying the applicable standards by bodies processing data and issuing decisions by means of ICT tools and systems. Therefore, it seems necessary to use a legal-dogmatic research method to analyze the content and examine the relationship between the provisions of the Code of Administrative Procedure[1] and acts introducing or affecting the computerization of the discussed procedures, with particular emphasis on the rectification of administrative decisions. In order to fully verify the thesis, and then to propose legal and organizational solutions, an analysis of available literature, jurisprudence and results of the inspection regarding proper functioning of state bodies will be made. Data analysis of research based on access to public information and empirical analysis of the provisions of the Polish legal system will allow to demonstrate the way of applying the provisions on rectification in practice and to propose an approach to the computerization of rectification that implements key postulates of legal security.

1. PERCEPTION OF THE LEGAL SECURITY OF THE PARTIES TO ADMINISTRATIVE PROCEEDINGS

First of all, it is crucial to define the concept of security. The term is associated with the Latin expression *sine cura*, which means without fear or anxiety, and can be defined as "a state of non-threat" [Doroszewski 2000]. The doctrine also emphasizes the close relationship of the term with the word *securitas*, by which stability and peace of mind are understood. Etymological definitions describe security as a condition that lacks threat or does not require care [Rosicki 2010, 23-32].

In the context of this article, it is important to notice the difference between the actual state of security and the subjective sense thereof [Filipkowski 2024, 158]. From the position of a party to administrative proceedings and due to the nature of the administrative and legal relation, it is necessary to ensure security

[1] Act of 14 June 1960, the Code of Administrative Procedure, Journal of Laws of 2024, item 572 [hereinafter: CAP].

in both areas. Security also has a direct impact on the perception of legal security, on which a separate paper could be written due to its unusual capacity for meaning. Nevertheless, it should be noted that legal security is an extension of the term security, and adds to the definition a normative guarantee, i.e. reliance on the provisions of statutory law. It is emphasized, however, that although the understanding of normative order(s) is of key importance here, legal security would not exist in defiance of the natural order or even customs and morality [Kość 2005, 111]. In normative terms, legal security should be verified with regard to the coherence and stability of the legal system and understood as the overall security of the participants in the legal system and in terms of the certainty of the law [Potrzeszcz 2013, 186-92]. Therefore, analyses and conclusions related to both of these aspects will be presented later in this paper.

Regardless of the definition of legal security and its perception, the need to ensure it seems to be indisputable both in the context of political and social discourse, and even more so in the scientific debate in the field of legal sciences. Nevertheless, it should be emphasized that the need to ensure such security also results from the values perceived in the doctrine as arising from the provisions of the Code of Administrative Procedure. Public administration should take care of the individuals and their affairs in the matter of which a decision is made, at the same time being guided by the concern for the common good and respect for the provisions of law, the specification and subsumption of which is its key task [Kostecki 2023, 245].

2. RECTIFICATION OF ADMINISTRATIVE DECISIONS

In order to verify the proper functioning of the administrative law system within the scope set out in the title of this paper, it is necessary to explain the concept of rectification and to indicate the legal grounds for taking specific measures within it. The term comes from the Latin word *rectificatio*, which means "straightening". In law, the concept was first used in 1933 in the context of civil proceedings as a collective name for forms of repairing the so-called insignificant defects of the decision [Litauer 1933, 1]. Then, it moved to other areas of law, taking root in the doctrine of administrative proceedings.

Pursuant to the provisions of Article 111 and 113 CAP, administrative decision may be rectified by correcting, supplementing or clarifying its content. These measures are used, as was the case with the original assumption in the civil proceedings, to remedy defects that not only do not invalidate the decision that contains them, but also do not affect significantly the manner of settling the case.[2] This type of defects includes, in particular, obvious

[2] Judgment of the Regional Administrative Court in Poznań of 4 April 2019, ref. no. IV SA/Po 1241/18, Lex no. 2695464.

clerical or accounting errors, and minor deficiencies or ambiguities in the content of the decision. Such errors do not result in the exclusion of a given decision from legal transactions [Gabryel 2019, 100]. This does not mean, however, that the defects are irrelevant. On the contrary, they repeatedly affect the legal and factual situation of the parties to administrative proceedings [Adamiak 1998, 8-10].

As far as the importance for legal security is concerned, it should be noted that rectification can be carried out both at the request of a party to the administrative proceedings and at the authority's initiative. In addition, the interest of the party might warrant correcting, supplementing or clarifying the content of the decision (in practice it is the most common factor). Nevertheless, concern for quality – the flawlessness of the authorities' decisions, as well as equity, or care for the broadly understood social good – should be an equally important motivator for correcting errors. Not only the accuracy of the final administrative decision, but also its quality is a sign of the administrative bodies' effectiveness and a confirmation of their highest democratic standards. In this respect, the attitude of staff acting on behalf of the authorities is very important. Guided by equity, they should show concern for the correctness of the issued decisions in every possible aspect [Gabryel 2020, 144-46]. Moreover, the authorities' care for the quality of the decision and the elimination of errors referred to as insignificant in the doctrine should be perceived as an obligation resulting from the rule of law. Therefore, a strong connection can be observed between proper rectification and the relevance of applying the presumption of correctness of the decision in the legal system and, in the long run, its purposefulness.

Bearing in mind the importance of the rectification of administrative decisions, the reasons for its occurrence, and the need to popularize the possibility of using correction, supplementation or clarification of the content among the parties to administrative proceedings, one should look hopefully at the computerization of administrative proceedings, which may enhance the legal security of the parties.

3. ELECTRONIZATION OF ADMINISTRATIVE PROCEEDINGS

By making 5 October 2021 the date the changes in administrative proceedings became effective, the legislator initiated a kind of ICT revolution. On that day the provisions in the wording provided for in the Act of November 18, 2020 on Electronic Deliveries[3] came into force. Although the amended provisions of the Code of Administrative Procedure do not

[3] Journal of Laws of 2023, item 285 as amended by the Act of 28 April 2022 amending certain acts in connection with the development of public ICT systems, Journal of Laws, item 1002.

provide for new trends in computer science, their purpose is to create legal space for computerization and even automation of certain processes in the course of administrative proceedings. There has been a change in the perception of the written form rule in the proceedings, granting a power of attorney, serving notices and summons, and the course of time limits or the moment of initiating the proceedings.

The above-mentioned changes do not amount to a complete implementation of the aforementioned acts, because the computerization of proceedings under the Code of Administrative Procedure has been divided into stages, the last of which is set for 1 October 2029. Nevertheless, the binding content of the amended Article 14 CAP needs to be studied thoroughly. There has undoubtedly been a desirable simplification in the scope of the written form principle. Previously, cases could be conducted in writing or in the form of an electronic document delivered by means of electronic communication.[4] Currently, the written form rule of administrative proceedings is understood as the consideration of cases in paper or electronic form.

It is worth paying special attention to the content of section 1b of the aforementioned article, where the possibility of considering cases "using automatically generated letters with a qualified electronic seal of the relevant public administration body [...]" is introduced. The doctrine draws attention to the literal meaning of this provision and the need to distinguish it from the phrase "by means of an automatically generated letter". Such an approach proves the adoption of the object theory to the automatic system, i.e. subjecting it to human control and care, leaving no autonomy to the system [Sibiga and Maciejewski 2015, 73; Sibiga and Wiewiórowski 2010, 231], which in the context of imperfect technical solutions and problems with proper machine learning should be considered as fully justified.

In addition, Article 14(1) CAP introduces the possibility to perform activities, in particular to communicate with the parties to the proceedings, by means of online services. This gives the opportunity to provide somewhat obvious services, such as submitting an application for the initiation of administrative proceedings or downloading a decision or certificate in an electronic form [Wilbrandt-Gotowicz 2023, 145-46].

It should also be noted that Article 14 CAP does not contain an unambiguous instruction that could undoubtedly allow for the application of this provision not only to the decisions in the standard form stipulated in the Code of Administrative Procedure, but also in a simplified one or, finally, for issuing certificates and other documents. Of course, by using a broad interpretation of the concept of "administrative matter", it is assumed that the legislator's intention is to computerize all forms of administrative activity

[4] Act of 17 February 2005 on the ICT development of bodies performing public tasks.

within jurisdictional administrative proceedings [ibid., 152]. Nevertheless, as part of subsequent amendments to the Code of Administrative Procedure, it would be useful to regulate this process.

Although it may be somewhat contrary to the postulate of the simplicity of law, specifying further aspects of computerization and automation seems necessary in view of the need to ensure legal security for all entities involved in administrative proceedings. It is worth emphasizing that already today electronic form is the desired form of service, and in the perspective of the coming years it will become, in principle, a mandatory one. All public administration, all central offices, local government units and representatives of public trust professions (including legal advisers and lawyers) are obliged to use e-delivery from 1 October 2024. This requirement will also apply to entrepreneurs who register their activities after the aforementioned date in the National Court Register [*Krajowy Rejestr Sądowy*],[5] and in the case of entrepreneurs registering new business activities in the Central Register and Information on *Economic Activity* [*Centralna Ewidencja i Informacja o Działalności Gospodarczej]*,[6] this obligation will automatically apply from 1 January 2025. The latter date will also be binding for all enterprises registered in the KRS before the entry into force of the discussed provisions. In the case of activities registered in CEIDG prior to the new regulations, the date of mandatory use of e-delivery is scheduled for 30 September 2026.

It should be emphasized that despite the wide popularization of computerization, the Code of Administrative Procedure provides for a form of proceedings that allows to avoid digital exclusion. If the electronic form cannot be used, the so-called public hybrid service provided for in Article 2(1)(3) of the Act of 23 November 2012 Postal Law,[7] i.e. delivery of documents through a designated postal operator obliged to provide universal service, should be used. This delivery is possible upon prior automated transformation of an electronic document produced by a public body and sent from an electronic service address into a traditional letter to be delivered to the addressee [Kmiecik and Kotulska-Kmiecik 2024, 310].

The legislator's understanding of the need to maintain the possibility of conducting administrative proceedings based on the traditional form of correspondence also supports the view that it would not be allowed to resolve cases based on the current wording of the Code of Administrative Procedure by means of fully automated decision generation. It should be noted here that the participation of an authority employee in this process is a procedural guarantee and is intended to protect against the violation of the rights of

[5] Hereinafter: KRS.
[6] Hereinafter: CEIDG.
[7] Journal of Laws of 2023, item 1640.

the parties, which algorithm would not be able to perceive, and thus would go beyond the limits of the principle of legality. Of course, it cannot be ruled out that over time ICT solutions will appear that will replace the authority employee in a specific type of proceedings in a sufficiently competent manner. However, one should agree with the view that if such a solution is allowed in the Code of Administrative Procedure, a special procedure with an efficient appeal procedure and judicial control should be provided for [Wilbrandt-Gotowicz 2023, 156-57]. It will then be necessary to redefine the obligations of the authority in the area of personal data protection based on national regulations and the GDPR.[8]

Leaving aside the considerations concerning the hypothetical development of the computerization in administrative proceedings, it is necessary to address the changes planned in the Code of Administrative Procedure on the basis of the draft act of 13 April 2023 amending certain acts in order to improve the legal and institutional environment of entrepreneurs prepared by the Minister of Development and Technology and in the draft act of 22 September 2022 amending the Code of Administrative Procedure in relation to the government draft act amending certain acts regarding the development of e-Government. These amendments are to add sections 5 and 6 to Article 33 CAP so as to enable the use of another tool facilitating the implementation of public administration tasks in an electronic form, namely the Register of Electronic Powers of Attorneys. In addition, the content of Article 39(1) CAP will be changed, so that electronic deliveries can also be carried out when a public administration body does not use the e-Delivery platform [*e-Doręczenia*], but its own ICT systems.

4. OPPORTUNITIES AND REQUIREMENTS FOR ICT INFRASTRUCTURE

In the context of the above considerations, it should be stated that the digitalization of administrative proceedings is undoubtedly a fact and a huge step in the development of public administration. With the right approach, both the implemented changes and those pending entry into force (see the drafts of legislative changes mentioned above) have a chance to facilitate and accelerate the conduct of administrative proceedings.

Therefore, the computerization of administrative proceedings should be followed by the improvement of the ICT system, which would also be

[8] Regulation 2016/679 of the European Parliament and of the (EU) Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, Journal of Laws of the EU.L 2016 No. 119, p. 1.

conducive to the parties to the proceedings in terms of making them aware of their rights and facilitating use thereof. In the case of e-delivery, it would be desirable to add the functionality of selecting, in a graphically attractive and clear form, the options of correction, supplementing or clarifying the content of the decision. It seems all the more possible because solutions such as, for instance, the system of submitting reports to the National Court Register which – depending on the user's needs – suggests the next step, already function in an analogous way. The mere awareness of the parties to the proceedings, who often do not read the instructions in the decisions served to them, is a chance to increase the citizens' general awareness about the possibility of rectifying administrative decisions and, consequently, of enhancing legal security.

It should be noted that the opportunity to reduce the number of errors requiring rectification of data concerning the parties will arise from the development of the register of contact details of natural persons provided for in Article 20h-20o of Act of 17 February 2005 on computerization of the activities of entities performing public tasks,[9] which is also to remain unchanged after 2029. As far as the computerization of administrative proceedings is concerned, this register may soon be filled with correct data of the parties, allowing for easy use by the authorities for the purposes of issuing decisions. This, in turn, will allow to avoid errors that often arise in designating the addressee of the decision issued by the authority. Pursuant to Article 20j(1) of the Act on computerization of the activities of entities performing public tasks, the register in question contains identifying data, such as name and surname, PESEL number, e-mail address or mobile phone number.

Regardless of the hopes related to computerization in the context of the legality of proceedings and legal security of the parties, it is worth paying attention to the obligations that should be fulfilled by public administration bodies in their use of ICT systems, which are crucial for these considerations. According to the wording of Article 13(1) of Act on computerization of the activities of entities performing public tasks, ICT systems may be used by public entities if they meet "[...] minimum requirements for ICT systems and systems ensuring interoperability on conditions set out in the National Interoperability Framework." This requirement does not apply only to the use of ICT systems for scientific and didactic purposes. What is more, ICT solutions provided for the purposes of contacting entities that are not government administration bodies must be used with respect to the requirement of equal treatment of ICT solutions, in accordance with the wording of Article 13(2) of Act on computerization of the activities of entities performing public tasks.

[9] Journal of Laws 2024, item 307.

When discussing the requirements towards public administration bodies, it is impossible to ignore the requirements related to the principles of keeping a register of contact details. Pursuant to Article 20i(1) of Act on computerization of the activities of entities performing public tasks, protection should be provided, among other things, against unauthorized access to the register or damage to the ICT system in which the register is kept. Accountability for activities carried out on data, as well as strictly defined security rules for the data processed therein are also stipulated there. In addition, in Article 21 of Act on computerization of the activities of entities performing public tasks, the obligation to verify the interoperability and correctness of the implementation of the applied ICT solutions is provided for, and Article 25 of Act on computerization of the activities of entities performing public tasks specifies the need and entities authorized to control the correctness of ICT projects, the operation of ICT systems and public registers, and the correctness of spending funds allocated by public administration bodies for these purposes in terms of legality, economy, purposefulness and reliability of spending public funds.

5. PRACTICAL PROBLEMS RELATED TO THE COMPUTERIZATION OF THE AUTHORITIES' ACTIVITIES

The above-mentioned examples of regulations in the area of electronization seem to guarantee legal security in the discussed field. However, apart from reflection based strictly on the content of legal provisions, the analysis of their application in practice has to be included. Despite the quite extensive and precise regulation of issues related to the computerization and electronization of the activities of administrative bodies, in practice a human being – usually an employee or head of an administrative body – remains the key element in the process of applying the law.

According to the report published by the Supreme Audit Office [*Najwyższa Izba Kontroli*],[10] on 29 April 2024 which summarizes the first inspection as to the state of ICT software used by public administration,[11] the state of implementation of the applicable regulations and guidelines in practice is at least worrying. NIK pointed out, for example, that most of the public administration bodies used unauthorized software. The software was repeatedly used outside the scope of supervision (on unauthorized devices) or without the tools available to monitor the installed software. As many as 59% of the inspected bodies lacked full knowledge of the software at their disposal. In many cases (47%), the condition of the software was connected

[10] Hereinafter: NIK.

[11] See https://www.nik.gov.pl/plik/id,29153,vp,31988.pdf [accessed: 22.05.2023], p. 10-17.

with serious danger. Moreover, the use of illegal software was not an isolated case (41%).

It is also worth mentioning the findings of this report regarding the spending of public funds. Indeed, as many as 43% of the bodies inspected by the NIK acted improperly in this respect, acquiring public funds in a manner inconsistent with the provisions of the Act of 11 September 2019 Public Procurement Law[12] or financing unused software modules. In addition, there was a lack of optimization in the acquisition and implementation of software, and the purchases of ICT solutions repeatedly included integrated software that required long-term dependence on a private licensor.

CONCLUSIONS

The computerization of administrative proceedings is connected with many opportunities as well as threats in terms of legal security, affecting the availability of the rectification of administrative decisions. The presented analyses also lead to the following conclusions.

First of all, computerization carried out in a correct and lawful manner, and aimed at facilitating the party's participation in the proceedings, is desirable and even necessary in administrative proceedings. As far as the rectification of administrative decisions is concerned, it may even lead to a full, or at least partial, automation that gives a chance to avoid at least part of the errors that need to be corrected or supplemented, which also facilitates the rectification process itself.

Secondly, public administration bodies, and more so their employees and heads, are largely not ready for computerization. This, in turn, creates a sense of the need to further regulate the mechanisms of functioning and controlling all processes taking place within administrative proceedings, especially those connected with computerization, and the related need to protect the processed data, especially the data of persons participating in administrative proceedings.

Thirdly, this further regulation, although it may be necessary to maintain the legal security of the parties from the perspective of computerization itself, becomes a reason for violating the very security in the area of simplicity and legal certainty as well as the principle of citizens' trust in the state and the law.

However, I believe that the development of ICT systems is possible without further extensive regulation. It is necessary to emphasize the responsible and conscious actions of public administration bodies, whose employees should be particularly sensitive to the need to ensure broadly understood legal security.

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[12] Journal of Laws of 2023, item 1605.

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THE POSITION OF THE INTERNATIONAL COMMUNITY TOWARDS RUSSIA'S AGGRESSION AGAINST GEORGIA (LEGAL OUTCOMES AND OVERVIEW OF THE CASE LAW)*

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Abstract. The 2008 Russian-Georgian war began during the Olympic Games, but the conflict had pre-existing roots and did not conclude with the official ceasefire. The international community's immediate reaction was delayed, yet over time, both political and legal efforts to establish accountability for the war emerged. Georgia used international legal mechanisms, including claims to the European Court of Human Rights, the International Court of Justice, and the International Criminal Court. While some efforts were unsuccessful, many produced significant results. These legal processes led to the formal recognition and legal assessment of the Russian occupation of Georgian territories and responsibility for human rights violations. This article reviews international case law concerning the legal evaluation and recognition of the occupation of Georgian territories by Russia, as well as the prospects for establishing the legal responsibility of the Russian Federation.

Keywords: Russian-Georgian War; ECtHR; Case Law; International Responsibility.

INTRODUCTION

International law is the law of civilized nations, which respect each other and uphold their responsibilities [Kaczorowska-Ireland 2015, 1, 4]. This is a primary reason why international law has little effect on the Russian Federation: they do not recognize civilized negotiations, nor do they respect other nations and their will to be independent [Mälksoo 2015, 184-89]. In 2008, Russia breached an unwritten rule dating back to antiquity by initiating a war against Georgia during the Olympic Games in Beijing [Cohen 2008]. The international community's reaction and response were neither immediate nor widespread; democratic states were unprepared, and despite many

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warnings, most of the international community did not believe that Russia would launch military aggression against Georgia [Goradze 2023, 58-59].

Political reactions and support from key international partners prevented Russia from fully realizing its objectives. The United States, the European Union, and the personal interventions of leaders from Poland, Lithuania, Latvia, Estonia, and Ukraine encouraged Georgia to resist what they perceived as the "Empire of Evil" [Lašas 2012], a symbol for the Soviet Union, now transformed under the guise of a formally modern nation.

The legal qualification of any action is crucial, not only for personal or national reasons but also for historical understanding and future prevention. This prevention is directed not at the lawbreaker and aggressor but at partners and the international community, enabling them to prepare legal or political instruments, both national and international, to prevent aggression. The Russian-Georgian war and its legal consequences are particularly important now, as the civilized world confronts Russia's increasing international crimes and inhumane actions in Ukraine.

The paper overviews reaction of the international community towards Russian-Georgian war of 2008 in the light of legal aspects, describes basic international legal mechanisms, used by Georgia against the Russian Federation, judgements and decisions by the international courts regarding the war and its qualification. The article pays attention to the international and domestic legal instruments, which can (or at least could) be used for the individual and state responsibility.

1. INTERNATIONAL RECOGNITION OF OCCUPATION

Terminology and legal definitions are fundamental pillars of legal concepts in general [Van Hoecke 2002, 1-20]. This understanding, rooted in Roman law, remains crucial, if not even more so, today. In the 19th century, the historical school of law emphasized the importance of meanings and their power in understanding the entire process of jurisprudence [Bix 2003, 5-6]. Lawyers operate with words, and everything in legal practice is linked to the semantic and logical concepts of specific terms [Gegenava 2010, 9-10]. Terms like "occupation" and "occupier" are particularly contentious, as these statuses recognize not only facts concerning war, annexation, and unjust actions, but also carry significant legal implications for nations. Therefore, every legal act that defines and qualifies such actions plays a crucial role in the international community.

In September 2008, the European Parliament adopted a resolution regarding the Russian-Georgian war, using the term "occupation" for the first time [Goradze 2023, 58]. It supported Georgia and condemned the disproportionate aggression and violation of international law by the Russian

Federation.[1] This process continued with the resolution of the Parliamentary Assembly of the Council of Europe in October 2008.[2] In October 2010, the NATO Parliamentary Assembly also classified the Russian military aggression against Georgia and the control of Georgian provinces as an occupation.[3] In 2011, the European Parliament issued a more direct resolution, officially designating Abkhazia and South Ossetia as occupied territories.[4]

The final and most significant stage in the recognition of the occupation was the judgment of the European Court of Human Rights (ECtHR) in the case of Georgia v. Russia (II) on January 21, 2021.[5] The concept of occupation was further elaborated in the case of Mamasakhlisi and Others v. Georgia and Russia, where the ECtHR detailed the annexation and occupation of Georgia by Russia.[6] Due to the precedential nature of ECtHR case law, this judgment became legally binding and marked a significant legal victory.

Georgia has no choice but to utilize all legal instruments to declare and label the actions of the Russian Federation. This is crucial for the future and has a substantial impact on the international level.

2. INTERNATIONAL COURTS AND LEGAL EFFECT OF THEIR JUDGMENTS

2.1. International Court of Justice

In 2008, Georgia filed a case with the International Court of Justice (ICJ), based on violations of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 1999-2008.[7] It was

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[1] Resolution P6_TA(2008)0396 of 3 September 2008 of the European Parliament on the Situation in Georgia.

[2] Resolution 1633(2008) of 2 October 2008 of the Parliamentary Assembly of Council of Europe on The Consequences of the War between Georgia and Russia.

[3] Resolution 382 of 16 November 2010 of the NATO Parliamentary Assembly on the Situation in Georgia.

[4] Resolution P7_TA(2011)0514 of 17 November 2011 of the European Parliament Containing the European Parliament's Recommendations to the Council, the Commission and the EEAS on the Negotiations of the EU-Georgia Association Agreement (2011/2133(INI)).

[5] See: Georgia v. Russia (II), Judgement of the European Court of Human Rights of 21 January 2021, App. No. 38263/08.

[6] See: Mamasakhlisi and Others v. Georgia and Russia, Judgement of the European Court of Human Rights of 7 March 2023, App. Nos. 29999/04 and 41424/04.

[7] Summary, Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation) Request for the indication of Provisional Measures, 15 October 2008, https://www.icj-cij.org/sites/default/files/case-related/140/14809.pdf [accessed: 25.07.2024].

challenging to find appropriate, adequate, and direct legal grounds for an international dispute at the ICJ because the Russian Federation had not signed many important international instruments that could have been useful in seeking justice. CERD was considered one of the few available options.

The ICJ issued interim documents, provisional measures[8] (seven judges dissented[9]). The Russian Federation filed preliminary objections: with one objection, it requested to declare the complaint inadmissible on the grounds that there was no dispute between Russia and Georgia and that the Russian Federation was not a party. With the other objection, it pointed to Article 22 of the CERD, which mandates mechanisms of alternative dispute resolution before filing the case before the ICJ.[10] The court rejected the first objection and agreed with the second one.[11] Despite numerous attempts and the official notes sent by the Ministry of Foreign Affairs, Georgia did not receive a response from the Ministry of Foreign Affairs of the Russian Federation.[12] ICJ did not make final judgement and qualification for the actions of Russia.

Formally, the ICJ acted in accordance with international standards and the provisions of CERD. However, this was a narrow interpretation of the convention. Subsequent case law from the European Court of Human Rights demonstrated numerous instances of discrimination and breaches of human rights related to equality and ethnicity.

2.2. International Criminal Court and International Crimes of Russian-Georgian War

The International Criminal Court (ICC) operates under a strict mandate within the framework of the Rome Statute.[13] Many countries are not parties to the Statute, making it challenging to legally address the consequences of war, military aggression, and other forms of international crimes. However, there is one nuance, the ICC has a mandate if an international crime is committed on the territory of a state party to the Rome Statute. Referring to this, in 2010, the ICC Prosecutor's Office published a press release and

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8 Order of 15 October 2008 of the International Court of Justice (Georgia v. Russian Federation).

9 Joint Dissenting Oppinion of Vice-President Al-Khasawneh and Judges Ranjeva, Shi, Koroma, Tomka, Bennouna and Skotnikov, International Court of Justice (Georgia v. Russian Federation), 15 October 2008; Declaration of Judge ad hoc Gaja, International Court of Justice (Georgia v. Russian Federation), 15 October 2008.

10 Preliminary Objections of the Russian Federation, Case Concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), International Court of Justice, 1 December 2009.

11 Georgia v. Russian Federation, Judgement of 1 April 2011 of the International Court of Justice

12 Correspondence N01/5646 of the Ministry of Foreign Affairs of Georgia, 16 February 2017.

13 Rome Statute of the International Criminal Court, adopted 17 July 1998, entered into force 1 July 2002, Articles 5-21.

noted that the court would potentially have jurisdiction over international crimes committed on the territory of Georgia.[14] Georgian government could not or did not investigate crimes committed during the war of 2008.[15] This paved the way for the ICC, which only intervenes when a case cannot or will not be investigated at the domestic, national level[16] [Tskitishvili 2012].

On January 27, 2016, the ICC's Office of the Prosecutor opened an investigation into the situation in Georgia, focusing on crimes against humanity and war crimes committed between July 1 and October 10, 2008.[17] The Prosecutor's proprio motu request was authorized by the pre-trial chamber of the court [Bezhanishvili 2023]. The Chamber confirmed "existence of a reasonable doubt that the war crimes of wilful killing, destroying the enemy's property and pillage, intentionally directing attacks against peacekeeping mission and crimes against humanity of murder, deportation or forcible transfer of population and persecution against an identifiable group of ethnic grounds were committed in the context of the conflicts"[18] [ibid.]. It was first ever investigation of the European case in the history of the court, all the previous ones were concerned to African conflicts.[19] In 2018, the ICC established a local office in Georgia to begin questioning and collecting evidence. Even more than a decade after the Russian-Georgian war, the repercussions of this conflict and other international crimes continue to affect civilians directly and indirectly.

In 2022, based on its investigations, the ICC issued arrest warrants against three separatists.[20] The Prosecutor's office also identified the involvement of General Borisov of the Russian army, who was the Deputy Commander of the

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[14] ICC Press Release, *No Impunity for Crimes Committed in Georgia: OTP Concludes Second Visit to Georgia in Context of Preliminary Examination*, 25 June 2010, https://www.icc-cpi.int/news/no-impunity-crimes-committed-georgia-otp-concludes-second-visit-georgia-context-preliminary [accessed: 25.07.2024].

[15] Norwegian Helsinki Committe Report, 2011, Unable or Unwilling? Georgia's Faulty Investigation of Crimes Committed During and After the Russo-Georgian War of August 2008, http://www.humanrights.ge/admin/editor/uploads/pdf/Report_2_11_web.pdf [accessed: 25.07.2024].

[16] ICC Press Release, ICC Prosecutor Confirms Situation in Georgia under Analysis, 20 August 2008, https://www.icc-cpi.int/news/icc-prosecutor-confirms-situation-georgia-under-analysis [accessed: 25.07.2024].

[17] ICC Prosecutor, The Prosecutor of the International Criminal Court, Karim A.A. Khan KC, announces conclusion of the investigation phase in the Situation in Georgia, 16 December 2022, https://www.icc-cpi.int/news/prosecutor-international-criminal-court-karim-aa-khan-kc-announces-conclusion-investigation [accessed: 25.07.2024].

[18] See: Pre-trial Chamber of the International Criminal Court, No. ICC-01/15, 27 January 2016.

[19] FIDH Report, The Russia-Georgia War: The Forgotten Victims 10 Years On, 05 February 2018, https://www.fidh.org/en/issues/international-justice/international-criminal-court-icc/the-russia-georgia-war-the-forgotten-victims-10-years-on [accessed: 25.07.2024].

[20] ICC Prosecutor, The Prosecutor of the International Criminal Court, Karim A.A. Khan KC, announces conclusion of the investigation phase in the Situation in Georgia.

Airborne Forces in 2008, although he had since died.[21] This investigation has been labeled "the ICC's most delayed investigation" [Bezhanishvili 2023]. Final decisions and judgments are not expected in the near future. Unfortunately, international investigations and the pursuit of justice at the international level are complex processes, but they remain without any viable alternatives.

This is a necessary process, as international accountability is crucial for addressing war crimes. It holds significant symbolic value, highlighting the international community's reaction and making a clear statement based on the principles of the rule of law and human rights. The international community and each nation must possess all legal instruments for declaration and recognition because, in the modern era of information and technology, information holds real power for planning a better future.

2.3. European Court of Human Rights and Responsibility for Russian-Georgian War

The European Court of Human Rights (ECtHR) has a significant influence on legal and political processes in Europe and worldwide. As one of the most authoritative and powerful international courts, its judgments shape the framework of the modern concept of human rights. The ECtHR has heard numerous cases concerning the Russian-Georgian war: some filed by Georgia and Georgian citizens against the Russian Federation, while others were instigated by Russia, supporting individuals to submit claims against Georgia.

In the judgments of the European Court of Human Rights (ECtHR) related to the Russia-Georgia war, several key issues stand out as particularly significant in the context of war and occupation (this does not imply that individual claims against the Russian Federation for rights violations are insignificant): The legal qualification and assessment of the Russia-Georgia war; The legal recognition of the occupation of Georgian territories by Russia; Human rights violations of Georgian citizens by Russia during and before the war of August 2008.

(1) Georgia v. Russia (I): First Steps towards Recognizing the Responsibility of the Russian Federation

In many cases, the European Court did not find any breach of human rights by Georgia, and some cases did not meet the criteria of admissibility. In 2014, the ECtHR delivered its first major judgment on the matter in Georgia v. Russia (I). Georgia utilized the opportunity provided by Article

[21] Ministry of Justice of Georgia, Another Victory of Georgia Over the August 2008 War, 11 March 2022, https://justice.gov.ge/?m=articles&id=UpL8kINlaj&lang=2 [accessed: 25.07.2024].

41 of the European Convention to initiate an interstate dispute against the Russian Federation. The case concerned the mass deportation of Georgian citizens from Russia in 2006 and the violation of European Convention articles during this deportation. The ECtHR recognized the interstate dispute on this issue as admissible, noting that Georgia's complaint met the admissibility criteria outlined in its 2014 judgment on the case Cyprus v. Turkey.[22]

European Court recognised responsibility of the Russian Federation and upload Georgia's claim.[23] Regarding the number of the subjects whose rights were violated four judges made partly concurring opinion[24], and one – dissenting opinion.[25]

Although the judgement was not directly related to the 2008 war, it is extremely important as it marked the first precedent of an interstate dispute between Georgia and Russia. The judgement officially recognized that the 2008 war was not an isolated event, but was preceded by deliberate aggressive actions and human rights violations committed by the Russian Federation against Georgia and its citizens. This legal recognition reinforced subsequent judgments by the European Court regarding other interstate disputes between Georgia and Russia, as well as individual complaints arising from the 2008 war.

(2) Determination of Jurisdiction, Effective Control and Occupation (Georgia v. Russia (II))

In 2021, the European Court of Human Rights delivered a landmark judgment regarding the interstate disputes between Russia and Georgia, recognizing the responsibility of the Russian Federation for the war of August 2008. The ECtHR outlined two main issues: The extent to which the Russian Federation had jurisdiction over the territory where the human rights violations occurred; The degree to which Russia exercised jurisdiction and effective control, and its consequent responsibility for human rights violations.[26]

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[22] "(i) the type of complaint made by the applicant Government, which had to concern the violation of basic human rights of its nationals (or other victims); (ii) whether the victims could be identified; and (iii) the main purpose of bringing the proceedings." See: Cyprus v. Turkey, Judgment of the European Court of Human Rights of 12 May 2014, App. No. 25781/94, paras. 43-45.

[23] See: Georgia v. Russia (I), Judgement of the European Court of Human Rights of 31 January 2019, App. No. 13255/07.

[24] Partly Concurring Opinion of Judges Yudkivska, Mits, Hüseynov and Chanturia on Georgia v. Russia (I), Judgement of the European Court of Human Rights of 31 January 2019, App. No. 13255/07.

[25] Dissenting Opinion of Judge Dedov on Georgia v. Russia (I), Judgement of the European Court of Human Rights of 31 January 2019, App. No. 13255/07.

[26] See: Georgia v. Russia (II), Judgement of the European Court of Human Rights of 21 January 2021, App. No. 38263/08.

These issues are not simple topics the court will highlight in the case, since the dispute was not typical and determining the jurisdiction of the states is not only related to law, it is, first of all, a political issue and a very delicate one, since it also involves determining the scope of the authority, responsibility and mandate of the European Court itself.

The court separated the phase of active hostilities – August 8-12, 2008 from the rest of the period (until October 10, 2008) and noted that Russia did not directly exercise jurisdiction in the zone of military actions during hostilities, therefore, the Russian Federation could not be responsible for the actions and human rights violations committed during this period.[27]

The European Court recognized the "effective control" of the Russian Federation over the occupied territories of Georgia after August 12 and established Russia's responsibility for actions committed during this period.[28] This judgment is significant not only in the context of Georgia-Russia relations but also more broadly. It marked the first time since the Banković case that the Court had to address the issue of jurisdiction in relation to military actions [Mchedlidze 2021].

The court followed the standard set forth in the Banković case and declined to extend extraterritorial jurisdiction. The judgment was criticized from different angles by the judges in concurring and partly different opinions.[29] Judge Chanturia's dissenting opinion is particularly interesting, the court should not avoid its responsibility basing argumentation about difficulties regarding collection of evidence and interpretation of international humanitarian law.[30]

Despite some controversial statements and limitations within its jurisdiction, the ECtHR made a very important decision that will have significant effects on other conflicts in the future. The judgement has already made a significant impact. ECtHR recognized human rights violations and factual war crimes by the Russian Federation beyond the reasonable doubt [ibid.]. It will play an important role in the Ukrainian cases too, – of course facts and circumstances are different, but the principles of legal qualification of the Russia's military actions remain same [Cain 2023, 223-25].

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[27] See: Ibid., paras. 105-144.

[28] Ibid., paras. 174-175.

[29] See: Concurring Opinion of Judge Keller, Partly Concurring Opinion of Judge Serghides, Partly Dissenting Opinion of Judge Lemmens, Partly Dissenting Opinion of Judge Grozev, Partly Dissenting Opinion of Judges Yudkivska, Pino de Albuquerque and Chanturia, Joint Partly Dissenting Opinion of Judges Yudkivska, Wojtyczek and Chanturia, Partly Dissenting Opinion of Judge Pinto de Albuquerque, Partly Dissenting Opinion of Judge Dedov, Partly Dissenting Opinion of Judge Chanturia on Georgia v. Russia (II), Judgement of the European Court of Human Rights of 21 January 2021, App. No. 38263/08.

[30] See: Partly Dissenting Opinion of Judge Chanturia on Georgia v. Russia (II), Judgement of the European Court of Human Rights of 21 January 2021, App. No. 38263/08.

(3) Responsibility of the Russian Federation for the Period Prior to the August 2008 War

The European Court approached the consideration of Russia-Georgia legal disputes in a planned and measured manner. Despite some controversial interpretations and evaluations, its practice is invaluable in establishing legal responsibility for the war (or at least for certain parts of it). The Court's efforts are particularly noteworthy in addressing the increasing number of artificial individual complaints against Georgia, which were inspired by Russia in an attempt to overload the Court [Mchedlidze 2021].

Impressive and significant work for the legal recognition and evaluation of the occupation was done by the court in the case – Mamashakhlisi and others v. Georgia and Russia. According to the assessment, before the 2008 war, since the conflict of the 1990s, the Russian Federation had influence over the separatist government of Abkhazia, Georgia could not exercise jurisdiction during this period, and logically, it could not be responsible for human rights violations in these territories, unlike Russia, which exercised effective control over this territory. Therefore, human rights violations within the administrative borders of Abkhazia came under the responsibility of Russia.[31]

This legal qualification is not merely symbolic; it also serves a highly practical purpose. During the conflict in Abkhazia, ethnic cleansing was perpetrated against Georgians, a fact recognized by authoritative international organizations [Goradze 2023, 59-60]. Consequently, this legal framework paves the way for holding the Russian Federation accountable for these actions, thereby establishing a foundation for legal responsibility in this matter as well.

3. THE LEGAL BATTLE CONTINUES

Georgia should consider utilizing the concept of universal jurisdiction and begin collecting facts and initiating its own investigation processes. While international instruments and mechanisms are crucial, they often lack timeliness and efficiency. Many civil actors and organizations have been involved in gathering information, and this effort should be expanded. All victims of war, genocide, and ethnic discrimination, as well as witnesses, should be questioned. The government must gather all necessary information not only for inter-state disputes but also for establishing personal, individual responsibility. This is a principal matter that should be documented, at least at the national level.

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[31] See: Mamasakhlisi and Others v. Georgia and Russia, Judgement of the European Court of Human Rights of 7 March 2023, App. Nos. 29999/04 and 41424/04.

Another approach is to initiate an ad hoc tribunal for the Georgian case, which could also set a precedent for the Ukrainian case in the future. The ICC's jurisdiction is limited, and even though an investigation by the Prosecutor's office has been launched because Georgia is a party to the Statute, and crimes on its territory fall under ICC jurisdiction, an ad hoc tribunal could be more effective. It would not be confined by strict jurisdictional questions and could investigate all war crimes, establishing basic information and legal facts. This would play a significant role not only in achieving justice but also in maintaining political stability in Europe and worldwide.

The resources of the European Court must be utilized and comprehended. At this stage, both individual complaints and those submitted by Georgia against the Russian Federation are before the court. The case of Georgia v. Russia (III) involved the arrest of four minors in the Tskhinvali region in 2009. They were released following the intervention of the Commissioner for Human Rights of the Council of Europe, leading the European Court to remove the case from its list of pending cases [Mchedlidze 2021].

The fourth case concerns the so-called "borderisation," where Russia harasses the population of Georgia in the occupied territories and along the occupation line, illegally arresting, attacking, and killing people, including the murders of Tatunashvili, Otchozoria, and Basharuli. The Court declared its judgement and recognised human rights violation by the Russian Federation.[32]

In a civilized world, establishing accountability through legal means is essential. The Russian Federation must be held responsible for the war, mass crimes, and human rights violations committed in the occupied territories of Georgia. This can be achieved through individual claims and remedies, domestic investigations, interstate complaints, and other legal mechanisms. Such efforts will significantly contribute to establishing accountability for Russia's actions in other states too. While this may not offer much solace to those who have lost their lives or had their families destroyed, it is crucial for the restoration of justice, the affirmation of the concept of justice and legal responsibility, and the prevention of future violations. There is no alternative to the legal battle in this context.

FINAL REMARKS

The recognition of the occupation of Georgian territories by Russia is both a political and legal issue. Any political recognition ultimately requires an appropriate legal framework. As previously mentioned, this recognition has occurred numerous times at the international level, notably by the

[32] See: Georgia v. Russia (IV), Judgement of the European Court of Human Rights of 4 April 2024, App. No. 39611/18.

Council of Europe, the European Union, and NATO, which is of significant importance. While this reflects the correct and adequate response of the international community, it often serves more as an instrument of politics and international relations. For a comprehensive legal assessment, recognition at the level of international justice is of even greater importance.

Despite Russia no longer being a signatory to the European Convention, the European Court has recognized its responsibility for actions committed before its withdrawal from the Convention. The following findings regarding the Russian-Georgian war were established by the European Court of Human Rights: 1) Russia has occupied territories of Georgia; 2) Russia exercises effective control and jurisdiction over the occupied territories of Georgia; 3) The Russian Federation is responsible for human rights violations occurring in the occupied territories of Georgia.

ICJ is an ineffective mechanism for addressing disputes with Russia due to its limited scope of responsibility and jurisdiction. On the other hand, the ICC, while a long-term mechanism with enforcement dependent on various circumstances, remains a potentially effective tool with significant resources for future use. Developed states should consider establishing an ad hoc tribunal to address war crimes related to the Russian-Georgian and Russia-Ukrainian conflicts with a higher priority, in order to determine both individual and state responsibility. All available mechanisms should be employed to combat the actions of the terrorist state. Failing to act decisively, giving another second chance to Russia could lead to catastrophic consequences not only for specific individuals or states but also on a regional or even global scale. National investigations should be conducted to collect and document evidence, facts, and information concerning the circumstances of the war and human rights violations perpetrated by the Russian Federation.

While all these instruments and legal mechanisms are unfortunately post facto for the victims of the war in Georgia, there is hope for other people, particularly in light of the ongoing war in Ukraine. Such actions would have symbolic significance, demonstrating solidarity and preserving the principles forged since World War II.

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MANAGEMENT CONTROL AND ITS MAIN EFFICIENCY OBJECTIVES AND CHALLENGES IN THE MANAGEMENT PROCESS OF PUBLIC FINANCE ENTITIES*

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Abstract. One of the key elements of effective management in the public sector is management control, which acts as a system for monitoring and directing the organisation's activities. The article describes what management control is, what its objectives and measures are, as well as the challenges that may arise in its implementation. Bodies in the public finance sector function to fulfil the goals and objectives set for them. Management control is a management system designed to help them achieve these objectives. This

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system is described in the Public Finance Act (Article 68). According to it, management control is the totality of measures taken to ensure that objectives and tasks are achieved in a lawful, efficient, economical and timely manner. Management control is exercised through the cycle of achieving the entity's objectives and tasks, which consists of planning, day-to-day execution of tasks and monitoring. This cycle does not end and the monitoring stage is followed by another planning stage based on lessons learned.

Keywords: public finance; management control; process management; economic efficiency; management rationality; public finance law; New Public Management.

INTRODUCTION

Management control is a systematic process to monitor and assess the performance of a public organisation in achieving its objectives. Although it is sometimes seen as unnecessary formalities, it is actually a key element of management, helping to identify possible irregularities, to align current activities with established plans, and to improve the efficiency of processes. Management control is not a predetermined, fixed system of activities. Its elements are flexible and can evolve over time, adapting to the changing conditions and needs of a particular entity. Crucial to its correct implementation is also the understanding that it is not a system of new, top-down, unadaptable measures. Rather, its essence is to utilise and possibly improve those constructs that already exist at the level of functioning of LGU's structures [Wojciechowski 2018, 6-8]. According to the Public Finance Act, the purpose of management control is to ensure, in particular: compliance of activities with legal provisions and internal procedures; effectiveness and efficiency of operations; reliability of reports; protection of resources; observance and promotion of ethical conduct; effectiveness and efficiency of information flow; risk management [Wołowiec, Skowron, and Cwynar 2023, 84-86].

Correctly implemented management control is therefore a guarantee that the organisation's individual activities are in line with its strategic objectives, which translates into the effectiveness of the public institution's mission. It also enables the optimal use of resources, such as people, finances or technology, which is crucial in the context of limited public funds. Management control also helps to catch potential irregularities at an early stage, making it easier to correct them and minimising the risk of damage to the organisation. It also makes it possible to identify areas that need to be optimised, leading to a more efficient functioning of the entity [Wołowiec 2021, 391-94]. In order for these objectives to be met, specific metrics need to be defined to show whether and to what extent the entity is achieving its objectives. They enable the progress and effectiveness of activities to be accurately monitored, so their correct construction is crucial throughout the management control process. Examples of measures in management control

may include: financial indicators: which assess the organisation's ability to manage its financial resources effectively; operational performance indicators: which measure the effectiveness of the institution's operational processes; customer satisfaction indicators: which measure the level of satisfaction of public service beneficiaries; staff performance indicators: which assess the efficiency and commitment of staff; indicators of plan implementation, e.g. number of cultural events realised [Wołowiec 2022, 28-29].

1. PURPOSE OF ARTICLE, CRITERIA OF ANALYSIS AND RESEARCH METHODOLOGY

The social sciences use the typical methods found in the social sciences and humanities, i.e.: the study of documents (legal acts, expert reports, opinions, analyses), comparative methods (scientific articles, reports, analyses derived from linguistic, grammatical and historical interpretation) and case studies. The result of cognitive research is new claims or theories. The article is written according to the traditional methods used in legal research sciences, linguistic analysis (dogmatic-legal method and linguistic-logical method), and comparative (comparative) and economic method of legal analysis.

Induction was used as the main research method. It involves drawing general conclusions or establishing regularities on the basis of an analysis of empirically established phenomena and processes. It is a type of inference based on details about the general properties of a phenomenon or object. The application of this method requires the assumption that only facts can form the basis of scientific inference. These facts are real-life situations (social, legal or organisational). Inductive methods include various types of analysis, expert opinion, statistical data and scientific documents used in social research. In addition, the paper makes use of two general research methods, i.e. analytical and synthetic methods, which are characterised by a particular approach to the study of reality. Analytical treats reality as a collection of individual, specific features and events. Following this research method involves breaking down the object of study into parts and examining each part separately or detecting the components of that object. The disadvantage of the analytical method is the over-exposure of details, sometimes causing the whole object of study to be lost from view. This hinders full and objective cognition of reality, which is admittedly a collection of independent partial elements, but at the same time a set of parts closely related to each other in a limited whole.

The article takes the form of an analysis of the management control process in the system of public finance sector entities. It analyses legal, organisational and efficiency issues focused on economic rationality and the improvement of public management processes.

2. THE CONCEPT OF MANAGEMENT CONTROL AS AN ECONOMIC AND LEGAL PROCESS

The obligation to establish an adequate system of public financial management and to protect public funds against fraud has found its legal anchorage in Chapter 6, Article 325 of the Treaty on the Functioning of the European Union.[1] The current concept of control in the public finance sector follows the implementation of the EC concept. It is based on three key pillars. The first is managerial accountability of managers in public administration (managerial accountability) combined with adequate financial management supported by a system of controls. The second pillar is based on the functioning of an independent internal audit. The third pillar comprises the establishment and operation of a central harmonisation unit, which deals, *inter alia*, with the development of standards and methodologies for the two previous phases.[2]

An important element of the analysis is the notion of internal institutional control is understood as those control activities that are performed by an authorised employee, a human team or a specially designated control unit within the structure of a given organisation. Functional internal control is the activity performed at each stage of management by managers at different stages of the public management [Antoniak 2012, 21]. The concept of internal control is unfortunately often identified with the concept of internal audit, by reference to the term internal audit. As it stands today, the concept of management control has replaced the concept of internal control and consumed the concept of financial control. The latter was present in the Public Finance Act, but even before the 2009 amendment, which introduced the concept and elements of management control in Article 68. It should also be mentioned that even before the 2009 amendment to the Public Finance Act came into force, financial control was treated as a special type of control (mostly internal), the subject of which are financial phenomena and processes. The concept of management control therefore has a clear, even already in its name, reference to management. At the same time, the essence of these regulations is the organisation of a management system, one of the elements of which is control. As J. Płoskonka points out, the management control system is a set of all activities aimed at achieving results in a lawful, effective and efficient manner [Płoskonka 2013, 43]. Financial control in Poland was already included in the 1998 Public Finance Act. As a result

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[1] Treaty on the Functioning of the European Union of 13 December 2007, Official Journal of the EU C 202, 7.06.2016, 47-360.

[2] See Ministerstwo Finansów. Departament Audytu Sektora Finansów Publicznych Kontrola zarządcza w sektorze finansów publicznych. Istota, unormowania prawne i otoczenie, Warszawa 2012, p. 28.

of the amendment to the Act in 2001, in Article 35a, it included, in its then shape, ensuring compliance with control procedures and carrying out preliminary assessment of the advisability of assuming financial obligations and making expenditures, as well as control of collecting and accumulating public funds, assuming financial obligations and their expenditure, including public procurement and reimbursement of public funds. Such a concept of control had a significant drawback, as it limited the scope of matters covered by the aforementioned provisions, as it lacked the key issue for the concept of control, namely accounting for responsibility for the overall management of the organisation in the context of its objectives [Wojciechowski, Skrzypek-Ahmed, Ivashko, et al. 2023, 842-46].

3. MANAGEMENT CONTROL OBJECTIVES IN ECONOMIC AND LEGAL TERMS

From the point of view of the public finance law system, Article 68(2) of the Public Finance Act indicates that the purpose of management control is to ensure in particular: compliance of activities with the law and internal procedures, efficiency and effectiveness of activities, reliability of reports, protection of resources, observance and promotion of principles of ethical conduct, efficiency and effectiveness of information flow, risk management. Attention should be drawn here to the vague nature of these terms, as well as to the phrase "in particular", through which the legislator left the possibility of a broad understanding of the objectives of management control while indicating the general directions of control, but at the same time caused the possibility of problems of interpretation of what should be subject to control and what is already beyond this scope. The overriding objective of management control is to continuously improve management, the consequence of which is to increase the efficiency and effectiveness of the operation of individual units of the public finance sector, government administration departments and local government units. Characteristic of the current management control model is the accentuation of the individual responsibility of the manager (public accountability). The management control system is therefore intended to facilitate the management of public finance sector institutions, so that this management is characterised by an orderly [ibid., 845-47].

Management control in its assumptions therefore refers to the self-improvement of the organisation, the continuous diagnosis, monitoring and improvement of the organisation's processes. It is not possible to consider that there is a standardised control implementation path common to all units and that it will ever be possible to reach the stage of "implementation" of management control. Indeed, entity management is not a project that can ever be considered completed. As such, management control is intended to encompass all aspects

of an entity's activities and it is the responsibility of the manager to implement and monitor the elements of control to ensure that the entity achieves its objectives in a legal, economical and timely manner [Lipiec-Warzecha 2011].

Management control is an integral part of effective management in any organisation. Its main purpose is to monitor and grade activities and processes to ensure the achievement of objectives and improve the efficiency of operations. In this article we will discuss the main objectives of management control and what benefits it can bring to an organisation. One of the main objectives of management control is to ensure compliance with the organisation's objectives. By monitoring activities and processes on a systematic basis, management control makes it possible to identify any deviations from the stated objectives and take appropriate corrective action. This enables the organisation to effectively implement its strategy and achieve its intended results.

Management control also aims to optimise the use of the organisation's resources. By monitoring and analysing activities, management control identifies areas where efficiency and effectiveness in the use of resources can be improved. This enables the organisation to achieve greater efficiency and savings, resulting in improved financial outcomes. Management control is also important in ensuring an organisation's compliance with laws and regulations. In today's business environment, there are many laws and regulations that organisations must comply with. Management control allows monitoring and rating of activities to ensure compliance with these laws and regulations. In doing so, the organisation avoids the risk of penalties and sanctions and maintains its reputation for integrity and accountability. Management control is also important in identifying and managing risks. Through the systematic monitoring of activities and processes, management control allows potential hazards and risks to be identified and appropriate preventive action to be taken. This enables the organisation to minimise the risk of adverse events and to manage risks effectively [Wołowiec 2017, 31-34]. Management control also aims to improve the quality and efficiency of the organisation's processes. By monitoring and assessing activities, management control identifies areas where improvements and enhancements can be made. This enables the organisation to achieve higher quality products and services, increase customer satisfaction and improve the efficiency of operations [Cienkowski and Wołowiec 2014, 33-38].

4. RISK IDENTIFICATION IN MANAGEMENT CONTROL

The most important issue from the point of view of management control is risk identification. Risk in this case should be understood as the possibility of an event occurring that will negatively affect the achievement of the goals and objectives of the units of the public finance sector. However,

merely locating a risk is not sufficient to counteract its negative effects. For this purpose, procedures and policies known as risk management have been adopted. By identifying risks and determining appropriate responses to them, there is a greater likelihood of achieving management control objectives. This stage plays an important role, as perceiving a given risk will allow the effective counteraction of the [Wolski 2019]. When identifying risks, it is important to name them correctly and then find appropriate countermeasures to implement in the future. Management control standards recommend that assurance on the state of control for the previous year should be confirmed annually in the form of a statement (Communication of the Minister of Finance on management control standards for the public finance sector). In order to facilitate the preparation of the statement, the Ordinance of the Minister of Finance of 2 December 2010 prepared a model statement to be filled in (Ordinance of the Minister of Finance on the model statement on the state of management control). The statement prepared in this way is divided into three sections. Section I presents the grade of the state of management control and is further divided into 4 parts to be completed in specific cases. Parts A, B or C are to be completed depending on the outcome of the grade of action taken.

According to the management control standards, risk management must be embedded in the entity's mission and strategy. It should address all goals and objectives and every area of the entity's activities. The purpose of the risk management process is to identify potential factors and events that may affect the entity, and to analyse the potential impact of the risks and keep the risks at a defined level while ensuring the achievement of the entity's stated goals and objectives. This is achieved by [Dmowski, Bogacki, and Wołowiec 2019, 138-42]: recognition – that is, identifying risks, determining the types of risks that are associated with the activities of the entity and measuring them; grading risks and their materiality, using a specific scale; risk management, which involves examining the efficiency and effectiveness of the actions taken through a system of institutional and external control; risk management control, the essence of the actions taken is to grade the methods used to reduce risks leading to the effective and efficient implementation of the objectives and tasks imposed.

For example, for public finance units, the most important type of risk is operational risk and legal risk. Operational risk, which covers two areas of activity: the financial area, where this risk is a risk having a fundamental impact on the activity, here we can mainly talk about liquidity risk and result risk. The second area of operational risk is technical and organisational risk. Legal risk can be defined as the likelihood of suffering material and non-material losses arising, *inter alia*, as a result of incorrect or late drafting or enactment of legislation; instability of legal regulations; changes in case

law; incorrect conclusion of contracts; or adverse decisions of courts. A very important aspect of identification is the development of different scenarios of situation development and the analysis of their influence on the formation of the results of the individual. It should be added that the assessment of the total risk, understood as the magnitude of individual risks, the probability of their occurrence and the correlation between them, is crucial for risk management [Wołowiec, Skowron, and Cwynar 2023, 84-87].

Defining strategies for risk and developing remedial plans or actions creates options, the implementation of which will avoid or reduce risk and limit its impact on the organization and its processes. We also update our plans according to the changing legal and economic situation in the organization and its surroundings. For each identified risk, the unit manager determines the planned preventive measures and the actions we will take in case it occurs. In the risk management strategy, we define what the probability of a given risk is and how it affects the company. The planning of the reaction allows you to avoid the surprise of the appearance of risk (its materialization). We can respond to risk or combinations of risk in the following ways: avoiding – usually changing an aspect of a project in such a way that the threat cannot be affected or not at all; reducing – reducing the likelihood of an event occurring or limiting the impact of an event on the project's objectives; developing a contingency plan – developing a plan for actions that will be taken when the risk arises that will reduce the impact of the risk on the project's objectives; transferring – transferring responsibility for some of the financial effects of a risk (as in insurance) to a third party; and accepting – making a conscious decision not to respond to the threat. Monitoring and control is a continuous process. In the risk management strategy, we define the frequency of risk control. We implement appropriate remedial actions and adopted response plans to limit the risk. We are constantly evaluating the actions so far in terms of expected effects. We correct them on the basis of achieved results and conclusions and record experiences. We periodically monitor identified risks and assess the adequacy of adopted strategies to reduce them in relation to the current situation in the project and its environment [Wołowiec and Bogacki 2021, 101-104].

5. NON-ACCESSION OR IMPROPER EXECUTION OF MANAGEMENT CONTROL PROCESS

Article 18c of the Act defines violations of public finance discipline related to improper management control. What is management control, we will learn from the Act of 27 September 2009 on public finances. In accordance with its Article 68(1) management control in public finance units is the totality of actions taken to ensure the achievement of objectives and tasks in

a lawful, efficient, cost-effective and timely manner. In U.S. 2 of the same article, the legislator indicated that the objective of management control is to ensure in particular: compliance with legal provisions and internal procedures, effectiveness and effectiveness of operations, reliability of reports, protection of resources, compliance with and promotion of ethical conduct, efficiency and effectiveness of information flow and risk management. This means that management control is a management system that allows you to perform tasks in the best possible way and realize the set goals. This system takes into account the legal environment (authorities and responsibilities and deadlines), available resources (human, financial, material) and their potential, information management and risk. It is important to ensure that the management system functions effectively and delivers the expected results in the form of proper execution of tasks. The legislator does not prejudge the form in which management control is carried out (whether it is a highly formalised, holistic system of internal rules detailing the mechanisms for decision-making or the implementation of individual actions, or a more flexible formula based on internal rules relating only to key tasks, in areas which need to be specified by other standards), recognising that decisions in this area should be left to the persons responsible for the unit of the public finance sector, who, depending on the size of the unit, the number of tasks assigned to it, its potential and previous experience, can select the appropriate tools to build a management control system that will meet their needs [Sulikowska 2012, 127-29].

It is worth noting that the Public Finance Act imposes the obligation of adequate, effective and effective management control, *inter alia*, on the head of the unit as well as the governor, the mayor, the city president, the chairman of the local government unit (Article 69(1)(2) and (3) of the Public Finance Act) and in this respect coincides with the subjective scope of the new Law of 2009 (Article 4(1)(1) and (2)). Additional help in clarifying the concept of "management control", and indirectly also in determining the scope of violations described in the commented provision, are the standards of management control for the public finance sector published by the Minister of Finance. However, those who expect ready-made solutions to adapt to the needs of each unit of the public finance sector forming a system of management control are mistaken. Standards – as indicated in the document itself – are an orderly set of guidelines to assist in the creation, evaluation and improvement of management control. From the point of view of public finance discipline, the standards can be a model for verifying the obligation to ensure adequate management control by detailing individual concepts and indicating the expectations that the Minister of Finance attaches to the persons responsible for management control in the public finance unit. However, it is worth adding that by the decision of the legislator the standards were issued in the

form of a communication from the Minister of Finance and are not a universally applicable law, but only a set of guidelines to promote the implementation of a coherent and uniform model [Zawadzka-Pąk 2015, 299-300].

The breach of public finance discipline defined in the provision in question, consisting in a failure to perform or inadequate performance of management control obligations, does not imply that liability is incurred in every case in which irregularities are identified in the establishment and operation of management control in a given unit. What is important is the link of the aforementioned irregularity to the specific errors and breaches identified in the operation of the entity. If such a link is not proven, the possible failures in management control are irrelevant. At the same time, it is possible to imagine a situation in which, despite the elaborate tools of the management control system, compliant with the standards and adequate to the situation of the entity, one of the errors referred to in the commented provision occurs. There would then be no breach, as there is no failure to perform or inadequate performance of management control duties. In summary, the violation described in Article 18c of the commented Act consists, so to speak, of two elements: the occurrence of one of the enumerated errors/irregularities in the operation of the entity and the non-performance or improper performance of management control duties by the head of that entity, and, in addition, there must be a connection between these elements [Skrzypek-Ahmed, Bogacki, Halemba, et al. 2023, 789-95].

The catalogue of faults and irregularities specified by the legislator may be divided into those relating directly to the management of public funds (depletion of receipts, expenditure in excess of the plan, incurring an obligation without authorisation, failure to perform an obligation on time, an act or omission resulting in a financial sanction) and those relating to public procurement and provisions on a concession agreement for public works or services. It is worth noting here that the indicated errors/irregularities themselves also constitute a violation of the public finance discipline under other provisions of the commented Act, however, in order to assert liability pursuant to Article 18c of the Public Finance Act it is sufficient to establish the mere fact of the occurrence of these mistakes [Jastrzębski, Majek, and Ćwik 2023, 826-31].

In conclusion, the pursuit of liability for a breach of public finance discipline for failure to perform or inadequately perform management control obligations is limited in subject matter (to the head of the entity) and subject matter (if it affects at least one of the enumerated irregularities in the operation of the entity). The key is to demonstrate the link between the failures identified in the entity and the absence or failures of management control mechanisms. Supplementing the catalogue of violations with management control irregularities is a kind of drawing attention to the need to

create and improve the management control system in units of the public finance sector, and the list of errors that may result in liability on this account is intended to illustrate the impact of effective and adequate management control on the functioning of the public unit [Bożek 2022].

CONCLUSIONS

The quality of public finance (QPF) is a multidimensional phenomenon that affects the effectiveness of actions undertaken in the public sector and thus the final shape of public services and the level of satisfaction of their beneficiaries. QPF is positively correlated with the phenomena of growth and development and thus shapes the competitiveness of the state and its economy. The issue of the quality of public finances is particularly important in the context of globalisation and demographic change, given the direction and size of the allocation of public expenditure. The concept of the quality of public finances is an issue that evolves and is systematically reviewed, especially in terms of the previously unidentified correlations between the QPF and economic growth and the macroeconomic policy of the country. The quality of public finances is broadly defined as a multi-dimensional concept encompassing all actions within the fiscal policy framework of the state and supporting actions aimed at achieving the objective of ensuring long-term economic growth.

In a narrow sense, the concept of public finance quality is seen as an accident of interrelated elements influenced by: the size of the public sector, the balanced fiscal situation, the structure and efficiency of public expenditure, the structure and efficiency of public revenue, public finance decisions affecting market functioning and business development. The quality of public finances implies the performance indicators achieved in the public finance sector, affecting public sector performance, and is determined by the quality of governance and by the legislation adopted by the country that regulates the functioning of the public sector. The organizational environment affects the decision-making mechanism in the public sector and makes the likelihood of the phenomenon of moral hazard and inefficient spending of public funds very high in this sector. Modern public finances are affected by many dysfunctions. From the point of view of the quality of public finances and the rational management of public funds, it is important: 1) the proper formation of the structure of public income and expenditure (including by achieving the desired level of income and expenditure independence, verifying the validity of legally determined expenditure, rationalisation of sources of own income); 2) the establishment of a rational level of public deficit and its financing strategy (including the choice of effective methods of calculating and servicing the debt limits, selecting efficient sources of

financing, minimising the cost of servicing the debt); 3) the harmonization and clarification of budgetary reporting rules, – the creation of conditions for effective intersectoral cooperation; 4) the comprehensive implementation of management principles by objectives and rules of performance management, – the improvement of the effectiveness of control and audit in public sector units, linked to the enforcement of responsibility for the performance of public officials; 5) the creation of a legal and functional framework ensuring the implementation of the principles of material and formal unity in public finance units.

Control mechanisms have been and will continue to be an integral part of the management processes, allowing to prevent the occurrence of negative phenomena and to respond effectively in the event of disruptions in the managed institution. Management control is supposed to cover the totality of actions taken to ensure the achievement of the objectives and tasks of the State in a lawful, efficient, economical and timely manner. In addition, in their assumptions, these activities should promote the self-improvement of the organization, continuity of diagnosis, monitoring and improvement of the processes implemented by the organization. As a result, management control should therefore serve to increase the efficiency and effectiveness of the operation of the entire Polish public administration and promote the accounting of the effects of these actions. Through the use of management control, the management of a given unit has the opportunity to efficiently obtain information about what and, above all, for what reason may not work or which measures, despite their inclusion in the activities of the unit, do not bring the intended effects, i.e. improvement of functioning. Most elements of management control, including goals and standards, are not new in the Polish public administration. Management control does not in principle create new and hitherto unknown management requirements in the field of administration. One of the commentators on the new solutions in the field of management control, P. Walczak, pointed out that "Management control as a normative institution constitutes – as already indicated – a new element in the public finance system, which can no longer be said about the actions taken within it. The management of public finance units required the development of specific procedures, mechanisms, instruments or standards to be applied in the management process of a given entity, as in the case of any organisational structure functioning to achieve certain objectives. Control mechanisms have been and will continue to be an integral part of the management processes, allowing to prevent negative phenomena and to respond effectively when disturbances occur in the managed structure. Management control mechanisms are intended to support the performance of tasks and objectives by entities in the public finance sector, while respecting the criteria for the performance of public tasks. Such mechanisms have been formed

in all units of the public sector during its years of operation. The management control standards announced by the Minister of Finance are being implemented to a significant extent, and the date of 1.01.2010 is not the beginning of their achievement. Control in this sense is one of the functions of management, alongside planning, organisation and management, playing a supporting role towards them" [Walczak 2010, 486].

The role of the management control standards was to set general lines of action and benchmarks, the achievement of which should be taken into account by those responsible within the entity for implementing the system. The standards do not set out specific responsibilities, do not describe the required behaviours, do not give specific mandates for internal regulations. They are a set of general guidelines describing the management control model. It is the responsibility of individual unit managers to define the needs and adapt the control system to the specifics of the public unit.

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THE RUSSIAN MILITARY AGGRESSION IN GEORGIA AND UKRAINE: A COMPARATIVE ANALYSIS*

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Abstract. Russia's aggressions in Georgia and Ukraine are part of Russian imperial policy. Therefore, the scenarios for their implementation are identical: passporting a potential victim country, accusing national minorities or Russian citizens of harassment-genocide, then invading these states and occupying/annexing their territories. In both cases, Russia has violated basic principles of international law. Moreover, both aggressions were characterised by extreme cruelty on the part of Russia: ethnic cleansing of Georgians was carried out several times in the occupied territories of Georgia. The massacre of civilians, the illegal deportation of children and other crimes against humanity are also Russia's signature in Ukraine. The article focuses mainly on the similarities between Russia's aggression in Georgia and Ukraine.

Keywords: Russian aggression; Russo-Georgian war; Abkhazia; South Ossetia; Russo-Ukrainian war; Crimea; Donbas; genocide; occupation; annexation; *ius ad bellum*; violation international law.

INTRODUCTION

The Russian aggression in Georgia in 2008 was an important event in many ways. First of all, it was the "Europe's first twenty-first century war" [Slomanson 2023, 5]. This war shocked a West that had become complacent in its belief that war in Europe is left in the past [Asmus 2010, 215]. Also, it was the first time that a member state of the Council of Europe invaded another member state. Even this facts should have been enough to recognize Russia's real intentions and for the democratic world to respond appropriately, although it is a fact that proper conclusions were not made at the time, which led the world to the Russia-Ukraine war. If Russia had faced proper consequences for its aggression against Georgia in 2008, it might not have even dared to invade Ukraine [Kramer 2017, 54].

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The main common point that unites the aggressions directed against Georgia and Ukraine is Russia's strategic line, which implies the resuscitation of the USSR or the creation of a new Russian empire. A clear confirmation of this is Putin's famous words In 2005, that the Soviet Union collapse was the greatest geopolitical catastrophe of the century,[1] and the symbolic expression is the Russian anthem with a new verse and the melody of the USSR anthem, which Vladimir Putin changed in the first year of his presidency [Goradze 2023, 54]. Even in the 21st century, the Russian government continues "with dignity" a tradition of autocracy, imperialism, militarism and genocide, which was typical for Russia throughout its history [Shenfield 2001, 46].

Some explained the Russia-Georgia war with Saakashvili's "folly" and "provocative character" [Emerson 2008, 2], however, the aggression in Ukraine soon convinced the world of the error of this opinion. In 2014, Ukraine did not give an armed response to Russia, and Russia annexed Crimea without a fight. Russia did not stop there and on February 24, 2022, a full-scale war began in Ukraine.

Thus, what unites Russia's aggressions in Georgia and Ukraine is that they are a constituent part of Russia's imperial strategy, Russia's "privileged sphere of interest" in its "Near Abroad" [Pupcenoks and Seltzer 2021, 763]. It can be said that the differences are only tactical and technical in nature.

It is difficult to fully compare Russian aggression in Georgia and Ukraine within one article. Therefore, the article focuses only on similar political and legal issues characteristic of both aggressions. Special attention is focused on the general scenario of aggression, common causes and goals of aggression.

The article mainly uses the comparative, historical-genetic and legal analysis methods.

1. SCENARIO OF RUSSIAN AGGRESSION IN GEORGIA AND UKRAINE: OCCUPATION V. ANNEXATION

The scenario of Russian aggression in the cases of Georgia and Ukraine is identical: occupation of the territory as a result of hostilities, appointment of pro-Russian rule on the seized lands and recognition of the independence of the self-proclaimed republics [Javakhishvili 2022, 12], which will be subject to his control. It can be said that this is the main line, the general scenario of Russian aggression, although Russia's approaches are different in individual cases. For example, regarding Ukraine Russia went even further and

[1] Address to the Federal Assembly of the Russian Federation on April 25, 2005, http://kremlin.ru/events/president/transcripts/22931 [accessed: 03.08.2024].

officially annexed Ukrainian territories – Crimea[2] (in 2014), Donetsk[3] and Luhansk[4] (in 2022). Although, this fact, despite the occupation of Georgian territories – Abkhazia and the Tskhinvali Region (so-called South Ossetia), cannot be considered as an essential difference from Georgia, including, from a legal point of view, due to the following circumstances:

1) The territory of Abkhazia was actually occupied by Russia since the beginning of the 1990s. Russia did not only support the Abkhaz separatists, but the Russian regular army directly fought against Georgia. On September 27, 1993, using Russian aviation and heavy artillery, Russian regular units, along with North Caucasian military groups and Abkhaz separatists, took over the administrative center of Abkhazia – the city of Sukhumi [Malashkhia 2011, 99-100]. As a result of Russian aggression, Georgia was forced to first (on October 8, 1993) enter the Commonwealth of Independent States (CIS), created as a result of the collapse of the USSR, and then – on May 14, 1994, to sign an agreement "On a Cease-Fire and Separation of Forces" with the representatives of the separatist forces of Abkhazia in Moscow [ibid., 100-101]. According to the agreement, the military contingent of the CIS should enter the conflict zone under the auspices of the peacekeeping forces, and the units of the Georgian army in Abkhazia should completely leave the territory of Abkhazia.[5] The same agreement also defined the mandate of the UN observers.[6] In June 1994, about 1,600 military personnel of the Russian military forces entered the conflict zone under the CIS flag [ibid., 101]. On July 21 of the same year, the UN Security Council adopted Resolution #937, which welcomed the efforts of Russia and other CIS members aimed at establishing peace in Abkhazia, post facto approved this peacekeeping operation, and extended and expanded the mandate of the UN peacekeeping mission in Georgia.[7] Despite the adoption of this resolution, the representatives of that time members of the Security Council – New Zealand, Pakistan and the Czech Republic were concerned over an emerging fact to attribute peace-keeping and

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[2] See: Federal Constitutional Law of Russian Federation of March 21, 2014 "On the admission of the Republic of Crimea to the Russian Federation and the formation of new subjects within the Russian Federation – the Republic of Crimea and the federal city of Sevastopol".

[3] See: Federal Constitutional Law of October 4, 2022 "On the Admission of the Donetsk People's Republic to the Russian Federation and the Formation of a New Subject within the Russian Federation – the Donetsk People's Republic".

[4] See: Federal Constitutional Law of October 4, 2022 "On the Admission of the Luhansk People's Republic to the Russian Federation and the Formation of a New Subject within the Russian Federation – the Luhansk People's Republic".

[5] Moscow Agreement "On a Cease-Fire and Separation of Forces", 14 May 1994, item 2(2).

[6] Ibid., items 2(3)-(4) and (7).

[7] See: Resolution of the United Nations Security Council of 21 July 1994 no. S/RES/937 (1994).

predominant role to the neighbouring country when it had direct political interests in the area of the conflict.[8] In addition, the representative of Pakistan also negatively assessed the practice of post- facto endorsement by the Security Council of a regional peace-keeping operation which was outside the purview of the United Nations.[9] A similar situation existed in Tskhinvali Region as well, where actually Russian military forces controlled this territory. The European Court of Human Rights in the decision made on January 21, 2021 on the case Georgia v. Russia (II) stated, that the Russian Federation established the fact of the occupation of Abkhazia and Tskhinvali Region (South Ossetia) after the cessation of hostilities in August 2008,[10] although the actual occupation had been ongoing since the 1990s. Due to occupation (as a legal regime) is founded on a presumption of temporariness "a permanent occupation is no longer an occupation" [Levine-Schnur, Megiddo, and Berda 2023, 12].

2) In 2000, Russia imposed a visa regime with Georgia.[11] Russia established a visa regime for Georgian citizens working in Russia or visiting there, but for "humanitarian reasons", the visas were not required of residents of Abkhazia and South Ossetia what was evaluated as the first step in Russia's effort to annex Abkhazia and South Ossetia [Gordadze 2009, 44]. The European Parliament called de facto annexation a simplification of the visa regime for the population of Abkhazia and South Ossetia/ Tskhinvali region unilaterally by Russia.[12]
3) In the report of September 2009 the Independent International Fact-Finding Mission on the Conflict in Georgia in several places uses the terms "progressive annexation" and "creeping annexation". The report states that "Russia was promoting progressive annexation of Abkhazia and South Ossetia by integrating these territories into its economic, legal and security space."[13] As evidence of "creeping annexation", the report mentions the mass passportisation of these territories – when Russia awarded Russian passports and citizenship of the Russian Federation to residents of these territories;[14] the payment of pensions to residents of

[8] Protocol of the 3407th meeting of the United Nations Security Council of 21 July 1994, 7, 9 and 13.
[9] Ibid., 13.
[10] Judgment of the European Court of Human Rights of 21 January 2021, Georgia v. Russia (II), application no. 38263/08, 142-144.
[11] Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, vol. II, 2009 [hereinafter: Report], p. 410.
[12] European Parliament Resolution "on the visa regime imposed by the Russian Federation on Georgia" of 18 January 2001 no. C 262/259, item 1.
[13] Report, p. 18-19.
[14] Ibid., p. 19.

Abkhazia and South Ossetia; staffing separatist governments and security forces by Russian officials, etc.[15]

4) The European Court of Human Rights on March 7, 2023 made a decision on the case of Mamasakhlisi and Others v. Georgia and Russia. Based on the evaluations of abovementioned report of the Independent International Fact-Finding Mission and European Parliament resolution of 18 January 2001, the court found Russia's effective control of the territory of Abkhazia since the 1990s and, accordingly, Russia's responsibility for human rights violations in these territories.[16]
5) The difference between illegal occupation and de facto annexation is very fragile. As they say, both lenses are part of a single pair of glasses [Levine-Schnur, Megiddo, and Berda 2023, 15]. Both are prohibited by international law, and in terms of legal consequences, both are similar – infringing on state sovereignty.
6) According to the legislation of Ukraine, Crimea, Donetsk and Luhansk are considered occupied territories[17] as well as Abkhazia and the South Ossetia under the legislation of Georgia.[18] This approach of Ukraine is understandable, because with the mentioned law it declares that the territory is illegally occupied, but does not recognize the internal, unilateral act of Russia – the law by which Russia de jure but unlawfully annexed those Ukrainian territories.

In conclusion, we can say that the territories of Georgia – Abkhazia and South Ossetia de jure are occupied by Russia, but de facto – they are annexed. Russia avoided open or de jure annexation of Georgian territories "by several obstacles, ranging from Russia's military conflict in Chechnya to its interest in avoiding a massive confrontation with the West."[19] However, this does not mean that Russia will maintain the status quo and will not try to annex the occupied territories of Georgia, especially after the invasion of Ukraine and the start of a large-scale war, when it entering into an open confrontation with the West.

As for Ukraine, its territories de jure are annexed (by Russian unilateral law). Thus, the difference between Georgia and Ukraine in this matter is purely formal, but legal and factual results are identical in both cases.

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15 Ibid.

16 Judgment of the European Court of Human Rights of 7 March 2023, Mamasakhlisi and Others v. Georgia and Russia, application nos. 29999/04 and 41424/04, item 135.

17 See: Law of Ukraine of 15 April 2014 "On Securing the Rights and Freedoms of Citizens and the Legal Regime on the Temporarily Occupied Territory of Ukraine".

18 See: Law of Georgia of 30 October 2008 "On Occupied Territories".

19 Report 2009, p. 19.

2. REASONS FOR RUSSIAN THE AGGRESSIONS

The main reason for the Russian aggression in 2008 was that Russia was losing Georgia, and its strategic (imperial) interest was threatened.

The new government that came in churge of Georgia after the Rose Revolution in 2003 presented a clearly reform-oriented program that included economic liberalization, the fight against corruption, and institution-building [Nilsson 2009, 89]. Georgia soon achieved considerable success on the path of reform. In 2004-2008, its GDP reached the 10 percent mark, and according to the World Bank index, Georgia took its place among top ten reforming countries; State institutions were established or successfully rebuilt and corruption reduced [ibid., 89-90].

Georgia started moving rapidly toward Euro-Atlantic integration [Cornell and Starr 2009, 4]. In 2004, Georgia became part of the European Union's neighborhood policy, which was significantly influenced by the expectations created by the Rose Revolution. Georgia received the five-year action plan of the European Union neighborhood policy [Gogolashvili 2017, 8]. In April 3 of 2008 NATO summit in Bucharest adopted a declaration where NATO welcomed Ukraine's and Georgia's Euro-Atlantic aspirations for membership in NATO and declared that these countries will become NATO members.[20]

On September 26, 2007, at the session of the UN General Assembly, the President of Georgia spoke about the negative role of the Russian troops under the UN mandate in Abkhazia and raised the issue of replacing them with neutral international troops [Saakashvili 2007]. This meant that the Russian army would lose the legal basis for its presence in Abkhazia, which it had since 1994.

On 15 May 2008 the General Assembly of United Nations adopted a Resolution on "Status of Internally Displaced Persons and Refugees from Abkhazia, Georgia". The resolution recognized the right of return and of all refugees and internally displaced persons and their descendants to Abkhazia, Georgia as well as emphasized the importance of preserving the property rights of refugees and internally displaced persons from Abkhazia, Georgia, including victims of "ethnic cleansing". The resolution also underlined the urgent need for the rapid development of a timetable to ensure the prompt voluntary return of all refugees and internally displaced persons to their homes in Abkhazia, Georgia and Requested the Secretary-General to submit to the General Assembly at the next session a comprehensive report on the implementation of the present resolution.[21] This meant that the return of the IDPs from Abkhazia had to really start implementation from autumn

[20] Bucharest Summit Declaration of the North Atlantic Council of 3 April 2008, para. 23.

[21] Resolution of the General Assembly of the United Nations of 15 May 2008 #A/RES/62/249 on "Status of Internally Displaced Persons and Refugees from Abkhazia, Georgia", items 1-4.

of the same year and not remain just on paper from September 2008, it was planned to develop a timetable for the return of IDPs, which would inevitably lead to the issue of replacing the peacekeeping contingent to ensure the safe return of IDPs and their property [Malashkhia 2011, 13].

Soon after the Rose Revolution of 2003 the new government resolved a problem with Ajara, especially with Aslan Abashidze, the leader of the Autonomous Republic of Ajara, who ruled this autonomy since 1992 [Felgenhauer 2009, 177]. Abashidze had established authoritarian, semi-separatist regime within the Ajara, and created long-term problems with the central authorities of Georgia. Abashidze was supported by Russia military contingent stationed in the region for several years and became a kind of private army for Abashidze [Gordadze 2009, 34]. Sure, Ajarian leader "was a loyal client of Moscow" [Artman 2013, 687] and after Rose Revolution looked to Moscow for support in his political confrontation with the new Georgian government.[22] Finally, with Kremlin's positive interference Aslan Abashidze fled to Moscow [Illarionov 2009, 55]. The Autonomous Republic itself, which was outside the constitutional order of Georgia, returned to the legal space of the country [Goradze 2021, 403].

These and other more or less important issues were the basis of Russia's concern, because parallel to these changes taking place in Georgia, Russia's increasingly aggressive foreign policy was shaped by the sphere of influence-thinking [Cornell and Starr 2009, 4].

Here the similarity with Ukraine is obvious:

1) In 2004, the Orange Revolution took place and a pro-European government came to power, which initially had a negative impact on Ukraine-Russia relations [Muradov 2022, 21]. Like the Georgian Rose Revolution, the Orange Revolution in Ukraine alarmed Moscow. Both of these revolutions were the very first signals of the future eastward expansion of EU and U.S. interests [Matsaberidze 2015, 79].
2) Russian Kremlin-backed Viktor Yanukovych became the Prime Minister in 2006 and the President in 2010, and it seemed that Russia had strengthened its position in Ukraine, but after the 2013 Euromaidan and Yanukovych was ousted, and a new era began in Ukrainian politics that determined relations with Moscow [Muradov 2022, 21].
3) After the 2008 Bucharest Summit, NATO emphasized the importance of cooperation with Ukraine in practically every summit declaration,[23]

[22] Report 2009, p. 12.

[23] See: Strasbourg / Kehl Summit Declaration of the North Atlantic Council of 04 April 2009, para. 29-30; Lisbon Summit Declaration of the North Atlantic Council of 20 November 2010, para. 22; Chicago Summit Declaration of the North Atlantic Council of 20 May 2012, para. 35; Wales Summit Declaration the North Atlantic Council of 05 September 2014, para.

except London Declaration in 2019,[24] and in the declarations of the 2009, 2018 and 2021 summits with regard to Ukraine, it was stated that NATO remained committed to the decision taken at the Bucharest Summit.[25]

4) After Yanukovych's departure, Ukraine soon – on 21 March 2014 signed an EU-Ukraine Association Agreement.[26]
5) Ukraine has modernized its army in cooperation with the United States, England, and Turkey. This process has been accelerated by threats from Russia. In this regard, time worked in favor of Kiev [Muradov 2022, 22].

Russia's main fear regarding Georgia and Ukraine was related to their "Westernization". Kremlin's important goal was to prevent Georgia and Ukraine from becoming a member of NATO. As later at a meeting with military officers in Vladikavkaz, the then President of Russia, Dmitry Medvedev, said that if not for the invasion of Georgia in 2008, a range of countries which the NATO tries to artificially "protect" would have been within it.[27] Under "range of countries" he definitely meant Georgia and Ukraine.

But it would be a mistake to think that Russia's aggression was only due to this and only Georgia and Ukraine were Russia's target. As many authors say, Georgia and Ukraine were not Russia's primary objectives, they were only the tools for gaining leverage over the West [Matsaberidze 2015, 84]. The war in Georgia in 2008 was at the same time a response to the West for the declaration of independence of Kosovo [Bescotti, Burkhardt, Rabinovych, et al. 2022, 3]. As Ronald Asmus noted, this war was directed not only against Georgia, but against the West more generally. Georgia was a physical target, but the West was also a political target. "Tbilisi became the whipping boy for Russian complaints and resentments that had been building for years against the United States, NATO, and those countries Moscow saw as giving encouragement to Georgia" [Asmus 2010, 217]. The same was with Ukraine. By declaring Crimea, Luhansk, and Donetsk as independent

29; Warsaw Summit Communiqué of the North Atlantic Council of 8-9 July 2016, para. 118; Brussels Summit Declaration of the North Atlantic Council of 11-12 July 2018, para. 66; Brussels Summit Communiqué of the North Atlantic Council of 14 June 2021, para. 69.

[24] The only exception was the London Declaration of the North Atlantic Council 3-4 December 2019 dedicated to the NATO's 70th anniversary in 2019, which was much smaller than usual, consisted of a total of 9 paragraphs and only generally responded to current events in the world. See: London Declaration of the North Atlantic Council of 3-4 December 2019.

[25] See: Strasbourg / Kehl Summit Declaration of the North Atlantic Council of 04 April 2009, para. 29; Brussels Summit Declaration of the North Atlantic Council of 11-12 July 2018, para. 66; Brussels Summit Communiqué of the North Atlantic Council of 14 June 2021, para. 69.

[26] See https://ukraine-eu.mfa.gov.ua/en/2633-relations/ugoda-pro-asociaciyu-mizh-ukrayinoyu-tayes [accessed: 03.08.2024].

[27] *Medvedev: Russia's 2008 War with Georgia Prevented NATO Growth*, 21 November 2011, https://www.atlanticcouncil.org/blogs/natosource/medvedev-russias-2008-war-with-georgia-prevented-nato-growth/ [accessed: 03.08.2024].

states, Russia once again reminded the West, "What you did in Kosovo, we can do elsewhere" [Värk 2022, 6].

3. SIMILAR PURPOSES OF RUSSIAN AGGRESSIONS

3.1. Prevention of Genocide

The main similarity between Russian aggression in Georgia and Ukraine is the false premises for initiating these aggressions. Russia justified its aggressions in both Georgia and Ukraine with humanitarian purposes and cited stopping the genocide of Ossetians or the population living in Donbas (mainly Russian-speaking) as one of the reasons [Pupcenoks and Seltzer 2021, 763].

In 2008, Russia cited the genocide of the local population in the South Ossetia as a pretext for initiating aggression in Georgia, but this was a lie. The Independent International Fact-Finding Mission on the Conflict in Georgia did not find any evidence substantiating this,[28] but on the contrary indicated that "ethnic cleansing was carried out against ethnic Georgians in South Ossetia both during and after the August 2008 conflict."[29] Ethnic cleansing of Georgians in the occupied territories and especially in South Ossetia has been recognized by many other international organizations such as Parliamentary Assembly of Council of Europe,[30] NATO Parliamentary Assembly,[31] European Parliament resolution,[32] etc.

From a legal perspective, very important is the decision of Pre-Trial Chamber I of the International Criminal Court (ICC) of 27 January 2016, where the court affirmed the facts of attacks in August 2008 "targeted mainly ethnic Georgians following a consistent pattern of deliberate killing, beating and threatening civilians, detention, looting properties and burning houses… These acts were reportedly committed with a view to forcibly expelling ethnic Georgians from the territory of South Ossetia in furtherance of the overall objective to change the ethnic composition of the territory."[33] As a result of these attacks, there were between 51 and 113 cases of deliberate

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[28] Report 2009, p. 430.

[29] Ibid., p. 394.

[30] See: Resolution of the Parliamentary Assembly of Council of Europe #1633 (2008) of 2 October 2008 on "The Consequences of the War Between Georgia and Russia", para. 13, 24.4.

[31] See: Resolution of the NATO Parliamentary Assembly № 382 of 16th of November 2010 "On the Situation in Georgia", para. 14 (a).

[32] See: Resolution of the European Parliament #P7 TA (2011)0514 of 17 November 2011 on "Negotiations of the EU-Georgia Association Agreement", para. F.

[33] Decision of Pre-Trial Chamber I of the International Criminal Court of 27 January 2016, No.: ICC-01/15, para.

killings of ethnic Georgians and the displacement of from 13,400 to 18,500 ethnic Georgian inhabitants from villages and cities in South Ossetia and the "buffer zone."[34] Later, the same court in 24 June 2022 adopted three arrest warrants for Mikhail Mindzaev Gamlet Guchmazo and David Sanakoev who held high positions in the *de facto* South Ossetian government. They were found allegedly responsible for war crimes (unlawful confinement, torture and inhuman treatment, outrages upon personal dignity, hostage taking, and unlawful transfer of civilians) committed between 8 and 27 August 2008.[35]

The European Court of Human Rights in the case of Georgia v. Russia (II) shared the assessments of the abovementioned Independent International Fact-Finding Mission on the Conflict in Georgia and international organizations as well as the decision of Pre-Trial Chamber I of the ICC of 27 January 2016 regarding the ethnic cleansing of Georgians in South Ossetia and responsibility for this mass violation of human rights were attributed to Russia.[36]

As for the "genocide" carried out by Ukraine in Donbas, Russia has not presented any real evidence to prove it. There is a near consensus among experts that like in Georgia, the situation in Ukraine did not meet the conditions for intervention because there was no evidence of imminent genocide or similar atrocity crimes [Pupcenoks and Seltzer 2021, 771].

Moreover, On February 26, 2022, Ukraine lodged a complaint with the International Court of Justice (ICJ) against Russia, requested the court to Adjudge and declare that: contrary to what the Russian Federation claims, no acts of genocide have been committed in the Luhansk and Donetsk oblasts of Ukraine; the Russian Federation cannot lawfully take any action in or against Ukraine aimed at preventing or punishing an alleged genocide, on the basis of its false claims of genocide in the Luhansk and Donetsk oblasts of Ukraine; recognition of the independence of the so-called 'Donetsk People's Republic' and 'Luhansk People's Republic' by Russia as well as the 'special military operation' were based on a false claim of genocide and therefore have no legal basis.[37] In the order of preliminary measures of 16 March 2022 the ICJ stated that "the Court is not in possession of evidence substantiating the allegation of the Russian Federation that genocide has

[34] Ibid., para 22.

[35] See: "Arrest warrant for David Georgiyevich Sanakoev" of Pre-Trial Chamber I of the International Criminal Court of 24 June 2022, No. ICC-01/15; "Arrest warrant for Gamlet Guchmazov" of Pre-Trial Chamber I of the International Criminal Court of 24 June 2022, No. ICC-01/15; "Arrest warrant for Mikhail Mayramovich Mindzaev" of Pre-Trial Chamber I of the International Criminal Court of 24 June 2022, No. ICC-01/15.

[36] Judgment of the European Court of Human Rights of 21 January 2021, Georgia v. Russia (II), application no. 38263/08, 142-144.

[37] Order of the International Court of Justice of 16 March 2022 on Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), No. 182, para. 2(a-d).

been committed on Ukrainian territory."[38] By the way, in this order ICJ ordered the Russian Federation, as a provisional measure, to immediately suspend the military operations it began on February 24, 2022 on the territory of Ukraine.[39] Despite the court's decision, Russia has not halted its military operations. Thus, it violated Article 94 of the Charter of the United Nations, which obliges each Member of the United Nations to comply with the decision of the International Court of Justice in any case to which it is a party.[40]

It can be said that terms such as "ethnic cleansing", "genocide" or "crimes against humanity" are increasingly applied to Russia and its military personnel or officials [Goradze 2023, 51]. The Bucha massacre, the illegal deportation and transportation of Ukrainian children, the bombing of populated areas and other crimes against humanity show us that kremlin leaders are cruel criminals [ibid., 56]. A legal evidence of this is that several arrest warrants issued by the ICC for Vladimir Putin, the President of the Russian Federation, Maria Lvova-Belova, the Commissioner for Children's Rights in the Office of the President of the Russian Federation, Sergei Kobylash, the Commander of the Long-Range Aviation of the Aerospace Force of Russia, Viktor Sokolov, the Commander of the Black Sea Fleet of Russian Federation, Sergei Shoigu, the Minister of Defense of the Russian Federation and Valery Gerasimov, Chief of the General Staff of the Armed Forces of the Russian Federation. They are suspected of war crimes and crimes against humanity in Ukraine. Especially the first two of them – Putin and Lvova-Belova are allegedly responsible for the war crime of unlawful deportation of population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation.[41]

3.2. Protection of Russian Citizens

Russia began the "preparatory work" for the argument of protecting Russian citizens long before, and it is called "passportisation".

Passportisation is an instrument of Russian foreign policy for dealing with territorial conflicts in the post-Soviet space [Burkhardt 2020, 4]. Russia is involved as a patron and protector of secessionist entities in protracted territorial conflicts in this space [Bescotti, Burkhardt, Rabinovych, et al. 2022, 2].

Russia used this policy Since the early 1990s, the Russian Federation has had a policy of issuing passports to both South Ossetia and Abkhazia [Green 2010, 66], but the active "passportisation" policy started only since

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38 Ibid., para. 59.

39 Ibid., para. 86(1).

40 The United Nations Charter, Article 94(1).

41 See https://www.icc-cpi.int/situations/ukraine [accessed: 03.08.2024].

July 2002 when new Russian Law on Citizenship was adopted.[42] According to Nagashima, the Kremlin launched passportisation in Abkhazia in June 2002 on an ad hoc basis, even before the adoption of the new citizenship law, and in South Ossetia in May 2004 [Nagashima 2017, 187]. This passportisation process accelerated significantly during 2008 [Green 2010, 66]. Putin blanketed the Georgian provinces of Abkhazia and South Ossetia with Russian passports [Slomanson 2023, 5]. As a result, the overwhelming majority of the residents of Abkhazia and South Ossetia became Russian citizens until August of 2008.[43] The naturalizations of the residents of South Ossetia and Abkhazia were not collective naturalizations in a formal sense. They operated upon individual application and not *ex lege* (by law). However, the procedures were so simplified that, in practical terms, the naturalizations constituted a mass phenomenon and they might be qualified as *de facto* collective naturalizations of persons residing outside Russia.[44] This practice of widespread distribution of passports was even called "manufacture of nations" [Green 2010, 66].

Like Abkhazia, in Transnistria passportisation began in 2002 and by 2020 some 220,000 inhabitants (44 per cent of population) held a Russian passport [Burkhardt 2020, 4].

Nagashima believes that the policy of passportisation, which Russia implemented in Abkhazia, the South Ossetia and Transnistria, was caused by its reaction to the current political processes, thus he tried to some extent justify this policy. He also concludes that "Russia might implement passportization in Donbas only if it became quite likely that the Ukrainian government would succeed in regaining its control over the separatist region by force and it became necessary for Russia to foil Ukraine's ambition" [Nagashima 2017, 196]. The fallacy of this conclusion, made by Nagashima in 2017, was soon revealed. On 24 April 2019 the President of Russian Federation issued a Decree No. 183 "On the Definition for Humanitarian Purposes of Categories of Persons Entitled to Apply for Admission to Citizenship of the Russian Federation in a Simplified Manner". Despite the general nature of the title, the decree referred only to residents of so-called Donetsk and Luhansk People's Republics.[45] Accordingly, only in 2019 more than 136,000 residents of the so-called Donetsk and Luhansk People's Republics and additional 60,000 people from the Donbas received Russian citizenship. By mid-June 2020, more than 180,000 new inhabitants from these "People's Republics" had been given Russian passports [Burkhardt 2020, 2-3]. Russia

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[42] Report 2009, p. 165.

[43] Ibid., p. 147.

[44] Ibid., p. 169.

[45] Decree of the President of Russian Federation No. 183 of 24 April 2019 "On the Definition for Humanitarian Purposes of Categories of Persons Entitled to Apply for Admission to Citizenship of the Russian Federation in a Simplified Manner", item 1.

flooded the Donbas with Russian passports for all who desired to become Russian citizens [Slomanson 2023, 13]. As a Crimea, "annexation came before the conferral of citizenship" [Hoffman and Chochia 2018, 232], but after the annexation during 2014-2017 only about 10 thousand people were naturalized, because of "automatic naturalization" after annexation. It means that the Russian state automatically considers local residents as Russian citizens after a one-month opt-out period. This is confirmed by the fact that in Crimea, Russia issued 1,865,000 domestic passports only in 2014, and in 2014-2017 – about 2,300,000 [Burkhardt 2020, 14-15].

The Independent International Fact-Finding Mission on the Conflict in Georgia found the conferral of Russian nationality on a large scale as a probable basis (or rather a pretext) for military intervention.[46] The practice of passportisation was a pretext for intervention, especially considering that a large number of these passports were issued immediately before the conflict. The widespread issuance of passports may be seen as indicative of a general premeditated tactic to annex the region. Further circumstantial evidence to support this is the fact that in July 2006, the Russian Duma adopted a resolution explicitly authorizing Russian troops to defense Russian nationals anywhere [Green 2010, 67]. It is true that the Independent International Fact-Finding Mission on the Conflict in Georgia as well as Green's opinion applies to Georgia, but the same applies to Eastern Ukraine, whose annexation was preceded by mass passporting. Of course, this is Russia's strategic line, within which there may be other goals of a consequent nature. For example, maintaining constant tension, prolonging the peace process and freezing the conflict, demographic changes in Russia itself by artificially increasing the number of citizens [Burkhardt 2020, 14-15], etc. But the developments proved that in Georgia and East Ukraine Russia implemented the policy of passporting in order to justify its invasion of the territory of another state under the pretext of the "protection of nationals abroad" doctrine, that is "actual or threatened – outside of its own territory, without the consent of the state against which the force is used or the authorization of the UN Security Council" [Green 2010, 58].

Passportisation policies had mainly two common components in the different regions: First, these policies were unlawful from an international law perspective, and a second common component – a phenomenon so-called "petrification of the exceptional", deriving from the fact that Russia actually did intend to make use of lawful measures on an international scale, but simply concentrated on non-public (and most often hard-power-driven) measures intending to factually gain or keep control over Russian-speaking individuals in these countries [Hoffman and Chochia 2018, 233].

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[46] Report 2009, p. 172.

Another similarity that characterizes the passportisation carried out in Georgia and Eastern Ukraine is wrapping it with humanitarian rhetoric by Russia. If in the case of Georgia it was announced that passportisation was provided to allow Abkhazians and Ossetians to travel internationally,[47] in the case of Ukraine it took a more cynical form. In the decree of the President of Russia of 24 April 2019 "On the Definition for Humanitarian Purposes of Categories of Persons Entitled to Apply for Admission to Citizenship of the Russian Federation in a Simplified Manner", the basis for its adoption and therefore granting Russian citizenship to residents of Donetsk and Luhansk regions was declared protection the rights and freedoms of human and citizen as well as the generally recognized principles and norms of international law.[48]

In conclusion, it can be said that passportisation in Georgia and Ukraine worked as a tool of interference with the sovereignty of these countries [Bescotti, Burkhardt, Rabinovych, et al. 2022, 2].

3.3. Overthrowing the Government

In the case of Georgia, Russia only tried to wrap its aggression with its invented pretext and named the goal of protecting the ethnically Ossetian population and citizens of Russia. However, Russia's real goals were soon revealed: On August 10, 2008, At an emergency session of the United Nations' Security Council the US representative to the UN, Zalmay Khalilzad, officially stated, that Moscow's goal was to overthrow the democratically elected Georgian government. The Russian ambassador to the UN objected to the disclosure of a confidential phone call between top diplomats (the US Secretary of State and Russian Foreign Minister), but then added that some leaders "become an obstacle" and "some situations take courageous decisions with regard to the political future,"[49] thus factually confirmed the Russian ulterior intentions. Later Condoleezza Rice, the US Secretary of State confirmed Zalmay Khalilzad's statement and accused Russia of aggression and attempt to overthrow the president of Georgia [Traynor 2008].

In the case of Ukraine, Russia has moved to more open action. Russia's strategic narrative during the first step of aggression in Crimea and eastern Ukraine in 2014-2016 was initially focused on delegitimizing the Ukrainian government by punishing it for its alleged atrocities and continuously

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[47] Ibid., p. 409.

[48] See: Decree of the President of Russian Federation No. 183 of 24 April 2019 "On the Definition for Humanitarian Purposes of Categories of Persons Entitled to Apply for Admission to Citizenship of the Russian Federation in a Simplified Manner", preamble.

[49] *Russia Trying to Topple Georgian Government*, https://edition.cnn.com/2008/WORLD/europe/08/10/un.georgia/ [accessed: 03.08.2024]; https://www.icc-cpi.int/situations/ukraine [accessed: 03.08.2024].

establishing links between fascism and anti-Russian groups in Ukraine [Pupcenoks and Seltzer 2021, 768].

In his address of February 24, 2022, the President of Russia named "demilitarization and denazification" of Ukraine as one of the main goals of starting the war.[50] "Denazification" exactly meant the violent overthrow of the Ukrainian government.

4. VIOLATIONS OF INTERNATIONAL LAW

There are fundamental similarities between the two aggressions. This is a violation of the international law.

Russia violated the norms and principles of international law, particularly on the initiation of war (*ius ad belum*) by invading Georgia [Malashkhia 2011, 30-33] and Ukraine [Slomanson 2023, 8-11], attempting to overthrow the democratically elected government, and carrying out aggressions. First of all, this is Article 2(4) of the UN Charter, according to which "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." It is the fundamental principle of the post-World War II international order and prohibits the unilateral use of force in international relations [Slomanson 2023, 8-9]. In case of threat to the peace, breach of the peace, or act of aggression, only the UN Security Council can decide what measures shall be taken[51] including using forces if it is necessary to maintain or restore international peace and security.[52] Neither before (nor after) the invasion of Georgia nor Ukraine did the UN Security Council make a similar decision, which confirms Russia's violation of the above-mentioned articles of the UN Charter. Moreover, in contrary, Russia has vetoed all Security Council attempts to limit its use of force [Slomanson 2023, 11].

Russia also violated the 1975 Helsinki Final Act, which is a fundamental document for security and cooperation in Europe. Russia has violated at least the first six articles of this act: I. Sovereign equality, respect for the rights inherent in sovereignty, II. Refraining from the threat or use of force, III. Inviolability of frontiers, IV. Territorial integrity of States, V. Peaceful settlement of disputes, VI. Non-intervention in internal affairs. In terms of the use of military force Article II is particularly important. This article prohibits the use of force in international relations against the territorial

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[50] Address by the President of the Russian Federation. 24 February 2022, http://kremlin.ru/events/president/news/67843 [accessed: 03.08.2024].

[51] The United Nations Charter, Article 39.

[52] Ibid., Article 42.

integrity or political independence of any State, as well as any manifestation of force for the purpose of inducing another participating State to renounce the full exercise of its sovereign rights. "No consideration may be invoked to serve to warrant resort to the threat or use of force in contravention of this principle" – is stated in the same article.

Thus, Russia ignored the fundamental principles of international law and the modern world order with the aggressions carried out in Georgia and Ukraine, the declaration of parts of the territories of these countries as independent states and the occupation/annexation.

CONCLUSION

The aggression carried out by Russia in Georgia and Ukraine has several fundamental similarities.

First and foremost is the basis of the aggression – Russia's imperial aspirations. Georgia and Ukraine are important components of the common strategic line of these aspirations. Russia considers Georgia and Ukraine within its "sphere of influence" and cannot accept these countries' independent choice to be part of the democratic and free world. For Russia, as a dictatorial type of state, the "Westernization" of "its sphere of influence" is unacceptable. Therefore, Russia perceives this more as an expansion of the West (NATO and the EU) rather than a choice of the Georgian and Ukrainian people.

The second fundamental similarity is the violation of international law. Russia violated the principles of international law that underlie the world order established after World War II.

The third similarity is the common scenario of aggressions: mass passportisation, accusing the potential victim countries of genocide, invading these countries, occupying/annexing their territories, and attempting to overthrow democratically elected governments.

The fourth similarity is Russia's exceptional cruelty. Russia is extremely ruthless in satisfying its imperial ambitions. In Georgia, Russia, directly or through separatist puppets, organized ethnic cleansing of Georgians in several waves (in the 1990s, directly during the August 2008 war period and after). Russia also carried out multi-stage aggression in Ukraine (first, the annexation of Crimea and de facto occupation of eastern Ukraine in 2014-2016, then – the start of the war on February 24, 2022), during which it showed extreme cruelty that could be qualified as genocide.

The only real difference between these two aggressions is that the aggression carried out in Georgia was not followed by a significant reaction from the world. However, it should be said that the annexation of Crimea did not become

a reason for active actions of the democratic world either. The West only woke up after the invasion of Ukraine and starting the large-scale war in February 2022.

Russia's violation of fundamental principles of international law and crimes against humanity cannot remain without accountability. This is not only legally necessary but also morally justified [Kramer 2017, 13]. Otherwise, the existence of international law will lose its meaning and humanity will find itself in uncontrollable chaos.

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MANAGEMENT ACCOUNTING IN THE FINANCIAL SYSTEM. ECONOMIC APPROACH AND ACCOUNTING LAW*

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Abstract. In today's high-competitive and volatile corporate environment, the importance of strategic management accounting is steadily increasing. There is a growing need for information that addresses not only the past, but also the future of the company in a competitive environment. Already in the early stages of research in the area of management accounting, the observation was made that providing a strategic perspective requires expanding the role of accounting in two directions. The first is to integrate own costs with strategy by means of strategic cost analyses to align the level and type of

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costs with strategy. The second is to study the cost structure of competitors and monitor changes in these performance categories over time. It follows that it is costs and their level that are the most important decision-making criterion for company managers in the short term, but also in the long term. This also means that these result categories are an important subject of study, especially in the area of strategic cost analysis. Management accounting is a branch of accounting focused on providing managers with financial and non-financial information for decision-making. It also assists in planning, control and operational decision-making. Unlike financial accounting, which is aimed at external stakeholders, management accounting is designed for internal use.

Keywords: accounting law; tax law; act on accounting; management accounting; financial accounting; financial analysis; economic analysis; financial statements; balance sheet; profit and loss statement.

INTRODUCTION

Generally, although accounting and economics are two very related disciplines, they still differ in the following respects. Accounting uses certain principles to support its actions, while economics uses assumptions that will simplify certain situations. Accounting prepares, analyzes and understands financial statements, and economic – production, consumption, and even distribution of certain goods and services. Economics is a vast field in which many, often unclear terms operate. We use some of them every day, not quite knowing what they mean or how to use them correctly [Wołowiec 2017, 29-45]. The terms accounting and accounting are often used interchangeably. Many people think these words mean the same thing. In fact, they are two related but distinct fields with numerous differences. As it turns out, accounting is a component of accounting, so its significance is somewhat narrow [Bogacki and Wołowiec 2021, 515-27]. What does this term mean? Simply put, accounting is conducted to collect and store data in an orderly manner concerning all economic events related to the business conducted. Such activities, carried out by specialists, are based on the control of all income and expenses, including funds spent on salaries for employed employees, amounts intended for payment of taxes and for advertising and marketing. Such registration, controlled by qualified personnel, is the basis for the efficient operation of any company, regardless of its size [Wołowiec 2021a, 11-15].

Accounting is a term with a broader meaning. Its components are, among other things, the aforementioned accounting, but also the accounting of costs, including the keeping of records, calculation and analysis of costs. Accounting allows, among other things, to create accurate statements that analyze individual plane activities of the company, which in turn helps people running the company, as well as investors to gain insight into the current situation. Such comprehensive supervision of the financial condition

of the company is necessary to make good, fact-based decisions. Due to the differences that arise between the terms "accounting" and "accounting", the names of entities engaged in certain services are also different. It is incorrect to use the terms accounting office and accounting office as synonyms. Of course, the services provided by us are a comprehensive set of activities that help to run a business, but it is worth remembering that the term "accounting office" has a much broader meaning [Wołowiec 2021b, 597-600].

1. ACCOUNTING AND ITS LEGAL AND ECONOMIC PERSPECTIVE

In economic entities, accounting is the recording of the state of assets held and the sources of financing. It consists of recording, in monetary and sometimes quantitative terms, properly documented economic events causing changes in assets and their sources of origin. Bookkeeping is the recording part of accounting. Accounting is a broader concept. Accounting consists of the accounting part, the calculation part and the reporting part. In addition, accounting includes three perspectives from which a company is observed. These are [Kister 2021b, 18-21]: the financial perspective, providing financial information for external stakeholders, mainly investors and lenders; the management perspective, providing financial information for the company's managers and employees within the organisation; the tax perspective, regulated in Poland by the Accounting Act, providing information for the tax authorities [Wołowiec 2012, 108-16].

Accounting is a narrower term, as it is an integral part of an extensive accounting system consisting of many other departments. It is therefore a recording system, responsible for recording all the economic activities that take place in a given company. It contains everything that has been purchased by the company, sold by the company or invested in advertising or, finally, allocated to the salaries of employees. It also shows how much money certain taxes have absorbed. The main tasks of a company accountant will therefore include [Kister 2021a, 7-11): keeping the company's accounts, producing statements of balances and turnovers, valuing liabilities and assets, cataloguing and filing company documents.

The more detailed activities that the accountant deals with on a daily basis include: keeping records of economic events, verification of accounting evidence in terms of its correctness and legality, supervision of the correctness of settlements with public institutions and contractors, preparation of required financial reports, filing of company tax returns, filing of social security declarations.

Looking at the above activities, it can be said that accounting, so to speak, is the technical aspect of accounting. Accounting is a formalised system of

recording economic events concerning a specific economic entity. It is also concerned with the collection, processing and presentation of information and, on the basis of this information, making specific decisions regarding the conduct of business activities. In other words, accounting is a branch of knowledge that, on the basis of the above-mentioned methods and with the help of monetary measures, such as the PLN, identifies events that affect the finances of an organisation. Accounting shows how the company's assets and financial situation really are. It is also thanks to it that business owners in large cities such as Warsaw can react in time if it turns out that the company requires action to improve its condition or to avoid excessive risk or even bankruptcy. Accounting being a non-uniform system, it can be divided into individual departments. These are accounting, calculation and reporting [Martyniuk 2021, 8-14].

2. MANAGEMENT ACCOUNTING ITS OBJECTIVES FUNCTIONS AND TASKS

Management accounting is a field of accounting that focuses on providing managers with information to make internal decisions. It can be understood as an information system that provides data on the financial and non-financial aspects of an organization, which helps in managing and controlling operations and planning future activities. The objectives of management accounting include: planning – it helps in determining KPIs, creating budgets and forecasting future trends, both at the strategic and tactical levels, i.e. relating to specific actions within the strategy; decision-making – the information obtained from management accounting is often necessary to make operational decisions; control – with a particular focus on controlling operational performance by comparing actual results with expected; performance measurement and reward – management accounting is also used to measure the performance of business units, teams and individuals and can help establish reward and incentive systems to achieve the objectives of an organization. Management accounting plays a variety of roles in an organization and influences various aspects of its operations [Wołowiec 2021c, 515-27]. One of the most important functions is planning.

Management accounting helps set business goals, create budgets, forecast future trends, and prepare financial plans for various scenarios. Another important function is control. Management accounting focuses, among other things, on monitoring the operational and financial performance of an organization by comparing actual results with planned or expected results, which allows to assess the effectiveness of plans on an ongoing basis. Management accounting also plays an important role in decision making. For example, it can help managers understand the profitability of different

products, services or market segments, allowing them to develop ways to optimize resources and maximize profits. Management accounting is also important in the context of communication within the company. It enables the exchange of financial and operational information between different levels of management. With reports and analytics, managers can share important data and indicators with other members of the organization, allowing everyone to better understand the situation of the company [Wojciechowski, Skrzypek-Ahmed, Wołowiec, et al. 2023, 510-25].

While financial accounting focuses on producing financial statements for external stakeholders (shareholders, lenders, or legislators), management accounting is intended for internal use. Both types of accounting also differ in purpose – financial is to provide financial information to external stakeholders, internal managers (e.g. managers or managers). In addition, there is a difference in the level of processed information. Financial accounting focuses on preparing financial statements in accordance with generally accepted accounting principles (GAAP) or International Financial Reporting Standards (IFRS). Management covers a wider range of information, both financial and non-financial.

In the case of financial accounting, reports are usually prepared at the end of the fiscal year, although quarterly and semi-annual reports are equally frequent. In turn, management accounting can and as a rule is practiced more often, for example in a monthly or weekly perspective – it depends on the needs of the organization.

Management accounting and controlling are two elements of a company's information system and help in effective management. Although they have their own unique characteristics, they are closely related to each other and often penetrate to help an organization achieve its goals. In practice, the lines separating these two functions can be unclear, and some organizations may even integrate them into one department. This does not change the fact that management accounting and controlling have similar goals, such as supporting management decisions, planning and control. They differ, among other things, in terms of the role played. Management accounting focuses on the collection, analysis, and reporting of financial and non-financial operational data used within an organization to make decisions. Controlling is a broader concept – it includes not only management accounting, but also strategic planning, coordination and control of the company's activities.

Another noticeable difference is the scope of the data. Management accounting focuses on historical and current data. Controlling, on the other hand, can include not only the analysis of historical data, but also future forecasting, scenario analysis and modelling. Data range is linked to time perspective – management accounting focuses on short-term information and decisions, while controlling covers both short-term and long-term perspectives.

3. TAX ACCOUNTING IN THE MANAGEMENT ACCOUNTING SYSTEM

Tax accounting – is the economic records kept for tax purposes, arising from the regulation of tax law and its impact on the accounts kept in accordance with balance sheet law, it is perceived as an extension of the analytical records for tax purposes, which expresses the differences in costs and revenues in accordance with balance sheet and tax law. Tax accounting is closely related to one of the accounting functions, namely the tax function. Its tasks include calculating, declaring, remitting and posting taxes and charges equal to them [Dziuba-Burczyk 1995, 14-24]. Polish legislation has allowed the possibility of recording economic operations only for tax purposes outside the functioning system of accounting records. These entities are taxpayers, i.e. natural persons and civil partnerships of natural persons conducting business activity on the basis of an entry in the National Court Register (KRS), which do not become financial accounting entities by virtue of the balance sheet law due to the small size of their activity or by self-declaration. They are obliged to keep simplified records for tax purposes, mainly due to personal income tax liabilities. The recipient of tax accounting is the tax office [Wołowiec 2022, 349-68].

Accounting law – is the body of legal norms that covers the main rules of accounting for economic entities. It is observed in order to present a true and fair view of the financial situation. This is evidenced by the fact that it depends on the main accounting principle of 'true and fair view'. Thanks to this law, it is possible to estimate the past productivity of an economic activity in a fairly accessible way, but also to predict its near future. This is facilitated by economic information, which is prepared under the authority of the balance sheet law. However, the usefulness of this information depends on certain parameters: reliability, relevance, comprehensibility, comparability [Dziuba-Burczyk 2003, 54]. Tax law – 'is the body of legal norms governing the determination and collection of taxes. Tax law is part of budget law, or more precisely, budget income law. Budgetary law is, in turn, a part of financial law'. The principles of tax law are formed on the basis of their main sources, i.e. normative acts. These acts are divided into two subcategories: executive acts, which are orders and decrees of the Minister of Finance and decrees of the Council of Ministers. The second subcategory is basic acts, i.e. laws [Micherda 2011, 13].

The main tasks of the ordinance are to establish the technical and organisational criteria for the flawless implementation of the Act. The ordinance, on the other hand, extends or complements the provisions of the Act. Resolutions of the councils of local self-governing units are also not without significance. They contain tax norms which have the force of law on the territory of the given unit and they are implementing acts. As for court rulings, they influence the analysis and tax legislation, but they are not

a source of tax law. In fact, these laws have a different impact on accounting as an information system and mainly on the image created of the economic entity. Balance sheet law creates the actual image of the entity through economic facts, usually concerning the incurring of costs and the earning of revenues [Micherda and Świetla 2013, 15-18]. Tax law, on the other hand, serves the purpose of implementing tax policy and fulfilling especially the fiscal function. The duality of law, i.e. the simultaneous validity of balance sheet law and tax law with regard to economic units, results in corresponding accounting and financial consequences. Income tax laws compel taxpayers to keep accounting records in a manner that ensures the determination of the amount of income, the tax base and the amount of tax due for the tax year. Small-scale businesses have the right to choose a form of record keeping: accounting or tax. Under the latter, they have a choice of one of the following three registers [Martyniuk 2014, 11]: 1) tax card – this form of lump-sum tax may be paid by those who fulfil the requirements set out in the Ordinance of the Minister of Finance and obtain a decision from the tax office on granting the card; 2) lump-sum tax on registered incomes – one of the forms of a lump-sum percentage tax connected with the recording of incomes, it is a good solution for people starting their business; 3) tax book of incomes and expenditures – a registering tool aimed at reliable calculation of the amount of income and deductible costs [Olchowicz 2011, 52].

4. TYPES OF MANAGEMENT ACCOUNTING TASKS

Management accounting encompasses many different types of analysis and techniques. By understanding and managing the different aspects, managers can better control operations, plan future activities and make decisions that help the organisation achieve its goals. Management accounting includes, but is not limited to, the following types of activities. Break-even point analysis – management accounting often involves calculating a break-even point, which shows how many units of a product or service a company needs to sell to cover fixed costs and generate a profit. Profitability analysis – involves measuring the overall profitability of different products, services, departments or market segments. Variance analysis – involves comparing actual results with budgeted or standard results to identify and understand deviations. Budgets – the creation and monitoring of budgets, e.g. marketing budgets that serve as financial plans for an organisation, helps to plan expenditure and income, as well as comparing actual results with planned ones. Leverage – this aspect refers to the ratio of debt to equity in a company's capital structure. Through management accounting, it is possible to understand the level of leverage and its impact on a company's profitability and potential risks. Investments – the grading of capital investments (e.g. the purchase of new equipment or a building)

helps to understand whether they will deliver the desired return on investment. Product or service costing – this can include, for example, the allocation of direct costs, such as materials and direct labour, and indirect costs, such as overheads and administration. Other task areas include [Jachna and Sierpińska 2014, 11]: controlling and grading performance – this refers to monitoring and grading operational and financial performance and identifying areas for improvement; costs – here the company's focus is on understanding, tracking and controlling costs associated with various aspects of the organisation's operations, which includes analysis of variable, activity or fixed costs, among others; grading the performance of departments or business units – this usually involves analysing financial performance, labour productivity, product or service quality and other key indicators within a specific part of the organisation; projects – this aspect focuses on tracking and controlling costs associated with specific tasks. This is often used in project-based industries such as construction or IT; strategies – this refers to the provision of information to assist in planning and decision-making, which may include profitability analysis or financial forecasts; creating budgets and forecasts – preparing operating, capital and financial budgets, as well as forecasting future revenue and expenditure, is one of the most important tasks within management accounting; performance – measuring and reporting performance in the context of an organisation's goals and objectives can include, among other things, remuneration systems and performance measurement systems; managing constraints – every organisation has to deal with constraints such as capacity, resource or financial limitations. Management accounting can identify constraints and develop ways to deal with them; cash flow management – this aspect involves monitoring and managing the flow of money in an organisation. The acquisition and disbursement of cash must be balanced in order for the company to meet its objectives; cash flow management – this aspect involves monitoring and managing the flow of money in an organisation. The acquisition and disbursement of cash must be balanced in order for the company to meet its objectives.

The results of the above-mentioned tasks are crucial for decision-making, planning and control and communication within the company. They also support the efficient use of resources and make a significant contribution to the achievement of business goals and thus the long-term success of the organisation [Zaleska 2012, 13-14].

5. ELEMENTS OF MANAGEMENT ACCOUNTING AS AN ENHANCEMENT OF FINANCIAL ANALYSIS

They are an extension of the analysis of a company's financial situation. Their scope extends from the day-to-day operations of the company to strategic management issues (strategic analysis).

Table.1 Management accounting methods

Method	Features
Benchmarking competitor accounting	Systematic comparative analysis of costs and market position of competitors, based on both publicly available and unpublished material
Activity Based Management, ABM	Performance management on the basis of activity-based costing, aimed at reducing activity costs
Value Chain Costing	Cost analysis based on M. Porter's value chain concept, extended by an analysis of the value chains of suppliers, distribution channels and buyers
(Cost drivers analysis)	A long-term analysis of cost factors, which include: structural cost factors such as size and complexity of the business, organisational structure, and executive cost factors such as employee involvement, quality, efficiency and others related to management style and organisational culture
Customer account profitability	Systematic analysis of customer service costs, taking into account long-term customer relationships (customer segments)
Life cycle costing, LCC	Cost and profitability accounting for products and customers, taking into account the entire product life cycle
Target costing	A method of cost analysis during the product design period, which involves determining the maximum unit cost as the difference between the market price and the desired profit. This method is known by the Japanese as kaizen.
Cost of quality, COQ	Analysis of the interrelationship between the four elements that make up quality costs: cost of preventive actions, cost of quality control, cost of internal deficiencies, cost of external deficiencies
Model DuPonta	It points to the important relationships that exist between the indicators that characterise the process of efficient management, creating from them a compact grade system
Break Event Point analysies	It aims to optimise the relationship between costs, sales volume and profit from the point of view of maximising financial benefits, taking into account the limiting conditions (break-even point)

Source: own elaboration.

Accounting is the systematic and comprehensive process of identifying, measuring, processing, classifying and recording financial transactions relating to an economic entity. It refers to the summarising, analysing and recording of such information to be reported to internal users such as management, employees and external users such as investors, regulators and supervisory agencies or tax officials. Financial management is also commonly known as corporate finance or corporate finance. Financial management is the managerial activity that deals with planning, directing, monitoring, organising and controlling an organisation's monetary resources. In other terms, accounting reports financial information in accordance with generally accepted accounting principles (GAAP) and international financial reporting standards (IFRS). The Financial Accounting Standards Board (FASB), the Financial Reporting Council, the Securities and Exchange Commission (SEC), the IRS and other regulatory bodies establish accounting standards and requirements for accounting preparation and presentation.

According to the financial literature, accounting can be divided into three general categories [Tendera-Właszczuk 2002, 15-17]: 1) Financial accounting, which deals with the preparation of financial statements and the communication of financial information to external users such as creditors, government agencies, analysts, investors, bankers, etc. Financial statements, i.e. the income statement and balance sheet, indicate the financial situation of a company during a given period of time; 2) Management accounting, which deals with reporting financial information to internal users, such as management and employees, in order to shape the company's policies and daily operations. Management accounting is forward-looking and focuses on future activities to achieve business objectives; 3) Cost accounting – this is the part of management accounting for cost analysis. Cost accounting creates detailed cost records for various products, operations and functions. It is the process of determining and accumulating the cost of a specific product or activity.

Both accounting and financial management are similar economic and financial processes. The main differences between accounting and financial management [Gabrusewicz 2014, 15-21]: 1) Accounting is more about identifying, measuring, processing, classifying and recording financial transactions, while financial management is about managing finances and economic resources effectively and efficiently; 2) The key objective of accounting is to provide financial information using standard procedures and principles, while the objective of financial management is to maximize profits and maximize wealth; 3) Accounting communicates financial information to both internal and external users such as creditors, investors, analysts, management and regulatory bodies, while financial management is used internally by the management of the organization for planning and decision-making purposes; 4) Accounting has three broad categories – financial accounting,

management accounting and cost accounting, while financial management is a process involving financial planning and budgeting, financial reporting, accounting record keeping and financial control; 5) Accounting involves reporting past financial transactions in the form of financial statements, while financial management involves planning for the future through the analysis and interpretation of financial statements; 6) Accounting represents the financial situation of the Company, while financial management provides a holistic picture of the business activity and provides insight into future wealth generation; 7) In accounting, the valuation of a fund is based on a memorial principle, while the treatment of funds in financial management is based on cash flows; 8) The purpose of accounting is to collect and present data in a meaningful manner, while the CFO uses this data for the purpose of making financial decisions.

Both accounting and financial management play a key role in any organisation. Accounting is an essential input to the financial management function of any company. Good financial management is important for the effective use of an organisation's economic resources. Accounting is limited to reporting and summarising financial transactions for external and internal users, while financial management is about planning, directing, monitoring, organising and controlling an organisation's monetary resources to achieve a goal. Every person or company engages in some kind of business activity. All companies are engaged in business/financial activities. Accounting and financial management are related to the extent that accounting is an important input to financial decision-making. However, they differ in their treatment of funds and decision-making [Nowak 1996, 14-15].

6. ACCOUNTING AND ECONOMIC AND FINANCIAL ANALYSIS IN BUSINESS MANAGEMENT

Accounting is recognised as historically the oldest part of economic science, having originated with the first human communities. The phenomenon of modern accounting is that it is based on principles described as far back as the 15th century [Ziętowska 2014, 179-97]. The origins of accounting can be found in the theoretical concepts of the social sciences. On the other hand, within the framework of its functioning, accounting developed its own theory and methodology subsequently implemented into the practice of economic sciences in the discipline of finance. The concepts, views and theories developed in the accounting system were reflected in legal regulations, including the shape and principles of preparing financial statements. conceptual framework for the preparation of financial statements. Over the years, the accounting information process has been described, which proceeds in the following stages: 1) identification of data on events

and observable objects and their documentation, 2) transformation of data using accounting-specific processing methods and procedures, as well as the use of special recording devices, 3) presentation and communication of information in the form of reports.

Contemporary accounting is defined as a universal (it can be applied to different companies, e.g. of different sizes, from different industries) and flexible (it provides information with different levels of detail) information and control system that reflects the course and results of the company's activities [Jaklik and Micherda 1995, 10]. Accounting has three basic functions: a) informational (provides information for decision-making in the process of business management, source of information for external audiences), b) controlling (protects company assets from misappropriation and destruction, influences the rational use of company assets), c) analytical (interprets the numerical data provided) [Zaleska 2012, 13-14].

We can divide accounting into two basic components. Financial (external) accounting, which generates information about the economic activity of the company in the past period, mainly for external customers, includes: accounting, i.e. a system of recording business operations, based on appropriate methods, principles and rules, financial reporting, consisting of providing information mainly for the needs of external users in the scope and form specified by law and analysis of financial statements. Second component it's managerial (managerial – internal) accounting, aimed at providing information for internal needs, providing the basis for decisions concerning the future [Sojak 2012, 13-14].

Accounting policy is based on certain principles that allow the recipient of financial statements to understand how the resources and results of a company's activities are measured. M. Zaleska [Zaleska 2012, 14-18] lists the basic principles of modern accounting, which include: 1) the accrual basis – whereby revenue and expenses are recorded on an accrual basis, i.e. they are deemed to have been earned or incurred, respectively, when they occur rather than when the cash is received or spent; 2) the principle of matching revenues and expenses – costs incurred in achieving certain revenues are set against those revenues to determine the result of operations for the period; 3) the principle of prudence – stating that in determining the value of revenues and assets as well as costs and liabilities, one should be guided by prudence and take a pessimistic view, not overestimate revenues and assets, and not understate costs and liabilities; 4) the principle of continuity, according to which, in the course of a financial year, no changes should be made to the principles adopted; moreover, the balances of assets and liabilities shown in the books of account on the day they are closed should be entered in the same amount in the books of account opened for the next financial year; 5) the going concern principle, which assumes that

the activity of the enterprise in question is not limited in time, the enterprise has no intention or need to be liquidated or to materially reduce its volume of activity in the future; 6) the principles of regularity (1) and fair representation (2), the first is mainly implemented by the auditor examining the compliance of the accounting with the law, the second assumes that the company's accounts should give a faithful picture of the company's financial position.

The most important legal act regulating the principles of business accounting is the Act of 29 September 1994 on Accounting,[1] which defines the principles of accounting and the principles of providing bookkeeping services. The Act defines the scope of an entity's accounting, which includes: 1) the adopted accounting principles (policy); 2) keeping, on the basis of accounting evidence, books of account that record events in chronological and systematic order; 3) periodic determination or verification by means of stocktaking of the actual state of assets and liabilities; 4) valuation of assets and liabilities and determination of the financial result; 5) preparation of financial statements; 6) collecting and storing accounting evidence and other documentation provided for by law; 7) having the financial statements audited, filed with the competent court register, made available and published in the cases provided for by the Act [Dobija 1997, 14-15].

Accounting is the main and most important source of economic information on a company's economic activities. Regardless of how it is defined, its purpose is to represent economic reality accurately and to communicate these representations to external stakeholders. As an applied science, accounting has a practical purpose, i.e. the measurement of the flows and incremental value of the firm, made to facilitate management and investment decisions based on efficiency calculations [Sojak 2012, 15-19].

Business management is a continuous process of making and implementing diverse and sometimes contradictory decisions. One of the methods facilitating good decision-making is precisely financial analysis, which deals with the study and grade of a company's efficiency. The tool for measuring and describing economic and financial values is accounting theory, which explains the principles for measuring economic and financial values in relation to the business sector, and indirectly the results of these measurements are used to make economic decisions at the macro level.

The development of the management sciences has led to the emergence of a new field of knowledge known as controlling in addition to financial and management accounting, and covering planning, control and management. Controlling can be defined as a cross-functional management instrument, which is a result-oriented control process of a company, and realised

[1] Journal of Laws No. 121, item 591 as amended.

by planning, control, reporting and management, while accounting in the aspect of controlling is an instrument providing various decision-making levels with cross-sectional information, necessary for future-oriented company management. Accounting can be defined as a system, providing users of reports, with information about the economic activity of an entity. The data collected by the accounting system can be presented in the form of: internal reports to managers for planning purposes, control of day-to-day operations and day-to-day decision-making; internal reports to managers for strategic planning; and external financial reports to shareholders, creditors and other external stakeholders, as well as internally [Sawicki 2009, 13-14].

The preparation of financial statements applies certain principles that affect their content. In view of the wide range of audiences and comprehensive application of the financial statements, they should be prepared in accordance with six principles: the principle of completeness (periodisation), the principle of reliability (truthfulness, relevance), principle of verifiability, the balance sheet continuity principle, the principle of prudence and the principle of timeliness). M. Dobija divides the sources of benchmark values into: external – established by administrative and financial law and institutions that can do so by law, (e.g. official prices, depreciation rates, interest rates, tax rates, exchange rates) and internal – created in the company in order to effectively control the economics of the company – in particular, they relate to costs, (they relate to the internal organisation of activities in the company; they exist depending on the state of organisation in the company) [Dobija 1997, 17-19].

Economic, financial, comparative, comparative (identifying deviations of a measurement from a benchmark value) and causal analysis (identifying the factors causing the deviation and assigning an appropriate measure to that deviation) compares economic figures with benchmarks in order for managers to make decisions that modify the company's activities. Financial analysis and related financial reporting play a special role and are distinguished by, among other things, their public purpose of reporting and the range of restrictions to which they are subject. Financial analysis makes it possible to accurately measure a company's resources and also to make forecasts for the future. This is what the break-even point, NPV (Net Present Value) or net present value of an investment or money stream, IRR (Internal Rate of Return), PB (Payback Period), analysis of the impact of financial 'leverage' (i.e. the structure of equity to various types of debt) etc. serve to achieve. Within financial analysis, the most common distinctions are: comparative analysis of annual and multi-year data, data structure analysis, ratio analysis, analysis of selected economic and financial issues, cash flow analysis, analysis of changes in financial position (structure of assets and liabilities), break-even analysis.

CONCLUSIONS

Management accounting – what does it give in daily business. First of all, this method allows both to make informed decisions regarding current problems and to create long-term investment plans. In modern companies and institutions, it is used in strategic analysis and in the creation of a comprehensive strategy. There are several methods of managerial accounting. It is widely used, among other things, comparative analysis of the competitive position and management of activities. The first is to regularly process the costs and market position of competitors. The research is conducted on the basis of all possible information, both published and unpublished. This characteristic allows you to better understand the market and adapt your offer to the needs of consumers. Management of ABM activities, on the other hand, aims to reduce the costs generated by the business.

Managerial accounting can be successfully applied both in manufacturing plants and commercial and service outlets, as well as in educational institutions and medical facilities. What kind of managerial accounting can have tasks? Above all, it provides managers with information about the costs of services and products. In addition, it allows you to gain the knowledge necessary to plan, control and improve the functioning of the business.

Management accounting functions depend on the profile and nature of the company or institution being run. However, its main task, regardless of the type of activity, is to identify, present and interpret data that will be used for various purposes. First of all, to effectively create a development strategy, optimize the use of resources and protect assets. Managerial accounting allows you to plan and control current processes in the company. Proper implementation of this type of management also improves communication in terms of presenting the course of events and financial transactions.

Why do management accounting. First of all it is the guarantee of efficiency is the simplest answer to the question: management accounting – why is it worth it? As mentioned above, it allows to optimize communication within the company and improves the daily transmission of information. In addition, properly implemented allows for the introduction of a corrective procedure that will allow the appropriate results of the financial audit to be obtained. Moreover, it is a tool necessary for short-term planning using budgeting and creating long-term strategies. This model works for both small and medium-sized enterprises and large companies. Comprehensively supports the management of the company, at every stage and in all areas. At the same time, the tool can play the role of motivating and activating process participants through accounting education.

It is also used in the preparation of strategies related to environmental protection. The creation of an appropriate financial information system

allows for efficient environmental monitoring. With the use of appropriate tools, it is possible to efficiently control the use of natural resources and the life cycle of the product. Control is only one of the functions of managerial accounting, so this method of management covers a larger range of activities in the company than controlling. The latter is considered by many researchers only as a tool to create an efficient functioning of the management system, while management accounting allows to solve decision-making problems. At the same time, these models use the same tools, so in everyday life these names are used interchangeably and can mean the same thing. In turn, financial accounting is transmitted not only to internal but also to external authorities, so it must be prepared in accordance with the legally regulated standards defined by the National Accounting Standards. However, the accounting rules themselves remain the same for both types of accounting.

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ILLEGAL TRADE OF PHARMACEUTICALS IN POLAND – ETHICAL, LEGAL, SOCIAL, AND EDUCATIONAL IMPLICATIONS

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Abstract. This study addresses the issue of illegal pharmaceutical trade in Poland, focusing on its ethical, legal, and social dimensions. The article is divided into three parts. The first part outlines the structure of the healthcare system in Poland, the key regulatory institutions overseeing the pharmaceutical market, and the legislative solutions in this area. The second part describes the operations of organized criminal groups in Poland that engage in the pharmaceutical trade outside state control, generating increasing profits. The third part of the study highlights the social and educational aspects of illegal drug trafficking and the potential consequences of this activity on patients' health and lives. The conclusion emphasizes the need for legislative changes and enhanced public oversight of the pharmaceutical market in Poland.

Keywords: organized crime; security; ethics; law; drugs; counterfeiting; education and public awareness; mental health.

INTRODUCTION

The rapidly evolving global landscape introduces new and significant threats to the public domain, particularly within the sphere of health security in its broadest sense. The swift pace of these changes frequently demands the implementation of innovative strategies for both monitoring and detecting adverse phenomena, as well as criminal activities that undermine the state's economic and legal interests. In recent years, Poland's health security sector has witnessed an increasing dynamism and heightened activities of organized groups involved in what is broadly categorized as pharmaceutical crime. This crime type is relatively novel in Poland, yet it has systematically broadened the market for the illicit trade of pharmaceuticals. The

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issue primarily revolves around drug counterfeiting, theft, and the diversion of medications from the Polish market to other countries, where they are resold through legitimate entities. Profits from the illegal drug trade are extraordinarily high, with organized crime groups reaping millions of euros annually by exploiting legislative loopholes across various EU member states, particularly those in the 'new union.' Price discrepancies for medications and widespread counterfeiting, alongside the mass procurement of specialized drugs from countries like Poland, Hungary, the Czech Republic, and Slovakia, render their resale in markets such as Germany, the Netherlands, and France increasingly profitable. As a result, this market has become progressively enticing for both existing organized crime syndicates and newly emerging illicit networks that focus solely on this domain. Europe's response to combat these criminal activities commenced relatively late, as evidenced by data from multiple public institutions and law enforcement agencies. This delayed response can primarily be attributed to the exponential growth in online medication sales, the globalization of the pharmaceutical trade, and the escalating demand for pharmaceutical products.

1. HEALTH SECURITY MONITORING SYSTEM IN POLAND

"The health system is conceptualized as a cohesive entity, wherein various components are interconnected, collectively influencing human health in a meaningful and effective manner" [Kotuła and Nicpoń 2016].

The notion of health security pertains to the subjective sense of threat experienced by patients and their families when confronted with illness. According to Benedykt Bober, assessing such threats can be objectively approached by examining the state of a country's healthcare infrastructure, including public hospitals, diagnostic equipment, and other vital resources [Bober 2015, 38].

The healthcare system serves a unique societal mission, distinguished not only by legal imperatives but also by ethical considerations. Its responsibility encompasses the regulation of pharmaceutical distribution within the nation, along with cooperation with other state institutions and the European Union to identify and address abuses and unethical practices by medical entities. The system's organizational structure and management strategies are fundamental to its overall efficacy and adherence to ethical standards.

Post-war Poland's healthcare model was based on the Soviet "Siemaszko model," characterized by centralization and a strict hierarchical framework. The system was entirely state-financed, leaving no room for private healthcare initiatives, aligning with the communist state's vision of universal healthcare. The state held a monopoly over the provision of healthcare services, resulting in the exclusion of all medical facilities previously operated

by the Catholic Church, which had been instrumental in healthcare provision both before and during the war.

While this model underwent several adjustments during the People's Republic of Poland era, it was not until the late 1990s that substantial changes were implemented. A mandatory health insurance system was introduced, reducing the prominence of direct state funding. During the administrative reform of 1998, many management functions and ownership of public healthcare units were transferred away from the Ministry of Health (Polish: MZ), with some responsibilities delegated to local governments. Mandatory health insurance contributions, managed by the Social Insurance Institution (Polish: ZUS), were allocated to the Health Insurance Funds.

The financing structure positioned these Health Insurance Funds, through their regional branches, to purchase healthcare services for individuals covered by mandatory insurance. Contracts were established with specific healthcare institutions to deliver these services. Additionally, the concept of the family doctor was introduced, and ethical guidelines for healthcare were systematically codified across the sector. This marked a significant qualitative shift, embedding ethical considerations into the professional responsibilities of doctors, nurses, and pharmacists in a comprehensive manner.

The healthcare system in Poland encompasses several key entities, including [Shortell and Kałużny 2001, 25]: 1) Beneficiaries: Patients who seek or utilize healthcare services financed through public funds; 2) Health insurance institutions: These entities act as payers, with the National Health Fund (Polish: NFZ) serving as the primary institution; 3) Healthcare providers, which include: a) medical entities: Operating in various forms such as entrepreneurs, Independent Public Healthcare Entities (Polish: SPZOZ), budgetary units, research institutes, foundations, and associations. This category also encompasses medical, dental, nursing, and midwifery practices; b) pharmacies; c) other healthcare providers; 4) Supervisory and regulatory bodies, including: a) the State Sanitary Inspection; b) the State Pharmaceutical Inspection; c) the Patient Ombudsman; d) Provincial Governors, alongside their respective public health centers and provincial medical consultants across various specialties; e) the Ministry of Health, which not only establishes strategic directions for national health policy but also exercises oversight authority and includes national consultants for specific medical disciplines [Fal 2016].

The organization of Poland's healthcare system is primarily dictated by the following legal acts [Hryszkiewicz 2021, 132-34]: 1) The Constitution of the Republic of Poland, dated April 2, 1997; 2) The Act of April 28, 2011, on the healthcare information system; 3) The Act of August 27, 2004, on healthcare services financed from public funds; 4) The Act of April 15, 2011, on medical activity; 5) The Act of September 8, 2006, on state emergency medical services; 6) The Act of May 12, 2011, on the reimbursement

of medicines, special purpose foodstuffs, and medical devices; 7) The Pharmaceutical Law, dated September 6, 2001.

The Ministry of Health stands as the principal authority within Poland's healthcare system, tasked with the oversight and regulation of the National Health Fund (NFZ). It is also responsible for issuing regulations related to the reimbursement of medicines, medical devices, and specialized foodstuffs.

The second pivotal institution in the provision of healthcare services is the National Health Fund (NFZ). Endowed with legal personality, the NFZ operates in accordance with its statutes and relevant legislation,[1] comprising a central office and 16 regional branches.

The third vital component of the healthcare system is the Chief Pharmaceutical Inspectorate (Polish: GIF). Reporting directly to the Ministry of Health, it functions as a central governmental authority responsible for supervising and coordinating the tasks delegated to the State Pharmaceutical Inspection.

The fourth entity within this system is the Chief Sanitary Inspectorate (Polish: GIS), a central government office whose organizational structure is dictated by regulations issued by the health minister. Its core responsibilities include establishing the strategic direction of the State Sanitary Inspection's activities, as well as coordinating and overseeing its operations. Moreover, this institution initiates and supervises government actions designed to mitigate the adverse effects of health security-related incidents.

In addition to these bodies, several other organizations play a crucial role in drug regulation in Poland:

- The Supreme Chamber of Nurses and Midwives: its principal duties encompass overseeing the proper practice of nursing and midwifery, promoting and upholding ethical standards, and ensuring adherence to these principles. Furthermore, it establishes professional standards and qualification criteria for nurses and midwives, which are then approved by the minister responsible for health.
- The Supreme Medical Chamber: this organization supervises the medical profession in Poland, ensuring compliance with the highest standards of practice.
- The Supreme Pharmaceutical Chamber: its responsibilities include representing the pharmacist profession, safeguarding its professional interests, preserving the dignity and independence of the field, and overseeing the practice of pharmacy.

The structure of the healthcare system in Poland, particularly concerning drug regulation, has remained largely unchanged for many years. The Chief Pharmaceutical Inspectorate (Polish: GIF) serves as the primary

[1] Act of 27 August 2004 on Healthcare Services Financed from Public Funds, Journal of Laws No. 210, item 2135.

entity overseeing drug regulation on behalf of the Ministry of Health. Its fundamental mandate is to guarantee patient safety by supervising and controlling the production and distribution of medicinal products. Alongside the Provincial Pharmaceutical Inspectorates, it constitutes the State Pharmaceutical Inspection, tasked with monitoring the distribution of medical products, excluding those intended for veterinary use.[2]

However, as practice and limited police data suggest, this supervision is not without its shortcomings. The emergence of new methods for illicit drug distribution by organized criminal groups, who derive substantial profits from such activities, underscores these regulatory gaps.

2. ORGANIZED CRIME IN THE DRUG TRADE

The World Health Organization (WHO) defines a counterfeit drug as "a medicine that is deliberately and fraudulently mislabeled with respect to its identity and/or source. Such drugs may contain the correct ingredients, the wrong ingredients, an incorrect quantity of active ingredients, substantial impurities, or fake packaging" [Fijałek and Sarna 2009, 467-75].

This definition underscores the complexity and multidimensional nature of pharmaceutical crime, a term that encompasses offenses affecting the pharmaceutical sector, including the production of counterfeit drugs, their distribution, theft, and illicit trade. Particularly noteworthy within this domain are the acts of counterfeiting, smuggling, and the illegal sale of medications.

The global recognition of pharmaceutical crime as a significant threat emerged in the 1980s, prompting the first concerted, institutionalized efforts to combat this phenomenon at the international level. Major initiatives were subsequently undertaken by the World Health Organization, the Council of Europe, and, later, the European Union.

In contemporary times, pharmaceutical crime has become an entrenched element of global organized crime, posing a grave risk to public health. The black market for counterfeit drugs is now estimated to be worth approximately $200 billion annually. Counterfeit, illegal, and substandard [Wojewoda 2023, 534] medicines are traded on an enormous scale, with products manufactured in the gray market frequently containing unidentified substances that do not adhere to any established quality standards, nor are they tested in line with pharmaceutical production protocols. The composition of these counterfeit products often relies on low-quality materials or incorrect proportions of ingredients, and counterfeiters commonly use unauthorized and untraceable active substances in their production.

[2] See https://www.gov.pl/web/gif/zadania-pif [accessed: 18.06.2024].

The pharmaceutical market in Poland presents a highly attractive target for criminal groups, with an estimated annual value of 35 billion PLN. Of this, approximately 2 billion PLN worth of drugs are illegally exported from Poland and sold at significantly higher prices in countries such as Italy, Germany, France, Belgium, and the Netherlands. In October 2019, Polish police dismantled an international criminal network comprising 16 individuals involved in the illegal trade of pharmaceuticals within the European Union and Asia.[3] According to the National Prosecutor's Office, at least 15 million PLN worth of drugs had been smuggled out of Poland. These groups, in collaboration with legally operating healthcare entities, trafficked specialized medications from Poland to other countries, where they were resold at much higher prices. This operation, launched by Polish police in 2018, was part of the largest investigation to date into the so-called "drug mafia" in Poland. Notably, to this day, no one in Poland has been directly held criminally liable for the illegal drug trade, as indicated by the absence of law enforcement statistical data in this area. The illegal trade was primarily orchestrated by two criminal groups based in Warsaw and Gdansk.[4] The October 2019 arrests in these cities exposed the scale and methods of these organizations, which exploited loopholes in pharmaceutical law to purchase large quantities of medications from the Polish market. Their operations utilized the "reverse distribution chain" method, whereby pharmaceutical wholesalers acquired large stocks of drugs from pharmacies and subsequently resold them abroad at much higher prices. Private healthcare entities, often only nominally operational, were used to receive specialized medications from pharmacies, which were then funneled to foreign markets through wholesalers. Most of these drugs were illicitly exported to the Netherlands and the United Kingdom. This illegal trade was extensively documented by investigative journalists and aired on Polish television in a report titled "The Drug Business of a Former Prosecutor." The report uncovered the mechanisms behind illegal drug exports from Poland, revealing the involvement of a former prosecutor and an employee of the Chief Pharmaceutical Inspectorate. This is how organized criminal groups operate, whose activities are criminalized under Article 258(1) or (3) of the Polish Penal Code. This provision defines participation in, establishing, or directing such organized structures, namely a group or association, aimed at committing crimes, with the latter representing a higher organizational form within the criminal structure compared to a group. It also highlighted the flaws in the current legal framework governing pharmaceutical trade, which criminals have exploited. The scale of this phenomenon is believed to be far more extensive than initially suspected, with allegations suggesting

[3] Data from the National Prosecutor's Office: https://pk.gov.pl/ [accessed: 15.03.2021].

[4] Data from: www.Portal tvn24.pl [accessed: 14.06.2022].

that officials overseeing healthcare entities may have advised perpetrators, exploiting weaknesses in Polish law, particularly in the oversight of the drug trade. The economic and social repercussions of this illegal trade have been profound. The most conspicuous impact has been the shortage of specialized medications in pharmacies, primarily those life-saving treatments for cancer, diabetes, and epilepsy. The significant price disparities between Western Europe and Poland make this practice exceedingly profitable and, compared to other criminal activities, relatively low-risk. Over time, pharmaceutical crime in Poland has adopted characteristics similar to those observed internationally, particularly in Italy. Experts highlight that criminal groups engaged in drug trafficking often turn to pharmaceutical crime, exploiting the "insufficient" supervision of the drug trade in Poland. An analysis of data published by the Central Bureau of Investigation (Polish: CBŚP) reveals that in 2021 alone, nearly 6,000 instances of pharmaceutical crime were thwarted nationwide. Increasingly, criminal groups in Poland are shifting their operations from traditional drug trafficking to the pharmaceutical market, drawn by the high prices of certain medications in Western Europe. Furthermore, the overall value of the global pharmaceutical market, with the Polish market alone exceeding 40 billion PLN,[5] has influenced this trend.

Counterfeiting as another facet of the illegal drug trade. The high cost and limited availability of original, specialized drugs, particularly in the absence of robust governmental oversight, drive the demand not only for substitutes but also for counterfeit production. The distribution of these counterfeit medications primarily occurs via online platforms, as well as through pharmacies and wholesalers that frequently collaborate with criminal networks. The COVID-19 pandemic starkly demonstrated that virtually any product within the pharmaceutical market can be counterfeited. Estimates suggest that up to 70% of drugs available online are counterfeit. During the pandemic, medicines, protective masks, and hospital equipment became so sought after that criminal enterprises seized the opportunity to produce these items without the necessary permits or certifications. Amid skyrocketing demand, regulatory oversight and inspections proved insufficient. The pandemic saw pharmaceutical crime reach an unprecedented scale, affecting all continents. In December 2020, Interpol issued a global alert to law enforcement agencies across 194 countries, warning of the risk of theft and counterfeiting of COVID-19 vaccines. The monthly value of stolen or counterfeit drugs and other medical products was estimated to be several billion euros.[6] This situation has precipitated numerous adverse social consequences. The use of counterfeit products not only fails to enhance the treatment process or

[5] WHO Data: https://www.gov.pl/web/zdrowie/swiatowa-organizacja-zdrowia-who [accessed: 03.06.2023].

[6] Interpol Data: https://www.interpol.int/ [accessed: 21.04.2021].

pharmacotherapy but also poses a grave threat to patients' health and lives. Such products can lead to an increased incidence of disease and the development of drug resistance. More alarmingly, counterfeit drugs have been directly linked to fatalities among patients [Wojewoda 2023, 535]. Estimates suggest that approximately one million individuals die annually due to the consumption of counterfeit medications. Particularly concerning is the misuse of painkillers and psychotropic drugs, where fentanyl or its derivatives are illicitly substituted for the active ingredients, resulting in tens of thousands of deaths each year. In the United States alone, this issue claims over 70,000 lives annually. Opioid overdoses have thus become the leading cause of death for individuals aged 18 to 50 in the U.S. Additionally, counterfeit versions of Viagra, malaria treatments, epilepsy medications, and antipsychotic drugs for schizophrenia further exacerbate these life-threatening risks [ibid.].

Polish authorities have recently focused on illegal pharmaceutical activities conducted by groups with close ties to the hooligan scene. These criminal operations involved the production of anabolic steroids using substances imported from Singapore, as well as the manufacture of abortifacients and erectile dysfunction drugs. During these efforts, 35 individuals were arrested, and medicinal products and active substances valued at over 40 million PLN were seized. In 2023, officers from the Poznan branch of the Central Bureau of Investigation (CBŚP), under the supervision of the Wielkopolski Branch of the National Prosecutor's Office for Organized Crime and Corruption, dismantled an organized crime group engaged in the production and distribution of counterfeit medicinal products, primarily anabolic steroids. Their range of illicit products also included potency drugs. The illegal production sites were located in the provinces of Wielkopolska, Lubuskie, and Dolnoslaskie, with the counterfeit goods being sold through online platforms. Investigations revealed that this group had been operating for over a year, marking one of the most extensive operations against pharmaceutical crime in the CBŚP's history. In total, nine individuals were arrested and charged with distributing counterfeit drugs valued at a minimum of 2 million PLN.[7] The vast profits and relatively low production costs serve as the primary incentives for both individual criminals and organized groups capable of manufacturing medicinal products on an industrial scale. Unlike legally produced drugs, the illegal production of these substances occurs outside regulated factories, circumventing any quality, facility, or equipment standards that ensure consumer safety. Moreover, the perpetrators avoid expenses associated with clinical trials and permit acquisition. Consequently, they can cut costs by omitting the active ingredient, using it in reduced quantities, or substituting it with cheaper alternatives. For these criminals, the actual composition of

[7] See www.bsp.policja.pl/cbs/aktualnosci/239660,Jedna-z-najwiekszych-akcji-w-historii-CBSP-wymierzona-w-przestepczosc-farmaceuty.html [accessed: 05.06.2024].

these so-called "counterfeits" is of secondary importance; their primary focus is on replicating the appearance of the original drug as closely as possible. Those introducing these counterfeit drugs into circulation bear only the cost of acquiring them from wholesalers [Nosal, Rheims, and Woźniak 2017, 24]. It is estimated that an investment of $1,000 in the illegal drug trade can yield returns of at least double that amount. However, the disparity between costs and revenue can be even more substantial, potentially reaching up to 500 times the initial investment [Wojewoda 2023, 536].

The illegal trade in counterfeit drugs is driven by immense demand, high prices, and a certain societal "tolerance" for more affordable medications. Individuals unable to afford life-saving drugs through legal distribution channels often resort to cheaper alternatives available online, inadvertently purchasing counterfeit products. Given that Polish society, alongside Americans and the French, ranks among the highest in medication consumption – where drug prices are disproportionately steep relative to average wages – Poland represents an exceptionally vulnerable market for counterfeit pharmaceuticals. Current estimates indicate that Poles spend approximately 100 million PLN annually on these illicit products [ibid., 537].

This phenomenon is further exacerbated by the open borders within the European Union, the internationalization of trade, and the logistical complexities inherent in global supply chains. Drug distribution is a multi-step process involving various stages dispersed across the world and engaging numerous entities. The intricate nature of pharmaceutical crime renders detection exceedingly challenging, as counterfeit drugs often bear no visible differences from their authentic counterparts and are offered alongside legitimate products within the legal pharmaceutical market.

As of September 23, 2023, a new Article 112a was introduced to the Polish Penal Code, permitting the application of Polish criminal law, regardless of the perpetrator's nationality or the condition of dual criminality, in cases where a crime is committed abroad using an IT system, telecommunications network, or similar means, if the act results or could result in a violation of Poland's national interests, notably including internal security, of which public health is a key indicator [ibid.].

The threat of pharmaceutical crime in Poland continues to escalate, partly due to its strategic geographical location between former USSR states, which, along with certain Asian countries, are at the forefront of drug counterfeiting. Various sources indicate that counterfeit drugs constitute 10% to 20% of the pharmaceutical market in these regions. Consequently, Poland not only serves as a target market but also plays a pivotal role in the transit of counterfeit medications, as its eastern border represents the external boundary of the EU. Smuggling routes traverse Poland from east to west and vice versa, extending from places such as Panama and Nicaragua to Belarus

and Ukraine [ibid., 538]. The persistent growth of pharmaceutical crime is further facilitated by the lack of unified international regulations to combat this issue. In many countries, systems designed to tackle drug counterfeiting have been, and remain, significantly flawed, lacking the necessary tools to effectively combat sophisticated criminal organizations. Moreover, the absence of close cooperation among law enforcement agencies across different nations weakens efforts to curb counterfeit drug trafficking.

The World Health Organization (WHO) estimates that the most frequently counterfeited medications include antimalarials, antibiotics, painkillers, and cancer treatments. In developed countries, anabolic steroids, weight-loss supplements, contraceptives, psychotropic drugs, erectile dysfunction medications, as well as specialized, high-cost medicines, are commonly subject to counterfeiting.[8]

Another form of criminal activity undertaken by organized groups involves the theft of pharmaceuticals from manufacturers, wholesalers, transport vehicles, clinics, and even hospitals. The theft of large drug shipments within the European pharmaceutical distribution chain has now been identified by pharmaceutical companies as a primary source of financial loss, surpassed only by counterfeiting. These thefts encompass both armed robberies and cargo stolen from trailers at unsecured parking facilities. Within the EMEA region (Europe, Middle East, and Africa), 75% of all pharmaceutical thefts occur during road transportation. Notably, Romanian groups have specialized in stealing entire trucks. The regions most vulnerable to such thefts include southern Italy, Germany, Russia, the United Kingdom, France, Romania, Ukraine, and Greece.

A report by FreightWatch International on pharmaceutical cargo theft in Europe (2015) indicated that in 2014, pharmaceutical thefts constituted 9% of all registered cargo theft cases in Italy [Hryszkiewicz 2021, 137-38].

3. THE SOCIAL AND EDUCATIONAL ASPECTS OF THE ILLEGAL DRUG TRADE: THE IMPACT OF LACK OF EDUCATION ON PATIENT HEALTH OUTCOMES

One of the fundamental human needs is the need for security, which must be met to pursue other goals [Wulff 1999, 509-12]. Among the aspects comprising this sense of security is undoubtedly health security. It serves as a crucial foundation for action. When an individual's health is threatened, all other needs take a back seat. A person experiencing a health crisis is often willing to take any action to safeguard their well-being and win the race against illness. While the struggle for life and the use of all available market

[8] WHO Data: https://www.gov.pl/web/zdrowie/swiatowa-organizacja-zdrowia-who [accessed: 03.06.2023].

options can be understood, the consumption of medications of unknown origin and composition, merely to alter one's appearance or improve one's mood, is highly irresponsible and reflects a lack of knowledge.

In today's borderless world, with the existence of virtual spaces and online shopping, acquiring goods and medications from other, often distant countries is not surprising. Unfortunately, consumers are frequently unable to verify the origin and properties of a given product.

An additional factor that has legitimized large-scale online purchases was the COVID-19 pandemic, which, as mentioned in the article, led to the counterfeiting of nearly everything, including medicines. The high demand and shortage of drugs created an opportunity for criminals to exploit. Sadly, the availability of all things on the internet does not coincide with adequate education and public awareness regarding the associated risks. Consumers often do not consider, and sometimes lack the necessary knowledge to avoid, the potential consequences of ingesting purchased medications.

Many individuals resort to buying medications that are difficult to obtain through prescriptions without having the appropriate medical conditions, such as large quantities of painkillers, weight-loss drugs, psychotropics, or potency enhancers. Without fully understanding their effects or consequences, and merely succumbing to the "enticement" of sellers, they risk severe health issues or even death [Samiczak 2024].

This situation urgently calls for actions in the field of education, as well as increased public awareness about the dangers of consuming medications of unknown origin.

Today's world pressures individuals to achieve quick results and spectacular transformations in the pursuit of perfection. We strive to be happy, beautiful, and free from problems such as low mood. Such expectations drive the demand for fast and dramatic results, serving as motivators behind the acquisition of medications of dubious origin. Therefore, health education, with particular emphasis on pharmaceutical education, should be firmly embedded in the educational landscape. Special attention must be given to young people, who, often limited by financial constraints, opt for products offered at low prices. Raising awareness of the consequences of irresponsible use of products from unknown sources is a critical issue that must be addressed.

CONCLUSION

Pharmaceutical crime currently ranks among the most formidable challenges confronting law enforcement agencies worldwide. The COVID-19 pandemic in 2020 exposed how the illicit trade in drugs and protective equipment can yield substantial profits. This challenging period in global

history also unveiled the shortcomings and vulnerabilities within the institutions responsible for overseeing healthcare security and the pharmaceutical market. It brought to light legislative gaps in the prosecution and prevention of pharmaceutical crime across EU countries, alongside the detrimental societal impacts stemming from the illegal drug trade. Today, reverse distribution chains, drug counterfeiting, medication smuggling, theft, and online sales constitute the most pressing challenges faced by law enforcement agencies on a global scale. Within this landscape of crime, Poland has emerged as a significant hub for the unregulated drug trade and a transit point for the so-called "drug mafias." Addressing this issue necessitates the implementation of new legal and structural measures to tighten the monitoring of the pharmaceutical market and to empower public agencies with effective tools to combat this form of crime.

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THE EDITORIAL DIRECTIVE OF NON-REPETITION OF REGULATIONS – SELECTED THEORETICAL AND PRACTICAL ISSUES ON THE EXAMPLE OF ARTICLE 5 OF THE CIVIL CODE AND ARTICLE 8 OF THE LABOUR CODE

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Abstract. The principles of legislative technique are directives that regulate the purposeful, rational and knowledge-based formulation of normative acts. Their primary purpose is to ensure the coherence and completeness of the system of law and the transparency of the texts of normative acts. Representatives of the literature on the subject, as a rule, unanimously emphasise that this objective is disturbed by unjustified repetitions. However, the practice of lawmaking shows that, on occasions, the legislator decides to shuffle repetitions in the texts of normative acts. Notable instances of such repetition are the provisions of Article 5 of the Civil Code and Article 8 of the Labor Code. The issues addressed in the article constitute interesting research problems due to the general prohibition of repetitions, resulting from the content of para. 4 of the Principles of Legislative Techniques.

Keywords: lawmaking; principles of legislative technique; directive on non-repetition of provisions; Civil Code; Labour Code.

INTRODUCTION

Paragraph 4 of the Regulation of the Prime Minister of 20 June 2002 on Principles of Legislative Techniques[1] introduces the directive of non-repeatability of provisions. Meanwhile, the legislator, who should meet the requirements of rational lawmaking, for some reason decides to use repetitions in the texts of normative acts. An example of such repetition is the wording of Article 8 of the Labour Code,[2] which is an exact repetition

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[1] Regulation of the Prime Minister of 20 June 2002 on Principles of Legislative Technique, Journal of Laws of 2016, item 283 [hereinafter: PLT].

[2] Act of 26 June 1964, the Labor Code, Journal of Laws of 2023, item 1465 as amended [hereinafter: LC]. Article 8 stipulates that "One may not make a use of one's right that would be contrary to the social and economic purpose of that right or the principles of social intercourse. Such an act or omission of the right holder shall not be considered an exercise

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of Article 5 of the Civil Code.[3] This constitutes an interesting research issue not only in view of para. 4(1) PLT, but also in view of Article 300 CC, which opens up a normative possibility to appropriately apply the provisions of the Civil Code to matters not regulated by the provisions of the labour law to the employment relationship, if they are not contrary to the principles of the labour law. It should be pointed out that *de lege lata* Article 5 CC and Article 8 LC is the only case of such repetition between the two codes. Both codes regulate two, completely different, spheres of social relations. The peculiarities of civil and labour relations and the axiological attitudes of these branches of law are different.

As a subsidiary matter, it should be pointed out that the issue is an interesting one also due to other threads, which, due to the scope of the publication, will not be analysed for the purposes of this article. These issues include the fact that the analysed provisions relate to the issue of abuse of rights and determine the limits within which it is permissible to exercise subjective rights (in civil law and labour law respectively), which have been determined by the principles of social co-existence and socio-economic purpose of the right. The principles of social co-existence and the socio-economic purpose of the right are general clauses, which by their nature are undefined. The construction of a general clause is one of the typical means of legislative technique, serving to make the drafted normative act, as well as the process of applying the law, more flexible.[4] Both the provisions of Article 5 CC and Article 8 LC are found in the essential (general) parts of the codification, which significantly extends their scope of application to

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of the right and shall not be protected."

[3] Act of 23 April 1964, the Civil Code, Journal of Laws of 2024, item 1061 [hereinafter: CC]. Article 5stipulates that "One may not make of his right a use that would be contrary to the social and economic purpose of that right or to the principles of social intercourse. Such an act or omission of the right holder shall not be considered an exercise of the right and shall not be protected."

[4] According to the author, the concept of a clause should be understood in two ways – legislative and decisional. In the first view, the general clause is an element of the process of lawmaking (or rather, lawmaking, which in the Polish legal order is the primary way of creating law). It is an undefined phrase contained in a legal provision, referring to gradings, values, extra-legal norms. The legislator formulates the criterion of the general clause in a general form, without specifying what is included in its content. In decision-making terms, the general clause is an element of the process of applying the law (the normative basis of the decision to apply the law). This is a construction included in the applicable legal provision, or more precisely, forming a part of this provision, which authorizes the entity applying the law to base a specific decision to apply the law on the extra-legal criterion indicated in the body of this provision. The role of the authority is to decode and determine the content of the clause, and incorporate it into decision-making processes. The content of the clause is supposed to reflect the gradations, values and norms that are generally accepted from the point of view of a given society or social group.

the remaining institutions of the Code (and the general clauses contained therein should be regarded as the so-called meta-clauses). Moreover, common to the provisions in question is the fact that the principles of social co-existence and social and economic purpose of law have been recycled into the Polish legal order from the Soviet legal order. During the People's Republic of Poland (PRL), the provisions in question constituted, together with the content of Article 4 CC and Article 7 LC[5] it was tool for the ideologisation and politicisation of the processes of law application. Despite the profound change in social axiology that took place after the collapse of the People's State, the Polish legislator did not decide to abandon clauses with a Soviet connotation. These clauses continue to function to this day in the new democratic legal order.

In view of the above, the basic research question posed in this paper is therefore whether the literal repetition in the Labour Code (Article 8 LC) of a provision of the Civil Code (Article 5 CC) is an unnecessary repetition or a deliberate and conscious legislative effort?

The research methods used in this thesis are adequate in relation to the research assumptions adopted. It is the formal-dogmatic method, the method of terminological and conceptual analysis and the method of analysis of justifications of court decisions.

1. LEGISLATIVE TECHNIQUE AND RULES

The Polish legal order belongs to the culture of established law. When using the term culture of law, the Author has in mind the meaning of this notion accepted in the literature on the subject, understood as „a set of features of legal orders, usually occurring on a relatively separate territory, but transcending the borders of individual states and the validity of their legal systems" [Korybski, Leszczyński, and Pieniążek 2005, 57]. The culture of statute law is distinguished from common law culture first and foremost by the fact that in this culture, the state is the primary law-making act [Maroń 2011, 121]. The result of the lawmaking process is a normative act, which is a set of legal rules in which patterns of behaviour are expressed, forming the content of legal norms. Lawmaking takes place in a strictly defined procedure and form, and this process is clearly separated from the process of its application in accordance with the principle *Iudicis est ius dicere, non dare* (It is the judge's job to judge, not to legislate). On the other hand, the basis

[5] The regulations expired on the basis of two amendments: the Act of 28 July 1990 on Amendments to the Civil Code (Journal of Laws No. 55, item 321) and the Act of 2 February 1996 on Amendments to the Labor Code and Amendments to Certain Laws (Journal of Laws No. 24, item 110).

for the recognition of the norms in question as binding is theoretical justification (the legal norm was formulated in accordance with the applicable procedure by a competent authority). An important role in the law-making process is played by the legislative technique, which includes issues of a substantive, editorial and technical nature concerning the correct elaboration and editing of the content of a normative act [Leszczyński 2003, 18; Korybski, Leszczyński, Sobczak, et al. 1993, 36].

It should be explained that legislative technique is an element of the rational lawmaking model. Based on the assumption of the rationality of the legislator's actions, various models of rational lawmaking have been constructed [Wronkowska 1982, 16; Wróblewski 1989, 45-66; Leszczyński 2003, 40]. In the model approach, the need for a legislative technique arises when the legislator chooses the legal means which, in its opinion, under specific conditions will best serve the achievement of its stated objectives. The means chosen by the legislator must be transformed into a form of legal regulation, in the form of a legal rule, a set of legal rules or a normative act. Weaknesses or mistakes in the formulation of normative regulations may render the objectives pursued by the legislator impossible, even depriving them of their intended effectiveness. A poorly edited text may lead to interpretation problems in the process of applying the law. This is why it is so important for the legislator, when creating the law, to implement the directives arising from the principles of legislative technique. The issue of legislative technique is one of the most topical issues concerning legislation. A significant contribution to the development of legislative technique was made by representatives of legal theory, such as L. Petrażycki [Petrażycki 1959; Idem 1968], J. Wróblewski [Wróblewski 1989], S. Wronkowska [Wronkowska 1982] or M. Zieliński [Zieliński 1993].

In the history of Polish law, sets of directives on legislative technique were issued in the form of annexes to normative acts. The first such act was Circular of the Minister of Internal Affairs No. 99 of 2 May 1929 on the set of rules and forms of technical drafting of laws and regulations,[6] to which the annex was the "Collection of Principles and Forms of Legislative Technique". The next act was Order No. 55-63/4 of the Prime Minister of 13 May 1939, which was published in the form of the book publication "Principles of legislative technique."[7] The third act is Ordinance No. 238 of the Prime Minister of 9 December 1961 on "Principles of Legislative Techniques," which, like the previous principles, was published in book

[6] Interpretive Note of the Minister of the Interior No. 99 (OL. 2048/2) of 2 May 1929 on a set of rules and forms for the technical drafting of laws and regulations, Official Gazette of the Ministry of the Interior No. 7, item 147.

[7] Principles of Legislative Technique (applicable to the legislative work of the government according to the Order of the Prime Minister of 13 May 1939, No. 55-63/4, Warszawa 1939).

form.[8] Another collection was the resolution of the Council of Ministers on the principles of legislative technique, which was published in the official ministry journal.[9] This act was an internal act which, after the entry into force of the 1997 Constitution of the Republic of Poland, was in force without legal foundation.[10] It was also the first act referred to by the Constitutional Court and the ordinary courts. The normative acts cited above were binding only on the Council of Ministers and the bodies subordinate to it. The currently binding 'principles of legislative technique' are addressed to all bodies authorised to create legal regulations and should be observed at the stage of drafting and editing normative acts.

De lege lata, the principles of correct drafting of normative acts are the subject of normative regulation of the principles of legislative technique, which constitute an annex to the Regulation of the Prime Minister of 20 June 2002 on "Principles of Legislative Technique." The Annex to the Regulation is the fifth official set of legislative technique directives in the Polish legal system. The principles of the legislative technique have been, on the basis of the statutory authorisation set forth in Article 14, paragraph 4, item 1 of the Act of 8 August 1996 on the Council of Ministers.[11] They regulate issues concerning the drafting and editing of draft laws, draft executive acts (regulations), draft normative acts of an internal nature (resolutions and orders), draft acts of local law and typical measures of legislative technique. To date, the Principles of Legislative Technique have been amended once, i.e. by the Ordinance of the Prime Minister of 5 November 2015 amending the Ordinance on "Principles of Legislative Technique."[12]

They have been defined in the literature as "directives governing the deliberate, rational, knowledge-based formulation of normative acts" [Wierczyński 2010, 16]. Attention is drawn to their praxeological [ibid., 25], technical [Wronkowska 1990, 7] and intentional character [Gromski 2007, 4-5, Wronkowska-Jaśkiewicz 2004, 15]. The legal definition of the Principles of Legislative Techniques has been standardised in Article 14(5) of the Acts on the council of ministers. According to this definition, the Principles are "elements of the methodology of preparation and the manner of editing drafts

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8 Principles of Legislative Technique, Warszawa 1962.

9 Resolution No. 147 of the Council of Ministers of 5 November 1991 on principles of legislative technique, "Monitor Polski" of 16 December 1991, No. 44, item 310.

10 This resolution ceased to be in force by virtue of Article 75(1) of the Act of 22 December 2000, amending certain statutory authorizations to issue normative acts and amending certain acts (Journal of Laws No. 120, item 1268). The resolution brought Polish legislation into line with the requirements of the 1997 Constitution of the Republic of Poland.

11 Act of 8 August 1996 on the Council of Ministers, Journal of Laws of 2024, item 1050 [hereinafter: CM].

12 Ordinance of the Prime Minister of 5 November 2015, amending the Ordinance on "Principles of Legislative Technique" (Journal of Laws, item 1812).

of laws and regulations and other normative legal acts, as well as the conditions to which the justifications of drafts of normative legal acts should correspond, as well as the rules of conducting amendments to the system of law" (Article 14(5) CM). Their application should "ensure, in particular, the coherence and completeness of the legal system and the clarity of the normative texts of legal acts, taking into account the acquis of legal science and the experience of practice" (Article 14(5) CM). Given the literal formulation of this provision, it should be noted that the purpose of the principles of legislative technique is to ensure the coherence and completeness of the legal system and the clarity of the texts of normative acts.

While the representatives of the subject matter agree on the technical character of directives resulting from the Principles of Legislative Techniques, doubts are expressed as to their normative character [Wierczyński 2010, 25]. S. Wronkowska indicates that they are only "a collection of rules indicating how to correctly construct normative acts" and not "a set of rules for validly performing acts of lawmaking" [Wronkowska-Jaśkiewicz 2004, 11]. A similar view was expressed by the Supreme Administrative Court in its decision of 25 September 2018,[13] on the issue of principles of legislative technique in the context of assessing the validity of the law in force. The Supreme Administrative Court pointed out that the principles of legislative technique "[…] are a set of directives addressed to the legislator (or more precisely to the legislators) indicating how to correctly express legal norms in legal provisions and how to group them in normative acts [...]."[14] In this ruling, the Supreme Administrative Court determined that the Principles could not be used to assess the legitimacy of the law in force, basing itself, at the same time, on another well-established line of jurisprudence, according to which "a breach of the legislative principles set out in the annex to the regulation does not constitute grounds for declaring a normative act invalid."[15]

In the author's opinion, the problem of sanctions for violation of the Principles of Legislative Techniques is properly raised in the literature and case law. In fact, neither the Act on the Council of Ministers, nor the Principles of Legislative Techniques, nor any other normative act in force *de lege lata* in the Polish legal system, provide for the possibility to declare a normative act invalid on the grounds that the legislator misapplied the directives arising from the Principles of Legislative Techniques. One has to agree with G. Wierczyński, who notes that they are "not classical

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[13] Judgment of the Supreme Administrative Court of 25 September 2018, ref. no. I OSK 127/18, Lex no. 2565952.

[14] Ibid.

[15] See: judgment of the Supreme Administrative Court of 22 March 2012, ref. no. II OSK 22/12, Lex no. 1145573, and judgment of the Supreme Administrative Court of 18 October 2017, ref. no. II OSK 2705/16, Lex no. 2406421.

directives of a normative nature and even establishing them in the form of a normative act does not change this" [Wierczyński 2010, 25]. They are largely norms of an instructive nature.

2. EDITORIAL DIRECTIVE TO AVOID PROVISIONS

Paragraph 4 PLT introduces the directive of a general prohibition of repetition. This principle is divided into several specific directives.[16] For the purposes of this article, it seems appropriate to focus consideration only on para. 4(1) PLT, which provides that a statute may not repeat provisions contained in other statutes.

It should be explained that repetitions contained in a statute may have the character of external repetitions (in different statutes) and the character of internal repetitions (within the same statute). The prohibition of internal repetitions is provided for in para. 21 and 23 PLT.

It is commonly indicated in the literature that the repetition of a provision is "the exact repetition of the same content" [Wronkowska and Zieliński 2004, 32-33]. Repetition, on the other hand, is not "the inclusion of almost the same content but where, in a manner affecting that content, one or more words or punctuation marks are changed, added or omitted" [ibid.]. G. Wierczynski postulates that the legislator "must avoid unnecessary repetitions, otherwise the bodies applying the law will try by way of interpretation to give these repetitions a new normative meaning, different from the meaning of the provision being repeated, and legal transactions will find provisions expressing not only what the legislator intended" [Wierczyński 2010, 67]. According to this author, a different interpretation of repetition by the authorities applying the law may lead to a provision repeating another provision being regarded as an unnecessary statutory *superfluum* [ibid.].

S. Wronkowska and M. Zieliński, on the other hand, consider that repetitions are justified only in such normative acts as statutes or regulations. According to the authors, these acts are the primary source of information for certain circles of the public and, therefore, it is justified to strive "to make the information as complete as possible, which may require repetition of the provisions of the act" [Wronkowska and Zieliński 2004, 34].

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[16] Para. 4 PLT reads as follows: "1. A law shall not repeat provisions contained in other laws. (2) A law shall also not repeat provisions of international agreements ratified by the Republic of Poland and directly applicable provisions of normative acts established by international organizations or international bodies. (3) A law may refer to the provisions of the same or another law and to the provisions referred to in paragraph (2); it shall not refer to the provisions of other normative acts. (4) A law may not contain provisions prescribing the application of other normative acts, including the agreements and acts referred to in paragraph (2)."

In the context of the above-mentioned considerations, attention should be drawn to the innovative research conducted by M. Suska on a group of legislators, which showed that exact repetition can, in certain situations, increase the communicability of a law [Suska 2023, 188]. More precisely, the results of his research indicate that deviations from the directive to avoid repetition in practice meet with approval. Respondents to the above-mentioned author's research advocate that repetition, especially external repetition, is defended by the desire to create a comprehensive law providing the addressees with the fullest possible information about the applicable legal norms [ibid.]. Furthermore, respondents to the above-mentioned author's research also point to "the need to make the regulation make logical sense", "to improve its communicability", or that it would be "difficult for the addressee to know that it is necessary to refer to yet another act" [ibid.]. Examples of this are the following statements "Indeed, with Statutory Acts, in order to better assemble the act, [...] the provisions of the Act are repeated" or "Generally it is not allowed to repeat the provisions of the Act, but sometimes it is worth doing so" [ibid.].

In view of the above, it should be stated that in fact the use of unnecessary repetitions by the legislator may give rise to the risk of giving them a different normative meaning. In a model approach, the legislator, wishing to avoid the accusation of incoherence, incompleteness, illegibility or, finally, vagueness of legal provisions, should avoid using repetitions. On the other hand, on the other hand, repetitions may, in certain situations, increase the communicability of the law, in particular given that their addressee is the ordinary citizen.

3. CIVIL CODE VERSUS LABOUR CODE

Returning to the issue of repetition that occurs between Article 5 LC and Article 8 CC, it must be emphasised that both codifications – the Civil Code and the Labour Code – regulate two, completely different, spheres of social relations. The peculiarities of civil and labour relations and the axiological attitudes of these branches of law are different.

The branch of civil law is undeniably the broadest branch in the legal system. According to the pandect systematics, its division into: general part, property law, obligations, family law, inheritance law is accepted. Civil law, in doctrinal terms, can be defined as a branch of law that encompasses a set of rules regulating property and non-property relations between autonomous subjects on the basis of their equivalence [Safjan 2007, 30].

The Civil Code regulates civil law relations, i.e. the creation, content, cessation and protection of subjective rights and civil obligations to which all

subjects of civil law are entitled. A party to a civil relation may be any natural person and a legal person, equipped with legal capacity and, in general, with the capacity to perform legal acts (unless it follows from the wording of the provisions that they apply only and exclusively to a certain group of subjects). As a general rule, each of these entities may act as a person entitled or obliged under a civil law relationship governed by the law of property, contract law or the law of succession.

Civil law relationships are, as a rule, of a pecuniary nature, but may also be of a non-pecuniary nature. The recognition of a social relationship as a civil law relationship results in the application of civil law, its interpretation and fundamental principles to that relationship. The guiding principle of civil law is the principle of party autonomy and equality of parties.

The axiological foundations of civil law are the basic principles of this branch of law. A. Wolter, I. Ignatowicz, K. Stefaniuk distinguish among the principles of civil law the following: the principle of protection of a human being, the principle of equality of subjects before the law, the principle of subjective rights, the principle of autonomy of will of the parties, the principle of protection of good faith, the principle of mitigating the strictness of legal regulations, the principle of equal protection of each property, the principle of civil liability for obligations, the principle of liability for damage, the principle of full protection of family, the principle of inheritance, the principle of civil law protection of rights on intangible goods, the principle of protection of civil rights by independent courts [Wolter, Ignatowicz, and Stefaniuk 2020, 33-34].

Labour law, on the other hand, in doctrinal terms, is a distinct branch of law encompassing all the legal norms regulating the employment relationship and other social relations closely related to the employment relationship [Liszcz 2024, 17]. In addition, the Labour Code uses a normative definition according to which "labour law is the provisions of the Labour Code and other laws and regulations defining the rights and obligations of employees and employers, as well as the provisions of collective bargaining agreements and other collective agreements based on the law, regulations and statutes defining the rights and obligations of the parties to the employment relationship" (Article 9 LC).

The characteristic elements of the employment relationship are: voluntariness, personal provision of work, payment for work performed, subordination of the employee, obligation to act diligently, risk of the employing entity.

The freedom to establish the employment relationship, the choice of employer and employee and the content of the employment contract are also guaranteed by the labour legislation, but these principles operate in a completely different normative dimension. It must be stated that the principle of autonomy and equality of the parties to a certain extent only applies until

the employment relationship is established. An employment relationship is a social relationship between an employee and an employer. An employee can only be a natural person.

The normative shape of the employment relationship, as well as of labour law as a whole, is designed to protect the broadly understood welfare of the employee, the welfare of the employer, as well as the common good. The content of the legal relationship is influenced by the protection of the employee as the weaker party to the employment relationship, the broadly protective aspect of labour law, the socio-political aspect (labour law as an instrument of state policy), the special characteristics of labour law as a hybrid branch of law (combining elements of civil law and administrative law [Koman 2020, 841-53]. The purpose of labour law is to protect the professional and social interests of employees, the financial interests of the employer, the welfare of the employer and to guarantee the proper course of work. Labour law performs specific functions, which include a protective, organising, irenic and distributive function [Baran 2022, 45].

CONCLUSIONS

It should be concluded that the repetition occurring between Article 5 CC and Article 8 LC is a justified and intended legislative action. This repetition makes it possible to give a different normative meaning to equal general clauses, setting the limits of abuse of rights in the process of judicial application of the law. Normative acts such as the Civil Code and the Labour Code are extensive in nature. The broad normative approach of these acts determines the necessity of repetition, so that in the practice of law application there are no doubts as to the scope and manner of application of this construction.

Despite the construction of Article 300 LC, the repetition of Article 8 LC is justified due to the fact that this provision is significant for the entire labour law system. It should be stated that the repetition of a *stricti iuris* provision, which specifically regulates a pattern of behaviour for the addressees of the provision, is different from the repetition of a provision which is, like Article 8 LC, a vehicle of a general clause.

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THE PARTICIPATION OF RESIDENTS OF A LOCAL GOVERNMENT UNIT IN THE DEBATE ON THE REPORT ON THE CONDITION OF THEIR LGU AS A MEASURE OF CITIZEN CONTROL

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Abstract. Legal measures introduced by the legislator in 2018 to self-government organizational acts established the institution of the report on the condition of a local government unit, the related debate and the institution of a vote of confidence. These regulations were intended to improve participation of residents of local government units in the process of controlling and functioning of local and regional authorities. This goal was pursued through, inter alia, ensuring that members of a self-governing community may participate in the debate on the report on the condition of their LGU. They were thus included in the process of controlling the activity of the executive authority and became active participants in the public debate. By getting involved in the debate and presenting their position, they gain a possibility of having an impact on the opinion of councillors, which is expressed in resolutions on granting the vote of confidence to the executive authority. The aim of this study is to analyse these legal measures that establish, in particular, the right of residents of a local government unit to participate in the debate on the report on the condition of their unit. On this basis, this study will try to establish to what degree the guaranteed possibility for members of a self-governing community to take part in the debate on the report allows residents to truly execute citizen control.

Keywords: citizen control; report on the condition of a commune; debate on the report; vote of confidence.

INTRODUCTION

By the Act of 11 January 2018 on amending certain acts to increase citizen participation in the process of electing, operation and reviewing certain public authorities,[1] the legislator introduced to self-government organizational acts[2] legal measures that established the institution of the report on

[1] Act of 11 January 2018 on amending certain acts in order to increase citizens' participation in the process of selecting, functioning and inspecting certain public authorities, Journal of Laws item 130.

[2] Act of 8 March 1990, the Commune Self-Government Law, Journal of Laws of 2024, item 609 as amended [hereinafter: CSGL], Article 28aa; act of 5 June 1998, the Poviat Self-Government Law,

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the condition of the commune, poviat and voivodship, hereinafter referred to as report. By doing so, the legislator provided for a related control right for the decision-making and control authority and the correlated obligations for the executive authority, the effect of which involves a resolution on granting or denying the vote of confidence to the executive authority. This resolution may only be adopted after the report is submitted and then examined in a debate. The legislator guaranteed councillors and members of local and regional communities participation in this debate. By allowing residents of communes, poviats and voivodships to voice their opinions during the examination of the report, they were included in the control process. During the debate, information about the real condition of the self-governing community is presented and may be then juxtaposed with the postulated condition. On such basis and also on the basis of information obtained in the examination of the report, residents may then submit requests, postulates and demands at competent public administration bodies in their own interest and in the interest of other members of the community. Moreover, by being involved in the debate and by expressing their opinion, they may influence the views of councillors who represent those voices in their voting on the resolution on granting the vote of confidence to the executive authority.

The aim of this study is to analyse legal measures that establish to institution of the report and the related debate. It places special focus on regulations that constitute the right of residents of local government units to participate in this debate. On this basis, this study will try to establish to what degree the statutorily guaranteed possibility to take part in the debate on the report allows residents to truly execute citizen control.

1. CITIZEN CONTROL

The discussion on citizen control must first start with terminological aspects because literature refers to it also as social control and these terms are used interchangeably [Leoński 2004, 239]. At the same time, legal scholars and commentators emphasize that the terminological difference between the terms "citizen control" and "social control" is not down to significant substantive reasons. However, the term "citizen control" better reflects the idea of this control which involves allowing citizens to do checks on public administration and then to influence its functioning. Moreover, current organizational determinants, the implementation of the idea of civil society, as well as a strive for normative strengthening of the basis of participation of individuals in planning and implementing public tasks seem to justify the

Journal of Laws of 2024 item 107 [hereinafter: PSGL], Article 30a; act of 5 June 1998, the Voivodship Self-Government Law, Journal of Laws of 2024, item 566 [hereinafter: VSGL], Article 34a.

need to use the term citizen control [Jagielski 2005, 47]. On the other hand, such a definition of control does not accommodate groups of persons that carry out social control, social organizations or the public opinion [ibid.].

Given that the subject matter of this study focuses on control carried out by residents of a local government unit, it needs to be explained that control performed by members of a self-governing community may, without a doubt, be called citizen control. This does not change the fact that a self-governing community comprises all residents of the local government unit, that is Polish citizens, foreigners and stateless persons alike, who together form the control entity. In order to classify this control and to use adequate terminology to specify it, it is crucial to situate the control entity against local administration structures and to determine how this control proceeds, rather than to establish the legal relationship between members of self-governing communities and the state that determines specific legal effects [Banaszak 2004, 435].

Broadly understood citizen control covers all entitlements, actual and specified by law, afforded to an individual, a group of persons or associations of persons to observe the activity of the public administration apparatus and its individual links and to express judgements, opinions and postulates intended to signal irregularities, errors or shortcomings in this activity and also to eliminate then effectively, often in a binding manner. Such an approach to control exposes its personal side by specifying the control entity [Jagielski 1999, 156-57].

It needs to be noted that legal scholars and commentators have expressed a view supporting the broadest possible catalogue of actors entitled to exercise citizen control. It covers not only individuals and their groups, but also bodies of local government units, their subsidiary bodies and social organizations as part of their organizational and social functions [Boć 2003, 422-23]. However, this view has not been accepted by some representatives of the academia who emphasize that qualifying bodies of local government units to the category of entities that carry out social control of public administration is only justified if social control is understood very broadly, relying on the social character of the control entity. It is also emphasized that these bodies themselves are subject to the same control executed by residents, their groups, specific circles or non-governmental organizations [Stahl 2011, 692-93]. Moreover, classifying bodies that have a representative nature to social control entities would strike at the essence of this control that assumes attribution of control functions to an individual acting on their own, to a group or to a social organization [Jagielski 2005, 45].

On the other hand, establishing the material side of the control is more difficult since there are no norms that expressly identify areas that are subject to this control or that exclude certain areas of administration from it [Wacinkiewicz 2007, 161]. Legal scholars and commentators emphasize that citizen control is to be control aimed at assessing all possible forms of

administrative activity and also entire series of activities. The subject of this control may involve not only examination of compliance of administrative activity with norms that from the formal point of view allow for this control to be taken up and also examination of compliance of administrative activity with task-based norms or norms specifying the substance of individuals' rights [Filipek 2001, 267]. The material scope of this control approached broadly may in practice mean difficulties in identifying it among other forms of active citizenship [Leoński 2004, 240].

Its features may be a determinant that helps to identify it out of other forms of social engagement. What is important for it is not the element of competence, but an assessment whether actions of administration are in line with social needs or whether administration satisfies citizens' needs and pursues their interests. This feature means that social control is treated as a manifestation of democratism which is to serve implementation of interest of broadest possible social circles, to sensitize the administrative apparatus to these interests and to strive for public administration bodies to serve social goals [Idem 2000, 129]. Citizens' or social perspective from which public administration is evaluated needs to be recognized not only as an attribute of social control but also as its special valour, unattainable in other types of control. This perspective allows assessment of administration from the point of view of compliance of its actions with general, not individual, needs and expectations [Jaworska-Dębska 2009, 514].

2. REPORT ON THE CONDITION OF A LOCAL GOVERNMENT UNIT

The requirement of drafting and presenting yearly reports on the condition of a local government unit introduced to self-government organizational laws established a crucial obligation for their executive authorities and additional control powers to their councillors and residents. Along the adoption of new legal measures, next to the existing institution of granting or denying budget discharge to the executive authority, the decision-making body was obliged to first adopt a resolution on granting or denying the vote of confidence to this authority based on the presented report on the condition of a given local government unit.

Pursuant to the legal measures introduced, the executive authority of a local government unit was obliged to present to the decision-making and control authority a report on the condition of a given unit, every year, before 31 May. The legislator did not specify the form of this report, neither did it identify all areas of activity of the executive authority that must be presented in the report. The legislator defined the subject of the report in very general terms, providing that is should include a summary of the

activity of the executive authority in the previous year. It then concretized it by presenting examples of information that should be included in the report. These are details on the implementation of policies, programmes and strategies, on resolutions of the commune council and on participatory budgeting. The literature points out that information included in the report should: pertain to the activities of the executive authority that serve the implementation of general and detailed goals (usually set by the decision-making body), by specified means, in specified fields of life, within the activity of a given local government unit; cover information about enforcement of resolutions of the decision-making body that concern both the year reported on and beyond; include information about the implementation of resolutions that concern only the year reported on [Witalec 2019, 11]. The legislator's formulation of an example catalogue of information included in the report makes it very likely that the details presented in it will be very diverse. Scholars signal that a pragmatic approach to executive authorities of local government units means that the reports will emphasize actions that are approved of while those that are unfavourable for these authorities will be left out [Dolnicki 2020a]. It needs to be emphasized that the legislator allowed the decision-making and control authority to specify by way of a resolution detailed requirements for the report which will restrict to a certain degree the freedom of the executive authority in the selection of information made public in the report.

When it comes to procedural aspects of the institution of the report on the condition of a local government unit, it needs to be pointed out that presentation of the report and its examination proceeds in consideration of the order and conditions determined by statutes. The legislator formulated a requirement for the report to be examined by the decision-making and control authority in a session at which this authority adopts a resolution on granting or denying the budget discharge to the executive authority. The report is first examined and then debated on. The debate is attended by councillors, while residents may take part in it provided they meet normatively set requirements. The next stage of proceedings at a session of a decision-making and control authority, directly after the closing of the debate on the report, is voting on granting the vote of confidence to the executive authority. The competence of the decision-making and control activity to examine the report and to adopt a resolution on granting or denying the vote of confidence cannot be implemented freely. There is a requirement that certain procedures specified by law must be observed and that the results of the debate on the report must be taken into consideration.[3] Also, all information obtained from the report and from the debate should become

[3] Judgement of the Voivodship Administrative Court of 9 March 2021, ref. no. II SA/Bk 855/20, Lex no. 3149219.

a legal basis for councillors to formulate an evaluation of the executive authority, which is to be expressed by a resolution on the vote of confidence.[4]

Where a commune council fails to pass a resolution that grants the executive authority the vote of confidence, it equals to passing a resolution on denying the vote of confidence to the commune head (mayor, president of the city). Where the executive authority is denied the vote of confidence for two consecutive years, the commune council may pass a resolution on holding a referendum on dismissing the commune head. In a poviat or a voivodship self-government, where the poviat council or the voivodship assembly deny the vote of confidence to the board, this is equal to submitting a request to dismiss the board.

3. RESIDENTS OF A LOCAL GOVERNMENT UNIT AS PARTICIPANTS IN THE DEBATE ON THE REPORT ON THE CONDITION OF THIS LGU

The legislator instituted councillors and residents of a local government unit as participants of the debate on the report on the condition of this local government unit. The former have the right to vote that is not time-barred. The way the legislator worded this provision allows a conclusion that active participation of councillors in the debate, expressed by their voicing their opinions, is their obligation. This obligation may be also derived from the provisions of self-government organizational acts that specify the function of councillors in the decision-making and control authority and that oblige the voters' representatives to participate in the works of the council or voivodship assembly, commissions and other self-government institutions to which they were elected or designated.[5] Despite the councillors' obligation to participate in the debate, there are circumstances in which this duty will not be fulfilled. Failing to perform this obligation is not legally sanctioned. Given the above, should no councillors speak during the debate on the report, this must not be read as a violation of a statutory procedure. Therefore, a resolution of the council or the assembly on granting the vote of confidence cannot be declared unlawful for this reason.[6]

The second group of participants in the debate are residents of the local government unit reported on. A resident of a commune, poviat or

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[4] Judgement of the Voivodship Administrative Court of 25 October 2021, ref. no. II SA/Op 492/21, Lex no. 3274080.

[5] Article 24(1) CSGL, Article 21(2) PSGL, Article 23(3) VSGL

[6] Judgement of the Supreme Administrative Court of 7 July 2013, ref. no. I OSK/ 600/20, Lex no 3064738; judgement of the Supreme Administrative Court of 19 March 2014, ref. no. II SA/Po 619/21, Lex no 3321003.

voivodship means a natural person who has a place of residence in the territory of a given local government unit [Szewc 2012, 34]. The term "resident" is closely correlated with the term "place of residence/domicile", which was given a legal meaning in Article 25 of the Civil Code.[7] Pursuant to this article, the domicile [place of residence] of a natural person is the place where that person stays with the intention of residing permanently. The place of residence is determined by elements such as: actual staying in a given location (external element, called objective) and the intention of staying there permanently (internal element, called subjective). Therefore, a place of residence is determined by "convergence of the state of actual staying somewhere with the intention of such staying there" [Popiołek 1995, 83]. It needs to be mentioned that the legislator thus laid down categorically in Article 28 CC that a person may only have one place of residence. Consequently, one cannot be a resident of two or more communes. However, this does not rule out belonging to other self-governing communities: local (poviat) or regional (voivodship) [Augustyniak 2012,17-18].

The exercise by residents of a local government unit of their right to participate in the debate on the report on the condition of this unit together with the possibility of them voicing their opinions depends on meeting statutory conditions. First, they need to file with the chairperson of the decision-making and control authority a written request supported with signatures. The number of signatures depends on the number of residents of the commune. In a commune with up to 20,000 residents, the required number of signatures is 20, in a commune with more than 20,000 residents – at least 50. In a poviat, the written request must be supported with signatures of at least 150 persons if the poviat has up to 100,000 residents and with 300 signatures if the poviat has more than 100,000 residents. In turn, at the level of the voivodship self-government, the number of necessary signatures that support a request for active participation of a resident in the debate is as follows: in a voivodship with up to 2,000,000 residents – 500 signatures and in a voivodship with more than 2,000,000 residents – at least 1,000. It seems that obtaining the required number of signatures supporting a resident's request for participating in the debate might prove difficult to implement, especially in a poviat or voivodship. This difficulty, in turn, may prove a factor that weakens the activity of members of self-governing communities. The legal measure adopted may be, on top of that, a source of doubts about the person who gives the support. There is a question whether this should be a member of the same self-governing community to which the resident asking for support for their request belongs or whether it might also be a person temporarily staying in the territory of a given local government unit, for

[7] Act of 23 April 1964, the Civil Code, Journal of Laws of 2024, item 1061 [hereinafter: CC].

example a beneficiary enjoying services in a health care resort commune. It needs to be believed that due to the residents' interest in matters of self-governing communities and possibly them needing to be involved in them, this should be a resident of the same commune, poviat or voivodship. However, the legislator did not decide on this unequivocally like it was done, for example, when regulating the institution of a citizens' resolution-giving initiative, where it directly established residents of a local government unit as those bringing the initiative. Thus, another question springs to mind, about personal details that a supporter should disclose and about how to verify them. Legal scholars and commentators are right to ask whether persons who support a resident's request may give their support to one candidate only or to an unlimited number of residents who wish to take part in the debate. Since there are no normative limitations here, it seems that this support may be given to more than one candidate [Dolnicki 2020b, 26].

A member of a self-governing community interested in taking part in the debate must file their request with the head of the decision-making and control authority no later than on the day proceeding the date for which the session has been convened and on which the report on the condition of a given local government unit is to be presented. It is rightly believed in the literature that the legislator did not regulate the form of a possible refusal of the chairperson of the council or assembly to accept a request from the resident. Neither was the procedure in the event of refusal to accept such a request or its dismissal established. Assuming that refusal to accept a request for taking part in the debate on the report were to be done in writing, the person concerned could have the chance to appeal against such a decision. They could do so by filing a complaint to the administrative court, as allowed by Article 3(2)(4) of the Law on the procedure before administrative courts [Bokiej-Karciarz and Karciarz 2019, 72-73]. On the other hand, in the event of the chairperson of the council or the assembly's "tacit" dismissal of the request, the person interested in taking part in the debate would be able to file a complaint with the governor pursuant to Article 229(1) of the Code of Administrative Procedure.[8]

Pursuant to the will of the legislator, the number of residents who are allowed to take part in the debate is 15, unless the decision-making and control authority decide to increase this number. It needs to be believed that the legislator intended to set the maximum, not the very specific, number of residents allowed to take part in the debate. This number may increase by a resolution passed by the council or the assembly that specifies the number of residents of a given local government unit entitled to voice their opinions

[8] Act of 14 June 1960, the Code of Administrative Procedure, Journal of Laws of 2024, item 572.

during the debate on the report. It needs to be noticed that the decision-making and control authority was not authorised to limit this number. Therefore, it is worth considering whether this resolution should be passed every year before the debate and take into account the interest in active participation in it or whether it suffices if it is passed just once. The first variant ensures greater flexibility to the decision-making and control authority and thus, from the point of view of possibility of members of a self-governing community to exercise their right, is more favourable. However, it needs to be flagged up that legal writers express a view that also allows the possibility to establish the number of residents of a given local government unit entitled to take part in the debate in the statute [Bokiej-Karciarz and Karciarz 2019, 65].

In cases where specification of the number of debate participants is not treated as a matter that should be regulated in the statute and concretization of it is done in a separate resolution, the time of passing a given resolution is essential. For organizational reasons, it is desirable that the knowledge about the interest in participation in the debate and its predicted extent be available adequately in advance. On the one hand, this would allow suitable preparation of the session of the decision-making body during which the debate is to be held, and on the other this would allow residents to assess their chances of participation it the debate and to prepare the substance of their presentation. It needs to be emphasized that residents are given their turn by the chairman of the council or the assembly to voice their opinion during the debate in the order in which he has received their requests.

The time for speaking during the debate should, as a matter of fact, not be limited since participation of members of self-governing communities in it is a form of exercising their control rights. However, the legislator did not reserve it directly but did it by regulating the time allocated for councillors' speaking. Therefore, it might be assumed that if the law-maker's intention had been to remove time limitations on presentations of residents of local government units, it would have been expressed somehow. Moreover, the Supreme Administrative Court held in one of its judgements that the absence of time limitations for councillors' presentations during the debate is an exceptional solution. It stated that apart from this case, there is nothing prohibiting the commune council from introducing in its statute time limitations for presentations of persons who take part in the sessions of the commune council.[9] Therefore, treating such absence of limitations as a special solution is an argument against an extending interpretation. Therefore, some thought might be given to guaranteeing residents of local government units analogical conditions for participating in the debate as those afforded to councillors.

[9] Judgement of the Supreme Administrative Court of 24 November 2022, ref. no. III OSK 5593/21, Lex no. 3573801.

Access to information is a crucial factor affecting the conditions and quality of the control apart from presentations granted to participants of the debate on the condition of a commune, poviat or voivodship. The subject of the debate is the report on the condition of a specific local government unit, whereby access to information included in the report determines reliable and substantive preparation to the presentations given during a session. The latter, in turn, may affect the opinions of councillors who take part in the voting on granting the vote of confidence to the executive authority. Therefore, it is reasonable for participants of the debate to be ensured earlier access to the content of the report by its publication in the Public Information Bulletin, on the office's website or by making it available to be read in the time allowing preparation for the debate. At that, it cannot be ruled out that the information residents obtain in this way will be used to submit requests, postulates or demands to competent public administration authorities, where such submission is in the interest of recipients of the administration's activity.

4. THE REAL DIMENSION OF PARTICIPATION OF RESIDENTS OF A LOCAL GOVERNMENT UNIT IN A DEBATE ON THE REPORT ON ITS CONDITION

The subject matter of the report on the condition of a commune, poviat or voivodship, the debate on the report and participation of councillors and residents of local government units is a subject of research and analysis carried out by various foundations and associations. Published findings that include results of a few editions of research demonstrate that the degree to which members of self-governing communities are interested in participating in the debate and in voicing their opinions there is far from expected. A study conducted at the level of a basic local government unit that concerned the institution of the report on the condition of the commune for 2020 analysed 100 communes were where the total of 70 residents took part in debates. In 80 communes no residents decided to speak [Sześciło and Wilk, 2021]. In turn, in research carried out in poviats that concerned participation in debates on reports on the condition of the poviat for 2021 and 2022, no residents took part in the debate in thirty randomly selected LGUs. An analogical result was yielded by research that covered 16 units of self-governments of voivodships, that again focused on residents' participation in debates on the report on the condition of their LGUs [Starzewski 2003].

Poor interest in taking part in the debate on the report or no interest at all is down to many reasons. One of the most crucial ones involves the requirement for the interested resident to obtain support for their request to be allowed in the debate. It is pointed out that in smaller communes persons who intend to submit their requests have difficulty in obtaining the required

number of signatures because residents refuse to given them support for fear of potential repressions from representatives of the commune authorities.[10] On the other hand, there have been situations in which residents who did not collect the required number of signatures were still allowed in the debate.[11] However, it is quite clear that due to expressly specified conditions for participation in the debate, chairpersons of decision-making and control authorities of communes, poviats or voivodships will eliminate such situations treating them as violations of provisions of the act, which may be considered a basis to question the legality of the resolution on granting the vote of confidence to the executive authority passed following the debate.

The second crucial factor that contributes to poor activity of residents during a debate on the report on the condition of a given local government unit is insufficient informing of members of a self-governing community about the planned debate and insufficient encouragement to do take part in it. The information about the debate is most often published on the website of the commune office (poviat office, marshal's office) and in the Public Information Bulletin. Other forms of propagating discussions on the condition of a local government unit are used much less frequently. They include: information in the office's social media, notifications on notice boards dedicated to public announcements or advertising in local mass media. In some communes no actions to encourage active participation in the debate have been taken up.

CONCLUSION

The regulations introduced to organizational acts that establish the institution of the report on the condition of a local government unit, the related debate and the institution of the vote of confidence were to facilitate increased participation of members of self-governing communities in the process of controlling and operation of local and regional authorities. By guaranteeing residents of local government units participation in debate on reports on the condition of these LGUs, the legislator intended to include them in the process of exercising control over the activity of the executive authority and make them active participants in the relevant discussion. Based on the analysis of the introduced legal measures and on the examination of research on the actual use of these new control measures carried out by non-governmental organizations, it may be concluded that the legislator's

[10] See https://samorzad.pap.pl/kategoria/aktualnosci/rpo-do-mswia-w-debatach-nad-raportem-o-stanie-gminy-nie-biora-udzialu [accessed: 15.07.2024].

[11] See https://backend.sprawdzamyjakjest.pl/media/annotations/mission/report_file/Jak_powstaja_raporty_o_stanie_gminy-raport_z_badania.pdf [accessed: 15.07.2024].

intention has been implemented only partially. This is down to normative reasons and to practices established in individual local government units.

The first group of reasons must include the requirement of obtaining a specific number of signatures that support the resident's request to take part in the debate. This solution does not allow for taking into account the specific characteristics of a given local government unit and in effect may significantly weaken the activity of members of a self-governing community in the discussion or even eliminate it altogether. Therefore, one should consider the possibility of transferring the competence to regulate the question of the number of signatures supporting a resident's request to take part in the debate to a local (regional) law-maker. No set time limit for presentations is the next factor that belongs to the same group of reasons that may affect the engagement of LGU residents in the debate on the report. This may mean that the persons presiding the session, the chairpersons of the decision-making and control authority, will limit this time to the minimum. Therefore, this calls for a legal measure that would unequivocally lay down that there are no time limits for residents' presentations or, for organizational considerations, that would introduce the same time limits for all participants in the debate, including councillors.

The process of preparing the report on the condition of a local government unit precedes participation of members of this LGU in the debate on this document. It would be desirable if a practice that allows residents to participate in this process were to be developed. It would allow them to offer their findings or comments. By becoming participants in the report, they would be naturally interested in its final version and in being allowed to express their opinions on the information included in it.

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INTERNATIONAL PROTECTION FOR UKRAINIAN CITIZENS IN THE TIME OF RUSSIAN MILITARY AGGRESSION*

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Abstract. The Russian full-scale military aggression against Ukraine not only constitutes a crime of aggression under the ICC Rome Statute, but also leads to Russian troops committing other international crimes on the Ukrainian territory. Due to the Russian military aggression millions of Ukrainian citizens escaped to neighbouring countries, where they are entitled to apply for temporary protection, introduced due to the massive influx of third-country nationals into the EU, or for international protection due to the ongoing international armed conflict on the Ukrainian territory. The purpose of the article is to analyse the legal situation of Ukrainian citizens who applied for international protection in Poland before and after 24 February 2022, and to examine the reasons for which they are currently granted subsidiary protection.

Keywords: international protection; refugee status; subsidiary protection; temporary protection; Russian military aggression.

INTRODUCTION

According to the UN General Assembly Resolution (1974)[1] and the Statute of the International Criminal Court, which provides a binding definition of the crime of aggression,[2] the full-scale Russian armed invasion launched on 24 February 2022 fulfills the characteristics of the crime of aggression, and its perpetrators should be prosecuted by the International Criminal Court. As a result of Russian military aggression there is currently an ongoing international military conflict on the territory Ukraine, in which the international humanitarian law of armed conflict, in particular the four Geneva Conventions of 1949 aimed at protecting victims of armed conflict, should apply.

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[1] United Nations General Assembly Resolution 3314 (XXIX), 1974, annex.

[2] Statute of the International Criminal Court, 2187 U.N.T.S. 90.

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As a result of the start of full-scale military aggression on Ukraine, two types of migratory movements have arisen: 1) an influx of internally displaced people,[3] fleeing from the eastern, southern and northern parts of Ukrainian territory to the western regions, 2) an unprecedented influx of people from Ukraine to EU member states. This mass influx of third-country nationals (not only Ukrainian citizens), which began on 24 February 2022, led to the activation of an EU legal mechanism to qualify this emergency situation as a mass influx of displaced persons from a third country. The mechanism is designed to establish minimum standards for granting temporary protection on the territory of EU member states.[4] It should be noted that the mechanism provided for in Council Directive 2001/55/EC of July 20, 2001 was activated for the first time, so for the first time it was decided on the territory of individual Member States to grant temporary protection in a simplified procedure provided primarily for citizens of Ukraine and their family members, but also for other categories of persons. Nevertheless, there is no obligation to apply for temporary protection and a citizen of Ukraine may apply for international protection on the territory of Poland. Applying for temporary protection more closely resembles a simplified registration – the assignment of a PESEL number, which confirms holding this type of protection, while the submission of an application for international protection initiates proceedings that can last up to 6 months or longer in the first instance.

The purpose of this article is to examine the legal situation of Ukrainian citizens who applied for international protection in Poland before the start of full-scale Russian military aggression and after, as well as the reasons for which Ukrainian citizens are currently granted one of the two forms of international protection. A short legal comparison between international protection and temporary protection will enable greater understanding reasons, for which Ukrainian citizens decide to apply for either international or temporary protection.

1. GROUNDS FOR GRANTING INTERNATIONAL PROTECTION FOR THIRD COUNTRY NATIONALS IN POLAND

Refugee status and subsidiary protection are two forms of international protection,[5] which can be granted to a citizen of a third country on his

[3] Internally displaced persons means persons who left their place of residence, but they have never left the territory of their country.

[4] Article 5 of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, Official Journal of European Union L 212, 7.8.2001, p. 12.

[5] Article 2a of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless

application within the framework of the administrative procedure for granting international protection on the territory of the Republic of Poland. It should be borne in mind that for EU member states, a third-country national is a citizen of a non-EU member state.[6] Both forms of protection are defined in both domestic and international law, including EU law. Refugee status is granted to a third-country national who, as a result of a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the borders of the country of which he is a national, and is unable or, because of such fear, unwilling to avail himself of the protection of that country.[7] EU and Polish law have basically implemented this definition into their laws, further clarifying what persecution can consist of.[8] According to Article 13(1), persecution may consist, in particular, of: 1) the use of physical or mental violence, including sexual violence; 2) the use of legal, administrative, police or judicial measures in a discriminatory or discriminatory manner; 3) the initiation or conduct of criminal proceedings or punishment, in a manner that is disproportionate or discriminatory; 4) the absence of the right to appeal to a court against a penalty of a disproportionate or discriminatory nature; 5) the initiation or conduct of criminal proceedings or punishment for refusal to perform military service during the conflict, if performing military service would constitute a crime or actions referred to in Article 19(1)(3); 6) acts against persons on the basis of their sex or minority. According to the definition of refugee status, the applicant should demonstrate that he or she has a well-founded fear of persecution, which is a subjective feeling that can be proven with reliable statements by the applicant and relevant evidence, including information on the situation in the country of origin, and therefore objective information. The concept of "fear" – which is a state of mind and a subjective element - is accompanied by the term "well-founded," which means that not only the state of feeling of the person concerned determines refugee status, but that it must be confirmed by an assessment of the objective situation. Thus, the term "well-founded fear" combines the subjective and objective elements – both must be taken into account in the procedure for determining whether there is a "well-founded

persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), Official Journal of European Union L 337/9-337/26; 20.12.2011.

6 Article 2(6) Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), Official Journal of the European Union L77/1, 23.03.2016.

7 Article 1(2) Convention relating to the status of refugees, U.N.T.S. vol. 189, p. 137.

8 Article 13-14 of act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland, Journal of Laws No. 189, item 1472 [hereinafter: Act on granting international protection].

fear" of persecution.[9] One of the most important aspects of the consideration of an application for international protection in the context of granting refugee status is a well-founded fear of persecution due to certain individual characteristics of the applicant, his beliefs or activities related to one of the enumerated reasons for persecution. The assessment of the subjective element is inseparable from the assessment of the applicant's personality, as individuals' psychological reactions differ. Some people have strong political or religious convictions, and their disregard for them can make their lives unbearable; others do not care. Some decide to flee spontaneously, others carefully plan their departure.

In contrast, under EU and Polish law, subsidiary protection, being the second form of international protection, is granted to a third-country national when return to the country of origin may expose him to a real risk of suffering serious harm by: 1) capital punishment or execution, 2) torture, inhuman or degrading treatment or punishment, 3) serious and individualized threat to life or health resulting from the widespread use of violence against the civilian population in a situation of international or internal armed conflict, and due to this risk he cannot or does not want to enjoy the protection of his country of origin.[10] As the practice of EU member states shows, subsidiary protection effectively covers those third-country nationals who do not qualify for refugee status, but nevertheless still require protection due to legally defined circumstances [Di Marco 2015, 184]. From the perspective of proceedings for the granting of international protection, the Head of the Office for Foreigners in Poland, after the applicant submits an application, first examines the prerequisites for granting refugee status, and if the prerequisites are not met, the Head of the Office for Foreigners moves on to examine the prerequisites for granting subsidiary protection.

Unlike refugee status, subsidiary protection can be granted because of the general situation prevailing in the country of origin. The two most common grounds on which subsidiary protection is granted in Poland are the risk of suffering serious harm through torture, inhuman or degrading treatment or punishment, or a serious and individualized threat to life or health resulting from the widespread use of violence against civilians in a situation of international or internal armed conflict. Torture, inhuman or degrading treatment or punishment is a rather broad premise, because of which this type of protection can be granted to a person who has post-traumatic stress syndrome as a result of experiencing traumatic events (e.g., sexual violence, violence related to armed actions, domestic violence), and return to the

[9] United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Geneva 1992, HCR/1P/4/Eng/REV.2, p. 17-18.

[10] Article 15 of the Act on granting international protection.

country of origin would involve inhuman treatment being a feeling in the psychological sphere.[11] Not to mention cases in which it will be proven that there is a risk of serious harm again through torture, inhuman or degrading treatment. In contrast, the criteria of an individualized threat to life or health arising from the widespread use of violence against civilians in a situation of international or internal armed conflict is already me dependent on the individual situation of the applicant. According to the practice of the Office for Foreigners in Poland, but also of migration authorities in other EU member states, in the case of recognition that there is an individualized threat to life or health on the territory of the country of origin resulting from the widespread use of violence against the civilian population in a situation of international or internal armed conflict, citizens of that country should be granted at least subsidiary protection and, if certain individual conditions are met, even refugee status. In recent years, such a practice has been applied by the relevant authorities of the Member States, including the Polish Head of the Office for Foreigners, to Syrian citizens, as there was an armed conflict throughout the territory of this country, and therefore there was a risk of suffering serious harm as a result of widespread violence against the civilian population. Even the nature of the conflict itself, therefore whether it was an internal or international conflict, was basically irrelevant for granting Syrian citizens one of the two forms of international protection.

It is worth clarifying the concept of international or internal armed conflict. This issue was addressed by the Appeal Chamber in the *Tadic* case, recognizing that an armed conflict arises when the parties resort to the use of armed forces or similar actions.[12] According to the First Additional Protocol to the Geneva Conventions, a non-international conflict is fought in the territory of one of the Contracting Parties between its armed forces and a breakaway armed force or other organized armed groups under responsible command and exercising such control over part of its territory that they can conduct continuous and consistent military operations. Thus, an internal armed conflict occurs when at least one of the parties is non-governmental in nature [Vite 2009, 75]. In order to distinguish internal armed conflict from internal unrest, criteria such as the intensity of fighting and the degree of organization of the parties should be considered.[13] Armed conflict, on the other hand, is international in nature when it arises between two or more

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[11] For instance, Chief of the Office for Foreigners decided to grant subsidiary protection to a Chechen woman with 4 children, who escaped from domestic violence and sexual abuse, claiming that the return to country of origin would mean risk of serious harm (including psychological) for her and her children. See: Decision of the Chief of the Office for Foreigners of 16 March 2018 (case no.: DPU-420-4174/SU/2016).

[12] Prosecutor v. Tadić, ICTY, Case No. IT-94-1-T, 1997, para. 70.

[13] Ibid., para. 561-568; Prosecutor v. Mucic et al., ICTY, Case No. IT-96-21-T, 1998, para. 184.

states. At the same time, in an armed conflict of an international nature, an attack by one state against another state motivated by the intent to cause harm is essential. In addition to the aforementioned types of armed conflict, there is also the concept of internationalized armed conflict in international law. This is a situation of ongoing conflict between two factions or internal groupings that are supported by other states, or a situation where there is an armed intervention of a third state in an internal armed conflict [Schindler 1982, 255]. Intervention can be distinguished between the situation of intervention by a third state to support one of the parties and intervention by multinational forces to conduct a peacekeeping operation [Gasser 1983, 145-46]. An example of internationalized conflict is the 1999 NATO intervention in the armed conflict between the Federal Republic of Yugoslavia and the Kosovo Liberation Army [Egorov 2000, 183]. With regard to the 1992-1995 conflict on the territory of the former Yugoslavia, it should be emphasized that it had the character of an international armed conflict, which is evident, among other things, from the wording of the Security Council Resolution of July 13, 1992, in which it was confirmed that the parties are bound to comply with international humanitarian law, and in particular with the provisions of the Geneva Conventions.[14] According to Article 2 common to the Geneva Conventions, they are applied in the event of a declaration of war or the emergence of another armed conflict between two or more states, thus in the event of an international armed conflict.

In view of the above, and in view of the fact that, as a result of unprovoked full-scale Russian armed aggression, there is currently an international armed conflict on the territory of Ukraine, and actual rocket fire threatens the entire territory of Ukraine, as can be seen almost every day, subsidiary protection is granted to Ukrainian citizens applying for international protection in Poland.

2. MAIN DIFFERENCES BETWEEN INTERNATIONAL PROTECTION AND TEMPORARY PROTECTION

The main difference between international protection and temporary protection lies within the legal basis – international protection derives from international agreements, while temporary protection derives from national regulations, with an exception of EU regulations concerning the temporary protection mechanism binding for all of the member states. The right to apply for international protection has to be available to third country nationals always, without any exception or discrimination, while right to apply for temporary protection is limited – it is introduced based on national

[14] United Nations Security Council Res. 764, U.N. Doc. S/RES/764, 1992.

regulation for a particular time and determined group of third country nationals, usually as a result of a massive influx of foreigners to that state.

Application for international protection initiates the procedure on granting international protection, which usually lasts a couple of months and includes a detailed interview with the applicant on reasons for submitting the application for international protection. Decision denying to grant international protection may be appealed and the case last for another 5-6 months. Applying for temporary protection does not require such detailed and long lasting procedure, since it is introduced upon the massive influx of foreigners and in fact the procedure on granting temporary protection should be rather called a registration. As a result, registration for temporary protection is a one day administrative action that ends with issuing a document proving that one was granted this type of protection. There is no interview with the applicant or evaluation on individual situation. Legal criteria required for granting temporary protection usually are easy to identify – for example date of entrance to the state where one applies for temporary protection and citizenship of the applicant.

International protection, therefore refugee status or subsidiary protection, are granted for a not limited period of time, meaning that this type of protection does not expire under any circumstances. It may be cancelled by the authority who granted international protection in such cases as contacting the authorities of the country of origin or returning to the country of origin.

Nevertheless, it does not expire automatically. Temporary protection does expire under the term and conditions provided by law. The term "expires" in terms of temporary protection should be understood as: 1) the end of the legal stay in Poland of the third country national, who was granted temporary protection; 2) the end of the possibility to apply for temporary protection for those third country nationals, who have recently arrived.

Therefore the national law, that introduces temporary protection for particular category of third country nationals, has to provide for the time period, during which third country nationals can apply for this type of protection and for the possibility to prolong that term in case if there is still a need (e.g. Russian military aggression only intensifies and civilians in Ukraine are under permanent threat of being a target for any rocket shelling or drone activity). What has to be underlined is that temporary protection cannot be prolonged for longer than needed. Finally, if a third country national, who was granted temporary protection, does not apply for a residence permit then after the term provided in the national law his temporary protection expires and his stay from then on is considered to be illegal.

Another difference between international protection and temporary protection lies within the rights and obligations of the third country national. Applicant for international protection receives all the rights upon the

issuance of the decision on granting one of the two forms of international protection what means that during the procedure he does not have a right to work. However, a third country national, who registered for temporary protection, obtains all the rights on the day of registration, for example right to work, right health insurance, right to social benefits.

In terms of the differences between temporary protection and international protection it should be stated that it is possible for a foreigner, who was registered for temporary protection, to submit an application for international protection. Though the temporary protection is cancelled on the day of applying for international protection.[15] As a result, the applicant for international protection is deprived of all the rights and benefits that derives from temporary protection. What is more, legality of his stay in Poland will depend on the final decision issued in the proceedings for international protection, therefore if he is to be denied international protection and the applicant is not willing to return to his country of origin, and for instance submits the second application for international protection, then the procedure on deportation can be started 30 days after he had received final administrative decision in his first procedure on international protection.

3. CONDITIONS FOR GRANTING INTERNATIONAL PROTECTION TO UKRAINIANS BEFORE 24 FEBRUARY 2022

The period before 24 February 2024, therefore before Russia has initiated a full-scale military aggression on Ukraine, has to be divided into two phases, since there was a significant difference in practice of Polish Chief of the Office for Foreigners and Council for Refugees. Therefore, until the beginning of the Euromaidan and cruel response from the Yanukovich regime to the civil demonstrations the practice of granting international protection to Ukrainian citizens had been comparable to citizens of other countries, without any exceptions due to specific situation on the territory of Ukraine, for instance military conflict on the territory of Ukraine.

Situation has drastically changed after the Euromaidan, illegal annexation of Crimean Peninsula by Russia and the beginning of military conflict in Eastern Regions of Ukraine initiated by the "separatists" (Russian proxies) in Lugansk and Donetsk Regions, that are fully controlled and supported with weapons and logistics by Russian regime. The correct legal question would be therefore if these separatists can be considered as party to the military conflict in Eastern regions of Ukraine. The so-called separatist groups, claiming discrimination by the new government in Kyiv due to their use of the

[15] Article 4.17 of the Act of 12 March 2022 on assistance to Ukrainian citizens in connection with the armed conflict on the territory of this state, Journal of Laws item 583.

Russian language can be considered as "organized armed groups" within the meaning of II Additional Protocol to the Geneva Conventions. According to Article 1, these groups must remain under responsible command and exercise such control over part of the territory as to enable them to conduct continuous and consistent military operations. It should be emphasized that the command and the ability of these separatists to exercise effective control is intended to avoid a situation in which individuals, not subject to any command, are considered parties to the conflict [Sandoz, Swinarski, and Zimmermann 1987, 1351]. With regard to the criterion of being under responsible command, it is necessary to consider the question of the degree of organization of the groupings, which boils down to the ability to plan and carry out continuous military operations and activities, and to enforce discipline against this *de facto* authority. Taking into consideration the ability of conducting organized military operations against Ukrainian Armed Forces, exercising effective control over occupied territories and being supported in all possibles manners by Russia makes it possible to qualify Russian proxies as party to the military conflict in Ukraine that has started in 2014.

In terms of international protection, according to the definition of subsidiary protection provided in EU Directive and Polish national law, it does not matter what type of military conflict is taking place in country of origin – domestic or international – both types can serve as a reason for granting subsidiary protection to Ukrainian citizens that submitted application for international protection in Poland in the period from April 2014 till 24 February 2022. However, for Ukrainian citizens regardless whether from annexed Crimean Peninsula or Eastern regions, that were affected by military activities and afterwards, on 30 September 2022, annexed and since then illegally occupied by Russia, it was still not a rule to be granted for instance subsidiary protection due to military conflict on its territory. The reason for such a practice is provided in Article 18 of the act on granting protection to aliens within the territory of the Republic of Poland, according to which if in a part of the territory of the country of origin there are no circumstances justifying the foreigner's fear of persecution or suffering serious harm, and there is a reasonable expectation that the foreigner will be able to safely and legally move to and reside in that part of the territory, it is considered that there is no well-founded fear of persecution or actual risk of suffering serious harm in the country of origin. In other words, if, as it happened in Ukraine, the military conflict, whether domestic or international, directly affects only a particular part of country's territory (Donetsk, Lugansk regions and Crimea) while the remaining part of country's territory is not under the threat of military activities therefore the Article 18 of the Polish act on granting protection to aliens in Poland has to be applied. Consequently, the applicant is denied both types of international protection.

What is interesting from legal perspective is the fact that Article 18 can be applied only in a situation when the applicant is able safely and legally move and reside in the other part of the country of origin. Therefore, relocation within the territory of the country of origin does not cause any risk of persecution or suffering a serious harm and the applicant can relocate to another part of the country of origin without violating any law. If any of these two conditions can not be fulfil then Article 18 can not be applied.

As the practice has shown that Ukrainian citizens, who submitted the application for international protection between 2014 – 24 February 2022 due to military activities (residents of the Eastern regions) or occupation of Crimea (residents of the Peninsula, including Crimean Tatars) were in vast majority denied international protection based on Article 18 of the Polish act on granting international protection, since according to the Polish Chief of the Office for Foreigners there was a possibility to relocate safely and legally from Eastern regions of Ukraine or Crimea to other parts of Ukrainian territory. Nevertheless, some Ukrainian citizens who applied for international protection in Poland in the mentioned period were granted subsidiary protection. In fact the reason why it had happened lies within the analysis of individual case under the Article 18 of the Polish act on granting international protection. Thus, in cases when the Chief of the Office for Foreigner could not determine that there is an opportunity of safe and legally possible relocation within the territory of Ukraine then the applicant was granted usually subsidiary protection. For instance, Chief of the Office for Foreigners granted a subsidiary protection to a family of 8 members from Lugansk region, who submitted the application for international protection on 13 January 2015. According to the Chief of the Office for Foreigners there was no possibility of safe relocation within the territory of Ukraine for the whole family (mother, father and 6 minor children).[16] Some of the Ukrainian citizens, who applied for international protection did not received any type of protection within the procedure on international protection, however due to similar motives received a permit for humanitarian reasons in a separate procedure on deportation.[17]

Consequently, the sole fact of military conflict between Ukrainian Armed Forces and *de facto* Russian proxies in the Eastern regions of Ukraine and the illegal annexation of Crimea had not change the practice of Polish authorities,

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[16] Decision of the Council for Refugees of 6 February 2017 (case no.: RdU-770-1/S/16).

[17] See: Decision of the Chief of the Office for Foreigners (Department of Legalization of Stay) of 16 July 2018 (case no.: DL.WIPO.412.945.2017) on granting permit for humanitarian reasons to a family of 4, who could not return to their home city – Donetsk – and due to formal challenges their return to Ukraine meant a number of difficulties that finally lead to permit on humanitarian reasons. Permit on humanitarian reasons is not a form of international protection.

so that every Ukrainian citizen had been granted for instance subsidiary protection almost "automatically". However, both acts of Russian aggression on Ukraine in 2014 had contributed to the fact that the real determinant for granting international protection was the issue of having a possibility to move to another part of Ukrainian territory in a safe and legal manner.

4. CONDITIONS FOR GRANTING INTERNATIONAL PROTECTION TO UKRAINIANS AFTER 24 FEBRUARY 2022

Situation of Ukrainian citizens, who submitted the application for international protection in Poland, has significantly changed after the 24 February 2022. First of all, on 24 February 2022 Russia started a full-scale military invasion on Ukraine with almost all types of military operations, including military aviation. The main difference between military conflict that has been launched in 2014 and the full-scale military invasion is that the latest means a threat of military attack in the whole territory of Ukraine. As a result, according to the Polish Chief of the Office for Foreigners territory of Ukraine is where the international military conflict is taking place as a consequence of Russian military aggression or there exists a risk of imminent military activities.[18] Additionally, Chief of the Office for Foreigners in Poland provides the argument that as a consequence of international military conflict on the territory of Ukraine civilian population may become a victim of widespread violence or direct military activities. Both of the abovementioned statements, that are currently the basis for granting Ukrainian citizens with subsidiary protection, confirm that there is no need in analyzing the application of Article 18 of the Polish act on granting international protection, therefore the possibility of moving safely and legally to another part of Ukraine's territory.

As the practice of the Polish Chief of the Office for Foreigners has shown, even though the full-scale military invasion that has threatened the whole territory of Ukraine has started on 24 February 2022, subsidiary protection is granted to all of Ukrainian citizens regardless of the date when they arrived to Poland or when they submitted the application for international protection on the territory of Poland. From procedural point of view it is essential to underline that applications for international protection submitted by Ukrainian citizens after 24 February 2022 are considered by the Chief of the Office for Foreigners without conducting a detailed interview with the applicant on the reasons of applying for international protection. An interview is the most important procedural action and the interview's protocol is a fundamental evidence. If it is not conducted in someone's case

[18] The following justification was provided in decisions on granting subsidiary protection in the following cases: DPU.420.3130.2022, DPU.420.813.2021, DPU.420.211.2022, DPU.420.1868.2022.

it is due to the fact, that the decision will be issued based on the situation in the country of origin (especially in case of military conflict) and not on individual's situation, and therefore the Chief of the Office for Foreigners does not consider its necessary to conduct that interview.

FINAL REMARKS

Subsidiary protection, if comparing with temporary protection, is the form of protection provided to third country national by Polish authorities due to similar reasons as temporary protection, particularly if subsidiary protection is granted as a result of the risk of serious harm caused by the widespread violence withing the international military conflict in the country of origin of the applicant. Unfortunately, Russian military aggression on Ukraine in 2014 and full-scale military invasion in 2022 provoked the unprecedent international military conflict in Europe and massive migration of Ukrainian citizens to the neighborhood countries. Ukrainian citizens are currently the only third country nationals (with some exceptions provided in the Council decision), who can apply in EU member states for both – international protection and temporary protection while staying on the territory of EU, especially Poland. Subsidiary protection has been always an option for a third country nationals, no matter of their citizenship or situation in country of origin. However, if a third country national arrives from the country, where there exists a risk of serious harm due to widespread violence to civilians as a result of military conflict, then subsidiary protection may be granted even without consideration of applicant's individual situation based on conducting a detail interview. Temporary protection introduced in the EU in 2022 as a consequence of the massive influx of third country nationals to EU due to Russian military aggression on Ukraine, what currently makes those two forms of protection (international protection in the form of subsidiary protection and temporary protection) being granted for the same reasons, however with different legal effect, rights and obligations for third country national, who were granted one of these forms of protection and the state, who granted them with this protection.

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RIGHTS AND OBLIGATIONS OF UKRAINIAN CITIZENS IN POLISH LAW*

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Abstract. This article is intended to specify what rights are given to and what obligations are imposed on Ukrainian citizens who came to Poland in fear of the armed conflict that erupted on February 24, 2022. Poland, in order to grant residency rights and make life easier for Ukrainians in its territory, enacted a law enabling them to live in Poland on a daily basis. The article characterizes the law regulating these rights and also points to the solutions provided by the latest proposal for its amendment.

Keywords: Ukraine; Poland; rights; obligations.

INTRODUCTION

The date of February 24, 2022 is the day the war in Ukraine broke out. The criminal attack of the Russian Federation on this country has consequences not only on the bilateral line. It has made a certain division of power around the world [Grosse 2023, 47-50; Regina-Zacharski 2023, 117-26]. Western countries have realized that the aid directed to Ukraine also allows for the maintenance of a relative geopolitical order in Europe. The war has also imposed various types of burdens on the countries of the region, especially the countries directly neighbouring Ukraine, including Poland. In addition to the real security threat, these countries have had and continue to face humanitarian challenges. Since the beginning of the war, the number of people of Ukrainian origin in Poland has doubled, and the Ukrainian minority is now largely made up of women up to 29 years of age and families.[1] This brought with it the challenge of creating legal regulations that would guarantee migrants fundamental rights and impose obligations that would facilitate their everyday life in Poland.

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[1] See *Ukraińcy w Polsce | dynamika populacji w latach 2022-2023*, https://selectivv.com/ukraincy-w-polsce-dynamika-populacji/ [accessed: 23.05.2024].

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The Act on Assistance to Ukrainian Citizens in Connection with the Armed Conflict on the Territory of the State was published on March 12, 2022[2] [Drembkowski 2022]. The dynamic situation, as well as the desire to guarantee the widest possible spectrum of rights to Ukrainian citizens in Poland, meant that the regulations in question have been amended many times since then.

This article, with the help of the dogmatic-legal and theoretical-legal methods, is an attempt to analyze the current legal status, guaranteeing the rights and obligations of the Ukrainian minority in the territory of the Republic of Poland. The work will also be a commentary on the currently proposed changes.

1. THE PURPOSE OF ESTABLISHING THE ACT ON ASSISTANCE TO CITIZENS OF UKRAINE IN CONNECTION WITH THE ARMED CONFLICT ON THE TERRITORY OF THE ARMED CONFLICT ON THE TERRITORY OF THIS STATE

According to the explanatory memorandum to the draft of this law, it was passed in order to create such legal regulations that will provide "an ad hoc basis for the legal stay of those Ukrainians in Poland" who fled their homeland as a result of the war with Russia. As indicated, "This bill is an attempt by the legislator to respond to the problems that have arisen as a result of this situation in the area of ensuring the legality of stay of persons arriving from the territory of Ukraine."[3]

Its purpose was also to supplement the provisions concerning this special situation, which were not included in the framework previously adopted under the Act of 13 June 2003 on granting protection to foreigners on the territory of the Republic of Poland,[4] as well as the Act of 14 October 2021 amending the Act on foreigners and certain other acts.[5] This Act assumes, thanks to the assignment of a PESEL number, the implementation of a number of public services within the framework of social rights for those who came to Polish in connection with the hostilities [Drembkowski 2022, 17-26]. In addition, this legal solution is intended to indicate how and on what terms they receive access to the Polish labor market or the opportunity to run a business.[6]

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[2] Act of 12 March 2022 on assistance to Ukrainian citizens in connection with the armed conflict on the territory of this state, Journal of Laws item 583. The provisions of the Act apply retroactively from 24 February 2022, pursuant to Article 116 of this Act.

[3] Explanatory memorandum to the bill – on assistance to citizens of Ukraine in connection with the armed conflict on the territory of this country, paper no. 2069 from 7 march 2022.

[4] Act of 13 June 2003 on granting protection to foreigners on the territory of the Republic of Poland, Journal of Laws of 2021, items 1108 and 1918.

[5] Act of 14 October 2021 amending the Act on foreigners and certain other acts, Journal of Laws of 2021, item 2354 as amended.

[6] Explanatory memorandum to the bill…, p. 4-8.

2. RIGHTS AND OBLIGATIONS OF UKRAINIAN CITIZENS GRANTED BY LAW

The current regulation, e.g. Act amending the Act on Assistance to Citizens of Ukraine in Connection with the Armed Conflict on the Territory of this State, came into force on February 22, 2024.

According to its provisions, certain rights and obligations can be distinguished that have been imposed on Ukrainians and their family members who came to Polish after the day the war broke out. Firstly, however, a person who has Ukrainian citizenship and comes to Polish in connection with hostilities is obliged to submit an application for temporary protection closest to the city or commune office, where this person is also assigned a PESEL number with the UKR marking. It gives you the opportunity to travel for a maximum of 30 days [Kozak-Balaniuk and Staszewski 2023, 181-98]. Exceeding this may mean the loss of UKR status.

2.1. Legalization of stay in Poland

One of the first obligations faced by Ukrainians in Poland is to obtain a residence permit. The so-called residence card allows you to stay in Poland without a visa or other documents. The application should be submitted to the voivode according to the place of residence. It should be accompanied by documents that confirm the intention to stay in Poland for more than 3 months. Once the card is obtained, the holder can travel within the Schengen area for 90 days within 180 days. Most often, people who are employed in Poland apply for such permits. It is then issued for a maximum of 3 years [Maksymiuk and Szmulik 2023, 327-34]. People of Ukrainian origin can also apply for the so-called permanent residence card, which is a permanent residence permit. Most often, people who have Polish origin (have a Pole's Card) apply for them.

On the basis of the above-mentioned amendment, Ukrainians and their family members can benefit from temporary protection until June 30, 2024. The following are also extended: 1) temporary residence permits; 2) period of departure from the territory of Poland; 3) residence cards, identity documents and "tolerated stay" documents; 4) stay of a Ukrainian citizen in Poland on the basis of a Schengen visa.

The obligation imposed on car owners who decided to come to Polish with them and use them during their stay has also been regulated. This vehicle does not have to be registered in Poland. However, it must be properly registered in Ukraine, as well as have a valid technical inspection and insurance for a trip abroad. However, if the owner of the car plans to stay in Poland for more than 180 days, then the car must be registered with foreign

license plates. Such an application can be submitted to the district office that is consistent with the place of residence of the Ukrainian citizen.

2.2. Rights granted to Ukrainian citizens whose residence has been recognized as legal

Ukrainian citizens who have a recognized legal residence in Poland and also have a PESEL number (with the status of UKR) have been granted the following groups of rights:

1) Access to free health care and use of assistance addressed to people with disabilities on the same terms as people who have been covered by compulsory or voluntary social insurance. Ukrainian citizens have also been granted the right to free access to doctors, as well as reimbursement of prescription drugs (Article 64a).
2) Access to free education. The act gives the right to education for Ukrainian citizens, as well as Polish citizens who studied within the local education system. It uses a number of solutions to facilitate the continuation of education at every level of education. The Act also provides for assistance in receiving scholarships, as well as the issue of payment of tuition fees at universities [Maksymiuk and Szmulik 2023, 336].
3) Access to the labour market – Ukrainians who reside in Poland legally have free access to the labour market. It is possible to take up work without the need to obtain an additional permit. The condition is verification of the legality of the stay by the employer, as well as notification of the District Labour Office[7] about the concept of work within 14 days of starting work. Any Ukrainian citizen can also register with the labour office as an unemployed person in order to look for a job. This gives you the opportunity to take advantage of job placement, career mediation or training. However, you are not entitled to unemployment benefit [ibid., 334]. The Act also provides for special regulations that are addressed to representatives of medical professions. Their qualifications were recognized (within a certain period of time) on the basis of the presented qualifications to practice professions, obtained outside the European Union.
4) To conduct business activity, on the same terms as Polish citizens. The legislator does not allow for differentiation into Polish and foreign citizens, preserving their right to equality, despite the fact that they do not have the status of a citizen.
5) to benefits and social assistance:

[7] Employment office in accordance with the location of the employer's headquarters.

a) using family benefits – these include, among others, support under the "Family 800+" or "Good Start" programs. From January 2024, the "Family 500+" [Prokopowicz 2017, 57-75] benefit has been increased to PLN 800. They can be obtained by families with children under 18 years of age.[8] As part of emergency assistance, able-bodied, adult Ukrainians can count on a one-time allowance of PLN 300 after crossing the border with Poland and obtaining a PESEL number;
b) free accommodation within 120 days from the date of arrival – the 40+ programme has been established for this purpose. Under this program, Poles who provide free accommodation and meals to Ukrainian citizens can apply for assistance at a daily rate of PLN 40. It is granted for a period of 120 days, excluding pregnant women, mothers with children under a year old, pensioners, pensioners or people with disabilities;
c) to free housing – this is an offer addressed to large families, pregnant women or mothers with children, as well as for the disabled, pensioners and pensioners.

2.3. Planned legal changes

On 15 May 2024, the Sejm voted on a bill amending the Act on Assistance to Citizens of Ukraine in Connection with the Armed Conflict on the Territory of Ukraine and Certain Other Acts (papers no. 342, 374 and 374-A), which entails certain changes. The current solutions, as mentioned above, are valid until June 30, 2024. The aforementioned amendment provides for the extension of aid and support for Ukrainian citizens who are fleeing the war. This was dictated by the Council Implementing Decision (EU) 2022/382 of 4 March 2022, which provides for a protection period until 30 September 2025. If the directive provides for the extension of protection until March 2026, the act is to contain regulations that will allow for automatic extension of this protection. The Act also provides for the introduction of new rules that will apply for the confirmation of the identity of a person who applies for a PESEL UKR number.

Residence rights are extended. According to them, Ukrainian citizens who have a PESEL UKR number will have their stay in Polish legally extended until September 30, 2025. From next year, it will also be possible to change the status of stay. This applies to the change from temporary protection to temporary residence, in accordance with the Act on Foreigners, after meeting the following conditions:

[8] See *Świadczenie wychowawcze 800+*, https://www.zus.pl/-/%C5%9Awiadczenie-wychowawcze-800- [accessed: 23.05.2024].

1) Supplementing or updating the necessary data in the PESEL UKS database in the commune authorities.
2) Submitting an electronic application to the voivode.
3) If the applicant had an active UKR status as of 4 March 2024, and on the date of submitting the application, the security services do not object to the change of the residence status.

The government estimates that up to 95% of Ukrainians can benefit from such a procedure. Due to various life situations, the possibility of temporary protection was also retained. As a result, they have the opportunity to choose a more advantageous solution until 30 September 2025.

As far as employee rights are concerned, the adopted amendments concern the extension of the deadline for submitting applications for the conditional right to practice the profession of doctor, dentist, midwife and nurse by 4 months.

This amendment also provides for the termination of the support, which dates from July 1, 2024, and applies to the financing of photography, as well as a one-off cash benefit of PLN 300 for the so-called "development". The changes (this time from July 31) will also concern the issue of financial support for the form of accommodation or food for Ukrainians who are in a difficult life situation. From now on, this will only be possible with the help of an agreement signed with the voivode or an authority acting on his behalf. It is also planned to extinguish the cash benefit granted under Article 13 of the Aid Act, the so-called "PLN 40 benefit", which was compensation for the costs of stay and food for Ukrainian citizens by owners of private premises.

From that moment on, the aid is to be concentrated in cohabitation centres, which have their financing basis in Article 12 of the Act. This change is intended to tighten the system of providing assistance to Ukrainian citizens in collective accommodation. Article 13 also specifies that the voivode may provide assistance which consists of: 1) providing collective accommodation, which consists of a facility hosting at least 10 people, or in facilities that operate under the management of units from the public finance sector; 2) all-day collective catering; 3) operating reception points; 4) provision of transportation related to accommodation or medical care; 5) others, after obtaining the consent of the competent minister.

However, these changes maintain guarantees of maintaining support for people who would otherwise experience social exclusion. This applies in particular to people with disabilities, elderly people – women over 60 years of age, or men over 65 years of age, pregnant women or raising children up to 1 year of age, or take care of three or more children, if at least 1 of them is under 14 years of age, or are people in foster care or minors, who do not

receive child care benefits, or persons who have received permission from the voivode to be exempt from participation in the costs of assistance, taking into account their difficult life situation.

With regard to social rights, this amendment also introduces some changes. Well, the above-mentioned "800+" and "good start" benefits were related to compulsory education. The new wording of Article 26(1) of the Act indicates that a child of a Ukrainian citizen for whom he or she applies for the above-mentioned benefits must attend full-time compulsory education in a school that belongs to the Polish education system. This regulation does not apply only to children who, due to their age, have not been covered by the obligation to attend preschool education or education, or for whom this obligation has been deferred. A provision has also been issued which includes an obligation imposed on the Social Insurance Institution to suspend the benefits granted when the fact of receiving education is not confirmed. These regulations will apply from the new benefit period, which falls on 1 June 2025, as well as from the school year 2025/2026 [Horbaczewski and Kośnicki 2024]. The amendment also indicates a maximum period of 3 years during which students have the opportunity to take advantage of free Polish language classes. This rule is to apply to students who started education in the school years 2022/2023 and 2023/2024.

CONCLUSION

The arrival of such a large number of citizens from Ukraine, due to the war, carries many burdens that the host country has to bear. Poland also faced such a difficult task. In this context, it is important to be aware that it is not enough to have regulations that guarantee the possibility of rescue from a war-torn country, but will be a long-term solution and will allow to secure basic rights and impose obligations on newcomers, taking into account their living situation. Many Ukrainian citizens have fled from the areas engulfed in military operations and it is possible that they will settle in ours permanently. The targeted assistance must be of a systemic nature that will guarantee a dignified and as independent life as possible in a foreign country.

The presented legal solutions are aimed at facilitating a difficult start in our country. Under the Act on Assistance to Ukrainian Citizens in Connection with the Armed Conflict on the Territory of the State, It indicates the possibility of obtaining the right of legal residence, shows the possibilities of taking up education, work, running one's own business, but also the path of using social rights, which have been granted on the same terms as citizens in Poland. However, it is worth emphasizing that in the current international and social situation in Poland, it is necessary to constantly

amend legal solutions. This is primarily to direct help to people who need it most, while sealing the system with mechanisms to guarantee their protection against pathologies and attempts to use them in accordance with the principles included in the Act.

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DOG OWNERSHIP FEE AND THE ISSUE OF LEVY COLLECTION, TAX EXEMPTIONS AND RATE DIFFERENTIATION. A TAX-LEGAL ANALYSIS*

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Abstract. Until the end of 2007, there was a dog ownership tax in the tax law system. The dog ownership tax was an obligatory benefit, i.e. municipal councils were obliged to establish and collect this tax (even if the costs of its collection exceeded the proceeds from the dog ownership tax). Consequently, there were calls for the dog ownership tax to be replaced by a tribute collected by municipalities on an optional basis. As of 1 January 2008, the dog ownership tax was replaced by a dog ownership levy. Unlike the dog ownership tax, the dog ownership fee is an optional levy – municipalities may, but are not required to, specify the obligation to pay the dog ownership fee. The municipal council is only empowered to introduce tax relief if the term relief is used in the relevant statutory provision. The power to enact tax reliefs cannot be derived from a provision authorising the municipal council to enact exemptions in local taxes and charges.

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INTRODUCTION

Until the end of 2007, there was a tax on dog ownership in the tax system. The dog ownership tax was a compulsory benefit, i.e. councils were obliged to establish and collect this tax (even if the cost of collecting it exceeded the income from the dog ownership tax). As a result, there have been calls to replace the dog ownership tax with a levy levied by municipalities on an optional basis. From 1 January 2008, the dog ownership tax was replaced by the dog ownership tax.[1] Unlike the dog ownership tax, the dog ownership fee is an optional fee – municipalities can, but do not have to, determine the obligation to pay the dog ownership fee (Article 18a(1) LTF). According to Article 18a(1), the fee for owning dogs is collected from natural persons owning dogs (such was the subject scope of owning dogs). Consequently, dog owners who are legal persons or non-legal entities (e.g. police, military, companies) are not obliged to pay this fee. As we read in the judgment of the Supreme Administrative Court of 20 August 2002 (III SA 3153/01), "the aim of the legislator was to tax the ownership of dogs exclusively on individuals. The legislator therefore allows the situation that a dog owned, for example, by a legal person or another legal entity, is not subject to taxation, even though it is cared for by a specific natural person. For example, natural persons employed in other organisational units which do not have legal personality, e.g. police bodies, which are individuals, as is well known, in many cases are dog owners."

1. STRUCTURE OF THE FEE AND STATUTORY EXEMPTIONS

It is important to note that the fee for owning dogs falls on individuals owning dogs, not on dog owners. Possession is a term of civil law. According to Article 336 of the Civil Code,[2] the owner of the thing is both the one who actually owns it as the owner (independent owner) and the one who actually owns it as a user, pledger, tenant, tenant or having another right, with whom there is a definite authority over the thing (dependent owner). Consequently, natural persons who own dogs who are not their owners (e.g. people who "borrowed" a dog from another person) are obliged to pay the fee adopted by the municipality. The provisions of Article 18a(2) LTF lists natural persons

[1] Act of 12 January 1991 on Local Taxes and Fees, Journal of Laws No. 9, item 31 as amended [hereinafter: LTF], Article 1(7).

[2] Act of 23 April 1964, the Civil Code, Journal of Laws No. 16, item 93 as amended.

from whom a fee is not charged for the possession of dogs. This fee is not collected from: 1) members of staff of diplomatic missions and consular offices and other persons equal to them on the basis of laws, agreements or international customs, if they are not Polish citizens and do not have a place of permanent residence in the territory of the Republic of Poland – subject to reciprocity; 2) persons classified to a significant degree of disability within the meaning of the provisions on occupational and social rehabilitation and employment of persons with disabilities (i.e. the provisions of the act of 27 August 1997 on vocational and social rehabilitation and employment of disabled persons – by virtue of having an assistance dog; 3) persons over 65 years of age owning a household – by virtue of owning one dog. In this case The Ministry of Finance, in the letter of 4 September 2001, LK-1594/LP/01/KM, stated that a linguistic and purposive interpretation of the provision of the above article leads to the conclusion that running a household on one's own means running that household without financial assistance from other persons. Thus, the exemption can apply to elderly single persons as well as to persons with other 'dependent' persons as dependants - provided that these persons do not have their own source of livelihood'; consequently, as the Ministry explained later in the letter, 'the exemption in question cannot generally apply to married couples if both spouses have their own sources of livelihood, even if they are both over the required age of 70.

The rules for determining collection and the payment dates and rates of the dog ownership fee are determined by the municipal councils by way of a resolution. When determining the amount of the dog ownership fee rates, municipalities are limited by the maximum rate set out in Article 19(1)(f) LTF. The maximum rate of the dog ownership fee in 2024 is 173.57 PLN per annum. When adopting a dog ownership fee, the municipal council (in addition to setting out the rules for its establishment and collection as well as the payment dates and rates) may order the collection of the dog ownership fee by way of a collection service and specify the collectors and the amount of remuneration for the collection service (Article 19(2)). A collector is a natural person, a legal person or an organisational unit without legal personality obliged to collect tax from a taxpayer and pay it in due time to the tax authority (Article 9 of the Tax Ordinance[3]). The role of the collector is limited to the execution of an already existing obligatory legal relationship in which the debtor is the entity charged with the obligation to pay the dog ownership fee. The debt collector collects this fee, but cannot perform enforcement activities. The function of the collector is therefore limited to acting as an intermediary between the debtor (the natural person owning the dog) and the creditor (the public authority).

[3] Act of 29 August 1997, the Tax Ordinance, Journal of Laws No. 2012, item 749 as amended [hereinafter: TO].

It should be noted that the collection of the dog fee by collectors constitutes a service subject to VAT, the service is taxed at the basic rate of 23%. The municipal councils should take this fact into account when adopting the fee for collection (the resolutions of the municipal councils should clearly state whether the adopted fee is net or gross). When adopting a dog fee, municipal councils may also introduce exemptions from the fee on dog ownership other than those listed in the Article 19(3) LTF. It should be expected that exemptions from the dog ownership fee adopted by municipal councils will be analogous to exemptions from the dog ownership tax.

2. SUBJECTIVE EXEMPTIONS

As in the case of the resort, spa and advertising fees, the phrase 'the fee shall not be collected' is also used in the case of the fee in question. It should be assumed, however, that the provision in question does not regulate the institution of tax exemption or non-collection, but contains statutory subjective exemptions. Two of the subjective exemptions in question concern persons with disabilities referred to in the Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities. Pursuant to Article 1 of that Act, a disabled person is a person whose disability has been confirmed by a certificate: of qualification by the assessment bodies to one of three degrees of disability, or of total or partial inability to work under separate regulations, or of disability, issued before the age of 16. Thus, the tax authorities do not have the right (let alone the obligation) to make their own determinations as to whether the taxpayer of the dog ownership fee meets the conditions for exemption (whether he is a disabled person). Only those persons who hold a relevant certificate issued by a competent authority can benefit from the exemption. A certificate issued by a Social Insurance Institution's certifying physician on total inability to work and inability to lead an independent life will be treated by the legislator on an equal footing with a certificate on a significant degree of disability – such a certificate will therefore also entitle to the exemption.

The fee exemption applies only to one dog, but – as a rule – only to an assistance dog, i.e. an appropriately trained and specially marked dog, in particular a guide dog for a blind or partially sighted person and an assistance dog for a person with motor disabilities, which facilitates the disabled person's active participation in social life. As a special category of disabled persons are those classified as severely disabled, the exemption for these persons applies to the ownership of one dog, and this regardless of whether it is a so-called assistance dog [Wołowiec 2016, 6-10].

The Act does not provide for cumulation of exemptions. Thus, if a person with a severe disability (who is also a 'disabled person' within the meaning of the provisions of the Act on Vocational and Social Rehabilitation and

Employment of Persons with Disabilities) owns two dogs, including one assistance dog, the exemption covers only one dog. In the case of agricultural taxpayers, the Act provides two restrictions on the possibility of using the exemption. The first is that the exemption covers no more than two dogs, and this is regardless of how many municipalities the taxpayer has land that constitutes an agricultural holding. The second restriction relates to the subject matter of the agricultural tax levied on persons wishing to benefit from the exemption: it is not sufficient that they own agricultural land subject to agricultural tax; this land must constitute an agricultural farm.

It is true that the legislator has not clarified what kind of agricultural farm it is referring to, but – given that it is 'agricultural tax on an agricultural farm' – it must be considered that the provision in question refers to an agricultural farm within the meaning of the provisions regulating agricultural tax. These provisions are contained in the Agricultural Tax Act. Pursuant to Article 2(1) of the Act on Agricultural Tax, an agricultural holding is considered to be an area of agricultural land with a total area exceeding 1 ha or 1 ha of calculation, owned or held by a natural person, a legal person or an organisational unit, including a company, without legal personality.

The analysis of the construction of the exemption concerning agricultural taxpayers raises a certain doubt. The exemption applies to no more than two dogs. If a taxpayer owns e.g. three plots of land (forming one agricultural holding) and keeps e.g. two dogs on each of those plots, it is practically impossible to ensure that he pays the fee on four dogs. It may turn out, for example, that he indicates two dogs in each municipality as exempt from the fee. Verifying the reliability of such a declaration would require collecting information in all municipalities where he could potentially have dogs.

3. CONSEQUENCES OF THE LACK OF STATUTORY INDICATIONS AS TO THE MODE OF PAYMENT

As in the case of all other fees regulated in the Act on Local Taxes and Fees, the legislator did not include any provisions on the rules of establishing and collecting, as well as payment dates and rates of the dog ownership fee. This matter has been entrusted to municipal councils. However, it should be presumed that the obligation to pay the dog ownership fee arises at the moment of taking possession of the dog. The municipal council should in turn indicate in a resolution how this obligation is to be transformed into a tax liability. The most convenient (cheapest from the point of view of collection costs) solution would be to state in the resolution that the fee is payable without a call: this would mean that the obligation arises by operation of law and it would not be necessary to serve the taxpayers with a decision establishing the dog ownership fee.

Unfortunately, there is also no provision in the Act to regulate the proportionality of the fee based on the duration of the fee obligation. The absence of such a regulation means that the entire annual fee has to be paid even if an individual ceases to be a dog owner in the course of the year. The municipal council should therefore introduce a provision providing for the possibility to terminate the obligation to pay the fee, e.g. at the end of the month in which the taxpayer ceases to be the dog owner. Such termination of the obligation should in turn be the basis for calculating the levy due only for the months in which the obligation existed [Wołowiec 2021a, 125-30].

Pursuant to Article 19(1)(f) LTF, the rate of the dog ownership fee is annual. On this basis, it may be concluded that the levy itself is also of an annual nature (similarly to real estate tax or tax on means of transport). This assumption makes it possible to apply Article 18 TO in the case of a change in the place of residence of a dog ownership fee taxpayer during the tax year. This provision stipulates that if in the course of the tax year an event occurs which causes a change in the local jurisdiction of the tax authority (in the case of the levy in question, it will be a change in the place of residence), the tax authority with local jurisdiction for this settlement period (i.e. for the whole year) remains the tax authority which was competent on the first day of the tax year or settlement period [Idem 2021a; 121-29].

Unfortunately, this regulation does not fit the specifics of the dog ownership fee, as it implies the necessity to settle the fee with one tax authority for the entire year – even if the taxpayer no longer resided in the territory of that authority for most of that year. It also means that the authority from the municipality where the taxpayer has settled during the year (changing residence) does not have the competence to assess the fee for the period from the month of the move to the end of the given year.

Although the law does not mention the local jurisdiction of the tax authorities, the issue was addressed by the Minister of Finance in the regulation of 22 August 2005 on the jurisdiction of tax authorities. Pursuant to para. 8(4) of that act, the local jurisdiction in dog ownership tax matters is determined according to the place of residence of the person owning the dog. This solution has a serious drawback. Firstly, if a person owns several dogs in different municipalities, all the fees payable in respect of the ownership of those dogs should be paid in the municipality in which he resides. Secondly, even if no dog ownership fee has been enacted in some municipalities (where the person owns dogs), such fees should be paid in the municipality of residence (if there is a dog ownership fee resolution in place there [Idem 2022, 349-68].

4. POWERS OF MUNICIPAL AUTHORITIES REGARDING THE DESIGN OF THE DOG OWNERSHIP FEE

Article 19(3) LTF provides for the possibility of the municipal council to apply tax exemptions, and only those of an objective nature. The above provision corresponds to Article 217 of the Constitution of the Republic of Poland, which prohibits subjective exemptions. In practice, the nature of tax exemptions means that it is often difficult to separate them into purely subjective or subjective exemptions. In accordance with the jurisprudence of administrative courts, in order to correctly fulfil the prerequisites of Article 19(3) LTF, it is necessary to determine the criterion of the exemption by identifying the subject, and not the entity, of the exemption.[4] Whenever it is not possible to derive who is subject to the exemption, the exemption is of a non-objective nature and consequently means exceeding the statutory delegation indicated in the aforementioned provision. The Constitutional Tribunal has repeatedly pointed out in its judgments that the financial independence of a municipality and the right to determine the amount of local taxes and fees constitute an important element of its subjectivity, but cannot be understood as the freedom to determine and dispose of revenues. On the contrary, municipalities are only allowed to do what the provisions of the law allow them to do.[5]

Pursuant to Article 19(3) LTF the municipal council, by way of a resolution, may introduce subjective exemptions from local fees other than those listed in the Act. Thus, the legislation clearly delineates the possibility of applying tax exemptions of an object-related nature only. The wording 'other than the exemptions listed in the Act' determines that the exemption may relate only to the subject of taxation.[6] The local authority council has the power to introduce tax reductions only if the term relief is used in the relevant statutory provision. It is not possible to derive from a provision authorising the municipal council to adopt exemptions in local taxes and charges the power to adopt tax reductions. It is therefore unacceptable to conclude that, since the municipal council has the power to introduce exemptions, it can also introduce tax reliefs, as this is nothing more than a 'partial exemption'.[7] The economic effects

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[4] Judgment of the Regional Administrative Court, in Gliwice of 19 March 2013, ref. no. I SA/Gl 1335/12; judgment of the Supreme Administrative Court in Gdańsk of 9 April 2014, ref. no. I SA/Gd 168/14 and judgment of the Supreme Administrative Court in Olsztyn of 23 March 2016, ref. no. I SA/Ol 98/16.

[5] Judgments of the Constitutional Tribunal of 23 October 1996, ref. no. K 1/96, OTK No 5, item. 38; of 4 May 1998, ref. no. K38/97 OTK No 3, item. 3; of 9 April 2002, ref. no. K 21/01, OTK-A No 2, item 17.

[6] Judgment of the Supreme Administrative Court in Gliwice of 19 March 2013, ref. no. I SA/Gl 1335/12.

[7] Judgment of the Supreme Administrative Court in Olsztyn of 25 February 2016, ref. no. I SA/Ol 824/15.

themselves of applying an exemption or relief in practice may even be identical, but on a legal level they are entirely separate institutions. Tax exemptions concern different elements of the tax structure than tax reliefs. In the doctrine of Polish tax law and in the well-established jurisprudence of administrative courts, it is unanimously accepted that it is unacceptable to identify the category of tax exemption with the category of tax relief. The legislator does not use these terms interchangeably, on the contrary, they serve to define legal constructions with easily noticeable differences [Etel 2001, 237].

The provision of Article 217 of the Constitution of the Republic of Poland distinguishes subjective exemption from relief. Admittedly, in Article 3(6) TO assumes that a tax relief is understood as exemptions, deductions, reductions or abatements provided for in the provisions of the tax law, the application of which results in a reduction of the tax base or the amount of tax, but at the same time this law unambiguously indicates that this definition is exclusively for the purpose of this law and thus cannot be used when determining the meaning of particular phrases from other laws. No tax law, other than the Tax Ordinance, contains a definition of tax exemption and tax credit. It is assumed in doctrine that a tax exemption is the exclusion from the subjective scope of a given tax of a certain category of entities (subjective exemption) or from the subject of a given tax of a certain category of actual or legal situations (subjective exemptions); there are also exemptions of a mixed nature: subjective and objective [Brzeziński 1996, 31]. In tax law, on the other hand, they amount to a reduction in the tax base, tax rate or tax amount. Exemption means the exclusion of a certain category of entities or objects from taxation, while relief means a reduction in the amount of tax paid. The distinction between these two concepts leads to the conclusion that the municipal council is authorised to introduce tax reliefs only if the term relief is used in the relevant statutory provision. The power to enact tax reductions cannot be derived from a provision authorising the municipal council to enact exemptions in local taxes and fees [Wołowiec 2022b, 146-56].

5. THE POSITION OF THE COLLECTOR OF THE FEE FOR OWNING A DOG IN THE CASE OF THE PROVISIONS OF THE TAX ORDINANCE ACT

The role of the tax collector is to facilitate the fulfilment of tax obligations by taxpayers. The applicable tax laws provide for the possibility to use it for the collection of taxes constituting the income of local government units, while the decision-making on the ordering of tax collection by means of collection, the determination of collectors and the amount of remuneration for collection is entrusted to municipal councils by means of acts of local law (resolutions). The entities on which the municipal councils impose

the obligation to collect tax by means of collection are obliged to perform it. Such a regulation can be found in Article 6(12) and Article 19(2) LTF with regard to the collection of real estate tax from natural persons and local fees, as well as with regard to agricultural and forestry tax collected from natural persons [Brzeziński and Olesińska 2010, 21].

The obligation of the collector to collect the tax and pay it in due time to the tax authority, arises from the regulations on particular types of taxes, which provide for such a possibility to collect a given tax by way of collection and the procedure for appointing entities as collectors. If the resolution of the municipal council does not provide for collection by way of collection, then the conclusion of agreements by the municipal management board (head of the municipality) with the entity that is to collect the levy is an act contrary to the adopted resolution, i.e. contrary to the applicable legal provision, and above all, this entity does not become an 'arm' of the authority that is authorised and obliged to collect the levy'.[8]

It should be borne in mind that the Municipal Council has not been authorised to enact additional regulations on collection with regard to the issuance of a receipt. The duties of collectors with regard to collected taxes and fees result directly from the law, i.e. from Article 9 and Article 47(4a) TO, and the principles of liability for non-performance or improper performance of these duties by collectors, as well as the principles of conduct of the tax authority, are established by the norms of Article 30(2) and (3) TO.[9] Thus, the collector is not liable for the taxpayer's obligation and its liability is limited only to that of its own acts or omissions, which arise under the law. On the other hand, the failure of the payer or collector to fulfil its obligation does not abrogate the taxpayer's tax liability. If, despite the liability of the payer or collector, the tax debt owed to it has been paid by the taxpayer, the tax liability has been extinguished. In such a case, a tax creditor will not legally be able to claim payment of the same benefit from the taxpayer [Wołowiec and Podolchak 2022, 371-90].

6. DESIGNATION OF THE FEE COLLECTOR BY A RESOLUTION OF THE LOCAL AUTHORITY

The appointment of a legal person or an organisational unit without legal personality as a collector by a resolution of the local municipal council raises the issue of who will perform the duties of a collector. Such a person, who is obliged to collect the fees and pay them to the tax authority on time,

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[8] Judgment of the Supreme Administrative Court in Warsaw of 16 April 2008, ref. no. I FSK 622/07.

[9] Resolution of the Regional Chamber of Audit in Olsztyn of 9 December 2015, No. 0102-469.15.

must be appointed by the head of the organisational unit concerned (this is a technical act) [Nykiel 1998, 178]. This may be several persons (e.g. all the employees at the reception desk of a hotel) whose duties will include performing the activities assigned to the collector. The designation of these persons may take the form of an increase in their job responsibilities (employment contract) or a contractual obligation on them to perform these activities. Designated persons should be notified by the head of the organisational unit to the competent tax authority before the first payment of collected tax is made. A change of these persons also requires notification within 14 days [Kosikowski, Etel, Dowgier, et al. 2011, 290-91). Failure to designate such persons and notify the tax authority of this is a fiscal penal offence, as pursuant to Article 79 of the Fiscal Penal Code,[10] a debt collector who fails to appoint, within the required time limit, a person whose duties include, inter alia, the collection of fees and the timely payment to the tax authority of the amounts collected, or who fails to notify the locally competent tax authority of the required details of such persons, is subject to a fine for a fiscal offence. Of course, failure to appoint a person responsible for collecting the spa fee cannot be interpreted as the absence of a collector or a person responsible for performing their duties, and thus incurring fiscal penal liability.[11] It should be clearly stated that a person (an employee of a hotel, guesthouse, sanatorium, etc.) appointed to perform activities related to collecting the spa fee is not a payer or collector.[12] Public law liability for the correct collection of these fees is borne, on general principles, by the collector, who is a specific legal person and organizational units without legal personality (an entity providing hotel services). A person appointed by the facility management to collect the spa fee shall be subject to employee liability or liability arising from an employment contract in the event of failure to properly fulfill these obligations [Wołowiec 2018a, 15-19].

The collector is obliged to store documents until the limitation period for their obligation expires (Article 33 TO). The collector is obliged to fulfil the obligations consisting in collecting the local (spa) fee from the taxpayer and paying it to the tax authority in due time (Article 9). The collector is liable for failure to perform or improper performance of these obligations. Therefore, throughout the period in which a decision on his liability may be issued, he is obliged to store documents related to the collection of the local and spa fee. This allows the tax authorities to determine the collector's liability or to charge the taxpayer with this liability. The limitation period for the obligations of collectors should be determined taking into account the periods of

[10] Act of 10 September 1999, the Fiscal Penal Code, Journal of Laws of 2007, No. 111, item 765 as amended [hereinafter: FPC].

[11] Judgment of the Supreme Court of 2 July 2002, ref. no. IV KK 164/02.

[12] Judgment of the Supreme Administrative Court of 5 October 1994, ref. no. SA/Gd 1726/94.

suspension and interruptions in its course. In most cases, it will be 5 years, counted from the end of the year in which the deadline for collecting or transferring the tax by the collector expired [Wołowiec 2018b, 16-19].

The collector is obliged to notify the tax authority in writing about the place where documents related to the collection of local and spa fees are stored. This obligation applies only to legal persons and organizational units without legal personality, and does not apply to natural persons. In the event of liquidation or dissolution of a legal person or an entity without legal personality, the entity performing these activities is obliged to indicate the place where the documents are stored. They should be stored until the collector's obligation expires. After this period, the documents should be destroyed.

7. LIABILITY OF THE COLLECTOR FOR FAILURE TO COLLECT FEES.

The Fiscal Penal Code does not provide for the liability of a collector for failure to collect fees. Only the collector who collected the fee but did not pay it on time to the account of the competent authority is subject to the penalty (Article 77 FPC). As a result, the lack of "sanctions" for failure to fulfill statutory obligations by collectors leads to the fact that they may not take any action to collect the fees. This is harmful not only for the interests of the commune, but also for the legal situation of the taxpayer. Failure to collect the fees by the collector means that the taxpayer must pay the fee themselves in a specified manner and within the specified deadlines. If a tourist (taxpayer), accustomed to paying through a collector, does not pay the due fee by the last day of the payment deadline (stay), tax arrears and default interest accrue to the taxpayer. In communes, collectors' failure to fulfill their obligation to collect the fees is a big problem, especially in relation to the local fee and spa. The collectors of these fees are appointed owners of guesthouses, summer houses, hotels, hostels, etc., who do not want, which is understandable, to collect these fees from their guests. The only solution to the lack of activity of collectors is to deprive them of this function by amending the resolution of the council and appointing new collectors. In some cases, civil law agreements are also effective, concerning the performance of additional obligations not directly related to tax collection (keeping registers, settling proofs of payment of the fee, etc., providing information on the amounts collected), where contractual penalties are provided for failure to perform these activities. These agreements cannot concern the statutory obligations of the collector, i.e. collecting and paying taxes [Kosikowski, Etel, Dowgier, et al. 2011, 284]. The collector is liable for non-payment of the collected fees with all his assets. This liability is personal and unlimited. It also covers all joint property of collectors and their spouses.

8. TAX PROCEDURE IN THE CASE OF NON-PAYMENT OF FEES

If, during tax proceedings, the tax authority finds that the collector has collected a local or spa fee but has not paid it, the authority issues a decision on the tax liability of the collector, specifying the amount due for the collected but unpaid fee [Olesińska 2010, 15-16]. The above decision may also be issued by the tax control authority. In one of its judgments, the Voivodship Administrative Court in Warsaw indicated that the liability of a collector is formally similar to a tax obligation in taxes that are the subject of tax liabilities arising from the delivery of a decision establishing a tax liability (Article 21(1)(1) TO). In a situation where the collector fails to perform his obligations on time, but pays the collected fees to the tax authority's account before the authority issues a decision on his tax liability, there is no basis for claiming that the payer has performed the obligations arising from the Tax Ordinance (Article 30(2) TO).[13] In the decision on the liability of the collector, the tax authority determines the amount due for the collected but unpaid local (spa) fee, despite such an obligation resulting from the law. This authority confirms a specific conduct (or rather the lack of conduct required by law) of the collector. The decision referred to in the Tax Ordinance (Article 30(4) TO) is therefore of a declaratory nature [Kosikowski, Etel, Dowgier, et al. 2011, 286; Mączyński 2001, 27]. It seems that in the case of payment of a local (spa) fee by a taxpayer (tourist), the proceedings initiated to establish the collector's liability should be discontinued as moot (Article 208 TO). "When the proceedings have become ineffective for any reason irrelevant, in particular in the event of the statute of limitations of the tax liability, the tax authority shall issue a decision to discontinue the proceedings. [...] The tax authority may discontinue the proceedings if the party at whose request the proceedings were initiated requests it, and if no other parties object and it does not threaten the public interest".[14] In a situation where the collector paid the amount specified in the decision on liability from his own funds, the taxpayer will avoid having to pay the tax. The tax will be paid by the collector. The collector, if the taxpayer does not return the amount paid by him, may demand a refund of the amount paid in the manner specified in the Civil Code (Article 405).[15] The taxpayer obtained a financial benefit (the amount of tax paid) without a legal basis. The taxpayer's unjust enrichment is a premise for the refund of tax to the collector who paid the tax on his behalf [Wołowiec 2018c, 56-87].

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[13] Judgment Supreme Administrative Court of 11 September 2007, ref. no. II FSK 957/06.

[14] Judgment of the Supreme Administrative Court of 20 December 2004, ref. no. III SA/Wa 557/04.

[15] Act of 23 April 1964, the Civil Code, Journal of Laws No. 16, item 93 as amended.

CONCLUSIONS

The appointment of a person responsible for performing activities related to collecting a dog ownership fee does not result in this person obtaining the status of a collector, and consequently, they are not liable for failure to perform the obligations specified in Article 8 and 9 TO. The collector is always the legal person or organizational unit on which the provisions of tax law impose the obligations to collect and pay the tax due. It does not follow from Article 31 TO that a person who, within an organizational unit (hotel facilities), is obliged to appoint a person whose duties will include calculating, collecting and timely paying the tax amounts – is liable as a tax payer in a situation where they fail to perform this obligation.

Therefore, a person appointed by the collector to perform the duties consisting in collecting and paying the collected tax amounts to the tax authority, in the event of a breach of these obligations may be subject to employee liability or civil liability. A person designated to perform activities related to tax collection may also be liable under fiscal and penal law. According to Article 9(3) FPC, a person who, based on a provision of law, a decision of a competent authority, an agreement or actual performance, deals with the economic affairs of a natural person, a legal person or an organizational unit without legal personality is also liable for fiscal offences or misdemeanors, as the perpetrator. Therefore, the collection and payment of tax is included in the concept of dealing with the economic (economic) affairs of a given entity, referred to in Article 9(3) FPC.

In the event that a natural person responsible for performing activities related to the collection of the spa fee is not designated, fiscal and penal law liability under Article 77 or 78 FPC may be attributed to the person responsible for collecting the local fee. Therefore, both when the regulations do not require the appointment of a person responsible for performing the activities of a collector, and when the obligation to appoint such a person has not been fulfilled.

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ON THE SOURCES OF ISLAMIC LAW

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Abstract. The text is devoted to the issue of the sources of Islamic law. It explains the peculiarities of Islamic law as such, emphasizing the absence of dualism, the absence of the division of reality into sacred and profane. There is no dualism in Islamic law between church and state, faith and law. Islamic law means the fulfilment of God's commandment by deed, responding to God's will with obedience. There can be no other law beside it, because the source of all law is God. The article describes Fiqh, Islamic jurisprudence, the study and application of divine law. It also analyses the origins and development of the Islamic legal system, the role of the Prophet Muhammad and other prominent Muslim scholars. It focuses on four basic elements – the Qur'an, the Sunnah, the consensus, the Ijma and the analogy, the Qiyas. The first two sources are generally regarded as primary, the others are more likely to be methodological foundations or principles of application, and thus secondary sources of law. It does mention additional sources of Islamic law such as derogation from one rule in favour of another rule, a decision based on public interest, relying on *qiyás*, *istisláh* and finally *urf*, custom. Finally, we assess the importance of knowing these sources and the logic of their use in Islamic law, which divides reality into permissible and impermissible acts, affecting the daily lives of all those who are subject to this law, as well as the coexistence between members of different religions. We consider that knowledge of the current state of legal scholarship in the field of religious law is a prerequisite for dialogue on peaceful coexistence of communities and its implementation.

Keywords: Islamic law; sources of law; principles; legal system.

INTRODUCTION

Islam is one of the fastest growing religions, if we consider the numbers. It is a monotheistic, universal, Abrahamic religion, based on the teachings of the Prophet Muhammad. More than 24.1% of the world's population is Muslim, with an estimated total of approximately 1.9 billion.[1] It is predicted that Muslims will also be the largest growing group among religions. Their numbers are expected to grow by 70 percent between 2015 and 2060. In the case of Christians, the growth is predicted to be only 34 percent.

[1] *Major Religions of the World Ranked by Number of Adherents*, http://www.adherents.com/Religions_By_Adherents.html#Islam/ [accessed: 10.18.2024].

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Yet the Pew study predicts a 32 percent increase in the planet's population in general.[2] The differences in the ways of life of the various components of increasingly heterogeneous societies are a challenge to the secular state as well as to its reflection of the experienced division of reality into the sacred and the profane. Islam strictly rejects such divisions when it naturally conflates culture, lifestyle, morality, norms and rules. In the context of comparing the degree of correlations between religion and way of life, it is not only social scientists who often reach for arguments that involve the ways and matter by which particular religious systems make ethical claims on their adherents. These are undoubtedly the canonical and non-canonical records of the lives and sayings of their founders and followers, but also other sources that were and are produced in a variety of geographical, cultural, social and political settings, and interacting with a wide variety of influences. The more these kinds of arguments progress, the more often we see various attacks whose actors themselves refer to religion or are associated with religious systems by others. Although this is not only true of Islam, is this religion that has been penetrating in recent times. Even in the context of many simplifications, but above all in the context of the need to approximate the ethical claims of religions and the practice of life in a democratic society in the 21st century, it is essential to eliminate misinterpretation and misunderstanding of the sources of religious law as far as possible. Their examination is even more important the more religion is diversified among different schools and traditions, and the more loosely its hierarchical aggregation, and hence the more problematic the determinable binding interpretation of its law.

1. THE WAY – ISLAMIC LAW – *SHARĪ'A*

Islamic law is quite exceptional, given that it is not the law of a particular state, but the law of persons of a particular religion. The Islamic legal code knows no dualism of church and state, faith and law. Islamic law means the fulfilment of God's commandment by deed, responding to God's will by obedience. There can be no other law beside it, because the source of all law is God. Islam, therefore, knows no dualism of secularism and religiosity [Bureš 2007, 39].

In the structure of Islam, it incorporates the *sharī'a* sum of the divine order commanded to mankind. It is an immutable moral law [Kropáček 2003, 117]. In particular, it is a Qur'anic code of conduct within the intent of Islamic morality. It is neither a part of normative law nor a set of legal precedents that determine judicial decisions. It is primarily about Qur'anically

[2] *The Changing Global Religious Landscape Babies born to Muslims will begin to outnumber Christian births by 2035; people with no religion face a birth dearth*, https://www.pewresearch.org/religion/2017/04/05/the-changing-global-religious-landscape/ [accessed: 10.18.2024].

determined conduct within the intent of Islamic morality. "It does not come from the state, it is not in the form of a book, nor is it a collection of rules. The *sharī'a* is of divine and philosophical origin. The human interpretation of the *sharī'a* is called *fiqh*, or the Islamic way of right conduct, which is created by individual scholars on the basis of the Qur'an and the hadiths" [Quraishi-Landes 2017]. According to Seyyed Hossein Nasri, the s*harī'a* represents an ideal model of personal life and a law that binds all Muslims into one community. It encapsulates the divine will in specific teachings, the acceptance and application of which guarantee man a harmonious life in this world and bliss in eternity [Hossein Nasr 1975, 93]. The term *sharī'a* [Haeri 1997, 228][3] was initially used to refer to a watering hole or path to water. Similarly, in Judaism, the term *halakhah*, the way, is used to refer to Jewish law. The ideal state is the management of every step in life by means of *sharī'ah* regulations, whether the matters are religious or secular. The most important sources and the main sources of legal scholarship [Kropáček 2003, 119-22, 144-46] are Quaran and Sunnah. Mohamed has served as a legislator since the beginning of his presidency. During his lifetime, his decisions were accepted uncritically, and as final. After his death, Muslim caliphs, rulers who faced different situations in different circumstances, had to make difficult decisions. Pragmatic solutions to problems, however, had to be replaced in due course by new firm legal foundations that were regarded as genuine Islamic principles. The early religious scholars, the ulama, strove for meticulous adherence to the precepts of their religion. Naturally, therefore, they turned to the Qur'an [Hillebrantová 2017, 100-101]. Although the Qur'an is primarily a book of revelation, out of 6345 verses, it contains approximately five hundred verses relating to law. From these, several specific rules can be derived. From the carefully preserved reports of what the Prophet Muhammad told his companions, the *ashāb*, of his deeds, and of what he approved in their presence, albeit tacitly, of the hadeeths, they have drawn upon the Qur'anic values as another source in formulating opinions reflecting Qur'anic values. The first two generations of followers of Muhammad's preaching, especially from Medina, where he spent the last decade of his life, drew on oral tradition, on the living memory of ancestors. The early scholars, however, were aware of the need for a formal record of the hadith for later generations and for converts from more distant areas. The Ulama therefore collected the hadiths, and gradually a critique of them and a doctrine of their criticism was developed. They formulated the first criteria for deciding the degree of their authenticity. A true hadeeth had to be proved by a chain of reliable

[3] "*Sharī'a* is [...] semantically not quite an unambiguous term [...] according to the most common Sunni conception [...] *sharī'a* represents the codified body of God's commandments and prohibitions, which encompass all the details of human conduct, action and thought in this world." See Mendel 1997, 19.

tradents whose testimony could be traced back to the Prophet Muhammad and his companions. The most important collections of *hadīth* are the works of *al-Bukhārī*, Muslim, *Abū Dā'ūd*, *at-Tirmīdhī*, *an-Nasā'ī* and *Ibn Mādja*. Thousands of statements recorded by them have become the foundations of a comprehensive system of legal science. In the period when Muslim territory was bounded by Granada in the north and India in the south, in the 8th century, because of the great distances, there were certain problems of communication, which naturally affected the uniformity of interpretation of legal texts. Local legal schools, madhhabs, were therefore established in the major centres. The most important were in Damascus, Kufa, Basra and Medina. It should also be mentioned that the early ways of applying Islamic law were strongly influenced by earlier systems, especially Jewish and Roman law. Pre-Islamic practices, local customs and administrative edicts of the rulers also had a considerable influence. The reign of the Abbas dynasty (750-1258), which replaced the Umayyad dynasty (661-750), which succeeded the Umayyad dynasty, was characterised by a firmly centralised authority, order and system that allowed the formulation of the classical principles of Islamic legal scholarship [Hillebrantová 2017, 102-103].

2. FIQH – MUSLIM JURISPRUDENCE, THE SCIENCE OF DETERMINING THE PRECISE TERMS OF *SHARĪ'A*

Contemporary Muslim scholars sometimes refer to their religion as a unity of dogma, *aqīd*, law, *sharī'a* and culture, *hadār* [Kropáček 2003, 117].

Fiqh is a term that denotes Islamic jurisprudence, the study and application of divine law; in a broader sense, it denotes knowledge or rationality. The etymology draws our attention to the fact that early Islam regarded *fiqh* as a science to be pursued by highly specialized experts, fuqaha. If *sharī'a* implies divine origin, *fiqh* expresses human activity and covers all aspects of religious, political and social life. "*Fiqh* is the knowledge of how to classify divine laws, which concern all responsible Muslims, into obligatory, prohibitive, recommendatory, condemnatory, and permissive. These laws are derived from the Qur'an, from the Sunnah, and from the proofs that Muhammad established for the knowledge of the laws. The laws drawn from all these sources are religious law," says Ibn Khaldun [Ibn Chaldún 1972, 430]. The earliest extensive and systematic legal treatises are found in texts attributed to scholars of the late 8th and early 9th centuries, Malik ibn Anas, Ash-Shafi'i, Abu Yusuf, and especially Abu Hanif and Ahmad ibn Hanbal. To establish a system of law and to evaluate man's actions, Islamic legal scholarship developed, in its early stages, four basic sources of legal theory, *usūl al-fiqh*. These are the methodological principles used to derive legal provisions legitimately. Ash-Shafi (767-820), one of the fathers of Islamic

legal systematics, relied on four basic elements – the Qur'an, the Sunnah, consensus, *ijmah* and analogy, *qiyas*. The first two sources are generally regarded as primary; the others are more likely to be methodological foundations or principles of application, and thus secondary sources of law. The other additional sources of Islamic law are: deviation from one rule in favour of another rule, the deviation being necessary, *istihsán*; a decision based on public interest, relying on *qijás*, *istisláh*; and finally *urf*, custom. *Istihsán* – reminiscent of the common law institution of equity as a departure from strict analogy in favor of an alternative rule that better serves the ideal of fairness and reasonableness. *Istihsán* – is an important tool for softening the law in light of the diversity of life circumstances and legal issues. It is used to deal with exceptional and borderline cases. *Istislah* – is a method of legal reasoning through which public interest, *maslaha*, is taken as the basis for a decision on a legal issue. *Istisláh* is similar to *istihsán*, but while *istihsán* is essentially an extension of *qiyás* or a choice within a broader analogy for the purpose of reducing the harshness of the law. In *istislah*, the norm is purposively formulated with a particular public interest in mind, where it is possible to determine what is the common good or public welfare. The Arabic word *arafa* means to know, and its adjective *ma'rúf* means that which is familiar, habitual. *Urf* denotes customary law, a recurrent, constant collective practice from pre-Islamic or even later times. It is an authoritative source of law provided that it is a general, widespread phenomenon that is consistent in terms of its observance, valid at the time of the transaction or legal act to be governed by it, and also, the interpretation of legal acts is consistent with the customs existing at the time. Custom is subsidiary to the agreement of the parties; only in the absence of agreement is the legal relationship governed by custom. *Urf* must not contradict the primary sources of law [Osina 2012, 38]. *Urfu* norms, unlike consensus, are changeable. This is undoubtedly due to the fact that *urf* persists not only in verbal or factual form, but also as a general custom, or a special custom that is bound only to a particular time or place, even approved or disapproved, depending on the perception of its conformity with Islamic law, general morality, and other requisites of custom.

3. THE QUR'AN

"In the name of the gracious God, in whose power is grace."[4] The above introduction to the prayer, which is also called the "Opener of the Book", the *basmala*, is not only an introduction to the entire Qur'an, but is also recited at the beginning of every prayer and on many other occasions. The Qur'an is

[4] *Korán. Zväzok I*, Alja, Bratislava 2008, p. 22.

the central fact of Islam's existence without which this tradition would never have come into being. Religious scholars compare the Qur'an in the Islamic milieu to the person of Christ in Christianity, both being the living or holy word of God. Muslims believe that if the Qur'an is recited in the right way,[5] the divine presence in the form of its sacredness descends upon both the reciter and the audience. This divine presence is peace and involves the feeling that one is protected and guided by the God.[6] The Qur'an is only touched by Muslims in its ritually pure state, and memorising it is considered a particularly meritorious act. Those who have done so are revered as "guardians of revelation" [Denny 1999, 92], the Hafiz. The word Qur'an is a noun verb derived from the verb *qaraa* – to recite, recite, read. It therefore means reciting or reciting or reading what has been revealed to Muhammad from God. The Qur'an is not a legal code, although there are verses of a legal nature in it. The Ulama divide the Qur'an into four basic headings, matters of faith, cultic matters, human morality and human relations. The legal heading mainly regulates family relations, civil and criminal law. Strict and detailed verses of a legal nature concern inheritance law and relations between spouses [Osina 2012, 32]. There are also prohibitions on some despicable pre-Islamic customs and practices, such as female infanticide, interest, gambling or unrestricted polygamy. In general, the Qur'an approves the existing customs and legal institutions of Arab society and introduces certain changes to them. However, the Qur'an, as a whole, is more a guide for life than a constitutional or legal document. Characteristic features of Qur'anic legislation include the phenomenon of gradualism, *tangim*, the division of the surahs and hence norms into Meccan and Medinan, and the frequent justification of particular prohibitions and injunctions by explaining the purpose and aim, indicating the benefit to be derived from compliance and pointing out the expediency of acting in accordance with the Qur'an. The *Qurʾān's* provisions are also divided into general, *'amm*, and specific, *chaṣṣ*, defining in their effect certain actions as obligatory, *wagib*, or forbidden, *haram*.

The legal meaning of the relevant *Qurʾānic* phrases regarding the scale obligatory – recommended – indifferent – reprehensible is always derived from the circumstances, the wording of the text and its systematic classification. Legally relevant, obligatory, are explicit commands or prohibitions defining in their effect a certain action as obligatory or forbidden. Most Qur'anic legislation is general guidance, although it is specific on some issues. But all questions should be resolvable based on the principles contained in the revealed text. General principles are specified in the Sunnah or other sources of law [Potměšil 2012, 58-62].

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[5] "Many translations of the Qur'an, if they are to be approved by Muslim religious communities, are published alongside the Arabic original and are referred to as 'interpretations'" [Kropáček 1994, 94].

[6] Like the *shechinah*, the divine presence in the world, in Judaism.

4. THE SUNNAH – THE BODY OF TRADITIONAL SOCIAL AND LEGAL CUSTOM AND PRACTICE OF THE ISLAMIC COMMUNITY

"The Sunnah took into itself the Prophet's well-established sayings, the hadiths, and became an authoritative guide developing or supplementing a particular piece of legislation enshrined in the Qur'an" [Hillebrantová 2017, 103].

Another of the primary sources of Islamic law is the Sunnah. The authority of the Sunnah is based on the Qur'an, which speaks of the Prophet Muhammad and his role to teach scripture and wisdom in the surah of *hikma*[7].

The prominent Islamic thinker Ibn Khaldun (1332-1406), the eminent Islamic thinker, Ibn Khaldun, summed up the essence of the Qur'an and the Sunnah when he argued that the basis of all traditional sciences is the legal material of the Qur'an and the Prophet's customary conduct, the Sunnah – these form the law given to us by God and his messenger Muhammad [Ibn Khaldun 2015, 436]. The term Sunnah is derived from the verb *sanna*, to give shape, form, to ordain, to prescribe. The customs of the Prophet Muhammad, his words, habits, actions, and commands as remembered and preserved by Muslims in the form of reports, sayings. It represents the totality of norms [Denny 1999, 98-99, 188]. The Sunnah is expressed through stories whose authenticity of origin derived from Muhammad has been researched and documented by approvals from generation to generation. The Sunnah has been regarded as an interpretation of Allah's words and has become a model of conduct for Muslims. The role of the Sunnah is to supplement and explain the loopholes of the Qur'an in an intelligible manner [Hruškovič 1997, 27-28]. The Sunnah, which is the main reason for the unified cultural character of Muslim communities in different cultural, linguistic and geographical settings, is a set of specific instructions on what a Muslim should believe and do in order to preserve the character of the global Muslim community – the *ummah*.[8] The fixed structure of the ummah is formed and governed by the *sharī'a*, the way of Islam,[9] which is the expression of Allah's will as revealed to Muhammad, and governs the believer's relations to the religious community, the state, Allah, and even to his own conscience. As mentioned above, the Sunnah is the authentic tradition of the Prophet Muhammad. It includes his sayings on specific occasions and his actions in certain situations. Muslims are bound by the obligation to follow the path of the Prophet

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[7] 62:2, 59:7, 33:36.

[8] However, the unity of the ummah suffered, splitting in the 7th century into Sunnis (forming the majority of the faithful and subject to the ruling caliph), *Shi'ites* (loyalists of the first "orthodox" caliph, Ali), and Kharijites ("apostates", according to whom only the community has the right to elect its leader and also the duty to overthrow him if he commits grave sins). See Eliade 2001, 39.

[9] Literally "the way to go" [Müller 1997, 23].

Muhammad. Although the Sunnah stands outside of revelation, it is nevertheless sacred and inspired by God. It ascribes infallibility to the prophet in religious matters, since he did not express his own will, but God's. The Sunnah is either a supplement to the Qur'an or an interpretation of its text. Expression through hadiths[10] conveys the interpretation of the words of Allah Himself and becomes a model of behaviour for all Muslims. The Sunnah is almost an equal source of law as the Qur'an and its role is to supplement and explain the gaps in the Qur'an in an intelligible way. It deals primarily with issues of a political, cultural and legal nature. It is an important source of law for the work of the Islamic courts, its provisions have become the normative basis for the decisions of Muslim judges, with the preponderance of normative prescriptions being causal in origin. The careful collection and preservation of information about Muhammad's conduct and actions testifies to Islam's tendency to offer, alongside the Qur'an, which is impersonal, other, personalized norms and patterns for Muslim life [Osina 2012, 34-35]. Sunnah in ancient Arabia referred to the continuous practice of a tribe or society that was inherited from ancestors. The opposite of sunnah is innovation, *bid'a*, for which there is no precedent and therefore no connection with the past. *Bid'a* usually has negative connotations and often denotes inappropriate innovation. It should be stressed that the Prophet Muhammad himself valued new good habits. His negative assessment of some new customs has given rise to a conservatism that fears anything new in Islam [Potměšil 2012, 73-74].

5. *IJMA* – FAITH OF ISLAM

"What Muslims consider righteous is righteous in the sight of Allah" [Hruškovič et al. 2015].

The Ijma, although the third most important source in Islamic law, is already classified as a secondary source, like the Qiyas. Ijma is the expression for the consensus of experts in law, a consensus unanimous and largely tacit. It is based on Muhammad's alleged statement that "my community will never unite on error" [Mendel 1997, 21]. In this context, it should be borne in mind that Shi'ite Muslims do not regard the Ijma as a source of law. From the etymological point of view, the root of the word can be found in the verbal noun *ajme*, which expresses an agreement on something, a resolution over something, an agreement, an opinion, a consensus. It can be defined as the unanimous opinion of all the scholars of one time

[10] News, conversation, talk. Denotes a specific report of the sayings or actions of the Prophet Muhammad and his companions. The hadeeth is the bearer and source of the sunnah. *Khaba* and *atar* are terms denoting the acts and sayings not of the Prophet but of his closest companions who followed the example of the Prophet Muhammad.

after the death of the Prophet Muhammad on a particular cause. Ijma does not require the consent of all Muslims, it is limited to Muslim jurists, ulama. Ijma is applied when a new case arises and their decision clearly cannot be based on the Qur'an or the Sunnah. The validity of decisions arising from Ijma is dependent on conformity and compliance with general rules from the Qur'an and Sunnah. Although the Ijma is a subsidiary source, in practice it is of great importance; it was believed to be infallible. It played a particularly important role in the early centuries of the Islamic era, the hijra, when the *sharī'a* was only being established and many problems remained unresolved. Ijma and Ijtihad.[11] In this context, it should be borne in mind that Shi'ite Muslims do not regard the Ijma as a source of law. From the etymological point of view, the root of the word can be found in the verbal noun *ajme*, which expresses an agreement on something, a resolution over something, an agreement, an opinion, a consensus. It can be defined as the unanimous opinion of all the scholars of one time after the death of the Prophet Muhammad on a particular cause. Ijma provided Islam with a certain flexibility in response to changing conditions of life. By the tenth century, the view began to prevail that all questions had been answered. The Caliph declared "the gates of ijtihad closed", which made it impossible for several centuries to adapt the law to changing conditions. Since then, only conservative methods of interpretation have been used, and the individual's own thought has been suppressed at the expense of adhering to the customs of the first generations of Muslims. Self-judgment has often been judged as negative innovation or apostasy from the faith. Islamic law and dogmatics for eight hundred years stagnated behind the closed gates of the Ijtihad. It was not until the eighteenth century, but significantly not until the early twentieth century, that a growing number of Muslims called for an updating of the *sharī'a* and its introduction into the modern world, which places the ummah in unforeseen and complex situations, to be done through the "reopening of the gates of ijtihad" – the effort of Muslim legal experts to exercise individual scrutiny and independent judgment in legal and religious matters. Today, ijma and ijtihad are used as arguments for the democratisation and liberalisation of Islam [Osina 2012, 36].

6. QIYAS – ANALOGICAL REASONING AS APPLIED TO THE DEDUCTION OF JURIDICAL PRINCIPLES FROM THE *QUR'ĀN* AND THE SUNNAH

"The gates of ijtihad should be thrown wide open to anyone who is sufficiently qualified" [Hillebrantová 2017, 111-12].

[11] One of the important elements of modern Islamic reform. The ability to determine from a certain point the decisions of the mujahideen, a qualified person expert in religious law.

Qiyas is a form of analogical reasoning, based on the logic of establishing general propositions and legal rules based on the generalization of the specific cases examined. Its justification is justified by a verse of the Qur'an: "Verily in the determination of the heavens and the earth, and in the alternation of night and day, is a sign for men of understanding."[12]

The qiyas, although an older source of law, like the Ijma, is of lesser importance than the Sunnah or the Qur'an [Hruškovič 1997, 30]. Etymologically, the root of the word means measure, pattern, or analogy, usually translated as a decision made in a new case based on a legal analogy. Judgment is based on the logic of establishing general propositions and rules of law based on the generalization of the examination of special cases. It is a matter of filling in the blanks in the legal regulation of a particular area or a particular case. Qiyas can only be allowed in partial provisions; it cannot relate to the fundamental norms of Islam. It is the application of a legal solution cited in the Qur'an or Sunnah to a particular case that is similar to a precedent case. It is not an autonomous source of law because it depends on a model case. Some jurists argue that the *qijás* contains within it ijtihad [Osina 2012, 37]. Qiyas probably originated in Jewish law and was probably introduced into Islamic jurisprudence by Jewish converts. Technically, it represents an extension of the meaning of a norm of Islamic law to a new case that shares substance with the original norm. Recourse to analogy is permissible only when no solution can be found directly in the Qur'an, the Sunnah or the Ijma. Theoretically, in the case of analogical deduction, it is not a matter of creating new law, but rather of discovering and developing already existing norms. A rule defined on the basis of qiyas is the result of rational reasoning, but subordinate to revelation. The main operating space of human reasoning is the search for the common ratio egis in the new and original case. Qiyas is therefore the application of a rule, *hukm*, pertaining to the original case, far, about which it is silent if the *ratio legis*, *illa*, is common to both cases. The legitimacy of qiyas relies on the hadeeth describing the dispatch of Murad b. Chabal as a judge to Yemen, who was called upon to perform ijtihad, and by implication the use of qiyas in cases not governed by the Sunnah or the Qur'an. The Prophet Muhammad himself often applied analogical deduction in cases for which he had no revelation, much like the companions of the Prophet. In any case, without analogy, the creation and interpretation of law would be hardly conceivable [Potměšil 2012, 82], even if it is a religious right.

[12] Súra 3, Werset 190. Hrbek 2000, 512.

CONCLUSIONS

"Perhaps it has never been so important to understand Islam properly as it is now" [Armstrongová 2002, 225]. The sources of Islamic law, primarily the Qur'an and the Sunnah are the *quinta essentia* of the Islamic religion in general. If we have stated that in Islam reality is not divided into the profane and the sacred, we can state, with a great deal of simplification, that it is divided into halal and haram, i.e. into what is permitted and recommended, and what is not permitted or forbidden. In other words, also into what is lawful or what is unlawful under religious law. Since the Qur'an and tradition naturally reflect the realities of the time in which they were written, for new circumstances and situations conditioned not only by historical developments and advances in science, it is necessary to apply the values of the Qur'an in the spirit of the best tradition, not shorthand extremist bounded interpretations. However, this seemingly simple assertion runs into a number of problems related to authenticity and fidelity to the spirit of Islam. *Sharī'a* is now widespread and applied to varying degrees, given the spread of Islam throughout the world. It represents a fundamental issue for the coexistence of Islamic and non-Islamic communities, but also for the existence and further development of states in the aftermath of the Arab Spring. In particular, the issues of contradictions between Islamic law and the secular law of the state are pertracted. They arise in the context of the practice of forced child marriage, circumcision, honour killings or personal "acts of piety", which are qualified as extremism or terrorism by the surrounding secular milieu. The contemporary context or contextualisation of the revelation and legacy of the Prophet Muhammad appears to be crucial in preserving the religious heritage also in the case of Islam, and at the same time social cohesion and peaceful coexistence not only in the Western hemisphere. Islamic jurists interpreting the Qur'an and the Sunnah are confronted with the ethical questions of today just as much as Christians, Jews, inverts or infidels. The complexity of the issues that both revelation and hadith offer is a challenge to them. Islamic law is an organic, living entity that has undergone a dynamic evolution, especially in the last two centuries. Throughout history, scholars have exercised varying degrees of pragmatism in interpreting the *sharī'a*, adapting it to the diverse conditions of society in different parts of the world. The decisions taken have had a profound impact on the lives of one and a half billion people, primarily, and secondarily billions more, especially women. The question of the day is whether modern Muslim jurists will apply ijtihad and remove long outdated aspects of Islamic law that are historically and territorially contingent, and now no longer functional or counterproductive. They must also address issues related to scientific discoveries that

touch on the very essence of life, especially in the fields of medicine, genetics and bioethics. There is a need to rethink the concept of the ummah, the global Muslim community, and the forms of its existence in a global world, too.

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ACCOUNTING AND ECONOMIC-FINANCIAL ANALYSIS IN BUSINESS MANAGEMENT. ECONOMIC AND LEGAL STUDIES*

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Abstract. Accounting is considered historically the oldest part of the economic sciences, having originated with the first human communities. The origins of accounting can be found in the theoretical concepts of the social sciences. However, as it evolved, accounting developed its own theory and methodology subsequently implemented in the practice of economic sciences in the discipline of finance. The concepts, views and theories developed in the accounting system were reflected in legal regulations, including the shape and principles of preparing financial statements. The difference

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between financial analysis and accounting is particularly evident in the decision-making process. Accounting gathers and presents data on the basis of an ex-post approach (something has happened and is reflected in the records), while the analyst (manager) assesses the situation of the company on the basis of these data, analyses the company's environment and makes decisions not only on the current basis, but also on a strategic basis (planning – on the basis of an ex-ante approach, making future decisions on the basis of historical data – ex-post).

Keywords: accounting law; management accounting; decision-making; economic analysis; financial management; tax law; balance sheet law.

INTRODUCTION

The indicators used in theory and practice for the economic analysis of a company originate from the practice of bank analyses. Banks were the first to develop and implement indicators analysing – important for the grade of creditworthiness and ensuring the bank's liquidity – the relations between short-term assets and liabilities, including the issues of dividing assets and liabilities according to the degree of their liquidity and timeliness, etc. The experience, resulting from bank analyses, has been disseminated over time and adapted in the economic activity of business entities and appropriately extended and modified to adapt them to the specifics of financial analysis [Wołowiec 2021b, 12-20].

In conditions of high volatility and instability of the micro- and macro-economic and social environment of companies, as well as rapid development of new technologies, management decision-making, is hampered and requires stable, fast and reliable economic information. Therefore, economic analysis is an important factor in providing the information necessary for efficient and effective business management.

The subject of economic analysis research includes the grade of quality and reliability of information derived from the analysis of a company's economic activity – its economic condition and the financial results achieved.

Economic analysis encompasses all economic and social phenomena occurring in the enterprise's closer and further environment. Their study and analysis consists of: the division of economic phenomena and processes into individual components, the determination of cause-and-effect relationships between the studied elements, and the formulation of conclusions, resulting from the analysis and comparative grades. Nowadays, economic analysis is a separate scientific discipline that grew out of detailed economics and is linked to other scientific disciplines, i.e. statistics, accounting, finance, mathematics, planning, technology, etc. From the point of view of the subject, the following should be distinguished in economic analysis: macro- and micro-economic analysis, financial analysis and technical-economic analysis.

Macroeconomic analysis involves the study and grading of so-called aggregate economic quantities at the level of the whole economy. However, it can provide a lot of useful information for the enterprise, such as general growth trends, the level of certain indicators (e.g. profitability in the total economy for the entire industry) allows hypotheses to be made on the development of the country and the consumption of product groups of interest to the enterprise [Artyukhova, Tiutiunyk, Bogacki, et al. 2022, 7711].

Microeconomic analysis deals with the study and grade of the activities of economic entities such as the enterprise, the household or the individual, as well as problem analyses concerning the main economic products in a given period, e.g.: labour productivity, own costs, asset turnover.

Financial analysis deals with economic values in monetary terms, and covers two main areas: the financial state of the enterprise determined at a specific moment in time (a static approach to the subject of analysis) and the financial results of the enterprise determined cumulatively over a certain period – month, quarter, year (a dynamic approach to the subject of analysis).

Technical-economic analysis is based on the study of economic quantities in material and personal terms and focuses on the grade of individual sections of the company's economic activity.

Internal analysis carried out by the company itself for the purposes of day-to-day and strategic management. The company's financial reporting is analysed, as well as detailed data from accounting records, management accounting or cost accounting. Internal analysis aims to search for ways to optimise decision-making processes, through proper selection and grading of the information collected. Internal analysis plays an important role in the operational and strategic management of a company, so its subject and scope is much broader than external analysis [Gabrusewicz 2011, 56-57; Idem and Remlein 2011, 23-27].

Retrospective analysis – includes a grade of the results of past activities, thus creating a premise for current and future intentions. We can distinguish between the following internal sub-analyses: current (operative) analysis is a systematic evaluation of the course of actions taken, with the aim of possibly detecting negative consequences of economic events and disruptions in the realisation of individual tasks and objectives, as quickly as possible, so that it is possible to make the necessary corrections; prospective analysis includes the identification and grade of various options for solutions (before decisions are made), with the simultaneous application of economic calculation. It is used for medium- and long-term planning in the company, and functional analysis involves the division and separate study of individual economic phenomena occurring in the company's activities, by persons or organizational units functionally responsible for the formation and development of these phenomena. Such analysis is usually carried out by a number of

people, which reduces the time for its execution [Grzenkowicz, Kowalczyk, Kusak, et al. 2017, 45-47; Bednarski, Borowiecki, Duraj, et al. 2018, 15-19].

1. ACCOUNTING AND ECONOMIC ANALYSIS IN BUSINESS MANAGEMENT

Accounting is recognised as historically the oldest part of economic science, having originated with the first human communities. The phenomenon of modern accounting is that it is based on principles described as early as the 15th century. The origins of accounting can be found in the theoretical concepts of the social sciences. However, in the course of its functioning, accounting has developed its own theory and methodology subsequently implemented in the practice of economic sciences in the discipline of finance. The concepts, views and theories developed in the accounting system were reflected in legal regulations, including the shape and principles of preparing financial statements. conceptual framework for the preparation of financial statements. Over the years, the accounting information process has been described, which proceeds in the following stages: 1) identification of data on events and observable objects and their documentation, 2) transformation of data using accounting-specific processing methods and procedures, as well as the use of special recording devices, 3) presentation and communication of information in the form of reports [Gos 2015, 63].

Nowadays, accounting is defined as a universal (it can be applied to different companies, e.g. of different sizes, from different industries) and flexible (it provides information with different levels of detail) information and control system that reflects the course and results of the company's activities [Jaklik and Micherda 1995, 10]. Accounting has three basic functions: informational (provides information for decision-making in the process of business management, source of information for external audiences), control (protects business assets from misappropriation and destruction, influences the rational use of business assets) and analytical (interprets the figures provided) [Wołowiec 2007a, 53-57].

Accounting can be divided into two basic elements: financial (external) accounting, which generates information about the economic activity of the company in the past, mainly for external users, includes: accounting, i.e. a system of recording economic operations, based on appropriate methods, principles and rules, financial reporting, consisting of providing information mainly for the needs of external users in the scope and form prescribed by law, analysis of financial statements, and managerial accounting (managerial – internal) focused on providing information for internal needs, providing the basis for decisions concerning the future [Zaleska 2012, 13-14].

2. ACCOUNTING POLICY AND STRATEGY

Accounting policies are based on specific principles that allow the recipient of financial statements to understand how the resources and results of the company's activities are measured. We can distinguish: 1) the accrual basis – whereby revenue and expenses are recorded on an accrual basis, i.e. they are deemed to be earned or incurred, respectively, when they occur, rather than when the cash is received or spent; 2) the principle of matching revenues and expenses – costs incurred in achieving certain revenues are set against those revenues to determine the result of operations for the period; 3) the principle of prudence – stating that in determining the value of revenues and assets as well as costs and liabilities, one should be guided by prudence and take a pessimistic view, not overestimate revenues and assets, and not understate costs and liabilities; 4) the principle of continuity, according to which, in the course of a financial year, no changes should be made to the principles adopted; moreover, the balances of assets and liabilities shown in the books of account on the day they are closed should be entered in the same amount in the books of account opened for the next financial year; 5) the going concern principle, which assumes that the activity of the company in question is not limited in time, the company has no intention or need to liquidate or significantly reduce the size of its business in the future; 6) the principles of regularity (1) and fair presentation (2), the former being implemented mainly by the auditor examining the compliance of the accounts with the law, the latter assuming that the company's accounts should give a faithful picture of the company's financial position.[1]

The Accounting Act sets out the principles of accounting and the rules for the provision of bookkeeping services. The Act defines the scope of an entity's accounting, which includes: 1) the adopted accounting principles (policy); 2) keeping, on the basis of accounting evidence, books of account, recording events in chronological and systematic order; 3) periodical determination or verification by means of stocktaking of the actual state of assets and liabilities; 4) valuation of assets and liabilities and determination of the financial result; 5) preparation of financial statements; 6) collecting and storing accounting evidence and other documentation provided for by law; 7) having the financial statements audited, filed with the competent court register, made available and published in the cases provided for by the Act [Wołowiec 2010, 499-508].

Accounting is the main and most important source of economic information on a company's economic activities. Regardless of how it is defined, it is intended to represent economic reality accurately and to communicate

[1] Act of 29 September 1994 on accounting, Journal of Laws No. 121, item 591 as amended.

these representations to external stakeholders. As an applied science, accounting has a practical purpose, i.e. the measurement of the flows and incremental value of a company, made to facilitate management and investment decisions based on performance accounting. Business management is a continuous process of making and implementing diverse and sometimes contradictory decisions. One method that facilitates good decision-making is financial analysis, which examines and grades a company's performance.

The tool for measuring and describing economic and financial values is accounting theory, which explains the principles for measuring economic and financial values in relation to the company sector, and indirectly the results of these measurements are used for making economic decisions at the macro level. The development of management science has led to the emergence, alongside financial and management accounting, of a new field of knowledge called controlling, which covers planning, control and management. Controlling can be defined as a cross-functional management instrument, which is a result-oriented control process of a company, implemented through planning, control, reporting and management, while accounting in the aspect of controlling is an instrument providing various decision-making levels with cross-sectional information, necessary for future-oriented company management [Dobija 1997, 61; Nowak 2009, 14-17].

Accounting can be defined as a system, providing users of reports, with information about the economic activity of an entity. The data collected by the accounting system can be presented in the form of: internal reports to managers for planning purposes, control of day-to-day operations and day-to-day decision-making; internal reports to managers for strategic planning; and external financial reports to shareholders, creditors and other external stakeholders, as well as internal [Brigham and Houston 2005, 34-36].

3. DIFFERENCES BETWEEN FINANCIAL ANALYSIS AND ACCOUNTING

The difference between financial analysis and accounting becomes particularly apparent in the decision-making process. Accounting gathers and presents data on the basis of an ex-post approach (something has happened and is reflected in the records), whereas the analyst (manager) assesses the situation of the company on the basis of these data, analyses the company's environment and takes decisions not only on the current basis, but also on a strategic basis (planning – on the basis of an ex-ante approach, taking future decisions on the basis of historical data – ex-post). When preparing financial statements, certain principles are applied, which influence their content. In view of the wide range of audiences and the comprehensive application of financial statements, they should be prepared in accordance

with six principles [Tendera and Wlaszczuk 2002, 15]: the principle of completeness (periodisation), the principle of reliability (truthfulness, relevance), principle of verifiability, the balance sheet continuity principle, the principle of prudence, the principle of timeliness.

Analysis is the process of decomposing a certain whole into its constituent parts and considering each of them separately, carried out in the process of their cognition and practical activity. Economic analysis as defined by K. Bolesta-Kukułka [Bolesta-Kukułka 1993, 3-8] is an process of search and diagnosis of the company's activities, and can concern the whole of its operations (comprehensive analysis) or selected areas, e.g. economic cost analysis, economic analysis of the project, or, for example, economic analysis of the investment task, also known as feasibility study. Comprehensive analyses are a combination of the analysis of an economic entity from both a typically economic and a financial aspect. The scope of the analysis varies depending on the needs for which it is prepared. Economic analysis is a method of examining economic phenomena in cause-and-effect relationships and determining the impact of individual factors and elementary components on the end result, usually defined as financial direction [Bednarski 2007, 19-24; Czekaj and Dresler 2012, 56-49; Dębski 2013, 5-9]. Economic analysis is a scientific discipline that studies the relationships between economic phenomena – providing information about the state of the company, as well as assisting management decisions in the area of finance in both operational and strategic terms. The economic management of a company includes: processes for maintaining the functional equilibrium of the company, processes for regulating a single economic quantity and information processes aimed at identifying benchmark values around which the current values of economic quantities should be focused [Dobija 1997, 52]. Economic and financial planning seeks to define appropriate ranges of variation for a set of important economic quantities. Economic control is based on the knowledge of a number of benchmark, normative and desirable values. M. Dobija divides the sources of benchmark values into: external – established by administrative and financial law and institutions that can do so by law, (e.g. official prices, depreciation rates, interest rates, tax rates, exchange rates) and internal – created in the company in order to effectively control the economics of the company – in particular, they concern costs, (they concern the internal organisation of activities in the company; they exist depending on the state of organisation in the company) [ibid., 52-53]. Financial analysis makes it possible to accurately measure a company's resources and also to make forecasts for the future. This is the purpose of break-even point, NPV (Net Present Value), IRR (Internal Rate of Return), PB (Payback Period), analysis of the impact of financial 'leverage' (i.e. the ratio of equity

to various types of debt), etc. [Waśniewski 1989, 11; Gabrusiewicz 2011, 23-27; Wołowiec and Suseł 2009, 203-24].

4. INTERCONNECTIONS AND COMPLEMENTARY ANALYSES – MULTIDIMENSIONAL COMPANY ASSESSMENT

Economic and financial analysis draws on the work of many other – related – scientific disciplines: management, business economics, finance, controlling, management accounting, financial accounting, marketing, and above all accounting and accounting reporting in the broadest sense. The unifying features of financial sub-analyses are primarily the quantification of economic results according to the value measures used (ratios, reports, etc.). The very differentiation of the content and results of the analyses is primarily due to the [Wołowiec 2007b, 47-51]: 1) the purpose for which the analysis is carried out, the type of economic problem/threat, 2) the need to use the information in the decision-making process (white, strategic), 3) other classification criteria, 4) the source of information used (accounting, non-accounting, estimated information), 5) form and procedure of preparing financial statements, 6) from the time dimension covered by the analysis [Janik and Paździor 2011, 6-12].

The main determinant of activities is the adopted objective of the analysis, which influences the adopted instrumentarium in the form of the selected set and information, so that the analysis is not limited to examining the structure of the financial statements alone. The grading of a company's condition based on a ratio analysis also requires differential linkages and transformations of the figures [Janik, Paździor, and Paździor 2014, 15-23; Jarzemowska 2013, 5-9; Michalski 2013, 23-29]. In indicator analysis, each indicator contains a specific information content and sometimes divergent information can be obtained about a given process/phenomenon, which is why only the use of data contained in a set of indicators gives a certain reliability.

Economic analysis can be divided by the subject of the study into: macro- and micro-economic analysis, and financial and technical-economic analysis [Bień 2011, 34-37; Sojak 2015, 43-45; Siemińska 2002, 5-11; Sierpińska and Jachna 2014, 5-20; Siudek 2004, 3-12]. Macroeconomic analysis deals with economic quantities aggregated for the level of the whole economy, while microeconomic analysis examines and evaluates the activities of companies, enterprises, households, individuals or other economic entities, from the perspective of the rationality of the decisions taken [Wojciechowski, Skrzypek-Ahmed, Wołowiec, et al. 2023, 510-25]. Current and past data on the company's financial standing should be used and taken into account in determining future operational as well as strategic decisions. A company's standing is its competitive position, its financial credibility, its economic

strength in the market, which influences the confidence of its counterparties in its reliability and the level of opinion formed about it [Dmowski, Wołowiec, Laskowski, et al. 2023, 395-409].

The most important subject of grading in financial analysis is a company's profitability, i.e. its ability to meet its short-term as well as long-term obligations. The information resulting from the economic and financial analysis is important for both managers and external stakeholders. Synthetic, comprehensible and, above all, comparable economic-financial information of a company makes it possible to quickly measure and grade the efficiency and rationality of financial management. In external analysis, the main emphasis is on ratio analysis – this should focus on the grade of liquidity, management efficiency and the financial standing of the company. The objectives of external analysis will change as the recipients (external stakeholders) of this analysis change. Shareholders, creditors and banks have a different objective in carrying out the analysis. Analyses carried out by the company itself are of a different nature; they are analyses carried out for the company's internal needs. Internal analysis takes into account the decision-making needs of the company's management and its management levels. It is referred to in the literature as a 'result control system' or even 'a substitute for a management system. The purpose, object and scope of internal analysis is much broader than that of external analysis, due to its very important role in the management of a company. An important tool of analysis is the study of the interrelationships between its elements: the profit and loss account provides information on the size of profits, but it should be noted that these figures must be considered in relation to the resources of goods and labour consumed in its production, the balance sheet shows the value of the company's assets, which must be considered in relation to its liabilities and the value-added statement indicates the size of the new value created, which must be considered in relation to the number of employees and other economic and technical factors. The economic and financial analysis should be preceded by a grade and analysis of economic information concerning the company's past (ex-post analysis). The assessment and analysis should cover the following information [Zientowska 2014, 9-11]: the financial history of the company, a description of the company's activities (identification of the industry and information on any unusual historical events), the situation of the industry to which the company belongs (information that allows the company to be compared with others in the same industry) and the economic situation of the region in which the company is located (information that allows local factors to be taken into account).

Economic and financial analyses are therefore carried out for various purposes, including: 1) for establishing the actual economic and financial state and taking measures to stimulate efficiency and rationality of management,

2) company restructuring, 3) mergers and liquidation of companies, 4) crediting the activity of companies – to determine the reliability of the grade, solvency and creditworthiness, 5) suppliers and other creditors – to grade the company's ability to meet its obligations on time.

A multidimensional company grade taking into account the interconnectedness in a logical (and complementary) manner allows the modern company to obtain information indicating the company's position on the market, its development possibilities, competitive position, etc. [Sierpińska and Jachna 2014, 15; Gabrusewicz 2011, 56-59; Gołębiowski and Taczała 2005, 45-48]. The economic and financial analysis should be carried out comprehensively, but should not overlook important details for the company. Next to the technical-economic analysis, the financial analysis is the most important part of the economic-financial analysis. Issues that are part of this analysis include: an initial and expanded analysis of the balance sheet, the profit and loss account, the determination and grade of cash flow, sources of income and their purpose, and the analysis of the financial result. The technical and economic analysis focuses primarily on material and personal factors. In order to establish the links in the analysis of the company's activities, it is necessary to combine financial and technical-economic analysis [Grzenkowicz, Kowalczyk, Kusak, et al. 2017, 51-60; Dudycz 2011, 23-30].

CONCLUSIONS

The efficiency of business operations, is one of the basic concepts studied and analysed in the economic and management sciences [Wołowiec, Kolosok, Vasylieva, et al. 2022, 3-7]. It is the foundation for the development of companies, their ability to survive and compete effectively, and consequently the basis for the stability of the economy as a whole (through tax revenues and employment) [Wołowiec 2021a, 324-32]. The literature in this area has developed a number of methods for the assessment of efficiency, which are based on a variety of economic and financial and financial-technical indicators. Changing environmental conditions, uncertainty in operations, ever-increasing customer demands, intensifying competition, especially international competition, influence management processes that stimulate restructuring processes in the area of financial (and process) management in order to achieve price-cost competitiveness and economic efficiency (internally and externally) [Czekaj and Dresler 2012, 39-46].

The accounting concept that is the guiding principle was formulated years ago in the UK and adopted by other countries. It is the 'true and fair view' concept included in International Financial Reporting Standards, EU company law directives, and in the national regulations of many countries around the world. In Polish, it is most often translated as 'faithful and fair

view', 'clear and fair view', but also 'true and fair view' or 'true and fair view'. According to this concept, 'if the financial statements comply with all the overriding accounting principles then they can be considered to present a true and fair view of the entity.' The true and fair view principle gives rise to further overarching principles which include the accrual principle. This involves recognising all transactions and other events as they occur, rather than at the time of the inflow or outflow of cash. These events are recorded in the accounts and reported in the financial statements drawn up for the period to which they relate. The accrual principle is related to another principle of matching costs and revenues. Costs and revenues are contrasted to determine the financial result of a company. The cognitive value of the financial statements is influenced by the going concern principle. It means that a company prepares its financial statements on the basis that it is able to continue its operations and will continue to do so in the future. If, on the other hand, an entity's operations are to be discontinued or curtailed then this must be included in the notes to the financial statements, as this has a clear impact on the valuation of the components of the balance sheet.

For the financial statements to be fair and specific, the information contained therein should be comparable with previous years. Related to this is the principle of continuity, whereby a company will group business operations, the valuation of assets and liabilities, the determination of financial results and the preparation of financial statements in a continuous and uniform manner according to the accounting policy adopted by the entity. All these data for subsequent years must be easily comparable, i.e. created in the same way and on the same basis. The closing balances of the various accounts for a given year should be identical to the opening balances in the following year.

Financial statements need to be readable, and with so many transactions and many components in them, it is necessary to follow established criteria and group all information, including not losing the most relevant items. This is where another principle of materiality comes in. Its main feature is that the report should contain as little detail as possible and present only those items that can be useful in assessing the company's situation. Any simplifications should not adversely affect the reliability of the picture of the entity and the reader of the report should not be misled. Ideally, an entity should use such simplifications as are permitted by the regulations for easy assessment of the financial position.

Related to the principle of materiality is the principle of non-compensation. The law states that 'the value of individual assets and liabilities, revenues and related costs, as well as profits and extraordinary losses shall be determined separately. Values of assets and liabilities that are different in kind, revenues and related expenses, as well as profits and extraordinary losses

may not be offset against each other' (Article 7(3) of the Accounting Act). The essence of this provision is that no offsetting should take place although it appears to be necessary in order to show the substance of a given transaction, mainly in the items presented in the income statement. However, this rule mainly applies to the balance sheet. The IAS takes a more flexible approach to offsetting, but emphasises that it undermines the ability of readers to understand the transactions carried out and thus grade future cash flows. Offsetting may be dispensed with unless the IAS (international accounting standards) requires or permits it.

A very important principle, which is mainly related to the valuation of assets and liabilities, is the prudence principle. Its basic intention is to value asset resources and their sources of origin in such a way that it does not distort the financial results of the enterprise. In the preparation of financial statements, uncertainty and risk in the operation of the entity must be taken into account in order for them to become reliable. All this rests with the preparer of the company's financial statements in question. He or she must take into account whether to show a pessimistic or optimistic picture of the entity, as in the course of its operation there are many circumstances that affect the financial situation and the result of the enterprise both positively and negatively. Also according to the principle, when determining the value of assets and the financial result, it should be reduced by the value in use or commercial value of the assets. According to the principle, revenues should not be overstated or expenses understated, and appropriate provisions should be made for known risks, losses or other events. Presenting a pessimistic view of an entity in accordance with the prudence principle may be detrimental to the fair and clear presentation of the entity's position [Wołowiec and Wolak 2009, 13-32].

When establishing its accounting policy, companies must choose and apply accounting principles that are defined by law, thus presenting the company's situation clearly and fairly in terms of the entity's finances, assets and results of operations. This choice contributes to ensuring that the quality and robustness of the financial statements is ensured. Simplifications that do not affect the picture of the entity may be used, but they must not serve to falsify it by manipulating the data.

Each analysis, irrespective of the method used, must have its sources, i.e. be based on specific data concerning assets, their origin, employment and other information concerning the financial sphere of the company's activity. The best and most reliable source providing all this information is the financial statements. Financial reporting is closely related to accounting, as the final financial statements are the result of processing all the data in the accounting system. Such a report is prepared for a specific period of time, the so-called reporting period – it can be a month, a quarter or a half-year,

but most often it is the financial year, as the preparation of annual reports is obligatory. However, the financial year does not have to coincide with the calendar year; it can be any other period covering 12 months of the company's operations. In accordance with the Accounting Act, the financial statements comprise the balance sheet, profit and loss account and notes to the financial statements, including an introduction to the financial statements and additional information and explanations. In addition, for entities subject to annual audit, the financial statements also include a statement of changes in equity and a cash flow statement [Wołowiec 2009, 185-203].

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THE PRINCIPLES OF SOCIAL JUSTICE – THE PROCEDURAL ASPECT

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Abstract. We still do not have a fully developed theory of principles of social justice, although it refers broadly to the theory of justice comprehensively outlined. Although it remains important to determine the nature of the principles of social justice, which must be properly addressed at the outset, it is only the starting point for determining the way the principles of social justice should operate. It is both legal basis and properly structured legal procedures that are essential for the application of the principles of social justice. As far as legal basis is concerned, reference must always be made to the Polish constitutional provision which requires "implementing the principles of social justice". On the other hand, the aspect of legal procedures must take account a certain type of constitutional review of "the implementation of the principles of social justice". The constitutional review of the "implementation of the principles of social justice" was based on the constitutional complaint and the extraordinary complaint.

Keywords: constitutional complaint; extraordinary complaint; implementation of the principles of social justice; principles of social justice.

INTRODUCTION

The issue of the principles of social justice has so far been addressed in few academic studies, which do not yet allow final conclusions to be drawn on all the issues subject to analysis [Lang and Wróblewski 1984; Sadurski 1988; Ziembiński 1996]. As a result, we do not have a fully developed theory of the principles of social justice, although it is, of course, based on a comprehensively established theory of justice [Tokarczyk 2005, 203-36]. Basically, there were attempts to answer two questions: "what are" the principles of social justice and "how" do the principles of social justice work. Obviously, these two questions complement each other, and there is also a matter of correct sequence of asking these questions. While the answer to the first question has been subject to an in-depth legal analysis, it cannot be found with regard to the second question. The constitutional postulate of "implementation of the principles of social justice" by the Republic of Poland forces

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a change in the current approach.[1] Although the determination of the nature of the principles of social justice is still an important issue to be properly resolved, it only marks a starting point for determining the operation of the principles of social justice.

It first seems necessary to state that the principles of social justice are a legal term that should additionally be considered constitutional. The very term "principles of social justice", which must also, after all, be "implemented" (respected) by the authorities of the Republic of Poland, is not a specific name, but defines a certain way of directing the actions of the State authorities and of other entities who have powers of a similar kind, so that it always follows a certain pattern of the arrangement of social life [Ziembiński 1996, 9]. As a result, the principles of social justice identify criteria in which: the possibility of extreme differentiation between members of society is limited; formulas are adopted which are rather substantive but not too radically divergent from egalitarian ones; the idea (by the way: convergent with Christian social doctrine) that everyone should be assisted to meet their needs if they are unable to meet them on their own is adopted; in particular, this help concerns the start in life of young people [ibid., 88-89].

Since the term "principles of social justice" does not have a legal definition, it is of course necessary to look for its legal meaning. Unfortunately, the principles of social justice are difficult to clearly define, even though their positive charge and capacity to realise the very specific values of any community may be sensed [Chauvin 2020, 5]. In general, this is a consequence of the three concurrent ways of understanding social justice: a model of analysis derived from Catholic social teaching combining social justice with the principles of common good and subsidiarity interpreted as a duty of the community; the postulate, linked to the left-wing (not only socialist) tradition, to uplift the living conditions of the working class; the model developed within the tradition stemming from John Rawls' thought, which can be described as social democratic liberalism [Morawski 2014, 116]. Admittedly, the first way of understanding social justice seems to be dominant, mostly due to the established line of case law of the Polish Constitutional Court [Trzciński 2016, 186].

1. THE ESSENCE OF THE PRINCIPLES OF SOCIAL JUSTICE

The essence of the principles of social justice in the legal system most often boils down to a general clause and a legal principle [Chauvin 2020, 7]. From the perspective of the identification of social justice principles as a general

[1] Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended [hereinafter: the Constitution of the Republic of Poland].

clause, it is necessary to assume that actually this is about an extra-systemic reference. Accordingly, extra-legal rules would ultimately be incorporated in the legal system based on a reference provision that directly sets out the principles of social justice. However, this implies vagueness of the assessments that could legitimately be made on the basis of principles of social justice. As regards the identification of social justice principles as a legal principle, the problematic issue is its prescriptive relevance, as they would then have to be used to assess a substantive rule of law, while these have a rather descriptive meaning, as they only affect the ordering of the norms of the legal system [Ziembiński 1996, 53]. Therefore, social justice principles cannot be considered as a typical general clause or legal principle.

With such an assumption, the principles of social justice cannot have a normative character. It should also be noted at this point that there is a norm applicable under an explicit constitutional provision, which requires that the principles of social justice be implemented in law making and law application [ibid., 52]. It is therefore necessary here to distinguish the normatively imposed obligation to implement the principles of social justice from the very set of these principles [Chauvin 2020, 7]. As this set consists not of directly applicable legal norms (norms-rules), but of principles that only point to the direction for the exercise of the legislative competence or a right vested in someone [ibid.]. After all, they refer to the postulated or implemented way of regulating matters in a given area [Ziembiński 1996, 53]. In fact, they present a descriptive approach, which should nevertheless be understood in a specific way, as they serve to define the guiding idea when it comes to a certain fragment of the legal system [ibid.].

The principles of social justice certainly do not become binding legal norms, even if they are given the shape of specific rules of conduct [ibid.]. This is so because they are merely directives for independent assessment or, in other words, directives to formulate evaluations of cases under consideration and to determine the legal consequences following these evaluations [Nowacki 2003, 141]. Nonetheless, we can only speak here of reference to one's own assessments, which have yet to be formulated in the process of making them [ibid.]. Thus, these assessments cannot refer to extra-systemic rules, because these simply do not exist [ibid., 140-41]. The assessment process should therefore take into account all, including: "the distinctiveness of each individual case", "the circumstances of each individual case", "the totality of all the circumstances of a particular case", "the circumstances of the case existing at a particular place and time" [ibid., 138]. Hence, only an individualised assessment of the "case" under consideration makes it possible to determine its legal consequences [ibid., 138-39]. It is therefore practically impossible to present the principle of social justice in the singular form when the

constitutional provision forces the use of the plural form [Ziembiński 1996, 52].

2. THE MECHANISM OF SOCIAL JUSTICE PRINCIPLES

The mechanism of social justice principles must always be analysed in the context of legal transactions. Legal transactions are to be understood here as the entirety of legal relationships that arise as a result of acts in law. First, this requires consideration of the context in which the principles of social justice have been established. This is so because the principles of social justice must be interpreted taking into account other constitutional principles, such as in particular the principle of justice, the principle of equality, the principle of the common good and the principle of solidarity [Sokolewicz 2003, 58-59]. Furthermore, the principles of social justice must be subject to interpretation, which will additionally have regard to constitutional institutions, particularly: freedom of choice of profession and place of work, fiscal justice, the requirement of creating healthy and stable economic development, fiscal sustainability, the right of citizens and their representatives to set the directions and priorities of social and economic policy using democratic procedures [ibid., 60, 62].

The context of the application of the principles of social justice must then be concurrently considered. Essentially, it is about the application of the principles of social justice by State organs, which refers directly to the judicial bodies that exercise the constitutionally assigned administration of justice in the Republic of Poland. In that case, their application must fall within the competence of specific State organs. In contrast, this does not cover the application of the principles of social justice by other legal subjects, as this does not involve civic participation. Moreover, claims of a subjective nature cannot be directly derived in their application [Wróbel 2013, 144]. It is both legal bases and properly structured legal procedures that are essential for the application of the principles of social justice. As far as legal bases are concerned, reference must always be made to the Polish constitutional provision which requires "implementing the principles of social justice". On the other hand, the aspect of legal procedures must each time take account of a certain type of constitutional review of "the implementation of the principles of social justice".

The constitutional review of the "implementation of the principles of social justice" was based on the constitutional complaint and the extraordinary complaint. These two remedies are intended to protect the constitutional order in different areas of the operation of the legal system [Dobrowolski and Stępkowski 2022, 67]. This is so because while the constitutional complaint is a means of constitutional review of lawmaking processes, the extraordinary complaint turns out to be a means of constitutional review of the

application of law. It should also be added that constitutional complaint is a means of constitutional review of lawmaking process due to its object: the legal basis of a judicial or administrative decision; its purpose: the protection of constitutional freedoms or rights; and its model: constitutional freedoms and rights or obligations. In contrast, the extraordinary complaint is characterised by being a means of constitutional review of the application of law from the perspective of its object: a ruling of a common court or military court, its purpose: particularly the protection of constitutional principles or freedoms and rights of a human being and a citizen, its model: democratic state ruled by law and implementing the principles of social justice.

3. CONSTITUTIONAL COMPLAINT

Of course, constitutional complaint is a means of protecting constitutional freedoms and rights, and the right to exercise it is a constitutional subjective right of anyone whose freedoms or rights have been violated by a provision under which a court or public administration body has made a final decision on that person's freedoms or rights or obligations set out in the Constitution of the Republic of Poland [Florczak-Wątor 2019a, 260]. The Constitutional Tribunal then reviews constitutionality of the provision which was the basis for the final ruling in the individual case and which is of a normative nature, i.e. allows a general and abstract rule to be identified [Florczak-Wątor 2019a, 261].[2] The constitutional complaint is therefore always a complaint "against the provision", not against a "specific, flawed application, even if that would lead to an unconstitutional effect."[3] The declaration of unconstitutionality of the legal basis of the ruling "should lead to the removal of unconstitutionality as far as possible, also in respect of individual decisions based on the unconstitutional norm."[4]

Due to its characteristic structural features, the constitutional complaint in the Polish legal system aims primarily at protecting constitutionality of the legal order, whereas the elimination of individual unconstitutional decisions from legal transactions takes place only within the framework of regulating the consequences of a ruling on unconstitutionality.[5] This requires the initiation of a separate proceeding, under the rules and procedure laid down in applicable provisions (Article 190 (4) of the Polish Constitution). Only Polish citizens, foreigners, stateless persons, legal persons and organisational

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[2] Judgment of the Constitutional Tribunal, ref. no. SK 45/09, *OTK* ZU 2011, No. 9/A, item 93.

[3] Decisions of the Constitutional Tribunal of 7 May 2013, ref. no. SK 31/12, OTK ZU 2013, No. 4A; and of 2 December 2010, ref. no. SK 11/10, OTK ZU 2010, No. 10A.

[4] Judgment of the Constitutional Tribunal, ref. no. SK 14/18, OTK ZU 2019, No. A.

[5] Judgment of the Constitutional Tribunal, ref. no. SK 7/06, OTK ZU 2007, No. 9A.

units without legal personality have a capacity to lodge a complaint if they demand the protection of constitutionally defined freedoms or rights or obligations,[6] while public authorities and entities performing public functions, including local government units do not have this capacity.[7] At the same time, it must be noted, when looking at the jurisprudence of the Constitutional Court, that such standing of the so-called public business entities is a contentious issue [Florczak-Wątor 2019b, 261].

Thus, it should generally be added that the jurisprudence of the Constitutional Tribunal allows the principles of social justice to be discussed by reference to its classical formulas. These formulas generally include the following: distributive and compensatory (commutative) formulas, contractual and non-contractual, formulas of reward (payment) and punishment (retribution), static and dynamic, substantive and formal, substantive and procedural [Tokarczyk 2005, 222]. As regards the principles of social justice, the following formulas will be the most appropriate: distributive, dynamic and substantive. Naturally, the principles of social justice are defined in a distributive formula, since we recognise when distributing public goods in society that: "just is what provides a balance and is proportional."[8] On the other hand, the principles of social justice in the dynamic formula refer to the rational ideal of "multiple cases of an arbitrary and variable nature" [Dupreel 1969, 266]. Finally, the principles of social justice correctly endorse the substantive formula as it renders "to anyone, according to what the law admits" [Domańska 2001, 52].

4. THE EXTRAORDINARY COMPLAINT

The extraordinary complaint should be considered as an extraordinary appeal against a final decision of only a common court or a military court ending the proceedings in the case, based on a general ground and at least one of three specific grounds, and this decision cannot be annulled or amended by way of other extraordinary appeals.[9] The need for the state to comply with the principle of democratic state ruled by law implementing the principles of social justice is then considered as the general ground, while the specific grounds are: violation of the principles or freedoms and human and civil rights set out in the Constitution of the Republic of Poland, gross violation of the law by misinterpretation or misapplication, obvious contradiction of the relevant findings made the court with the content of the evidence collected

[6] Judgment of the Constitutional Tribunal, ref. no. K 6/99, OTK ZU No. 7/1999.
[7] Judgment of the Constitutional Tribunal, ref. no. K. 19/00, OTK ZU No. 4/2001.
[8] Judgment of the Constitutional Tribunal of 22 August 1990, ref. no. K 7/90, OTK ZU 1990, item 5.
[9] See Article 89(1) of the Act of 8 December 2017 on the Supreme Court, Journal of Laws of 2023, item 1093 as amended.

in the case. The consequence of combining the general ground with specific grounds using the phrase "provided that" is that there must always be the general ground and at least one of the three specific grounds.

The main purpose of the extraordinary complaint is to challenge final rulings issued by common or military courts that are in conflict with the listed constitutional principles, norms or values [Radajewski 2020, 64]. In essence, it serves to remove from legal transactions genuinely unjust decisions of those courts whose validity is not otherwise challenged. The capacity to file a complaint is only exercised by the public entity directly indicated here, namely: Prosecutor General, Commissioner for Human Rights and, within the scope of their exclusive competence, the President of the State Attorney Office of the Republic of Poland, Ombudsman for Children, Ombudsman for Patients' Rights, Chairman of the Financial Supervision Commission, Financial Ombudsman, Ombudsman for Small and Medium Enterprises, President of the Office for Competition and Consumer Protection.[10] In view of this, an individual can only ask the designated public entity to file an extraordinary complaint, moreover, the entity will be able to bring such a complaint ex officio against this individual's will [Ereciński and Weitz 2019, 11]. The participation of the public interest spokesman is also allowed in the extraordinary complaint proceedings.[11]

In view of this, it should generally be considered that the role of the Supreme Court is not to eliminate from legal circulation all defective judgments of common and military courts when carrying out a specific constitutional review of them, but only those that are detrimental to the bases of the social contract, which shapes the foundation of a democratic state ruled by law, implementing the principles of social justice, and thus concerning a specific shape of relations between the individual and the public authority.[12] The justice aspect of the general ground is therefore an essential criterion on the basis of which it is possible to repeal or amend such judicial decisions. Undoubtedly, the general ground for the extraordinary complaint is to ensure corrective justice, since it cannot be found in a specific judgment of a general or military court [Szczucki 2018, 56]. The general ground for the extraordinary complaint is based on the assumption that such court rulings are to be fair i.e. made based on properly interpreted legal provisions and the evidence collected and properly assessed [Góra-Błaszczykowska 2018, 58].

[10] See Article 89(2) of the Act of 8 December 2017 on the Supreme Court.

[11] See Article 93 of the Act of 8 December 2017 on the Supreme Court.

[12] Decision of the Supreme Court of 12 May 2021, I NSNK 4/20, Lex no. 3229431.

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THE POSITION OF THE UKRAINIAN COUNCIL OF CHURCHES AND RELIGIOUS ORGANIZATIONS AFTER THE OUTBREAK OF THE WAR IN UKRAINE IN 2022*

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Abstract. The Ukrainian Council of Churches is the advisory body of Ukrainian government on religious matters. In the wake of the 2022 war with Russia, the Council's primary concern was to ensure humane treatment of prisoners of war and civilians. The Council also issued opinions on the necessity of providing support to Ukrainians from international institutions and organizations. Previously, the Council has also issued opinions on matters related to freedom of conscience and religion during the pandemic and related to events in Maidan, Crimea and Donbas.

Keywords: Ukraine; Ukrainian Council of Churches and Religious Organizations; freedom of conscience and religion; religious organizations; Ukraine-Russia war.

INTRODUCTION

The Ukrainian Council of Churches and Religious Organizations (the "Council") is a particular civil-society institution established in Ukraine in 1996. It has no equivalent in the Polish legal order, for instance, as the powers granted to the Council are only advisory and can be described as typical responsibilities foreseen for the president's social advisors. Under the Council's Statute, members of the Council, as representatives of their respective religious associations, work for free to advise the president on all matters concerning the protection of the right to freedom of conscience and religion.[1]

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[1] Articles 34 and 35 of the Constitution of Ukraine (Bulletin of the Verkhovna Rada of 1996, No. 30) and the Law on Freedom of Conscience and on Religious Organizations (Bulletin of the Verkhovna Rada of 1991, No. 25).

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At the outset of these considerations, a few points of order should be clarified. The original-language framing of the name "All-Ukrainian Council" (in another translation: "Pan-Ukrainian Council") may rightly suggest that it is an institution with a jurisdiction encompassing the entire state and all religious organizations active in the now territorially disintegrated Ukrainian state (without Crimea or Donbas). Moreover, the Council is a collegial and multi-religious body composed of representatives of the main religious associations (a total of more than a dozen). Their advice and opinions, however, are not binding on the president, and meetings that the president attends are most often of a courtesy nature and ceremonial function. Nevertheless, the Council's recent activities (in view of the Maidan, Crimea, Donbas, pandemic) communicates clearly to everyone the importance of the opinion of a politically independent advisory body in shaping the right social attitudes among Ukrainians, especially after the outbreak of the war with Russia. Therefore, the structure of the analysis below is framed so as to, first, summarize the Council's activity before and, then, after the outbreak of the war. The date of 24 February 2022 is not only cited as a symbolic reference to historical events, but also as the cut-off date for assessing the achievements of the Council before and after.

That the issues signalled in the title of this paper are much topical today seems obvious and self-explanatory. The subject matter of this paper was further determined by the practical aspect related to the security of Ukraine and other European countries. Noteworthy, moreover, the factual and legal status as at 15 October 2023 is considered here, and the materials used below (except where expressly cited otherwise) come mostly from online sources accessed on the Council's official website, available in Ukrainian and English at: www.vrciro.org.ua/en/council/info

1. PROTECTION OF THE RIGHT TO FREEDOM OF CONSCIENCE AND RELIGION AND THE STATUTORY ACTIVITIES OF THE COUNCIL

The genesis of the Council is directly related to the Ukrainian state gaining independence from the Soviet Union (upon the actual and legal dissolution of the USSR) and the need to provide conditions for the Ukrainian citizens' exercising their rights to freedom of conscience and religion. The new, now Ukrainian and no longer Soviet, government was fully aware of the deliberate negligence on the part of its "predecessors" and therefore took action to "restitute" the presence of religious elements in public life [Hofman 2015, 247]. Already the first president elected after 1991 officially declared the need for cooperation between state authorities and representatives of various (and clearly doctrinally diverse) religious denominations present in the Ukrainian

social space. President Leonid Kravchuk (his presidency spanning 1991-1994) early into his term of office strongly supported Metropolitan Philaret in his efforts for the establishment of the Ukrainian Orthodox Church of the Kyiv Patriarchate and the actual transfer of the decision-making centre for native Orthodoxy from Moscow to Kyiv. This was a much more difficult task than it might seem at first glance, as it was necessary to take into account not only the religious stratification of Ukrainians, but also the historical background and the dominant role of the Orthodox Church, continuing its intimate relations with Russia that had formed back in the period of the Empire, which had encompassed also the territory of the present-day Ukraine. The new government also had to consider the period after 1917 (up until 1991), especially the fact that not only the minds and consciences of the citizens of the Soviet state had been "plundered", but also that property of all religious associations, without exception, had been literally stolen, while nationalization, or change of the purpose of church buildings had reduced them, at best, to state architectural monuments. Aware of those events, state officials, starting with the president himself, realized perfectly well that the stabilization of the "young" state also required regulatory framing of religious matters, both at the level of communities (churches) and individuals (believers). Hence the idea of adopting the objectives of Ukraine's religious policy, the first element of which was to be the creation of a body advisory to the president (and further, implicitly, also to governors in the regions) in all areas of social life that had any, even loose or temporary, connection with the broadly understood religious freedom [Kozyrska 2012, 502].

Noteworthy, the presence of clergy among government advisors was not unique to the Ukrainian polity but a common practice applied in various geographies and in various times. Moreover, such advisory service was sought by both church authorities and representatives of government, especially the new authorities that needed legitimacy to be lent to them by those who had already enjoyed wide respect before. Therefore, in 1996, the Council was established as a *de jure* team of religious experts tasked with consulting the most important events and decisions in religious matters in the country with the President of the Republic.

It is also necessary to "excuse" the passivity of government in this respect in the years 1991-1996, as between the achievement of Ukrainian independence and the establishment of the Council both factual and legislative events occurred that justify this stoppage. Those events covered the constitutional work that culminated in the adoption of the Ukrainian Constitution in 1996 and the earlier Law on Freedom of Conscience and on Religious Organizations. Both legal acts, although of different statutory rank and passed in a sequence that was completely useless for systemic solutions, at least partly touched on the point of competition of mainly Orthodox churches for the

"palm of victory" in Ukrainian society and government's recognition of their priority. The doctrinal disputes of the three main Orthodox churches at that time (Ukrainian Orthodox Church of the Moscow Patriarchate, Ukrainian Orthodox Church of the Kyiv Patriarchate and Ukrainian Autocephalous Orthodox Church) related to property claims against the state and, as a consequence, mutual claims over legal title to church property, the demands for which lay at the core of the actual patrimony controversy [Babinow 2001, 54]. What added to those were difficulties that emerged in the registration of religious organizations (the need for double state registration, as a religious organization and separately as a legal person), official discrimination against "new" religious organizations, as well as in the protection of religious freedom in the individual aspect (the right to religious practices in the military, schools, prisons, the right to refuse military service due to religious beliefs or the presence of religious symbols in public spaces).

The most serious problems in the protection of the right to freedom of conscience and religion occurring in the law and practice of the Ukrainian state (also today), generally speaking, come from the missing framing of principles of the state's religious policy towards religious communities, despite formal attempts made by the state authorities and religious organizations that represent these communities in the Council. The list of specific deliverables for the state, to be dealt with without delay, include elimination of spurious double barriers in the registration of religious organizations, introduction of lower fee rates for energy utilities for religious organizations, tax exemptions and reliefs, prohibition of official discrimination, and preferential treatment in "religious" matters and equal treatment of all religious entities, as well as full restitution of church property [Nikołajew 2016, 470-80].

Given the extensive range of religious matters to be handled, it is difficult to argue against the need to establish (then and now) such a body as the Council was originally designed to be. Under the Statute, the Council is a body independent of the president, political parties, economic or church lobbies, and operates on the basis of the principle of equality and equity of its members, without any interference in the internal church norms of individual religious organizations. This status was intended to guarantee the Council's position within the state and allow it to put forward its own positions on religious matters, as determined by the opinion of the authorities of member religious communities. The statutory responsibilities specified in a separate document (the 1996 Rules) included taking action to promote inter-denominational accord, stimulating activity in the spiritual revival of Ukraine, strengthening universal values, disseminating rules of freedom of conscience and religion, ensuring reliable information about religious life in Ukraine, organizing conferences and round tables, and the Council's international networking. The catalogue of responsibilities assigned to the Council

clearly indicates that the effects of its operation could (and would) have had a real contribution to improving the quality of life of Ukrainian society, not only in the religious domain, but also in the patriotic, awareness and ethical dimensions. It is difficult to state clearly whether this was a well-thought-out intention of those drafting the text of the Council's Rules, or perhaps it resulted from the need to consolidate the previously secularized Ukrainian society based on proven religious values. Nevertheless, one cannot deny the fundamentally correct ideas expressed in the form of objectives and deliverables for a body representing the religiously pluralistic society of Ukraine.

At the meeting of the Council on 11 December 2007, the Rules were amended, mainly with a new wording given to Clause 3 to read that "the Council operates on the basis of equality and equity of all members, respecting internal guidelines and traditions of all present religious organizations in Ukraine, operating within the law of Ukraine." In turn, the Council's meeting on 24 January 2013 concluded with a decision that, in addition to the Council's Rules, the Rules of the Council Secretariat and the Rules of the Council's Commission for Social Service should also be considered binding, while the basic forms of work of the Council, the Council Secretariat and the Commission were meetings convened on the as-needed basis. As a rule, meetings were to be organized outside holiday periods (i.e., without Fridays, Saturdays and Sundays as holidays for followers of various religions) and the chairmanship was to be entrusted to members of the Council on a rotating basis. The Council members work for free, and their personal data originally used to be published on the Council's website. However, this type of data publication has not been practiced for several years now and personal changes in membership in the Council seem to be a natural course of things, taking place every six months (from 1 January 2024, pastor Stanisław Nosow of the Seventh-Day Adventist Church has been acting as the chairman of the Council for a six-month term).

Initially, the Council consisted of 19 members, who were mainly heads of those religious organizations that were recognized as legal entities under the law in Ukraine. Hence, in addition to the three main Ukrainian Orthodox churches, members of the Council included, among others, representatives of the Roman Catholic Church, the Greek Catholic Church, the Armenian Apostolic Church, the Adventist Church, the Baptist Church, the Pentecostal Church, the Lutheran Church, and the Muslim community and Jewish organizations. Representatives of Christian churches of various denominations, mostly Protestant ones, enjoy a vast numerical advantage. The original composition of the Council included representatives of the following churches and religious organizations: All-Ukrainian Union of the Churches of Evangelical Christians-Baptists, All-Ukrainian Union of Christians of the Evangelical Faith-Pentecostals, Spiritual Administration of

Crimean Muslims, Spiritual Administration of Ukrainian Muslims, Trans-Carpathian Reformed Church, German Evangelical Lutheran Church of Ukraine, Union of Jewish Religious Organizations of Ukraine, Roman Catholic Church, Union of Free Churches of Christians of Evangelical Faith of Ukraine, Ukrainian Autocephalous Orthodox Church, Ukrainian Orthodox Church of the Moscow Patriarchate, Ukrainian Orthodox Church of the Kyiv Patriarchate, Ukrainian Bible Society, Ukrainian Greek Catholic Church, Ukrainian Armenian Apostolic Church, Ukrainian Lutheran Church, Ukrainian Union Conference of the Seventh-Day Adventist Church and Ukrainian Christian Evangelical Church. However, in each case, membership in the Council requires that the condition is met for recognition of a religious organization by the state under the law, although this does not always entail the presence of clergy in the Council, as the Council's Statute provides for the category of a representative of a religious organization and not the requirement to nominate a clergyman only [Kovalenko 2002, 80-82].

2. ACTIVITIES OF THE COUNCIL BEFORE 24 FEBRUARY 2022

In 2021, the Council celebrated its 25th anniversary and on that occasion, it published a commemorative collection of documents illustrating its activity over the last twenty-five years. In particular, a read of the table of contents of the document gives an insight into the overall scope of the Council's activities. Thus, in addition to general information on the tasks of the Council, it contains details of agreements concluded by the Council with representatives of state authorities at various levels, appeals regarding the conditions for the development of cooperation and relations with the state, appeals for justice, electoral appeals and socio-political appeals, appeals regarding the "Revolution of Dignity", appeals related to Russia's aggression against Ukraine. What follows are appeals for the protection of the family and children, appeals on gender ideology, general references to health care principles and appeals on legislative initiatives, documents on social welfare, references to historical events and appeals made by the Council at the international level.

The table (corresponding to the chronological order of the text of the document) shows the essentially comprehensive and multi-faceted activity of the Council; however, the considerations below will highlight only some of the most useful forms of the Council's activities that have a direct or indirect link to broadly understood security of the state.

First and foremost, a reference needs to be made to the events at the Kyiv Maidan and the missing official support to it from the Council, even if the clergy of religious associations that are members of the Council were seen active not only in the capital city but also, for example, in Lviv. The buildings owned by religious communities were at that time places of asylum,

medical aid, and food distribution points for Protestants. However, no decision was made to issue a joint statement, appeal or other form of response from the Council to the violence and abuse of power by the police against street demonstrators.

The situation was different with the annexation of Crimea, as the Council did issue an official position condemning Russia after the majority of Ukrainians practicing Islam in this geographical area had been forcibly absorbed into Russian communities and repressions began against Crimean spiritual leaders (not only Muslim ones). The Russian invasion of the Crimean Peninsula also resulted in the need to carry out serious logistical efforts related to the internal displacement of people to the then safer regions of Ukraine; for example, Lviv was considered to be such a place, with its railway and road infrastructure enabling the evacuation of people at risk to Poland and further to Western Europe. Although the Council did not coordinate those efforts from the headquarters in Kyiv (the seat of the Council), its respective representatives, especially from Lviv Catholic churches (both rites), were actively involved in humanitarian aid campaigns (in particular those operated by the diocesan units of "Caritas") [Nikołajew 2023, 308].

The Council adopted a united front of action also after the arrest of the former Prime Minister of the Ukrainian government. Then, without exception, all its members filed a motion to the President of Ukraine for the release of Yulia Tymoshenko from custody, and then for pardoning her. However, the Council's appeals did not bring the expected result, as Yulia Tymoshenko, accused and later convicted of fraud, was released from prison as a result of the events at the Euromaidan, and not as a result of the efforts of the Council members.

At the same time, the Council openly condemned the hybrid warfare in Donbas, the creation of the so-called people's republics in Donetsk and Luhansk and, above all, military operations that brought suffering of civilians in these regions and destruction of the infrastructure owned by religious organizations. The protests of the Council's representatives (excluding the Ukrainian Orthodox Church of the Moscow Patriarchate) were an understandable response on the part of the institution, especially since part of the Orthodox (Moscow) clergy openly supported the usurper and pro-Russian authorities of the Donetsk People's Republic or the Luhansk People's Republic. After Russia annexed Crimea (indeed, since March 2014), representatives of the Ukrainian Orthodox Church of the Moscow Patriarchate, despite their previous presence at the Council meetings, began to boycott these meetings and, although they did not formally leave the Council, they were no longer signatories of the documents issued later on by the Council.

On the other hand, the response to the introduction of martial law in some Ukrainian oblasts at the end of 2018 was complete silence. The

Council remained silent over the provisions of the decree regarding restrictions, including on religious freedoms, temporarily introduced in ten regions immediately bordering the Russian Federation. The restrictions also covered other civil rights and freedoms, yet the Council failed to issue the expected statement, even on the Council's official website, although by that time the majority of Ukrainian society had become aware of the reality of the war threat from the imperial neighbour [Nikołajew 2019, 301].

At the same time, since the spring of 2020, the Covid-19 epidemic became a serious social problem, developing into what was later referred to as a pandemic and causing obstacles to the exercise of religious freedom also in Ukraine. The Ukrainian authorities, following the solutions of other countries, introduced first strict, then slightly less restrictive bans to minimize health risks by limiting the movement of people. The entry into force of the provisions regarding quarantine (from 11 March 2020) triggered a quick response from the Council, as on 13 March representatives of the Council held a working meeting with the Deputy Minister of Health. However, they failed to push through the demand for relaxed health regimes for those using religious practices and services, and after the meeting at the ministry, an appeal was published on the Council's website to the faithful of all religions to strictly comply with the introduced health recommendations, also in relation to rights to freedom of conscience and religion. In April 2020, two meetings of Council members and the central police authorities were held. First, the online form was recommended (or rather ordered) for participation of the faithful in services and then, just before Orthodox Easter, the faithful were encouraged to celebrate the Resurrection of the Lord only among their closest relatives (household members). At the same time, the Council reacted (but unsuccessfully) to the increasingly strict pandemic restrictions, including rigid limits on the faithful participating in traditional religious services, limitations related to self-isolation of elderly clergy, clergy's access to hospitals and care facilities, and restrictions on the free movement of people, e.g. to Orthodox churches. Before the start of the new school year 2020/2021, representatives of the Council held another meeting with the Prime Minister of the Ukrainian government and proposed their solutions for the organization of school classes in conditions of epidemic isolation.

Noteworthy, however, the Council's relations with the authorities during the pandemic period were also marked by a crisis after information had been posted on the website of the Ministry of Health which clearly stated that the spread of the epidemic in the western part of Ukraine was speeded up by, among others, failure by some clergy and believers to comply with the health regime recommended by the authorities. The Council immediately denied these allegations in the form of an electronic communiqué and, as

a result, the ministry removed the information that harmed the good name of religious communities, which after all uncritically followed all government guidelines on sanitary isolation [Nikołajew 2022, 261-65].

Another matter (which definitely deserves a separate and extensive analysis elsewhere) is the Council's position on the process of Ukraine's integration with the Council of Europe. In the period between 2013 and 2021, the activity of the Council as a collegial body in integration matters seems insufficient, while its individual representatives, as heads of specific religious communities, clearly communicated their endorsements. Those included representatives of the religious communities of Baptists, Christians of the Evangelical Faith, Crimean Muslims, Orthodox Christians (of the Kyiv Patriarchate) and, above all, Ukrainian Greek Catholics. For example, Archbishop Shevchuk's statement that "Ukrainian churches represent a European nation that tries and knows how to work with representatives of various nations, denominations and religions, and the future of Ukraine is to be forged in the circle of free European nations" can be safely treated as a motto for the pro-EU attitude of the Council, the Major Archbishop of Kyiv and Galicia and the head of the Catholic Church of the Byzantine-Ukrainian Rite, firmly rooted in the social realities not only of Ukraine but also in Europe and both Americas, being its active and recognized member [Szaban 2013, 3].

The endorsement of the aspirations among the majority of Ukrainian society for membership in the EU structures is also visible indirectly through the prism of the activity of Council members in international contacts (albeit non-collegial), even if such networking is most often pursued via their religious equivalents in Europe and the United States, especially in the period after 2013 but also earlier. The Russian aggression in Crimea, the hybrid war in Donbas, and earlier the pro-European attitude of Maidan participants brought Ukraine much closer to the EU structures. The clearly anti-Russian attitude of the Council members in the realities after the outbreak of the war with the Russian Federation, and the activities of its members in the EU forums (European Parliament, Council of Europe) give a testimony to the express endorsement of the integration of Ukraine with the EU on the part of Ukrainian religious leaders. Moreover, the issues of Ukraine's security to be pursued within the framework of the common European security architecture seem to be close to not only representatives of state authorities, although one should be aware that the events related to Maidan, Crimea or Donbas and then the war with Russia may potentially "freeze" the process of Ukraine's European integration, despite the efforts of the entire society and individual milieus, including churches and other religious associations [Nikołajew 2018a, 198-99].

3. ACTIVITIES OF THE COUNCIL AFTER 24 FEBRUARY 2022

Even before the outbreak of the war with Russia, the Council repeatedly issued statements and appeals calling for peace throughout the country. The Council was aware of the escalation of tensions and social unrest after the Russian annexation of Crimea, the separatist operations in Donbas or the hybrid war, including information warfare conducted on a large scale, and of the consequences of those operations [Getmańczuk 2018, 123-24]. Therefore, as early as on 22 November 2017, the Council issued a document (signed by its then chairman, Mufti Ahmed Amin) a titled, not coincidentally, the "Strategy for participation of Ukrainian religious organizations in the peace-building process;" the document, which is also an appeal for security addressed to all citizens of Ukraine, began with the words: "Ukrainian society craves for peace in different meanings of this word. Peace is important for each community. Peace is a gift of God. Religious societies have significant potential for peace-building, since all religions proclaim propensity for peace and love for one's neighbours." The text of the document points out the main practical problems related to this were indicated, i.e. the release of hostages (captives) held by separatists in the Donetsk and Luhansk People's Republics and the spread of illegal weapons on the territory of the Ukrainian state.

A few months before 24 February 2022, members of the Council met at the Orthodox Theological Academy with the European Commission Vice-President for Promoting our European Way of Life, Margaritis Schinas, and the subject of their talks was not only the issue of support expressed by members of the Council for Ukraine's aspirations to join the Council of Europe, but also help for the citizens of occupied Donbas. On the other hand, in view of the growing and real fear among Ukrainians of a potential military aggression by Russia, as justified by the deployment of Russian troops near the Ukrainian border as part of joint and prolonged drills of the Russian and Belarusian militaries, the Council called for all-Ukrainian prayer for the unity of the state, regardless of religion, language and nationality. The Belarusian motif is an important element of the war in Ukraine. The Council members touched on it in an appeal of 9 March 2022 addressed to the religious leaders of Belarus "for the sake of good-neighbourly relations of future generations of Belarusians and Ukrainians," stating that "if the army of the Republic of Belarus joins the war with Ukraine, an avalanche of suffering will envelop thousands of Belarusian families who will not see their husbands, parents and brothers alive or in good health. The blood shed and the innocent lives of peaceful citizens of Ukraine lost will be eternal condemnation for all those who now justify Russia's military aggression against Ukraine and support the accession of the Republic of Belarus to it." On 16 February 2022, as part of the celebrations of Ukrainian

Unity Day, the Council members gathered at St. Sophia Cathedral in Kyiv prayed together with the representatives of the authorities, aware of the danger of war breaking out. Two weeks later, after the outbreak of the war, the Council issued an urgent appeal to the leaders of the Russian state to preserve the Ukrainian national, cultural and religious heritage, i.e. St. Sophia Cathedral, which is part of the Pechersk Lavra complex in Kyiv. Religious leaders of Ukraine issued this statement due to the real fear of artillery shelling of these religious buildings, which have symbolic meaning for Ukrainians. After all, the Lavra is not only an architectural complex included in the UNESCO World Heritage List, built at the same time as, for example, the cathedral in Constantinople, but above all the place with the sarcophagus of Yaroslav the Wise, the monument of Bohdan Khmelnytsky, and the place where the Unification Council was held on 15 December 2018 and Ukrainian Orthodox Church was established. Formally, however, the Pechersk Lavra is still a property of the Ukrainian Orthodox Church of the Moscow Patriarchate. Representatives of the pro-Moscow Orthodox Church were absent at that meeting, just like at the meeting of the Council members on 22 March 2022, during which prayers were held for the president and defenders of Ukraine, in fear of shelling of St. Sophia Cathedral.

After regular military operations started, the Council took ongoing action calling for the creation of the humanitarian corridors for war victims. First (3 March 2022), an appeal for designation of evacuation routes for women and children from the areas of Kharkiv, Vyhoda, Mariupol, Kherson, Kyiv and Chernihiv was sent to the Office of the United Nations High Commissioner for Refugees, the International Red Cross, the European Parliament and the Organization for Security and Cooperation in Europe, pointing out that the situation in these locations was nothing less than a humanitarian catastrophe. In the initial phase of the war, on 13 March, then on 1 and 16 April 2022, the Council reiterated its appeals for the creation of humanitarian corridors, especially for the residents of Mariupol, and at the same time called for closing the sky over Ukraine, for external military assistance to the Ukrainian military, including fighter jets and air defence systems. Still in April 2022, the Council members first supported the appeal of the Secretary-General of the United Nations for limitation of hostilities and opening of humanitarian corridors during the Orthodox Easter period, and then issued an appeal for the evacuation of civilians and wounded defenders of the "Azovstal" iron and steel works in Mariupol. At the same time, the Council prepared and sent out an appeal to the President of the Russian Federation and the President of Ukraine for the exchange of prisoners of war, citing it as an act of Christian charity. The Council members also called for prayer and fasting for peace for Ukraine, and on 28 July 2022, in St. Sophia Cathedral, prayers were held under the motto "God bless Ukraine."

On 20 February 2023, the Council called on followers of all religions to fast and pray in the form of a 24-hour vigil for peace in Ukraine.

The Council's activity in the international forums, including the clergy's concern (not only prayer) for the end of hostilities, is an important part of its efforts. Appeals (including the one of 3 March as mentioned above) addressed to EU bodies and the United Nations, in addition to the demand for the creation of aid corridors and military support, also pleaded for the disclosure of the levels of war losses and destruction of church infrastructure. In the appeal of 8 March 2022, i.e. issued several days after the outbreak of the war, the Council took stock of the destruction of specific religious buildings and listed examples of attacks on the cathedral of the Ukrainian Orthodox Church in Kharkiv, the church in Izium owned by the "New Life" community (Kharkiv oblast), an Orthodox church in Zavorychi (Kyiv oblast), an Orthodox church in Vyazivka (Zhytomyr Oblast). Those buildings were damaged not only from the use of traditional warfare agents, but also as a result of the Russians using banned cluster and thermobaric weapons, which was clearly raised in the appeal of 8 March. Moreover, in an earlier appeal (4 March 2022), the Council firmly expressed its position that "we are convinced that only active efforts by the UN, NATO, EU and OSCE aimed at the final cessation of military aggression by the Russian Federation can prevent extermination of the population of Ukraine and all of Europe. Urgent action must be taken to establish a no-fly zone over Ukraine and provide the Ukrainian armed forces with modern air defence equipment."

The Council's appeals to the international community and heads of state were somehow part of the practice of the institution, essentially based on the conviction that only external support would make it possible to end the war in the territory of Ukraine. Hence the appeal for international support in the effective evacuation of the people from "Azovstal" to the areas controlled by Ukrainians (7 May 2022), and a joint appeal, together with the Ombudsman, to the international community for help in organizing returns home of the victims of Russian aggression, prisoners of war, civilian hostages and all those who were forcibly deported to Russia or were held captive in the temporarily occupied territories (22 September 2022). The Council also took initiatives to condemn war crimes, abductions, tortures and the killing of religious volunteers, and communicated that position, for instance, during a meeting with the Secretary General of the World Council of Churches organized in Kyiv on 3 August 2022. The Council's appeals of September 2023 condemned Russian terror using shelling of civilian infrastructure, including residential buildings, with cruise and ballistic missiles and combat drones. The appeals pleaded for provision of specific weapons to the Ukrainian army, including specialized air defence equipment such as the Patriot, Hawk, Avenger systems, NASAMS, IRIS-T, Storner, and

radar-equipped F16 aircraft with air-intercept capabilities. Another point that was raised was a serious danger of energy-terror strategy by Russia impending in the autumn and winter (2023/2024), which would clearly add to the hardships of war-weary Ukrainian society.

At the same time, in view of the ongoing hostilities, the Council got involved in the consultative process over legislation concerning service in the Ukrainian armed forces. Representatives of the Council joined the team responsible for drafting a bill on alternative service performed during martial law. Also, the Council's Commission for Social Service gave a positive opinion on the bill on pastoral care in healthcare establishments and concluded that spiritual care was "a special type of intervention supporting the patient as well as an essential element of palliative care also provided by military chaplains." This was all the more important because the opinion referred directly to the ongoing military operations and the experience acquired by military chaplains at the front lines, first in Donbas and then throughout Ukraine [Nikołajew 2018b, 202].

Noteworthy, the international campaigns of the Council cover a wide range of activities undertaken after 24 February 2022, also for interreligious contacts. In January 2023, a delegation of the Council visited the Vatican to meet with the Pope and, in a communiqué issued after the audience with Francis and talks with the Vatican Secretary of State, Cardinal Pietro Parolin and Cardinal Kurt Koch, Prefect of the Holy See Dicastery for Promoting Christian Unity, thanked Francis for his support, including material aid, for Ukraine. The conversation with the Pope was dominated by the matters of humanitarian aid, forced deportation of Ukrainians to Russia and the release of prisoners of war from Russian captivity. Members of the Council also held meetings with representatives of other churches, mainly discussing material support for the fighting Ukrainians. The Council had meetings with representatives of the Evangelical-Lutheran Church of Denmark (3 June 2023) and with the head of the Anglican Communion (1 December 2022). At the same time, the Council established direct contact with the American humanitarian organization MedGlobal, whose assistance had a measurable material effect. At the Council meeting on 20 September 2023, the scope of assistance from this organization in 2022 was summarized, and the statement that followed cited real aid amounts of approximately USD 11 million in equipment and medicines, as well as assistance in training over a thousand members of medical teams operating in 250 centres throughout Ukraine.

Equally important was the Council's activity in demanding respect for human rights, also in times of war, as Council called for "the preservation of magnanimity regardless of the circumstances." In its appeal of 12 March 2022, the Council passed a very strong message to Ukrainians, stating that "the enemy who attacked us everywhere shows his diabolical obsession through

inhuman cruelty and profanity. Let us not be like him!" A similar statement was issued after the crime of genocide was revealed in Bucha in the Kyiv oblast. In the same vein, an appeal was made on 20 October 2022 (sent to the World Council of Churches), in which Russia's actions were named explicitly "attacks by terrorists" using torture and inhumane treatment of prisoners of war. The Council also called on the Russian Federation to comply with the principles of the Hague Conventions III and IV and to allow representatives of the International Red Cross to visit prisoner-of-war camps. Moreover, on 15 December 2022, members of the Council met with Oleg Kotenko, the Ukrainian government's Commissioner for Missing Persons under Special Circumstances, to seek opportunities for sourcing new means and ways of finding persons missing during hostilities. Members of the Council also supported the efforts taken by the President of Ukraine aimed at bringing the Russian authorities before an international criminal tribunal for war crimes and endorsed the initiatives of the presidential office to demand compensation from Russia for war losses (Council statement of 15 May 2023). President Vladimir Putin completely disregarded the "threats" from the Ukrainian side and, above all, the arrest warrant issued by the International Criminal Court, and on 13 October 2023, he went on his first foreign trip after the Court's decision to Kyrgyzstan. The next confirmed trip of the President of the Russian Federation was a visit to China. Putin could feel safe in Kyrgyzstan because the country had not ratified the Rome Statute [Świderski 2023, 12].

In addition, in the period after 24 February 2022, the Council also expressed its position on other issues unrelated to Russian aggression or on matters only indirectly related to the war. For example, it sharply opposed the assumptions of bill no. 9103 providing for equal rights of same-sex civil partnerships with the institution of marriage, it condemned bill no. 8306 on the legalization of dangerous reproductive experiments outside the uterus, and expressed a negative opinion on bill no. 9623 on the legalization of the pornography industry in Ukraine. In its statement, the Council refuted the claim of the authors of the explanatory notes to the draft "pornography" law, which supposedly showed that the adoption of these new legal measures would contribute significant financial resources for the state budget, to be then available to fund the Ukrainian war effort. As another form of activity, the Council was active in pursuing its tasks for defining the role of the media in Ukrainian society. Thus, on 5 April 2023, the Council and the National Council on Television and Radio Broadcasting signed an agreement on refuting and condemning the myth of the "holy war", i.e. the sanctification of Russian aggression against Ukraine, and on 23 May 2023, the chairman of the Council and the head of the Broadcasting Council signed a memorandum on counteracting the spread of hate speech and on promoting the idea of freedom of conscience in the mass media. In the period after 24 February

2022, in principle, there were no cases of religious persecution in Ukraine, despite the ongoing war, although there were incidents indicating a lack of respect for religious beliefs. An example is the case of May 2022, when on the wall of a residential building at Antonova St. 13 in the Solomianskyi District of Kyiv, a mural was painted depicting the figure of the Virgin Mary holding the FGM-148 Javelin missile system in her arms instead of the Infant Jesus. The Council responded with a letter of protest to the President of the Republic and the Mayor of Kyiv, and the mural was quickly removed. In July 2023, the Council also issued a message on the 80th anniversary of the Volhyn massacre, asking the Polish nation for forgiveness while referring to words of John Paul II and the current war situation in Ukraine. The message to Poles ended with a strong statement that "We cannot change the tragic pages of history, but we also have no right to forget or justify them."

CONCLUSION

The Ukrainian Council of Churches and Religious Organizations has been active in the public life of Ukrainian society for over a quarter of a century. Established as an advisory and opinion-giving body competent on matters related to the state's religious policy, it was designed to advise the President of the Republic on everything that had anything to do with the protection of freedom of conscience and religion in the country. Already at the beginning of the Council's activity, it was accused of being only a dummy collegial body, as subsequent heads of Ukraine were rather "moderate" in using the "good advice" of this interdenominational body, composed, after all, of the key representatives of the main religious associations recognized under the law in Ukraine in the reality developed after 1991. The President of Ukraine himself rarely participated in the meetings of the Council and was most often represented by delegated officials at a lower, ministerial level, who were not directly reporting to the President. This in no way strengthened the position of the Council, nor was it a proof that the presidential power supported the Council's activities for the protection of religious freedom of Ukrainian citizens. However, this unbalanced critical assessment is not entirely justified, as in "extraordinary" situations the Council took action, mainly giving its opinions, which had or could have had a decisive impact on the protection of individual and community rights, not only in the field of religious freedom, but also other rights guaranteed to Ukrainians under the Constitution and international conventions (e.g. under the European Convention on Human Rights).[2]

[2] European Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms, Journal of Laws of 1993, No. 61, item 284, with Additional Protocols.

The Council's special activity was related to its response to extraordinary situations in Ukraine caused primarily by Russian aggression in 2022. Hence, the Council's appeals issued after 24 February 2022 (almost all) directly concerned eliminating or mitigating the effects of the ongoing war. Those documents did not focus solely on the protection of freedom of conscience and religion, but had a much wider scope, as it generally covered the matters of respect for civil rights and freedoms that were violated as a result of military operations. Therefore, the documents issued by the Council after the outbreak of the war called for specific humanitarian aid (creation of aid corridors) but also for tangible military support for the Ukrainian army, for the protection of the rights of prisoners of war and the evacuation of civilians from areas affected by hostilities. The Council's activity in this area was also based on its interreligious and international contacts as well as internal appeals addressed to national authorities and members of religious communities in Ukraine. Although it is difficult to evaluate the outcomes of these activities (the time for this will come after the end of the war), the Council's efforts after the outbreak of the war in 2022 are much more prominent than before February 2022.

Noteworthy, even before the Russian aggression, the Council issued appeals for maintaining peace in Ukraine, and it was not about peace between religions. The events in Crimea, Donbas and the introduction of martial law in 2018 were appropriately "commented" by the Council, and the pandemic quarantine was a period of considerable media involvement of this body in public affairs, which had apparently been lacking before. While the passive attitude of the members of the Council and, in general, the religious leaders of Ukraine towards the restriction of religious freedoms during the pandemic can be viewed with moderate criticism, the public involvement of the Council after the outbreak of the war in Russia should be considered sufficient to make a positive assessment of its intentions and achievements. It should be emphasized that, apart from its opinion-giving powers, the Council is unable to actually influence political decisions, especially those made in conditions of threat to the existence of the state. However, the statutory competences of the Council assumed a clear and uniform expression after 24 February 2022 to communicate the opinion of the religious community with impact on the attitudes of ordinary citizens. The prestige (even only formal) of bishops and representatives of churches and other religious associations can be helpful not only in building religious unity in a multi-religious country but also serve the idea of consolidating the Ukrainian nation in the fight for its biological survival [Kozyrska 2014, 42-54].

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STATE'S RESILIENCE TO CRITICAL INFRASTRUCTURE THREATS: THE EXAMPLE OF THE RUSSIAN WAR ON UKRAINE

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Abstract. The security environment is increasingly complex and uncertain today. This directly impacts the directions of Poland's national security transformation, especially the country's resilience to hybrid threats and war. One such area is threats facing critical infrastructure, facilities of strategic importance as well as services critical to state security and citizens. The article aims to present the way of understanding and building the state's resilience based on the current legislation on the protection of critical infrastructure against hybrid threats and war, based on the example of Russia's armed aggression against Ukraine. The following research question was posed: Does the current legislation defining the tasks of state and private entities responsible for the protection of facilities, equipment, services of so-called critical infrastructure and the adopted system solutions correspond to modern threats? Our study highlights inconsistencies and gaps in the current legislation on the state's resilience to hybrid threats and war.

Keywords: critical infrastructure; threats; security; state's resilience; law.

INTRODUCTION

Security is a core value in the hierarchy of human needs that has always been challenged. Security informs the social life of citizens and their relationship with the state. The modern world is perceived by the international community mainly through the lens of globalization, which rests on three processes: the tightening of bonds between countries, states' diminished impact on the economy, and technological progress [Mierzejewski 2011, 23-24]. One effect of globalization is change, not only in the political arena, but also in the economic, social or cultural spheres. These phenomena greatly contribute to the rise of specific challenges and threats, which are becoming

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increasingly diverse, such as terrorism, cyber-terrorism, hybrid operations (below the threshold of war), or direct military engagement. Another type of threat that is less overt in nature is disinformation activities intended to put political, including economic or social pressure on states and other non-state actors, using, among other things, manipulated media. The dissemination of false information and so-called "fake news" is an instrument for waging propaganda and information-psychological war aimed at making society more polarised and interfering with democratic processes. Increasingly, there are differences in the perception of the interests of nation-states and the globalization processes taking place. They are taking various forms as new political and social movements are launched and new ideological postulates are made, such as those challenging the liberalization of international trade or the idea of supranational structures of integration. The international order is revised again and again. Such changes follow mainly from the aspirations of individual states to play a major roles regionally or globally. The superpower motivations of various states are due to differences in their interests, but they are united by a common belief that it is necessary to curb the dominance of the United States of America. In many cases, demands to revise the international order can also be linked to ambitions for territorial expansion.[1] An example of a state that takes various measures to strengthen its position in the world is the Russian Federation. Its neo-imperial policy is being implemented in violation of international law, by infringing on international agreements and treaties and making attempts to destabilize Western integration structures. The greatest threat is the use of coercion in relations with other states and the use of military force. The 2008 military aggression in Georgia, the illegal annexation of Crimea and the seizure of eastern Ukraine in 2014 shook the foundations of the Euro-European security system. Russia's superpower aspirations and further territorial expansion were shown by the use of military force in 2022 in its armed assault on the Ukrainian territory. The full-scale war in Ukraine, which has been going on for more than two years now, poses a direct threat to Poland and other Central and Eastern European countries. The war on Ukraine has exposed Russia's aspiration and goal of reshaping the world order and establishing a new regional order. The methods employed by the Russian army operating in Ukraine testify to violations of international laws – from the UN Charter[2] to the Geneva Convention for the Protection of Victims of War (12 August 1949)[3] and the Additional Protocols to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts (Protocol I) and the Protection of Victims

[1] See https://www.gov.pl/web/obrona-narodowa/rodowisko-bezpieczenstwa-rp [accessed: 30.05.2024].

[2] Journal of Laws of 1947, No. 23, item 90.

[3] Journal of Laws of 1956, No. 38, item 171.

of Non-International Armed Conflicts (Protocol II), drawn up in Geneva on 8 June 1977.[4] Attacks and bombings on key critical infrastructure and services that are essential to the functioning of civilians, damaging city power systems, the destruction of transport networks, communications, medical care facilities, food production and distribution channels, all demonstrate the tremendous effort Ukraine must undertake to defend itself.

A country's defence capabilities imply its ability to conduct effective defence activities, protect its citizens, and the entirety of national heritage [Wojnarowski 2014, 69]. According to Jan Wojnarowski, state defence capabilities are a totality of measures undertaken and is the focus of the entire state apparatus, public administration and the state economy [Idem 2005, 5]. It can be assumed that state defence is related to the activities undertaken by the entire state aimed at countering military and non-military threats, using all its instruments, tools and resources.

State defence is closely linked to state resilience. Resilience, which is the maintenance and development of capabilities in the civilian and military spheres serving to considerably hamper hostile actions, is regarded as one of the preconditions for state security [Rey 2022]. Resilience is built in response to diverse regional threats, including hybrid and increasingly global threats. Every state is obliged to build up its resilience [ibid.].

In the literature on the subject we find many publications on state resilience [Fjäder 2014,114-29; Pospisil and Kühn 2016, 1-16; Nowak 2022, 29-50; Keplin 2023, 13-38] built in response to threats caused not only by armed conflicts but also by other natural or technological factors caused by human error. The subject of this paper aligns with the research on state policies to tackle security threats. Over the past few years, this area of research has been the object of constant interest for researchers in Poland and abroad.

This paper seeks to present the way of understanding and building state resilience based on the current legislation on the protection of critical infrastructure against hybrid threats and war, using the example of Russia's armed aggression in Ukraine. The following research problem was conceived: Do the current legislation defining the tasks of state and private entities responsible for the protection of facilities, devices, services of so-called "critical infrastructure" and the adopted system solutions correspond to modern threats? To address the research problem, we used various research methods, such as the qualitative method, document research method, system analysis, inductive and eliminative reasoning.

[4] Journal of Laws of 1992, No. 41, item 175.

1. NORMS GOVERNING THE PROTECTION OF CRITICAL INFRASTRUCTURE AND FACILITIES OF STRATEGIC IMPORTANCE

Today, issues related to critical infrastructure are presented in the context of its protection. The uninterrupted operation of critical infrastructure ensures a required standard and continuity of distribution of services, for which the state is responsible. The protection of critical infrastructure is an obligation arising from legal norms, which means that its owners, administrators of facilities, installations and devices are under a legal obligation to protect them against various hazards. The concepts of critical infrastructure and its protection are defined in the Crisis Management Act.[5] According to Article 3(2), "critical infrastructure comprises systems and their components consisting of functionally related objects, including built structures, equipment, installations, services of key importance to the security of the state and its citizens and assurance of the proper functioning of public administration bodies, institutions and entrepreneurs. Critical infrastructure encompasses: (a) systems that supply energy, energy resources and fuels, (b) communication systems, (c) information and, communication technology networks, (d) financial systems, (e) food supply, (f) water supply, (g) health care, (h) transportation, (i) rescue systems, (j) systems ensuring the continuity of public administration, (k) production, storage, storage and use of chemical and radioactive substances, including pipelines for dangerous substances." Defined in this way, the concept of critical infrastructure and the catalogue of its component systems shows the great importance of their proper functioning for the security of the state and its citizens.

Now, the statutory concept of critical infrastructure protection, as defined in Article 3(3) of the 2007 Act, is understood as all activities aimed at ensuring the functionality, continuity of operations and integrity of critical infrastructure in order to prevent hazards, risks or vulnerabilities, and to mitigate and neutralize their effects, as well as to rapidly restore such infrastructure in the event of failures, attacks and other occurrences disrupting its proper functioning.

It transpires from this definition that critical infrastructure is of crucial importance to the state as a territorial community and an organization that encompasses the general public residing in its territory. Therefore, the legislator has imposed a legal duty of protection as specified in Article 6(5), in such a way that "the owners, as well as independent or dependent possessors of facilities, installations or devices of critical infrastructure are obliged to protect them, in particular by preparing and implementing, according

[5] Act of 26 April 2007 on Crisis Management, Journal of Laws of 2023, item 122 [henceforth: 2007 Act].

to anticipated risks, plans for the protection of critical infrastructure, and maintaining their own reserve systems to ensure the security of this infrastructure and sustain its infrastructure, until it is fully restored." This means that managers of facilities, installations and devices are obliged by the law to protect critical infrastructure. If its functioning is disrupted, state institutions may lose their capability, in part or in whole, to perform their basic administrative and service functions, and to exercise effective control over their entire territory. The statutory regulations are supplemented by the National Programme for the Protection of Critical Infrastructure,[6] intended to improve critical infrastructure security. Among other things, the programme defines the goals, requirements, and standards to ensure the efficient functioning of critical infrastructure. It also includes detailed criteria that make it possible to determine which facilities, equipment and services are part of critical infrastructure systems.

National regulations and system solutions regarding the protection of areas, facilities, devices, installations and services have many underpinnings in statutory regulations that variously classify facilities under special protection and specify different organisation, responsibilities and competences necessary to protect them. This legal dualism impedes the unification of the system of protection of critical infrastructure facilities or, more broadly, facilities of strategic importance for state security. The first Polish regulations legislated a decade earlier than the Crisis Management Act, concerning the mandatory protection of areas, facilities and devices are found in the Act of 22 August 1997 on the Protection of Persons and Property.[7] The types of respective facilities are mentioned in Article 5(2), including in particular: 1) state defence facilities, 2) facilities serving to protect the economic interest of the state, 3) public security facilities, 4) facilities serving to protect other important interests of the state, 5) facilities, including construction structures, devices, installations, services included in the unified list of facilities, installations, equipment and services included in critical infrastructure.

According to the wording of Article 5(1) the legislator specified that the areas, facilities, devices and transports important for the defence system, the state's economic interest, public security and other important interests of the

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[6] Resolution No. 2010/2015 of the Council of Ministers of 2 November 2015 on the adoption of the National Programme for the Protection of Critical Infrastructure, taking into account Resolution No. 116/2020 of the Council of Ministers of 13 August 2020 amending the Resolution on the adoption of the National Programme for the Protection of Critical Infrastructure and Resolution No. 38/2023 of 21 March 2023 amending the Resolution on the adoption of the National Programme for the Protection of Critical Infrastructure, https://www.gov.pl/web/rcb/narodowy-program-ochrony-infrastruktury-krytycznej [accessed: 03.06.2024].

[7] Act of 22 August 1997 on the Protection of Persons and Property, Journal of Laws of 2021, item 1995.

state mentioned in this law are subject to mandatory protection of specialized armed protective formations or an adequate technical security system.

Another group of facilities under special and mandatory protection are marine and port facilities and installations. Legal regulations in this area of the state's responsibility are found in the Act of 4 September 2008 on the Protection of shipping and seaports.[8] The Act specifies the rules of ship and seaport protection, including the protection of the life and health of the personnel of seaports, port facilities or ships, in accordance with the requirements set forth in international regulations governing the safety of life at sea and the protection of ships and port facilities. This act, adopted at the time by the Polish Parliament, transposed within the scope of its regulation Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security.[9] Considering the growing risks of sabotage, terrorist and diversion, the act was amended to expand the range of the state's obligations to enhance the protection of port facilities, marine devices and installations. Security rules have also been defined concerning: 1) the Baltic Pipe, an inter-system gas pipeline linking the transmission systems of Poland and Denmark, together with the infrastructure necessary for its operation in the sea territories of the Republic of Poland; 2) facilities, equipment and installations that are part of the infrastructure providing access to ports of primary importance to the national economy; 3) all kinds of structures and equipment used in the exclusive economic zone of artificial islands and intended for the exploration or exploitation of resources, as well as other projects for the economic exploration and exploitation of the exclusive economic zone, in particular for energy purposes, including offshore wind farms in the meaning of Article 3 item 3 of the Act of 17 December 2020 on Promoting Energy Production in Offshore Wind Farms,[10] and sets of devices for power derivation in the meaning of Article 3 item 13 of the Promotion Act, as well as submarine electricity and fibre optic networks or pipelines, and related infrastructure; 4) the liquefied natural gas regasification terminal in Świnoujście.

The entities responsible for ship and port security are not only port managers, but also ministers, heads of central offices, provincial governors, directors of maritime offices listed in Article 4 of the Act. On the other hand, the entities responsible for the prevention, reduction or removal of a direct threat including terrorist threats to the listed facilities according to Article 27 of the Act are: the Internal Security Agency, the Polish Armed Forces, the Police, and the Border Guard.

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[8] Act of 4 September 2008 on the Protection of Ships and Seaports, Journal of Laws of 2024, item 597.

[9] OJ L 310/28, 25.11.2005.

[10] Journal of Laws of 2024, item 182.

Legal regulations on the protection of critical infrastructure also apply to services that are key to state security. Responsibilities concerning the security of this sensitive infrastructure are regulated in the Act of 5 July 2018 on the National Cyber Security System. The inclusion of this legislation in the national legal order implements the EU Directive on ensuring a high common level of security of information networks and systems within the territory of the European Union.[11] The system is intended to ensure cybersecurity at the national level by ensuring the uninterrupted provision of both key and digital services, and an appropriate level of security for the ICT systems used to provide these services. Supervised by the Ministry of Digitization, the system includes operators of key services (such as the energy, transportation, health and banking sectors), digital service providers. The statutory regulations on the cybersecurity policy were further developed by the Resolution of the Council of Ministers No. 125 of 22 October 2019, adopting the Cyber Security Strategy of the Republic of Poland 2019-2024.[12] The strategy extends the activities undertaken by the government administration and aimed at raising the level of cybersecurity. It defines strategic goals and relevant policy and regulatory measures aimed at achieving a high level of cybersecurity – that is, above all, the resilience of the information systems of key service operators, critical infrastructure operators, digital service providers, and the resilience of public administration to cyberthreats.

Another piece of legislation comprehensively regulating the duty to defend the State is the Homeland Defence Act.[13] By providing a special regulation in a crucial area represented by the constitutional duty to defend the state, this law, among other things, specifies the competence of authorities in cases when a request is made to recognise a facility as particularly important for the security or defence of the state (Articles 614 and 617). Tasks relating to the protection of objects of special importance for the security or defence of the state are found in section 20, "Militarization and protection of objects of special importance for the security or defence of the state."

Another area of protection that is important for state security and defence is the 2020 Strategic Reserves Act.[14] According to Article 3, Strategic reserves shall be created to counteract threats to state security and defence, security, public order and health, and the occurrence of a natural disaster or crisis a situation, for the purposes of supporting the performance of tasks in the area of state security and defence, restoration of critical infrastructure,

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[11] This Act, within the scope of its regulation, implements Directive 2016/1148 of the European Parliament and of the Council (EU) of 6 July 2016 on measures for a high common level of security of networks and information systems within the Union, OJ L 194/1, 19.7.2016.

[12] "Monitor Polski" of 2019, item 1037.

[13] Act of 11 March 2022 on the Defence of Fatherland, Journal of Laws of 2024, item 248.

[14] Act of 17 December 2020 on Strategic Reserves, Journal of Laws of 2023, item 294.

mitigation of disruptions in the continuity of supplies serving the functioning of the economy and meeting the basic needs of citizens, saving their lives and health, realisation of the national interests of the Republic of Poland in the field of national security, fulfilling its international obligations, as well as providing assistance and support to entities of public international law.

Another matter regulating critical infrastructure security is the 2002 Aviation Act.[15] This legislation not only regulates the sphere of legal relations in the field of civil aviation (Article 1(1)), but also matters relating to protection against destruction of or damage to aviation airport devices, ground or onboard devices, disruption of their operation or serious damage to the persons operating such devices when this causes a significant disruption to air traffic or the operation of an airport or a threat to the safety of civil aviation (Article 2(20)). The act also defines physical protection of aircraft. The above security areas are part of critical infrastructure.

The critical infrastructure protection zone also includes railway areas. The 2003 Railway Transport Law,[16] specifies rules for the management of railway infrastructure (Article 1). The act defines terms such as, among others, a railway with defensive significance, a railway of state importance, whose maintenance and operation is justified by state defence, including the needs of the Polish Armed Forces and allied troops in times of the State's increased defence readiness, as well as in wartime, intended to be covered by technical protection (Article 4, points 2a, 2b).

The network of key services, which are telecommunications services, is another zone of critical infrastructure protection. The 2004 Telecommunications Law[17] imposes tasks and obligations on telecommunications entrepreneurs for the benefit of defence, state security and public safety and order, in the field of telecommunications. Pursuant to Article 179(2), a telecommunications entrepreneur is obliged to perform tasks and duties in the preparation and maintenance of designated elements of telecommunications networks for the provision of telecommunications for the direction of the national security management system, including state defence, carried out under the terms specified in plans, decisions or agreements concluded between telecommunications entrepreneurs and authorized entities.

Another area of responsibility related to the protection of critical infrastructure and defence issues is the legal regulations under the 2003 act on spatial planning and development.[18] According to Article 1(2), "planning and spatial development shall take into account, among others, the needs of state

[15] Act of 3 July 2002, the Aviation Law, Journal of Laws of 2023, item 2110.
[16] Act of 28 March 2003, the Railway Transport Law, Journal of Laws of 2024, item 697.
[17] Act of 16 July 2004, the Telecommunications Law, Journal of Laws of 2014, item 243.
[18] Act of 27 March 2003 on Spatial Planning and Development, Journal of Laws of 2023, item 977.

defence and security, the need to ensure an adequate quantity and quality of water for the population, and the need to prevent serious failures and limit their impact on human health and the environment. It is the responsibility of state and local government bodies to implement tasks related to state defence and the protection of elements of essential infrastructure for the population.

Another legal act regulating special protection of facilities important for state defence or security is the Decree of the Council of Ministers of 21 April 2022 on facilities particularly important for state security or defence and their special protection.[19] The decree specifies the types of facilities of special importance for state defence or security by assigning them to one of two the categories, the procedure for recognizing facilities as particularly important for state defence or security and for their loss of such character, and activities necessary to prepare special protection of facilities (§§ 2, 3, 8).

The above presentation of the most important legislation in force in the national legal system demonstrates the multidimensionality and multifaceted nature of critical infrastructure protection. This is reflected in the definition of the concepts of critical infrastructure and other important facilities, areas and equipment subject to special protection. Critical infrastructure protection is regulated by many normative acts, which does not favour a unified system allowing essential facilities that are important for state and citizens' security to be protected.

2. RESILIENCE OF NATIONAL CRITICAL INFRASTRUCTURE: THE EXAMPLE OF THE WAR IN UKRAINE

The state's duty to protect the security, rights and freedoms of its citizens is safeguarded by the Constitution of the Republic of Poland.[20] It gives prominence to the security of the state, which is an overriding formula covering both the external and internal spheres of its citizens. From Article 5 of the Constitution stems a norm that constitutes the obligation of Polish State to safeguard the independence and inviolability of its territory, ensure human and civil rights and freedoms, as well as the security of its citizens, protect the national heritage and the natural environment in keeping with the principle of sustainable development. From this norm transpires the obligation of the state to take measures to ensure effective protection of these values. This was accurately expressed by Wojciech Lis: "The obligation to realize the values set forth in Article 5 of the Constitution of the Republic of Poland is absolute, that is, the state cannot evade it. Such an obligation is

[19] Journal of Laws of 2022, item 880.

[20] Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended.

first and foremost actualized in a situation of emergency" [Lis 2015, 127]. This opinion implies that the state should be the guarantor of its citizens' security. One of the segments that ensures a smoothly functioning state is critical infrastructure. It is characterized by the streamlined operation of systems and their interrelated facilities, devices, installations, services that are essential for the security of the state and its citizens. The usability of critical infrastructure is intended to ensure the smooth operation of public administration bodies, institutions, and businesses. Disruptions of its functioning can make the State and its institutions lose, in whole or in part, the ability to exercise its constitutional prerogatives and exercise effective control over its entire territory.

The strategic areas outlined in the previous section have necessitated the introduction of legal protective and defensive mechanisms. Protective and defensive undertakings are designed to create proper conditions for the continuity of the national economy if state security were in peril and in the event of war. State resilience is closely linked to defence. In recent years and especially after Russia's assault on Ukraine, the term 'resilience' has appeared frequently in public debates, expert discussions, being also a topic of public interest. Resilience – the maintenance and development of capabilities in the civilian and military spheres that will efficiently counter threats – is one of the basic conditions for state security. Today, if we look at the war in Ukraine, we see the need for building resilience within society to develop immunity against various types of threats. On the national level, references to state resilience are found in Poland's National Security Strategy, approved by the President of Poland on 12 May 2020.[21] This provision is no longer binding as its legal basis was repealed in 2022.[22] The introduction to this document, in the paragraph describing the security environment, there are references to the need to enhance the resilience of the state and society. Emphasis is laid on increasing the state's resilience to threats by creating a system of universal defence, based on the efforts of the entire nation, and building understanding for the development of Poland's resilience and defence capabilities.

Elements related to Poland's resilience to various kinds of risks are addressed in the National Crisis Management Plan and its amendment adopted by the Council of Ministers on 3 March 2022.

From the presented analysis of the legal tools serving the protection of critical infrastructure and the adopted state resilience solutions, it is clear

[21] "Monitor Polski" of 2020, item 413.

[22] The Order of the President of the Republic of Poland of 12 May 2020 on the Approval of the National Security Strategy of the Republic of Poland was repealed by the Act of 11 March 2022 on Homeland Defence.

that at the national level there are various operational systems designed to neutralize risks, but they are often not integrated with one another in terms of their scope and personnel involved. The existing legal regulations come from various sources and affect a multi-faceted obligation to protect critical infrastructure and other facilities of special importance for state defence and security.

Nevertheless, the problem of critical infrastructure protection in Poland calls for a revision of the existing approach to protecting the state and society from threats below the threshold of war and from war itself. The armed aggression in Ukraine has verified the assumptions not only of modern war doctrines, but also of approaches to the protection of civilians. Russian troops are following a scorched-earth tactics, destroying everything they encounter along the way. In addition to this, the aggressor is conducting coordinated, massive air strikes targeting civilian critical infrastructure. Power plants, hospitals, transformer stations, heat and power stations and waterworks have become targets of attacks using remotely controlled rockets and drones. Public transport and food production have been paralysed, and sewage treatment plants have stopped operating. These operations are directly targeting the civilian population, which is struggling with shortages of food, health care, housing, social provisions and other vital goods necessary for survival. At the same time, diversion, sabotage and terrorist actions are being conducted. This painful Ukrainian experience compels us to see what kind of state resilience capacity Poland has in confrontation with armed and hybrid actions conducted by Russia in Ukraine. The public sphere is full of information about the state of Poland's defence preparations for Russia's potential military. Military and civilian experts dealing with issues of contemporary threats and the security environment of Poland present their opinions and assessments of hybrid (sub-threshold) threats and the resilience capabilities of our country. The 10th National Forum for Critical Infrastructure Protection was held in Warsaw on 5 October 2023, during which a report titled "Poland learning from the conclusions and experiences drawn from the analysis of a state's resilience to hybrid (sub-threshold) threats and war" was presented.[23] The report was prepared by the Government Security Centre in cooperation with the Centre's external experts the Centre for Eastern Studies and the Polish Institute of International Affairs. The purpose of the report was to identify challenges and problems in the sphere of civilian operations and to present conclusions and findings relating to Poland's system for enhancing its resilience [Raubo 2023]. This study presents, on the one hand, the identified challenges on the Ukrainian side caused by Russia's armed aggression, and on the other hand, based on

[23] See https://www.gov.pl/web/rcb/x-krajowe-forum-ochrony-infrastruktury-krytycznej-za-nami [accessed:04.06.2024].

the Ukrainian experience, conclusions and proposals for actions to increase Poland's resilience.

As regards critical infrastructure protection, the report contained, among other things, conclusions and proposals to: 1) implement a training and exercise programme for critical infrastructure protection, 2) build backup internet communications including those for unofficial communication, 3) prepare critical infrastructure operators to respond to incidents caused by drones by counteracting threats from unmanned systems to the security of critical infrastructure, 4) safeguard the availability of goods and services in case of supply chains are disrupted, 5) integrate the critical infrastructure protection system with the territorial protection system through its militarization – giving organizational-mobilization assignments and employee mobilization assignments to critical infrastructure personnel and employees of specialized armed protection formations or internal security services [Raubo 2023].

The deliberations also highlighted the need to implement new legislation on cybersecurity protection in the form of: 1) a new act implementing the provisions of the CER Directive[24] and executive regulations; the implementation will consist in amending the Crisis Management Act and establishing a body (or bodies) in charge of enforcing the CER Directive; 2) the implementation of Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive).[25]

These are directives that Poland must incorporate into the Polish legal system. The report also addresses other areas connected with state resilience. The paper presents only selected aspects associated with the protection of critical infrastructure. The document, which was inspired by the war in Ukraine, shows challenging it is for state and local government bodies to build systemic solutions for state resilience, starting by revising the background of the existing legislation, and then introducing new regulations, based on which new holistic solutions for building state resilience will be created. The report notes the legal gaps and lack of regulation of national law in the implementation of EU directives in the field of cyberthreats, among others, based on Ukraine's present war experience. This war teaches that the equipment and installations of key services and critical

[24] Directive (EU) 2022/2557 of the European Parliament and of the Council of 14 December 2022 on the resilience of critical entities and repealing Council Directive 2008/114/EC, OJ L 333/164, 27.12.2022

[25] OJ L 333/80, 27.12.2022. See https://www.gov.pl/web/rcb/x-krajowe-forum-ochrony-infrastruktury-krytycznej-za-nami [accessed:04.06.2024].

infrastructure facilities must be kept fully operational at all cost. An important point raised by the report is the intensification of training and exercise related to critical infrastructure protection. Through exercises, employees and management staff consolidate their knowledge of procedures and substantially contribute to the improved ability to protect critical infrastructure by preventing threats and responding appropriately.

On the basis of the presented analysis of the current legislation and the conclusions presented in the report of the Government Security Centre, we can propose that a coherent supra-ministerial civilian and military solutions be developed to integrate the system of the State's resilience to modern threats.

CONCLUSIONS

The military assault on Ukraine has not only changed the security architecture of Central and Eastern Europe, but also completely changed the approach to state defence and resilience to modern threats. The war experience shows a poignant but very instructive lesson in dealing with the Russian army following scorched earth tactics. One of the tactical goals of the aggressor is to totally paralyse Ukraine, disabling its defence forces, destroy key critical infrastructure and command centres, information flow, and cause shockwaves across the nation. Since the beginning of the armed invasion, Poland has been paying more attention to the protection of its critical infrastructure. Legal regulations on critical infrastructure did not appear until 2007 – in the Crisis Management Act, but issues related to the protection of areas, facilities, devices and transport had appeared much earlier (in 1997), when the Act on the Protection of Persons and Property came into force. Also, solutions for the protection of category 1 and 2 facilities were regulated in 2003 in a decree of the Council of Ministers categorising objects of special importance for state defence and security and their special protection (currently the 2022 decree is in force) (CM Decree, 2022). The 2008 act, which is a *lex specialis* for the protection of maritime infrastructure and port facilities and devices, should also not be ignored. The characterization of the current legal acts presented in the section above reveals a range of legal sources regulating matters concerning the protection of facilities of special importance to state security. They apply different methodology in defining criteria of threats, measures for the protection of facilities and devices, various procedures and requirements for agreeing on security plans, as well as ways in which private or state entities can provide protection. Such a diversity of regulations does not favour a unified and holistic approach to protection, and consequently greater organized state resilience to threats to facilities, devices, services essential to the functioning of the state. In practice, this legal chaos is conducive to a diverse approach to

the idea of protection. The current legal state makes it difficult to respond flexibly and quickly to emergencies or other threats requiring a response. A similar diversity of regulations and concepts is visible in the system of state defence management. This state of affairs is described by Julian Maj, who points out that the discourse on the system of state defence management lacks a clear conceptual and legal base [Maj 2013], which impedes the use of terms that can be used equally or understood similarly by most participants of the debate. This applies mainly to concepts such as national defence, defence capabilities, state defence readiness, etc. Since these concepts are mentioned in the Polish Constitution and other normative acts, their meaning must be made unequivocal so that deliberations can be held on the same factual basis [ibid.].

Therefore, the current regulations require a comprehensive, holistic and unified approach to the development of a national model for the protection of critical infrastructure facilities and other facilities that are critical for state security.

It is necessary to take measures to improve the management of facility protection by putting together a range of fragmented regulations applied concurrently. This requires compact and interdisciplinary organisational and legal solutions in this area, aimed at creating an integrated system of national security management. The crucial link within this model must be a body coordinating work at the governmental level. The experience of the war in Ukraine shows how important it is to establish a central coordinating body for the protection of critical infrastructure. The Ukrainian war experience makes us aware that keeping operational the equipment and installations of key services and critical infrastructure facilities must be a top priority. An extremely important element of the protection of critical infrastructure and other facilities, equipment and installations that are critical for state security is the organisational ability to prevent, prepare for and respond to threats on the part of the managers and staff of these facilities. In this context, it is of utmost importance to intensify training and exercise programmes for the protection of critical infrastructure.

To sum up, the way to increase the State's resilience stipulated in the Polish National Security Strategy of 2020, which was in effect until recently, is not reflected either in the Act on Homeland Defence or in other acts such as the Crisis Management Act or other acts on emergencies. Such solutions should, sooner or later, find their way into a new draft law on civil protection and civil defence.

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THE IMPACT OF RUSSIAN AGGRESSION ON LIMITATION OF THE CONSTITUTIONAL RIGHT TO FREEDOM OF MOVEMENT IN UKRAINE*

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Abstract. According to Article 33 of the Constitution of Ukraine, everyone who is legally staying in the territory of Ukraine is guaranteed freedom of movement, free choice of place of residence, and the right to freely leave the territory of Ukraine, with the exception of restrictions established by law. The consequence of Russian aggression was not only the departure of several million Ukrainian citizens abroad in search of salvation from hostilities. The consequence was that the Ukrainian state was faced with the challenge of introducing restrictions on a number of constitutional human rights. However, under the circumstances of a full-scale Russian-Ukrainian war, it turned out that theoretical considerations, the formulation of relevant concepts and principles of limiting the exercise of human rights "lag behind" the realities of war and require significant improvement. After all, the introduction of martial law in Ukraine significantly complicated the state's ability to implement constitutionally guaranteed rights and freedoms. The consequence of such at times chaotically introduced legal restrictions was the narrowing of the content and scope of human and citizen rights and freedoms. At the same time, Article 22 of the Constitution of Ukraine establishes that human and citizen rights and freedoms affirmed by this Constitution are not exhaustive. Constitutional rights and freedoms are guaranteed and should not be abolished. The content and scope of existing rights and freedoms should not be diminished by the adoption of new laws or by the amendment of laws that are in force.

Keywords: human rights; human rights restrictions; constitutional right to freedom of movement; martial law.

INTRODUCTION

According to Article 33 of the Constitution of Ukraine, everyone who is legally present on the territory of Ukraine is guaranteed freedom of movement, free choice of place of residence, and the right to freely leave the territory of

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Ukraine, with the exception of restrictions established by law.[1] The consequence of the full-scale invasion of Ukraine, which took place on February 24, 2022, was the commission of genocide, crimes against humanity, and other war crimes by the Russian occupying army, which are already being assessed by the International Criminal Court in the Hague. In particular, on March 17, 2023, the Pre-Trial Chamber of the ICC, in connection with the illegal removal of children from Ukraine, issued arrest warrants for Vladimir Putin and Maria Lvova-Belova,[2] and recently, on June 24, 2024, arrest warrants for the former Minister of Defense of the Russian Federation Sergei Shoigu and Chief of the Russian General Staff Valery Gerasimov, the reason for which was the task of the Russian army to strike energy facilities in Ukraine. The ICC emphasized that the suspects intentionally caused great suffering or serious bodily injury or damage to the mental or physical health of the civilian population, and therefore bear criminal responsibility for crimes against humanity and other inhuman acts, as defined in Article 7(1) of the Rome Statute.[3] Recent Russian missile strikes, such as on July 8, 2024, when at least 43 civilians were killed and more than 190 were injured as a result of a missile attack on Ukraine, while 34 people were killed in Kyiv alone, and one of the most terrible strikes fell on the largest children's hospital in Ukraine [Shvets' 2024], testify that the main target of such strikes are completely civilian objects, in particular, specialized children's hospitals and maternity hospitals. There is no doubt that the millstones of international criminal justice are slowly but surely beginning to "grind" the rights of representatives of the Russian authorities, effectively "locking" them in the circle of states that do not recognize the Rome Statute, and limiting their freedom of movement by creating the threat of detention and arrest on the territory of those more than one hundred and twenty states that ratified the Rome Statute. We are convinced that the time will come when Russian war criminals will bear the appropriate punishment before a specially created international tribunal, as it once happened at the Nuremberg Tribunal for the war criminals of Nazi Germany, the International Tribunal for the prosecution of persons responsible for serious violations of international humanitarian law, carried out on the territory of the former Yugoslavia and the International Tribunal for Rwanda, created to prosecute persons responsible for the genocide carried out on the territory of Rwanda and Rwandan citizens responsible for the genocide carried out on the territory of neighboring states.

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[1] *Constitution of Ukraine*, https://hcj.gov.ua/sites/default/files/field/file/the_constitution_of_ukraine.pdf [accessed: 02.09.2024].

[2] *Mizhnarodnyy kryminal'nyy sud vydav order na aresht putina*, https://www.ukrinform.ua/rubric-world/3683849-miznarodnij-kriminalnij-sud-vidav-order-na-arest-putina.html [accessed: 02.09.2024].

[3] *MKS vydav order na aresht Shoyhu ta Herasymova za masovani obstrily enerhosystemy Ukrayiny*, https://www.radiosvoboda.org/a/news-kryminalnyy-sud-herasymov-shoyhu/33008483.html [accessed: 02.09.2024].

1. LIMITATION OF THE CONSTITUTIONAL RIGHT TO FREEDOM OF MOVEMENT: THEORETICAL ASPECTS

We are only interested in problems related to the freedom of movement of representatives of the so-called Russian "elite" in the context of their criminal prosecution. At the same time, the consequence of the Russian-Ukrainian war was not only the departure of several million Ukrainian citizens abroad in search of salvation from hostilities. The consequence was that the Ukrainian state was faced with the challenge of introducing restrictions on a number of constitutional human rights and freedoms in relation to its own citizens. At one time, in the PhD thesis "Realization of human rights: problems of limitation (general theoretical aspects)", which was defended in 2000, that is, almost 25 years ago, we, it would seem at that time, quite thoroughly analyzed the grounds for human rights limitations, in particular, such a constitutional basis as the interests of national security [Pankevych 2000]. Today we can claim that our conclusion that state activity cannot be unlimited and that human rights are one of the determining factors by which this activity is limited [ibid., 50], is relevant today. Article 19 of the Constitution of Ukraine establishes that "the legal order in Ukraine is based on the principles whereby no one shall be forced to do what is not envisaged by legislation." At the same time, the Ukrainian Basic Law foresees cases when separate restrictions on the rights and freedoms of a person and a citizen can be established. In particular, Article 64 of the Constitution of Ukraine states that "under conditions of martial law or a state of emergency, specific restrictions on rights and freedoms may be established with the indication of the period of effect of these restrictions." Actually, in the conditions of a full-scale Russian-Ukrainian war, it turned out that theoretical considerations, the formulation of relevant concepts and principles of human rights limitations "lag behind" the realities of war and require significant improvement. After all, the introduction of martial law in Ukraine significantly complicated the state's ability to ensure the implementation of a number of constitutionally guaranteed human and citizen rights and freedoms. Moreover, it turned out that the subject of the introduction of legal restrictions is far from always the parliament as the legislative body of power in Ukraine, but also other authorities that actually do not even have the relevant powers for this. The consequence of such sometimes chaotically introduced legal restrictions was the narrowing of the content and scope of human and citizen rights and freedoms. At the same time, Article 22 of the Constitution of Ukraine establishes that "human and citizens' rights and freedoms affirmed by this Constitution are not exhaustive. Constitutional rights and freedoms are guaranteed and shall not be abolished. The content and scope of existing rights and freedoms shall not be diminished in the adoption of new laws or in the amendment of laws that are in force."

The aforementioned norms of the Ukrainian Basic Law correspond to the Universal Declaration of Human Rights, Article 29 of which stipulates that the "everyone has duties to the community in which alone the free and full development of his personality is possible. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."[4] They also meet the norms of the Convention on the Protection of Human Rights and Fundamental Freedoms.[5] Thus, the Ukrainian legislator faced a problem: to introduce the necessary law-restrictive norms in the conditions of martial law (due primarily to the interests of national security), and at the same time to remain a democratic state governed by the rule of law. As noted by the former Minister of Foreign Affairs of the Republic of Poland Professor Adam Daniel Rotfeld rightly points out, Russia did not agree with the sovereign Ukrainian choice of a democratic path of development for the usual reason - if Ukraine succeeded on the chosen democratic path, then for millions of Russians it would become an example and inspiration for democratic changes in Russia itself [Rotfeld 2023, 6-7].

2. FEATURES OF CONSTITUTIONAL LAW IMPLEMENTATION ON FREEDOM OF MOVEMENT DURING THE PERIOD OF MARTIAL STATE

As for the specifics of the implementation of the constitutional right to freedom of movement during martial law, for obvious reasons, they mostly concern male citizens of Ukraine between the ages of 18 and 60. First of all, it should be noted that the relevant legal framework, which concerns the mentioned problem, still contains a number of inconsistencies and gaps, which lead to "different readings" of regulatory acts. As you know, after the Russian invasion, that is, from February 24, 2022, the State Border Service of Ukraine introduced restrictions on travel abroad for men of conscription age, guided by the provisions of the Law of Ukraine "On the Legal Regime of Martial Law" dated May 12, 2015,[6] Decree of the President of Ukraine dated February 24, 2022 No. 64/2022 "On the Introduction of Martial Law in

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[4] *Zahal'na deklaratsiya prav lyudyny. Pryynyata i proholoshena rezolyutsiyeyu 217 A (III) Heneral'noyi Asambleyi OON vid 10 hrudnya 1948 roku*, "Ofitsiynyy visnyk Ukrayiny" vid 15.12.2008, № 93, stor. 89, stattya 3103, kod akta 45085/2008.

[5] *Konventsiya pro zakhyst prav lyudyny ta osnovopolozhnykh svobod*, "Ofitsiynyy visnyk Ukrayiny" vid 16.04.1998, № 13, / № 32 vid 23.08.2006, p. 270.

[6] *Pro pravovyy rezhym voyennoho stanu: Zakon Ukrayiny vid 12 travnya 2015 roku*, "Vidomosti Verkhovnoyi Rady" (VVR), 2015, № 28, p. 250.

Ukraine,"[7] the Law of Ukraine "On Mobilization Training and Mobilization" dated October 21, 1993,[8] as well as a number of other secondary legal acts. Analysing the relevant legal norms, we would like to note that after the start of the war and the declaration of martial law in Ukraine, the right to unhindered crossing of the border for men of conscription age applies to a rather limited circle of persons. Moreover, the list of such persons is constantly changing in the direction of its decrease. In particular, at the beginning of the war, it was possible for the following categories of persons to go abroad: men from 18 to 60 years old, who permanently live abroad and have a corresponding mark in their passport; persons excluded from military registration due to health; persons with disabilities of groups I-III, in the presence of relevant documents confirming disability and social benefits; single parents raising a child or children under the age of 18; parents, guardians, custodians, adoptive parents, foster parents who raise a child with a disability under the age of 18; parents who are dependent on an adult child who is a person with a disability of group I or II; relatives who accompany children with disabilities when traveling outside of Ukraine, if they belong to the category of persons who are not subject to conscription for military service during mobilization; persons who have a spouse (husband) from among persons with disabilities and accompany her when traveling outside Ukraine; persons who have one of their parents or the parents of their spouse (husband) from among persons with disabilities of the I or II group and accompany one of such parents to travel outside Ukraine; persons who provide permanent care for persons with disabilities of the I or II group and accompany such persons outside Ukraine; guardians of persons with disabilities, recognized by the court as incapable, who accompany such persons to travel outside Ukraine; unfit for military service due to their health for a period of up to 6 months - according to the opinion of the military medical commission; military personnel on leave – subject to the permission of the military unit; military personnel undergoing military training abroad; employees of the diplomatic service who are sent on official or long-term business trips, and members of their families who will stay with them at the place of their long-term business trip; students of vocational pre-university and higher education, trainee assistants, post-graduate students and doctoral students studying abroad on full-time or dual forms of education (students, trainees).

In addition, in the presence of relevant documents, representatives of a number of professions are also allowed to travel abroad: ship crew

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[7] *Pro vvedennya voyennoho stanu v Ukrayini: Ukaz Prezydenta Ukrayiny vid 24 lyutoho 2022 roku*, "Ofitsiynyy visnyk Ukrayiny" vid 14.06.2022 r., № 46, stor. 16, stattya 2497, kod akta 111724/2022.

[8] *Pro mobilizatsiynu pidhotovku ta mobilizatsiyu: Zakon Ukrayiny vid 21 zhovtnya 1993 roku*, "Vidomosti Verkhovnoyi Rady Ukrayiny" (VVR), 1993, № 44, p. 416.

members, railway workers, aviation personnel, vehicle drivers, volunteer drivers, cultural figures, athletes and coaches.

The next step was a gradual reduction in the number of men of draft age who could go abroad. The first such rather unexpected restriction was the ban on the travel abroad of students of professional pre-higher and higher education, trainee assistants, post-graduate students and doctoral students studying in Ukraine under full-time or dual forms of education. On April 1, 2022, the Cabinet of Ministers of Ukraine amended clauses 2-6 of the Resolution of the Cabinet of Ministers of Ukraine No. 57 of January 27, 1995 „On Approval of the Rules for Crossing the State Border by Citizens of Ukraine,"[9] which prohibited their departure abroad. At the same time, the specified category of persons cannot be called up for military service without their consent, as they have the right to deferment, but they are also prohibited from leaving Ukraine. The situation with Ukrainian citizens studying abroad is somewhat different and, in our opinion, even more complicated and confusing. For almost six months since the beginning of the war, students and post-graduate students of the stationary form of study of foreign universities had the right to travel abroad. To cross the border, they provided the following documents: student card or student visa; translated and notarized documents on enrolment/study of a person in a foreign university; military registration documents with a record of granting them a deferral of conscription (conscription upon mobilization), a certificate issued by the territorial recruitment and social support centre for travel abroad for applicants of professional pre-university and higher education, trainee assistants, graduate students and doctoral students studying at across the border for full-time or dual forms of education.

However, on September 14, 2022, the State Border Service of Ukraine announced a ban on the departure of men who are students of foreign higher education institutions from Ukraine. At the same time, the reason for this decision of the top military leadership was the fact that the border guards daily detected people who tried to use fake documents, stating that they were students, and in this way illegally leave the borders of Ukraine. Hundreds of such forgeries could be discovered within a month.[10] Thus, it can be stated that in the final result thousands of "real" Ukrainian students of foreign higher education institutions became the victims of the said decision of the top military leadership. After all, the law enforcement agencies were actually unprepared to check a significant number of falsified "documents" and bring

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[9] *Pro zatverdzhennya Pravyl peretynannya derzhavnoho kordonu hromadyanamy Ukrayiny*, "Postanova Kabinetu Ministriv Ukrayiny" № 57 vid 27 sichnya 1995 roku, https://zakon.rada.gov.ua/laws/show/57-95-%D0%BF#Tex [accessed: 02.09.2024].

[10] *Vyyizd za kordon dlya studentiv obmezheno*, https://vseosvita.ua/c/news/post/7498 [accessed: 02.09.2024].

to justice the persons who used them. A further consequence was the actual impossibility of obtaining a higher education abroad for the majority of Ukrainian men of military age. After all, the question is logical: if students of permanent and dual education have a deferment from the draft, why can't they go to study at the foreign university where they entered? It is obvious that in this way the authorities are fighting not only with the above-mentioned flow of falsified documents, the authenticity of which can be easily checked if there is a desire on the part of law enforcement officers. It is also about preventing the use of loopholes in the law, which until recently allowed many persons (often at the age of 40 or 50) to "enter" studies at foreign universities with the aim of further travel abroad and actually avoiding mobilization. However, in our opinion, in this case, the rights of "real" students, who are also unjustifiably suspected of evading the draft, are limited.

During the last few months of 2024, the authorities have taken a number of steps that can be positively evaluated. In particular, by Resolution of the Cabinet of Ministers of Ukraine No. 366 dated April 2, 2024 "On Amendments to the Rules for Crossing the State Border by Citizens of Ukraine", certain categories of male students of Ukrainian higher educational institutions were allowed to leave to study in foreign higher educational institutions under the academic mobility program. At the same time, a number of requirements have been established for crossing the border, in particular: be aged from 18 to 22 years; not be subject to conscription for military service during mobilization; become a participant in academic mobility for one semester; to study full-time in institutions of higher education of state or communal forms of ownership; obtain a bachelor's degree in any specialty or a master's degree in medical, pharmaceutical or veterinary fields.[11]

So, it can be argued that although there are certain relaxations regarding the departure of students to study abroad, there will still be a number of restrictions: age restrictions, restrictions on the form of education (full-time education), level of education (bachelor), with the exception of the already mentioned master's level medical, pharmaceutical or veterinary field, as well as the form of ownership of a higher educational institution (higher education institutions of state or communal forms of ownership). Also, the issue regarding the possibility of studying abroad for students who have entered foreign higher education institutions on a stationary form of education has not yet been resolved. We are talking at least about those students who have not reached the age of 25, that is, they cannot be mobilized into the Armed Forces of Ukraine without their consent.

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[11] *Pro vnesennya zminy do Pravyl peretynannya derzhavnoho kordonu hromadyanamy Ukrayiny*, "Postanova Kabinetu Ministriv Ukrayiny" № 366 vid 2 kvitnya 2024 roku, https://ips.ligazakon.net/document/kp240366?an=1 [accessed: 02.09.2024].

A separate issue concerns men of conscription age who permanently live abroad and have a corresponding mark in their foreign passport. Until recently, until the beginning of June 2024, this category of men had the right to leave Ukraine unhindered on the basis that they are residents of other countries and have a residence permit there. The State Border Service of Ukraine provided a corresponding explanation on its official website. According to this explanation, departure to a permanent place of residence abroad is a special procedure, the result of which is obtaining a permit from the State Migration Service of Ukraine. As part of the preparation of this document, approval of departure with the military commissariat is also provided for. That is, a man who has officially changed his place of permanent residence is not registered with any military commissariat of Ukraine, and therefore is not conscripted. In connection with this, he can safely cross the border and leave Ukraine.[12] However, on June 5, 2024, the State Border Service of Ukraine published completely different information, namely, it announced that starting from June 1, 2024, men of draft age who permanently live abroad and have a corresponding mark in their foreign passports will be removed from the list of persons who have the right to freely cross the border.[13] At the same time, the specified information appeared on the DPSU website only a few days after such a ban came into effect.

3. LEGISLATIVE AMENDMENTS REGARDING MOBILIZATION DURING THE INTRODUCTION OF MARTIAL STATE IN UKRAINE

The Law contains a number of novelties designed to fill legal gaps and minimize opportunities for citizens to evade conscription, as a result of which the legal norms regarding the restriction of the right to freedom of movement for men of conscription age will become "transparent" and understandable not only to lawyers, but also to the majority of citizens of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding Certain Issues of Military Service, Mobilization, and Military Registration" dated April 11, 2024.[14] In particular, the specified law details the right to

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[12] *Yak choloviky, yaki postiyno prozhyvayut' za kordonom, mozhut' vyyikhaty z Ukrayiny: ekspert nazvav obov'yazkovu umovu*, https://fakty.com.ua/ua/ukraine/suspilstvo/20230123-yak-choloviky-yaki-postijno-prozhyvayut-za-kordonom-mozhut-vyyihaty-z-ukrayiny-ekspert-nazvav-obovyazkovu-umovu/ [accessed: 02.09.2024].

[13] *Ukrayina prodovzhuye obmezhuvaty vyyizd cholovikiv pryzovnoho viku za kordon*, https://www.lrt.lt/ua/novini/1263/2290221/ukrayina-prodovzhuie-obmezhuvati-viyizd-cholovikiv-prizovnogo-viku-za-kordon [accessed: 02.09.2024].

[14] *Pro vnesennya zmin do deyakykh zakonodavchykh aktiv Ukrayiny shchodo okremykh pytan' prokhodzhennya viys'kovoyi sluzhby, mobilizatsiyi ta viys'kovoho obliku: zakon Ukrayiny vid 11 kvitnya 2024 roku*, "Vidomosti Verkhovnoyi Rady" (VVR), 2024, № 19, p. 78.

receive a deferment from the draft for students and post-graduate students of the stationary form of education. According to the provisions of this law, only those students who obtain a level of education that is higher than the previously obtained level of education will have such a right. That is, if a student enrolls in a permanent form of education after completing a bachelor's degree for a master's degree or for a postgraduate degree after obtaining a master's level of education, then he has the right to a deferment from the draft. If, after completing the master's degree, he enters a bachelor's or master's degree in another specialty, then in this case he loses the right to postpone the draft. There is no doubt that such legislative changes will make it possible to significantly reduce the number of male persons who obtained a second or third higher education of a stationary form of education at a fairly "mature" age.

According to Article 53 of the Constitution of Ukraine, "everyone has the right to education… Citizens have the right to obtain higher education free of charge in state and communal educational institutions on a competitive basis. That is, the Basic Law does not establish age limits for exercising the right to education. Such a constitutional norm in the conditions of the introduction of martial law in Ukraine allowed many Ukrainian citizens to use the legal "loophole" to abuse the right to education. It is about the fact that after the beginning of the Russian-Ukrainian war in 2022 approximately 85 thousand men entered higher education institutions, and in 2023 – 110 thousand men of conscription age. At the same time, the number of new male students over the age of 30 increased 23 times during 2022-2023. In particular, if in 2020 there were 1,700 male entrants aged 30-39, in 2021 – 2,186, then in 2022 – 30,277, and in 2023 – 43,720. A similar situation applies to male entrants over the age of 40 years old. If in 2020 there were 692 male entrants of this age, in 2021 – 884, then in 2022 – 15,055, and in 2023 – 27,728 people [Poya 2023].

The aforementioned law also excludes the category of "limited suitability" from the list of conclusions of the military medical commission, instead leaving two categories of persons: suitable and unsuitable for military service. Persons who were previously recognized as having limited suitability are required to undergo a medical examination again within nine months from the date of entry into force of this law. The list of diseases for which the military medical commission decides on unsuitable fitness or exemption from mobilization has also been updated.[15]

Thus, it can be stated that the number of men of draft age, who are recognized as unsuitable for military service due to their health, and therefore can travel abroad without hindrance, will decrease. At the same time, the right to

[15] Ibid.

travel abroad to study in foreign higher education institutions under the academic mobility program will be granted to a certain number of students of permanent or dual education. The specified legislative amendments were adopted recently, the law entered into force on May 18, 2024, while the clarification of the data of conscripted citizens of Ukraine continued until July 16, 2024.

CONCLUSION

Today, it is difficult to talk about the extent of legislative restrictions on the constitutional right to freedom of movement during martial law in Ukraine. In fact, until the adoption by the Parliament of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding Certain Issues of Military Service, Mobilization, and Military Registration" dated April 11, 2024, which entered into force on May 18, 2024, it was possible to talk about quite chaotic activity a number of state bodies that are relevant to mobilization processes or to crossing the state border, and therefore to guaranteeing the right to freedom of movement in Ukraine. The adoption of the above-mentioned law by the Verkhovna Rada of Ukraine shows that, after all, in the third year of the full-scale Russian-Ukrainian war, the legislative body took the initiative in such a delicate and painful issue, which is the restriction of the constitutional right to freedom of movement in Ukraine under martial law hands. It will be possible to talk about the results of the application of this law a little later, when the specified legislative changes will finally begin to be implemented in practice. However, it should be remembered that the restriction of the constitutional right to freedom of movement in Ukraine should take place only on exclusively legal grounds. Only under the condition of compliance with the Constitution of Ukraine and relevant legislative acts, it will be possible to claim that the provisions of article 1 of the Basic Law are not declarative, and Ukraine, despite the need to introduce a number of restrictions on the constitutional rights and freedoms of man and citizen in the interests of national security, is democratic and legal state.

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GLOBAL PUBLIC SAFETY SYSTEMS. RESEARCH ON THE COHERENCE AND EFFECTIVENESS OF INTERNATIONAL AGREEMENTS PROTECTING ECOLOGICAL CONNECTIVITY

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Abstract. Ecological connectivity is one of the primary prerequisites of effective prevention and adaptation to climate change. However the legal protection of this phenomenon has been scattered in different legal acts of international, European and national law. The main criterion adopted for the purposes of this research was to focus on the development of instruments for the protection of ecological corridors. The research included both framework agreements on the protection of biodiversity as well as agreements strictly related to the migration of fauna and flora. The main conclusions of the research show that the provisions of multilateral nature conservation agreements vary in terms of their legal force, and in most cases leave a wide margin of discretion to the parties with regard to the forms of implementation. Furthermore, the agreements are not integrated and coherent, and are still based on outdated management tools and terminology (dating back to the 1970-1980 period). Binding executive acts are not widely recognised as having the same legal force as framework conventions and are, in fact, lost in the microcosmos of national environmental legislation. It is recommended to conduct a harmonised, in-depth review of the implementation of the conventions analysed, in order to integrate and improve the coherence of the protection regime of ecological networks at national, continental and global levels. This should be done by adopting an integrative agreement under the auspices of all the conventions concerned. The detailed scope of the necessary amendments proposed in the final chapter of this article constitutes the main added value of this research.

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INTRODUCTION

Wild animals are migrating because of the different biological reasons where the most important are wintering, staging, feeding, breeding or moulting.[1] The civilizational development is inevitably linked with progressive expansion of the settlement network, increased density and surface of linear and nonlinear infrastructure [Byron and Arnold 2008, 20] as well as all other types of anthropogenic impacts especially connected with the exploitation of water engineering structures [Pchałek and Grzegrzółka 2017, 208]. In consequence, wild animals dwell in increasingly shrinking and isolated patches of habitats, their populations are decreasing, and the threat of their extinction rises [Good 1998, 15]. Furthermore, disappearance of habitats and species disrupts the functioning of ecosystems and results in decreased biotic diversity because of ecological feedback loops [Pichon, et al. 2024, 1]. "Conservation status of a migratory species" means the sum of the influences acting on the migratory species that may affect its long-term distribution and abundance. "Conservation status" will be taken as "favourable" i.a. when population dynamics data indicate that the migratory species is maintaining itself on a long-term basis as a viable component of its ecosystems and there is, and will be in the foreseeable future, sufficient habitat to maintain the population of the migratory species on a long-term basis.[2] However the whole definition of "favourable status" is not fully consistent with contemporary scientific knowledge. The definition should be complemented by the aspects of "barrier effect" concerning water migration [Belletti, et al. 2020, 436] as well as air migration which are today significantly affected by water steps cascades [Silva, et al. 2018, 340], and wind farms developments.[3]

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[1] The Bern Convention on the Conservation of European Wildlife and Natural Habitats, signed in Bern, 19 September 1979 (entered into force 1 June 1982), Secretariat provided by the Council of Europe, OJ L 38, 10.2.1982, p. 3-32 [hereinafter: the Bern Convention], http://data.europa.eu/eli/convention/1982/72/oj [accessed: 26.08.2024], Article 4.3.

[2] Convention on the Conservation of Migratory Species of Wild Animals, signed in Bonn, 23 June 1979, United Nations Treaty Series 1651, no. 28395 (entered into force 1 November 1983) [hereinafter: the Bonn Convention or CMS], https://www.cms.int/en/convention-text [accessed: 26.08.2024], Article I.1.c.(1),(3).

[3] Strasbourg, 26 August 2013. Wind Farms and Birds: An Updated Analysis of the Effects of Wind Farms on Birds, and Best Practice Guidance on Integrated Planning and Impact Assessment. T-PVS/Inf (2013) 15. Report prepared by BirdLife International on behalf of the Bern Convention Bureau Meeting, Strasbourg (17 September 2013).

It should be noted that the ecological connectivity is the concept of abstractive nature,[4] however ecological networks of core areas and migratory corridors should be designated in a legally binding form based on geographically explicit data [Bennett and Mulongoy 2006, 4]. The primary example of continental ecological network is Natura 2000, where the core areas are special areas of habitats conservation (SACs) and important bird areas (SPAs). The migratory corridors covering terrestrial and water ecosystems [Hilty, et al. 2020, 30] are in fact of linear, nonlinear, continuous or non-continuous nature including s.c. "stepping stone" habitats [Saura, Bodin, and Fortin 2014, 180]. During birds' migration such habitats play a role similar to those like for the people highway rest areas.

As regards functionality of global public safety systems it must be stressed that the Resolution of the European Parliament of 17 December 2020 on the EU strategy on adaptation to climate change[5]: 1) emphasises that green infrastructure contributes to adaptation to climate change through the protection of natural capital, the conservation of natural habitats and species, good ecological status, water management and food security (point 8); 2) highlights the need to assess and make further use of the potential of forests, trees and green infrastructure in climate adaptation and in the provision of ecosystem services (point 25); 3) calls on the Commission and the Member States to classify green infrastructure as belonging to the category of critical infrastructure for the purposes of programming, funding and investments (point 29).

In the above context this article is a scientific response and invitation to further discussion because of two main reasons: 1) the first-ever report on the "State of the World's Migratory Species" finds that the overall conservation status of migratory species is still deteriorating[6]; 2) the conclusions of legal indicators-based report elaborated under auspices of International Union for Conservation of Nature which underlines that the Multilateral Environmental Agreements are neither efficient nor effective [Fromageau, Cherkaoui and Coll 2023, 33].

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[4] See *Global Assessment Report on Biodiversity and Ecosystem Services*, https://www.ipbes.net/global-assessment [accessed: 26.08.2024], p. 1037.

[5] European Parliament resolution of 17 December 2020 on the EU strategy on adaptation to climate change (2020/2532(RSP)), P9_TA(2020)0382 EU strategy on adaptation to climate change, OJ C 445, 29.10.2021, p. 156-67.

[6] *State of the World's Migratory Species*, UNEP-WCMC, Cambridge, United Kingdom 2024, p. 4.

1. MATERIAL AND METHODS

1.1. Legal sources

Protection of ecological connectivity is provided within the following categories of international legal norms: provisions in the scope of aerial (spatial forms) of nature protection including protection of landscape; provisions in the scope of protection of biodiversity including "species protection schemes".

For the purposes of analyses carried out in this paper, the following acts containing provisions from at least one of the categories listed above were identified: 1) The Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat, signed in Ramsar on 2 February 1971;[7] 2) Convention on the Conservation of Migratory Species of Wild Animals, signed in Bonn on 23 June 1979;[8] 3) The Bern Convention on the Conversation of European Wildlife and Natural Habitats, signed in Bern on 19 September 1979;[9] 4) The Convention on Biological Diversity, signed in Rio de Janeiro on 5 June 1992;[10] 5) The European Landscape Convention signed in Florence on 20 October 2000.[11]

These provisions are of various nature, on the one polar we can indicate substantive norms with direct effect and on the second one norms which are not enough precise, clear and unconditional as to grant them the value of direct effectiveness.

It must be noted that the substantive provisions regardless of their power must be supplemented by procedural schemes. Because the subject of environmental international law covers phenomena resulting in transboundary impacts such procedural basis has been introduced into international legal order in the form of Convention on Environmental Impact Assessment

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[7] The Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat, signed in Ramsar, 2 February 1971 (entered into force 21 December 1975) with amendments [hereinafter: the Ramsar Convention], https://www.ramsar.org/sites/default/files/documents/library/current_convention_text_e.pdf [accessed: 26.08.2024].

[8] The Bonn Convention, note no. 2.

[9] Ibid., no. 1.

[10] The Convention on Biological Diversity, signed in Rio de Janeiro, 5 June 1992 (entered into force 29 December 1993), Secretariat provided by the United Nations Environment Programme [hereinafter: the Biodiversity Convention or CBD], https://www.cbd.int/doc/legal/cbd-en.pdf [accessed: 26.08.2024].

[11] The European Landscape Convention, signed in Florence, 20 October 2000, Council of Europe Treaty Series 176 (entered into force 1 March 2004) [hereinafter: the Florence Convention], https://rm.coe.int/16807b6bc7 [accessed: 26.08.2024].

in a Transboundary Context (EIA)[12] with subsequent UNECE Protocol on Strategic Environmental Assessment (SEA).[13]

In all developed or developing countries the SEA and EIA procedures cover all plans and public or private projects that may have significant impact on environment regardless of transboundary impact. In EU legal order these are Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programs on the environment[14] and Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.[15]

1.2. Thesis

Generally low efficacy of international law results from the quality of legislative techniques and lack of will of Parties to the agreements as to amend their provisions in order to stop the loss of biodiversity. Despite of upcoming global climatic disaster still the economical and social interests are overweighing ecological balance. It must be treated as a shamefully short sighted of decision makers, lobbyists, entrepreneurs and unaware members of societies. The authors of this article would like to stressed in their own words that the environmental effects of climate change have o form of advanced and increasing negative changes as regards integrity and stability of the terrestrial ecosystems, hydrosphere, atmosphere and their interactions, leading to unpredictable, dynamic and extreme climatic phenomena as well as ongoing shift of climate zones, changes in pressure systems and wind directions. As a nexus social effects of climate change arise in the form of differentiated limitations in food production, barriers as regards access to work and food, partial or total obstacles in the field of economic activities and agricultural production. Taking into account the current trend in CO2 emissions and the level of effectiveness of climate policy it is undisputable that in a short

[12] Convention on Environmental Impact Assessment in a Transboundary Context, adopted in Espoo, 25 February 1991 (entered into force 10 September 1997) with amendments [hereinafter: EIA], https://unece.org/DAM/env/documents/2017/EIA/Publication/1733290_pdf_web.pdf [accessed: 26.08.2024].

[13] Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context, signed in Kiev, 21 May 2003 (entered into force on 11 July 2010) [hereinafter: SEA], https://unece.org/DAM/env/eia/documents/legaltexts/protocolenglish.pdf [accessed: 26.08.2024].

[14] Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, with amendments, OJ L 197, 21.7.2001, p. 30-37.

[15] Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (codification) Text with EEA relevance, with amendments, OJ L 26, 28.1.2012, p. 1-21.

perspective the human migration will escalate at continental and global level, and in the critical scenarios will result in social conflicts of unknown directions. Basing on the provisions imposing on the Parties discretional obligations in the form of "general clauses" the "international legislator" intentionally leaves himself "wide range" of freedom. At the same time the main goal of commented in this paper conventions are to ensure "wide and undisturbed range" but as regards migration of species. The mentioned "general clauses" have in majority of cases the following wording: "Parties shall endeavour to make wise and sustainable use of […]," "Parties shall endeavour to rehabilitate or restore, where feasible and appropriate." However, there are much more circumstances decreasing level of protection of ecological connectivity which are the consequences of the international treaties scheme. These includes: 1) basing the conservation rules on "species protection schemes" and considering the "aerial protection" as a marginal instrument whereas effectiveness of these schemes is in fact opposite; 2) multiplication "general clauses" by encouraging the Parties to include "the wise use of biodiversity" in spatial planning strategies, especially in case where under the national law of developing countries the spatial planning law is depreciated in a favour of infrastructural projects of overriding public interest; 3) on the one hand the conventions regimes overlap themselves but on the other hand it results only in legal mess because no one of them has provided for geographically explicit and strictly binding protection schemes.

Finally, we do not underestimate the role of catalogues of definitions included in the texts of the conventions which are still in force as regards law making and its application. However sometimes the effects of obsolete concepts and wording are not especially rational because "legal approach" to transboundary aspects makes them contrary to the real phenomena taking place in ecology of plants, animals and ecosystems.

In order to evaluate the effectiveness of international law in question the conventions have been analyzed in terms of: 1) the character of legal norms provided directly in a given convention or implementing agreement as well as adequate reporting and execution schemes; 2) the activity of conference of the parties of a given convention in the scope of issuing resolutions/recommendations/decisions, guidelines and reports on the implementation of the given convention; 3) external integrity at the normative level and initiatives of conventions secretariats and conference of the parties as regards cooperation between the Parties including harmonization of implementation measures.

Because of the fact that the most coherent and developed continental ecological network is the European concept – Nature 2000, the above-mentioned criteria have been also evaluated in the light of the implementation measures and other forms of response of EU institutions.

As for the official documents implementing or supporting implementation and transposition of international agreements, all the sources have been derived from conventions secretariats and the European Commission websites. The thesis of the article has been also compared with the statements presented in scientific literature and methodological guidelines.

2. THEORY

2.1. The objective of the Ramsar Convention is to protect wetlands and waterfowl at a global scale

The definitions of those are intertwined, since in the meaning of the Convention waterfowl are birds ecologically dependent on wetlands – which in practice limits the protection to birds from certain systematic groups. The first obligation imposed on the Parties to the Convention is to designate relevant wetlands on their territories in order to put them on the List of Wetlands of International Importance.[16] As of August 2024, there were 2.520 Ramsar Sites, which extend over 257 million hectares all around the world.[17] This is the strict form of "aerial (spatial) protection". In theory the Ramsar Convention introduces general obligation on promotion of wise use of wetlands. In the light of the above, the main instrument for the conservation of wetlands as a non continues elements of waterfowl ecological corridors has an indirect form because concerns proper spatial planning and management. In effect the Parties to Convention should adopt commonly binding provisions requiring inclusion of the "national programmes on the protection of migratory species" in spatial management plans [Wieser, et. al. 2011, 8]. Protection of ecological corridors in the course of spatial planning procedures is also impossible without implementing suitable instruments of assessment of impacts of plans and programmes establishing framework for development of projects significantly affecting wetlands ecosystems. With this view, the Secretariat of the Ramsar Convention developed "Guidelines on biodiversity-inclusive environmental impact assessment and strategic environmental assessment" [Pritchard 2010].

2.2. The objective of the Florence Convention is the protection of landscape at a European scale

In the meaning of the Florence Convention, landscape is "an area, as perceived by people, whose character is the result of the action and interaction

[16] The Ramsar Convention, note no. 5, Article 2(1).

[17] Ramsar the Convention on Wetlands, Official website: https://www.ramsar.org/ [accessed: 26.08.2024].

of natural and/or human factors." Therefore, the Convention applies also to elements other than natural, historical or man-made ones, and covers all the components of a given area, be it urban, rural, natural or industrial landscape. In fact the landscape protection under the Florence Convention appears to be an underused resource since "creating more resilient landscapes by increasing connectivity is a widespread aspiration in national and international planning and conservation guidance" [Kettunen, Genovesi, Gollasch, et al. 2007]. Linking landscape protection with conservation of ecological network becomes more pronounced in the context of implementation of the Birds and the Habitats Directives [ibid., 20]. Especially as regards Article 10 of the Habitats Directive[18] concerning directly landscape migration unfortunately in the soft law form ("Member States shall endeavour, where they consider it necessary, in their land-use planning and development policies and, in particular, with a view to improving the ecological coherence of the Natura 2000 network, to encourage the management of features of the landscape which are of major importance for wild fauna and flora").

2.3. The objective of the Bonn Convention is the protection of migratory species at a global scale

The Parties consented to engage in activities aimed at protection of migratory species "wherever possible and appropriate". The convention establishes wide scope of definitions, generally of high importance including definition of "migratory species". However, the term of "migratory corridor" or "migratory route" has not been explained. The Parties should endeavour to ensure strict protection of migratory species ("species protection tools") specified in Appendix I to the Bonn Convention (endangered species) and also to enter into agreements concerning protection and control of migratory species specified in Appendix II to the Convention (unfavourable conservation status of species). The convention does not provide for a strict obligation concerning protection of migratory species within the form of "aerial (spatial) protection". Moving on to outward impact of the CMS on the protection of ecological corridors, it must be mentioned that the Convention became the foundation for adopting three major independent agreements intentionally related to this topic. These are: 1) the Agreement on the Conservation of Populations of European Bats (London 1991);[19] 2) the Agreement on the Conservation

[18] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, with amendments, OJ L 206, 22.7.1992, p. 7-50, Article 10.

[19] The Agreement on the Conservation of Populations of European Bats (EUROBATS), signed in London, 4 December 1991 (entered into force on 16 January 1994) [hereinafter: the EUROBAT Agreement], https://www.eurobats.org/official_documents/agreement_text [accessed: 26.08.2024].

of Small Cetaceans of the Baltic and North Seas (New York 1992);[20] 3) Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA, Haque 1995);[21] 4) Remaining regional agreements concerning Appendix II generally concern particular species.

Taking into account the coherence of law and legal certainty principles it should be noted that AEWAs' scope of regulation overlaps Ramsar Convention. In the light of Article 1(2)(c) of AEWA "Waterbirds" means those species of birds that are ecologically dependent on wetlands for at least part of their annual cycle, have a range which lies entirely or partly within the Agreement. There is only one requirement in the text of AEWA concerning external coordination namely "The Agreement secretariat shall consult: (a) on a regular basis, […], where appropriate, the bodies responsible for the secretariat functions under i.e. Ramsar Convention."

2.4. The objective of the Bern Convention is to protect European species as well as their natural habitats

Protection of ecological processes requires as a general rule the cooperation of several states, with special focus on threatened and endangered species, including migratory ones. The Parties to the Convention should take proper and indispensable legislative and administrative measures in order to ensure protection in particular species listed in Appendices I and II to the Convention, as well as protection of endangered natural habitats. In their policies regarding planning and development, the Parties must acknowledge the need to conserve protected areas and to avoid or limit to the greatest possible extent any deterioration of their conservation status. condition. The Parties are obliged to ensure that the protection periods and/or procedures regulating exploitation of hunting migratory species specified in Appendix III to the Convention are sufficient to meet relevant requirements and properly applied. The greatest achievement of the Bern Convention was the creation of Emerald Network.[22] Potential Emerald sites were included in a Geographical Information System. Natura 2000 ecological network mentioned in the introductory section has been based on the same ecological criteria as applied to the Emerald Network., [Ćurčić and Đurđić

[20] Agreement on the Conservation of Small Cetaceans of the Baltic, North East Atlantic, Irish and North Seas, New York 17 March 1992 (entered into force on 29 March 1994) [hereinafter: the ASCOBANS Agreement], https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-9&chapter=27&clang=_en [accessed: 26.08.2024].

[21] Agreement on the Conservation of African-Eurasian Migratory Waterbirds, 16 June 1995 Hague (entered into force on 1 November 1999) [hereinafter: the AEWA Agreement].

[22] The Council of Europe. 2005. Development of the Emerald Network: General Principles of the Procedure for Examining and Approving Emerald Sites Put Forward by States. Secretariat's Proposals. Strasbourg.

2013, 21-34]. Last but not least, although not strictly a flyway-based instrument, the Bern Convention provides for specific provisions for the conservation of migratory birds species and until the entry into force of AEWA was the only one European conservation instrument that enabled the participation of African countries.

2.5. The global nature protection treaty of "umbrella" character is the Convention on Biological Diversity (also referred to as the CBD)

The Convention imposes an obligation to properly manage natural resources of significant importance for the conservation of biological diversity, both inside and outside special protection areas. The Parties to the Convention should support protection of ecosystems and natural habitats as well as sustainability of viable populations of species in their natural environment. It should be noted that the definition of biological diversity, included in Article 2 of the CBD explains this term as "the variability among living organisms from all sources, including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part [...]." It should be interpretated that the CBD has initiated the philosophy of ecological feedback principle. However the review of decisions of the Conference of Parties shows that initially, i.e. until 2000, CBD biodiversity protection guidelines were issued separately for the following categories: a) biological diversity of forests; b) biological diversity of dryland, mountain and inland water ecosystems; c) marine and coastal biological diversity; d) agricultural biological diversity.

An explicit breakthrough promoting ecosystem and feedback loops approach was made at the Fifth Meeting of the Conference of the Parties in Nairobi, Kenya on 15-26 May 2000. In accordance with the conclusions of the Meeting the priority goal of ecosystem approach should be to protect the structure and functioning of ecosystem in order to preserve its services. The principle emphasizes the significance of dependencies within and across species as well as in their abiotic environment which means the ecological feedbacks. Moreover it stresses both the role of protection of existing ecosystems and the need for their restoration [Michel, Russier-Decoster and Clap 2015, 5]. Finally, during the Seventh Ordinary Meeting of the Conference of Parties (2004) the ecological networks topic were incorporated in the work program on protected areas as a key issue of conservation strategy [Van der Sluis, Bloemmen and Bouwma, 2004, 7]. The latest contribution of the Conventions Secretariat as regards protection of ecological connectivity was the initiative which has resulted in elaboration of *The Global Assessment*

Report on Biodiversity and Ecosystem Services.[23] The authors of the Report have compiled the most advanced concepts and definitions in the field of applied ecology which are gathered in a separate Annex (I)(Glossary).

3. DISCUSSION

The "ecological connectivity" represents the philosophy which establishes fundaments as to maintaine and restore biological diversity [Torres, Patterson and Jaeger 2022, 451-59]. In fact, this is the wording of strategic nature concerning achievement of favourable status of ecological networks at different spatial planning levels starting from local (landscape level) and ending at intercontinental migrations (wintering birds migration) [Chapman et al. 2014, 11-25]. Taking into account the mentioned definition on "biodiversity" the conclusion should be that the favourable status of ecological connectivity depends on the functionality and integrity of ecosystems and habitats creating migratory corridor (including stepping stone habitats) as well as the core areas together with adjacent buffer zones [Bond, Bradley, Kiffner, et al. 2017, 1705-721]. That is because, even if the migratory corridor will be considered as an area of good conservation status at the analysed spatial level the general status of ecological connectivity will be not sufficient if the core areas (ecosystems and its habitats) are affected by significant and regular negative impact [Catchpole 2016, 35-54]. In one of the previous research projects, we have proposed to define "Migratory corridor" as a "trail enabling migration and dispersion of plants, animals, fungi and diaspores between patches of their habitats, including structural elements of natural environment necessary for its proper functioning of linear, non-linear, bandwidth and spatial, continuous and non-continuous, natural, semi-natural and anthropogenic, biotic and abiotic nature, including air space" [Pchałek, Kupczyk, Matyjasiak, et al. 2011, 111].

Taking into account the above illustration of the specificity concerning migratory corridors it must be noted that no one of commented conventions has created clear, precise and unconditional framework for legally binding protection scheme concerning complexity of ecological networks.

As regards "aerial forms of protection" only one of the commented conventions provides for the obligations in the strict and binding meaning namely Ramsar Convention. However, because of the extremely small number of Wetlands of International Importance indicated at the national level they may be compared with e.g. national parks or "nature reservoirs". In effect considering Wetlands of International Importance as an important part of global ecological network cannot be justified (in Poland there

[23] See *Global Assessment Report on Biodiversity and Ecosystem Services*.

has been 19th Ramsar Sites designated covering in sume 152.964 ha). It is strongly controversial legal status because wetlands generally play crucial role as regards migration of birds. Leaving their protection within the scope of procedural autonomy of Parties to Convention must be treated as most representative example of ineffectiveness of international law. It must be remembered that the wetlands not covered by strong protection regime will be significantly affected by flood protection and inland water ways infrastructure [Pchałek 2019, 18].

As for the "aerial protection" also the provisions of Florence Convention' have no significance for the purposes of protection of ecological connectivity. Recommendation CM/Rec(2008)3 of the Committee of Ministers to Member States on the guidelines for the implementation of the European Landscape Convention[24] entirely omits the question on protection of ecological corridors. Basing on the implementation reports published by the Secretariat of the Convention, one of the most spectacular project has been developed in the Czech Republic ("The Čehovice landscape, Prostějov district in Moravia, Regional Land Office Prostějov.)" In order to achieve ecological sustainability, the core area with bio corridors has been restored, along with the creation of a wetland, the planting of various groups of trees and the reintroduction of species which have left their previous habitats because of the ecological needs.[25]

Theoretically polish law includes much more stringent obligations as regards protection of landscape. On the one hand there are two aerial forms of protection established on basis of Nature Protection Act namely landscape parks and landscape protection areas.[26] Nevertheless, landscape parks and landscape protection areas have been not designated on the basis of criterions concerning restoration and maintenance of ecological connectivity. On the second hand the Spatial Planning and Management Law requires elaboration of "landscape audit" for the purposes of procedure concerning adoption of regional spatial management plans.[27] Unfortunately, the form of Landscape Audit do not allow to use this tool as regards ecological connectivity nor at the regional neither local scale. As it was mentioned

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[24] Recommendation CM/Rec(2008)3 of the Committee of Ministers to member states on the guidelines for the implementation of the European Landscape Convention (Adopted by the Committee of Ministers on 6 February 2008), https://search.coe.int/cm?i=09000016805d3e6c [accessed: 26.08.2024].

[25] European Landscape Convention, The Landscape Award Alliance of the Council of Europe. European Spatial Planning and Landscape Series No. 103. The Council of Europe, Strasbourg 2016, p. 52.

[26] Article 16 and Article 23 of the Act of 16 April 2004 on nature protection, Journal of Laws No. 92, item 880.

[27] Article 38a of the Act of 27 March 2003 on spatial planning and management, Journal of Laws No. 80, item 717.

in the scientific literature "To date, there is no unified division of the entire country into microregions, which in Poland are commonly perceived as the most appropriate natural spatial units for local-scale landscape analysis and management" [Piniarski 2023, 1]. It must be also remembered that despite of ambitious polish legislation relating to Landscape Audits in case of developing countries such as Poland the large number of specific acts has been adopted for the purposes of efficient absorption of EU funds in the context of rapid infrastructural growth. There should be mentioned i.e. such regulations as acts on specific rules on development of road projects, flood protection infrastructure, public airports infrastructure or wind farms developments. Polish Constitutional Tribunal has stated that in case of such categories of public interest application of spatial planning and management law may be excluded.[28] In effect "In Poland, where no legal instruments to protect ecological networks exist, the development of ecological corridors at local scale requires not only conducting an analysis of the present land use and landscape permeability, but also a detailed analysis of spatial planning documents" [Jakiel and Bernatek 2015, 245].

The main conclusion of the above argumentation is that taking into account the legal order where the effectiveness of international agreement is determined by national rules concerning spatial planning and management law, we cannot counter for harmonized approach even at the level of European Union.

Turning to directly binding prohibitions as regards strict protection of species it should be underline that this is the only one preventive institution adopted under Bonn and Bern Conventions. We will not be able to find provisions in those agreements which establishe direct obligations concerning protection of habitats and ecosystems necessary for maintain favourable conservation status of geographically explicit migratory routes [Shen et al. 2020, 158].

"Strict protection schemes" do not allow for effective prevention as regards impact of large infrastructural projects because migratory species are in the movement and their existence is as a rule organized at the population level.

In this place however the added value of European law should be appreciated. If we have already mentioned the Bern Convention indirectly gave rise to designation of Natura 2000 network, which supports as far as possible also the sites which should be protected under previously discussed global conventions – the Ramsar Convention and the Bonne Convention.

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[28] Judgment of the Polish Constitutional Tribunal of 6 June 2006, ref. no. K 23/05, Journal of Laws No. 106, item 720.

Taking into account the aspect of ecological functionality of Natura 2000 network it must be noted that this structure is managed at two different spatial levels The lower level concerns protection of integrity of core areas dedicated seperatelly to protection of bird species and to conservation of habitats alone or with inhabiting species. Both categories of sites are covered by the provisions of Article 6 of Habitats Directive (92/43/EEC)[29] which constitutes "aerial (spatial)" regime of protection. On the second hand the Article 6 section 4 establishes the higher level of protection regime concerning overall coherency of ecological network.

Undoubtfully so called "habitats assessment" based on Article 6(3)-(4) of Habitats Directive is the most advanced legal tool as regards contemporary environmental protection law [Krämer 2009, 59]. However, as usual the devil is in detail. In the above context it should be noted that actually, there is only one professional legal report elaborated under the auspices of organization of the highest international rank that clearly indicate an obligation on designation and protection of ecological corridors under the provisions of Habitats Directive. The authors of the report consider the Nature 2000 scheme as implying "the designation of protected areas, the adoption of ecological corridors, the adoption of conservation and protection measures, including of management and strict species protection measures" [Fromageau, Cherkaoui and Coll 2023, 28]. In practice the effectiveness of Habitats Directive at the application phase depends on the legislative techniques especially in the field of implementation of so called "blurred terms" which in the light of the theory of law gives the administrative authorities certain margin of interpretation discretion. Conclusions concerning Nature 2000 conceptual scheme are the following: neither the notion of 'site integrity' of the core areas nor the notion of 'overall coherency of the network' has its legal definition. This legal state takes place regardless of the fact that both of the terms establishes substantive environmental quality standards. In effect implementation of a preventive protection regime under Articles 6(3) and 6(4) of Habitats Directive is therefore determined by neverending legal, ecological and biological disputes [Rees et al. 2013, 14; Kleining 2024 passim]. The Court of Justice of EU does not feel competent as regards mentioned aspects and consequently underlines that in accordance with the principle on the shared competencies such considerations must be undertaken by the authority or court of the member state.[30]

As regards terminology concerning strict protection of species, we can only say that fifty years after adoption of CMS the problem with definition

[29] Council Directive, note no. 20, Article 6.

[30] Case C-727/17: judgment of the Court (Fourth Chamber) of 28 May 2020 (request for a preliminary ruling from the Voivodeship Administrative Court in Kielce – Poland), OJ C 255, 3.8.2020, p. 2-3.

of migratory species remains actual. The Convension defines "Migratory species" as "the entire population or any geographically separate part of the population of any species or lower taxon of wild animals, a significant proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries."[31] In the context of protection of ecological corridors it should be emphasized that in the light of that definition such species as wolf (*Canis lupus*) will still not be considered as migratory species because nor the wolf populations neither the significant proportion of their members does not cyclically and predictably cross one or more national jurisdictional boundaries" [Pchałek 2010, 126]. At the same time *Canis lupus* remains one of the fundamental indicators as regards mapping of regional and continental ecological networks moreover becomes to have a status of flaq species [Mekonnen, Fashing, Chapman, et al. 2024, 45]. Such legal status should be compared with the viewpoint presented in recent literature which assumes that multilateral environmental agreement should be intended to be a dynamic agreement that evolves in response to new information and circumstances [Bodansky 2024, 300].

Summarizing the authors completely agree with the statement presented in the latest scientific articles indicating that "The effectiveness of those treaties, which together comprise international wildlife law (IWL), depends on their national implementation by individual states rather than on their number" [Goyes 2024, 143].

4. RESULTS AND CONCLUSIONS

As for the general needs concerning international law making in the field of protection of ecological connectivity it is recommended to undertake activities as an initiative of Conventions Secretariats in order to adopt integratory agreement including: 1) Replacement of ecological connectivity in the hierarchy of public interest especially in the context of prevention and adaptation to climate changes, food security, role of the "umbrella species" as regards agricultural production and sustainable forestry management; 2) Amendments adequate to contemporary scientific knowledge concerning ecological networks in the scope of terminology, legal form of protection, geographically explicit data, integration with spatial planning and environmental impact assessment procedures whereas: a) catalogue of definitions should be established in the form of unified conceptual scheme,

[31] CMS, note no.2, Article 1(1)(a): "Migratory species denotes the entire population or any geographically separate part of the population of any species or lower taxon of wild animals, a significant proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries."

especially as regards the following terms: "ecological network", "connectivity of ecosystems and habitats", "migratory corridors", "significant impact factor", "critical ratio of significant impact"; b) harmonized legal protection forms shall be introduced as regards aerial conservation schemes with clear distinction between the provisions of substantive and procedural nature; c) the role of strategic environmental impact assessment procedure must be exposed as regards mitigation and compensation of largescale and cumulative impacts at national and transboudary dimensions e) the transboundary impact assessment of plans and projects should play more transparent role as regards protection of migratory species, with the particular attention given to renewable energy developments such as wind farms and water steps cascades.

As for the spatial planning, aerial protection and environmental impact schemes, it should be ensured that all of those branches of regulation interact with GIS Data Basis on Ecological Connectivity. The Basis shall enable access to interactive, regularly updated and supervised data concerning each spatial level of migration and including: 1) general data on ecological needs of individual species or groups of species 2) specific (real) data concerning localization, parameters, land use category (natural, semi-natural, anthropogenic), conservation status of strategic routs and habitats (including stepping stones habitats) confronted using GIS shape files with existing, aprooved and planned infrastructural barriers affecting ecological connectivity 3) necessary preventive requirements and active protection measures including data on responsible authorities 4) division into ecological spatial units interacting with significant impact factors resulting from barriers indicated under point 2); The main added value of the Data Basis on Ecological Connectivity should be identified with elaboration and updating process of GIS shapes concerning migratory corridors linked with the conditions necessary to maintain ecological continuity for particular groups of species and categories of corridors.

Finally the integratory agreement should require the Parties as regards establishing clear institutional scheme covering public authorities and private entities under obligation to include ecological connectivity requirements in the scope of their respective competencies such as:

1) National, regional and local spatial management and strategic development planning authorities: (1) authorities involved in SEA and EIA procedures it is: a) authorities conducting the procedure on adaptation strategic plan (programme) or issuing project development consent; b) environmental protection bodies acting in the form of co-agreement or co-opinion (binding or not binding form); (2) environmental Protection Authorities responsible for managing aerial nature protection, including Nature 2000 sites and implementing species protection.

2) Environmental Inspection Authorities responsible for monitoring the state of all or some of the elements of natural environment covered by the State Environmental Monitoring.
3) Veterinary Inspection Authorities, Zoological Gardens, non-governmental organizations responsible for providing veterinary assistance to wild animal species which are hurt as a result of anthropogenic impacts.
4) Water Management Authorities responsible for managing land ecosystems depending on waters which belong to the network of ecological corridors.
5) Implementing the land use and land use change regulations within the scope of climate protection policies.
6) Forest Management Authorities responsible for managing forest ecosystems belonging to the network of ecological corridors.
7) Road, Train and Inland waterways Planning Authorities.

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FORCED PASSPORTIZATION AND THE PROBLEM OF ITS CRIMINALIZATION IN THE INTERNATIONAL LAW*

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Abstract. The article analyses the problem of forced passportization of Ukrainian citizens in the temporarily occupied territories of Ukraine by the Russian occupation authorities during Russia's armed aggression against Ukraine. This process began as early as the period of the illegal occupation of Crimea and its scale significantly increased with the beginning of the full-scale invasion on February 24, 2022. It is stressed that the forcing of Ukrainians to obtain Russian citizenship is carried out as part of the Russian authorities' policy. In this context, we analyse the latest legislation of the Russian Federation which relates to the procedure for granting Russian citizenship by the Russian occupation authorities. Examples of forcing Ukrainians living in the occupied territories to obtain citizenship of the Russian Federation through intimidation, threats, and deprivation of basic human rights and freedoms are cited. Forced passportization in the occupied territories of Ukraine, carried out by the Russian authorities, is a violation of the International Humanitarian Law, in particular Article 4 of the IV Geneva Convention of 1949 "On the Protection of the Civilian Persons in the time of war" and Article 4 of the IV Hague Convention of 1907, which prohibits forcing the inhabitants to swear allegiance to the occupying power. It has been established that in contemporary international law, coercion to obtain citizenship of the occupying power does not constitute an independent component of a war crime. It is concluded that such violations of International Humanitarian Law may constitute a war crime and it indicates the need for the criminalization of forced passportization by amending the Rome Statute of the International Criminal Court. It is proposed to constitute a new war crime by adding to Paragraph 2 (b) of Article 8 of the Statute of the International Criminal Court a new war crime: forcing the inhabitants of the occupied territories to obtain citizenship of the occupying state.

Keywords: International Criminal Court; war crimes; Russian aggression; International Humanitarian Law; Rome Statute.

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INTRODUCTION

Having launched a large-scale aggression against our country in 2022, the Russian Federation occupied part of the territories of Kherson, Zaporizhzhia, Kharkiv oblasts and seized some regions of Luhansk and Donetsk oblasts of Ukraine and immediately launched forced passportization of the Ukrainian citizens living in these territories. It is worth noting that the occupiers' actions have gained a significant scope.

According to human rights organizations, as of April 2024, approximately 1.5 million people in the temporarily occupied territories[1] of Ukraine currently hold valid Russian passports.[2] According to the Ukrainian Parliament Commissioner for Human Rights, in 2023, he received 98 appeals regarding forced passportization from citizens living in the TOT (Crimea and Sevastopol – 1, Donetsk oblast – 7, Zaporizhzhia oblast – 70, Kherson oblast – 17, Luhansk oblast – 3).[3]

In fact, the issue of forced passportization of Ukrainian citizens living in the TOT emerged as early as 2014. Having occupied the territory of the Autonomous Republic of Crimea[4], the Russian Federation automatically recognized as its citizens all persons who resided in its territory as of the date of the beginning of the temporary occupation of the respective territory. At the same time, no active actions were required to acquire Russian citizenship.[5] As we know, at the beginning of the occupation in 2014, the occupation powers of the Migration Service did not start working immediately in the ARC. At that time, residents of the Autonomous Republic of Crimea were forced to obtain passports in the Russian Federation (Krasnodar Krai, Rostov and Moscow oblasts). A significant number of Ukrainian citizens,

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[1] Hereinafter: TOT.

[2] Press conference: "Forced passportization of the Russian Federation in Ukraine in 2000-2024." Organized by the NGO "Eastern Human Rights Group", NGO "Institute for Strategic Studies and Security" https://www.ukrinform.ua/rubric-presshall/3849861-primusova-pasportizacia-rf-v-ukraini-20002024-roki-prezentacia-analiticnogo-doslidzenna.html [accessed: 02.08.2024].

[3] Annual report of the Ukrainian Parliament Commissioner for Human Rights on the state of observance and protection of human and civil rights and freedoms in Ukraine in 2023, https://ombudsman.gov.ua/storage/app/media/uploaded-files/%D0%A9%D0%BE%D1%80%D1%96%D1%87%D0%BD%D0%B0_%D0%B4%D0%BE%D0%BF%D0%BE%D0%B2%D1%96%D0%B4%D1%8C_%D0%A3%D0%BF%D0%BE%D0%B2%D0%BD%D0%BE%D0%B2%D0%B0%D0%B6%D0%B5%D0%BD%D0%BE%D0%B3%D0%BE_%D0%B7%D0%B0_2023_%D1%80%D1%96%D0%BA.pdf [accessed: 02.08.2024], p62-63.

[4] Hereinafter: ARC.

[5] Law of the Russian Federation No. 6-FKZ "On the Accession of the Republic of Crimea to the Russian Federation and the Formation of New Subjects of the Republic of Crimea and the City of Federal Significance Sevastopol within the Russian Federation", http://static.kremlin.ru/media/events/files/ru/0bTO6S1g5c0RASXodOjRuI8wGLndsOzA.pdf [accessed: 02.08.2024].

including children, were deported from the TOT to the Russian Federation and automatically "awarded" the citizenship of the aggressor state.

Later, in 2019, a presidential decree stipulated that persons permanently residing in certain districts of Donetsk and Luhansk oblasts of Ukraine have the right to apply for Russian citizenship under a simplified procedure. This provision was later extended to all Ukrainian citizens and stateless persons permanently residing in Ukraine.

Office of High Commissioner of Human Rights[6] stated in its recent report on the situation in Ukraine, that the Russian Federation has violated several of its obligations as an occupying Power, including by compelling residents to obtain Russian citizenship.[7] On 27 March 2024, the UN Human Rights Committee found that the automatic naturalization of Ukrainian citizens who permanently resided in Crimea at the beginning of the occupation of the peninsula by the Russian Federation in March 2014 also constituted discrimination on the grounds of national origin. The Committee held that "a person's nationality constitutes an important component of one's identity, and that the protection against arbitrary or unlawful interference with one's privacy includes protection against forceful imposition of a foreign nationality."[8] While Russian authorities have not automatically imposed Russian citizenship on residents of the regions of Ukraine occupied after 24 February 2022 in the same manner as they did in Crimea in 2014, the systems imposed in newly occupied territory have, as a practical matter, effectively compelled people to obtain Russian citizenship in order to access necessary services. Dozens of people interviewed by OHCHR who had recently left the occupied territory described what appears to be increased pressure to obtain Russian passports as one of the main reasons for their departure.

It is obvious that the forced passportization of Ukrainian citizens by the Russian Federation was initially one of the elements of the hybrid war of the aggressor state and an integral part of the preparatory actions before the full-scale military invasion of Ukraine by Russia. Since February 24, 2022, such actions of the occupying power have become widespread and systemic, which is indisputable evidence of the existence of a separate state policy implemented in relation to Ukrainians living in the occupied territories. Thus, such actions of the occupying power should be properly assessed for their qualification according to the International Law.

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[6] Hereinafter: OHCHR.

[7] Report on the Human Rights Situation in Ukraine, 1 March – 31 May 2024, United Nations Human Rights, Office of the High Commissioner, https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2024/24-07-02-OHCHR-39th-periodic-report-Ukraine.pdf [accessed: 02.08.2024].

[8] Ibid.

1. SPECIAL CHANGES IN THE LEGISLATION OF THE RUSSIAN FEDERATION

On May 25, 2022, President Putin signed a decree[9] that simplified the procedure for obtaining Russian citizenship for Ukrainian citizens who continued to live in the temporarily occupied Kherson and Zaporizhzhia oblasts. It supplemented the previous act of 2019, under which a similar procedure had already been applied to residents of the previously occupied Donetsk and Luhansk oblasts. The document gave residents of the Kherson and Zaporizhzhia oblasts the opportunity to obtain the citizenship of the occupying state without meeting the general requirements, such as five years of residence in Russia, proof of income and knowledge of the Russian language.

Already at the end of 2022, after the pseudo-referendums, the Russian foreign ministry informed residents of the occupied Kherson and Zaporizhzhia oblasts that any travel "abroad" was possible only with a Russian passport. And in March 2023, President Putin publicly instructed the relevant services to speed up passportization in these areas. For this purpose, the Russian Ministry of Internal Affairs set up mobile "passport offices" in the occupied territories, and the control over the process of such: "passportization" was entrusted to the main department for migration of the same ministry.

In March of the same year, the president of the occupying power signed the law[10] "On the Peculiarities of the Legal Status of Russian Citizens Holding Ukrainian Citizenship," which provides that such persons, after receiving a Russian passport, may apply to the Russian government to renounce their Ukrainian citizenship. According to the same law, all so-called new Russian citizens "shall be deemed not to have Ukrainian citizenship from the date of their application to the federal body of internal affairs or its territorial subdivision."

In reality, Ukrainians used different ways to avoid forced Russian citizenship. Therefore, in order to ensure the implementation of the plan to convert them to Russian citizenship, on April 27, 2023, Putin issued a new decree[11] that provides for the forced deportation from the occupied Ukrainian

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[9] Decree of the President of the Russian Federation of 25.05.2022 No. 304 "On Amending Decree of the President of the Russian Federation of April 24, 2019 No. 183 'On Determining, for humanitarian purposes, the categories of persons entitled to apply for admission to citizenship of the Russian Federation in a simplified procedure'," http://publication.pravo.gov.ru/Document/View/0001202205250004 [accessed: 02.08.2024].

[10] Federal Law of 18.03.2023 № 62-FZ "On the peculiarities of the legal status of citizens of the Russian Federation who have Ukrainian citizenship," http://publication.pravo.gov.ru/Document/View/0001202303180001 [accessed: 02.08.2024].

[11] Decree of the President of the Russian Federation of 27.04.2023 No. 307 "On the peculiarities of the legal status of certain categories of foreign citizens and stateless persons in the Russian

territories of Ukrainian citizens who retain Ukrainian citizenship after July 1, 2024. This decree also stipulates that citizens who "declare their desire to retain their existing citizenship or remain stateless" and thus refuse to take the oath of the Russian citizen will be considered foreigners.

Moreover, starting from April 28, 2023, amendments[12] to the Russian law "On Citizenship" came into force, under which all Ukrainians who had received Russian citizenship could lose it for committing certain offenses. In other words, the new version of the law left all Ukrainians holding Russian passports in a permanent "suspended" state, which allowed the occupation authorities to manually deprive anyone who, in their opinion, deserved it of citizenship.

In addition to these innovations, in July 2023, Russian President issued another decree,[13] No. 495, "On some issues related to the peculiarities of the legal status of citizens of the Russian Federation who have the citizenship of Ukraine." This document establishes the verification procedure for Ukrainian citizens already holding Russian passports to check whether they have committed any actions aimed at exercising their rights and obligations as citizens of Ukraine.

As we can see, the scope of legal acts aimed exclusively at the passportization of Ukrainian citizens in the occupied territories, as well as their content and the involvement of a large number of authorities in their adoption and implementation, allow us to conclude that the process of granting Russian citizenship in the occupied territories is systematic, purposeful and coordinated at the highest level of occupying Power.

2. ACTIONS OF THE OCCUPYING AUTHORITIES

The above-mentioned provisions of the Russian legislation in relation to Ukrainians in the occupied territories are implemented through pressure, coercion and threats, and are characterized by humiliation of human dignity. The policy of the local occupation authorities consists of denying basic rights and freedoms and applying punitive measures to the residents who have not received Russian citizenship. There are many cases where Ukrainians are deprived of property, social benefits, and their last means of subsistence for refusing to obtain Russian citizenship, threatened with

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Federation," http://publication.pravo.gov.ru/Document/View/0001202304270013 [accessed: 02.08.2024].

[12] Federal Law N 138-FZ "On Citizenship of the Russian Federation" dated April 28, 2023, https://rg.ru/documents/2023/05/03/document-o-grazhdanstve.html [accessed: 02.08.2024].

[13] Decree of the President of the Russian Federation of 06.07.2023 N 495 "On some issues related to the peculiarities of the legal status of citizens of the Russian Federation who have Ukrainian citizenship," https://mvd.consultant.ru/documents/1058123 [accessed: 02.08.2024].

imprisonment or the taking away of their children, and restrictions on business and even freedom of movement.

In the Russian-occupied territories of the Kherson oblast, the occupation authorities literally stated, in particular, that failure to obtain a Russian passport would lead to "the inability to receive humanitarian aid or social benefits, as well as to find a job." In the occupied territories of Zaporizhzhia oblast, mothers without a Russian passport cannot receive childcare allowances, and pensioners cannot receive pensions.

Residents of the illegally annexed territories have problems obtaining medicines and medical care, which are available only if they acquire Russian citizenship. For example, in May 2023, Deputy Prime Minister of Russia Holikova said that all residents in the occupied territories of Ukraine must have a mandatory health insurance policy by the end of 2023.[14] However, it is impossible to become the owner of such a policy, and, therefore, to receive medical care without a Russian passport. Moreover, Ukrainian citizens living in these areas and suffering from diabetes cannot receive insulin without a Russian passport, which literary means – they may die.[15]

Car owners also face significant restrictions on their rights in the occupied territories. Vehicle inspections and, accordingly, the use of private cars are possible only for holders of a Russian passport. In addition, the occupation authorities are forcing employers to renegotiate labor contracts with employees in accordance with Russian law. In the absence of a Russian passport, such employees face dismissal [Hlushchenko 2023]. It even went so far as to prohibit taxi drivers in Zaporizhzhia oblast from providing transportation services unless they become citizens of the Russian Federation [Albinovska 2023].

The Ukrainians who refuse to obtain the citizenship of the occupying state will be threatened with deprivation of property rights. For example, residents of the occupied territories of Ukraine were threatened with the confiscation of their land if they refused to obtain Russian citizenship. According to CNN, some of these threats have already been realized. The situation is similar for residential and commercial real estate ownership. Ukrainians are threatened with eviction from their homes and offices if they do not become Russian citizens. Thus, after the full-scale invasion of Russia in February 2022, the occupying Power has been using passportization as a form of pressure and intimidation of the local population on an

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[14] See *Zhiteli novykh regionov budut obespecheny meditsinskim strakhovaniyem do kontsa etogo goda – Golikova*, https://www.interfax-russia.ru/south-and-north-caucasus/news/zhiteli-novyh-regionov-budut-obespecheny-medicinskim-strahovaniem-do-konca-etogo-goda-golikova [accessed: 02.08.2024].

[15] See *Zaharbnyky ne vydaiut insulin meshkantsiam TOT bez rosiiskoho pasporta*. Ukrinform. 04.06.2023, https://www.ukrinform.ua/rubric-regions/3717960-zagarbniki-ne-vidaut-insulin-meskancam-tot-bez-rosijskogo-pasporta.html [accessed: 02.08.2024].

unprecedented scale. Civilians often have no choice but to obtain a passport of the aggressor state in order to save their lives and the lives of their loved ones, to have access to basic medical or educational services, to avoid the confiscation of their property, etc.

According to the recent Report of OHCHR, a lot of, particularly older persons, cited difficulties in accessing health care without Russian citizenship.[16] For example, as stated in the Report, an older man in a wheelchair and his wife from a village in Luhansk region told that without Russian passports, it was no longer possible for them to undergo medical examinations and surgeries in the occupied territory. A paramedic who refused to obtain a Russian passport said that she was allowed to provide some medical care to non-Russian passport holders, but for more specialized care and hospitalization, a passport was needed. Parents also cited increased pressure to obtain Russian citizenship for their school-age children. One woman from Donetsk city told OHCHR that the teacher of her six-year-old daughter demanded in April that she obtain a Russian birth certificate for her daughter, the only child in the class without Russian citizenship. Another woman from Kalanchak, Kherson region, told OHCHR that some of her neighbors were threatened that if they did not obtain Russian passports and did not send their children to school, their children could be taken away.

It is quite obvious that all the above actions of the Russians against Ukrainian citizens in the occupied territories are deliberately aimed at their forced and violent integration into Russia.

3. VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

In connection with the above, the question arises as to the legal qualification of the actions of the occupying Power, in particular, its top military and political leadership, in the context of recognizing forced passportization as a grave breach of IHL. Moreover, it should be borne in mind that one of the obvious consequences of forced passportization is further forced mobilization into the armed forces of the occupying state, which is qualified as a war crime under international law.

There is no doubt that the actions of the Russian authorities violate international humanitarian law.

First of all, the norms of the IV Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949 are violated.[17] In particular, the methods of passportization used by Russians do not comply with

[16] Report on the Human Rights Situation in Ukraine, 1 March – 31 May 2024.

[17] Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949 [accessed: 02.08.2024].

Article 3(1)(c), which prohibits abuse of human dignity, including insulting and humiliating treatment.

Deprivation of the right to study for children whose parents have not received Russian passports is a breach of Article 50 of the Convention.

It is not difficult to notice also other violations of the abovementioned Convention: violations of Article 52, which provides for the protection of the right to labor; Article 53 on the protection of property rights; Article 55, which prohibits denying the population food and medicine.

Undoubtedly, the actions of the occupying Power to force residents of the occupied territories to obtain Russian citizenship are a clear breach of the laws and customs of war, namely Article 45 of the Regulations concerning the Laws and Customs of War on Land, which is an annex to the IV Hague Convention of 1907.[18] It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power. By forcing Ukrainians living in the occupied territories to obtain a Russian passport, the Russian federation, which is a hostile Power is literary forcing them to swear allegiance to it. After all, Article 21 of the federal law "On Citizenship of the Russian Federation" provides for taking an oath of allegiance to the Russian federation.[19]

So, if we see a breach of IHL, namely the breach of Article 45 of IV Hague Convention Is a forced passportization a war crime under international law?

As of today, a specific list of acts recognized as war crimes is defined in the Statute of the International Criminal Court, which is empowered to investigate them and bring perpetrators to international criminal accountability.[20]

Article 8 of the Statute, in particular, establishes that the court has jurisdiction over war crimes when they are committed as part of a plan or policy or when they are committed on a large scale and are gross violations of the Geneva Conventions of August 12, 1949 or other serious violations of the laws and customs applicable in the armed conflicts.

Accordingly, coercion to obtain the citizenship of the occupying state (forcing inhabitants of the occupied territories to swear allegiance to the enemy state) should constitute a crime under Article 8(2)(b) of the Statute of the International Criminal Court as "other serious violations of the laws and customs applicable in the international armed conflict." However, 29 war

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[18] Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907 [accessed: 02.08.2024].

[19] Federal Law "On Citizenship of the Russian Federation" of 28.04.2023 N 138-FZ (latest edition), https://www.consultant.ru/document/cons_doc_LAW_445998/ [accessed: 02.08.2024].

[20] Rome Statute of the International Criminal Court, International Criminal Court. 2021, https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf [accessed: 02.08.2024].

crimes envisaged by this subparagraph do not include such a crime as "forcing to swear allegiance to the hostile power" (forced passportization).

Thus, as we can see, not all violations of the laws and customs of armed conflict constitute a war crime. The Rome Treaty limits the criminalization of a particular violation of IHL depending on its severity.

For example, Article 147 of IV Geneva Convention defines, in particular, the following acts against persons or property protected by the Convention as grave breaches "willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity."[21]

However, the norms of international law do not contain a separate clear separation of violations of the laws and customs applicable in the armed conflict into "serious" and other like "less-serious" violations**.** In our opinion, a particular violation may be classified as "serious" depending on the scale of its commission, the amount of damage caused and the danger to the international law and public safety. In fact, any breach of the rules of armed conflict established by international law can be interpreted as serious, given these criteria. Also, the criminalization of the relevant violation as a war crime is necessary when it is committed within the framework of a separate plan or policy of the state or in mass scale. After all, the International Criminal Court has jurisdiction over this category of crimes.

Given that the violation by the Russian Federation, as a party to the armed conflict – a hostile Power, of Article 45 of the Regulations Regarding the Laws and Customs of War on Land, which is an annex to the IV Hague Convention of 1907, is systematic and widespread, carried out by force, consciously and intentionally, as part of state policy in all occupied territories of Ukraine, as another party to the international armed conflict, such actions should be appropriately criminalized in the modern international law to ensure that the perpetrators are brought to international criminal responsibility.

We define a war crime as a serious violation of international humanitarian law, applicable in armed conflicts of an international and/or non-international character that entails individual criminal liability in accordance with international criminal law. In fact, the actions of forced passportization in the occupied territories of Ukraine bear all elements of a war crime, as they are committed during an armed conflict and constitute a serious violation of a conventional rule of IHL, but the mere fact of such actions is not enough

[21] Convention (IV) relative to the Protection of Civilian Persons in Time of War.

for bringing the perpetrators to individual criminal liability under international law because of the lack of its criminalization.

Therefore, we consider it expedient to amend the list of war crimes prosecuted by the International Criminal Court with a new crime with the conditional title "coercion to obtain the citizenship of the hostile power."

This can be done through the Assembly of States Parties to the Rome Treaty, which has the authority to amend the Court's Statute. In this way, Article 8 was amended with new war crimes in 2010 and 2017.[22]

As mentioned above, it is important to note that coercion to obtain a Russian passport is carried out through blackmail, intimidation, torture and threats to deprive those who refuse to obtain the citizenship of the aggressor state of humanitarian and medical assistance, deprivation of parental rights, restriction of movement and deportation.[23] In addition, it should be borne in mind that Ukrainian citizens who have been forced to obtain Russian citizenship may be forcibly drafted into the Russian army.[24] These actions of the occupiers obviously imply such elements of war crimes under Article 8 of the Rome Statute as torture or inhuman treatment (Article 8(2)(a)(ii)), compelling a prisoner of war or other protected person to serve in the armed forces of the hostile Power (Article 8(2)(a)(v)), Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war (Article 8(2)(b)(xv)), committing outrages upon personal dignity, in particular humiliating and degrading treatment (Article 8(2)(b)(xxi)).

CONCLUSIONS AND RECOMMENDATIONS

Analyzing the above, it can be concluded that actions to impose the citizenship of the hostile power (forced passportization) on the population of the occupied territories do not currently constitute a war crime under the Rome Statute. At the same time, such an act, when committed during an armed conflict can be considered a serious violation of International Humanitarian Law, in particular, Article 45 of the Hague Convention relative to the Laws and Customs of War on Land and the IV Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949. Thus, coercion to obtain citizenship can be interpreted as "another serious violation of the laws

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[22] Rome Statute and other agreements, https://asp.icc-cpi.int/RomeStatute [accessed: 02.08.2024].

[23] See *Vyklyky prymusovoi pasportyzatsii na tymchasovo okupovanykh terytoriiakh Ukrainy: kruhlyi stil v Ofisi Ombudsmana*, https://ombudsman.gov.ua/news_details/vikliki-primusovoyi-pasportizaciyi-na-timchasovo-okupovanih-teritoriyah-ukrayini-kruglij-stil-v-ofisi-ombudsmana [accessed: 02.08.2024].

[24] Rome Statute of the International Criminal Court, International Criminal Court.

and customs applicable in international armed conflicts" if committed as part of a plan, policy or on a large scale, as set forth in Article 8(b) of the Rome Statute. In this regard, it is advisable to consider amending the Rome Statute by adding to it a new war crime – "coercion of the inhabitants of the occupied territory to obtain the citizenship of the occupying power".

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WARSAW MAYOR'S POSITION REGARDING THE CHRISTIAN CROSS

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Abstract. The article examines the position taken by the Mayor of Warsaw, Poland's capital city, regarding the symbol of the Cross. First, the Ordinance of 8 May 2024 on the introduction of the *Standards for Equal Treatment in the Warsaw City Hall* is described. Second, the author cites relevant fragments of Sejm and Senate resolutions that informed the debate in defence of the Cross in the wake of the 2009 ruling of the European Court of Human Rights – resolutions that are still relevant given the current sociopolitical circumstances.

Keywords: religious symbols; religious freedom; Cross; Christianity.

INTRODUCTION

In this article I examine the position of the Mayor of Warsaw towards the Christian Cross (which is not merely a religious symbol), expressed in Ordinance No. 822/2024 of 8 May 2024 on the introduction of the *Standards of Equal Treatment in the Warsaw City Hall*,[1] issued on the basis of Article 33(3) in conjunction with Article 11a(3) of the Act of 8 March 1990 on municipal government.[2] According to the ordinance, the *Standards* (annexed thereto)[3] follow from Warsaw's *Social Diversity Policy*, adopted by Resolution no. LXIII/2071/2022 of the Warsaw City Council of 7 April 2022.[4]

Standard 4 provides that "the space of the City Hall is religiously neutral." At the same time, the Guidelines added the following to this standard.

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[1] GP-OR.0050.822.2024, https://bip.warszawa.pl/web/prezydent/-/zarzadzenie-nr-822/2024-z-2024-05-08 [accessed: 14.10.2024].

[2] Journal of Laws of 2023, items 40, 572, 1463, 1688.

[3] See https://bip.warszawa.pl/web/prezydent/-/zarzadzenie-nr-822/2024-z-2024-05-08 [accessed: 14.10.2024].

[4] The resolution, annex and voting results are available in Polish at https://bip.warszawa.pl/web/rada-warszawy/-/uchwala-nr-lxiii-2071-2022-z-2022-04-07-5977962 [accessed: 14.10.2024].

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1. "In the City Hall buildings accessible to the public and during events organized by the City Hall, no symbols associated with a specific religion or denomination shall be displayed in its space (e.g., on walls or desks). This does not apply to religious symbols worn by the City Hall staff for personal use, for example, in the form of a medallion, tattoo or a wristband."
2. "Events organized by the City Hall are secular in nature, that is to say, they do not include religious elements, for example, prayers, services or ordinations."

The Mayor believes that "these standards will strengthen efforts to promote equal opportunities and access to city services and resources for all Warsaw residents" (sect. 2, para. 1).

The Mayor's Plenipotentiary for Equal Treatment, supported by the Special Group for the Standards of Equal Treatment is to be in charge of coordinating their implementation (para. 4).

Before we analyse the ordinance in question, we need to present the historical and legal context, and its position within the hierarchy of normative acts.

The discussion on the place of the Cross in the public sphere was renewed after the European Court of Human Rights in Strasbourg passed a ruling on 3 November 2009 (no. 30814/06) concerning the exposition of the Christian cross in classrooms in Italy.[5] At the time, both chambers of the Polish Parliament, the Sejm and the Senate, joined the public debate.[6]

1. THE POSITION OF THE SEJM

The Sejm, as Poland's legislative body, passed the Resolution on the protection of religious freedom and values that are the common heritage of the peoples of Europe[7] on 3 December 2009, in which it expressed concern about "decisions that harm religious freedom, disregard the rights and feelings of religious believers, and undermine social peace." It was also critical of "the judgement of the European Court of Human Rights questioning the legal basis for the presence of crosses in school classrooms in Italy." The Sejm also stated: "The sign of the cross is not only a religious symbol and a sign of God's love for people, but in the public sphere it reminds us of our willingness to make sacrifices for others, it expresses values building respect for the dignity of every human being." These concerns were expressed by the Sejm because it (i) declared its sensitivity to freedom of opinion, conscience and religion; (ii) recalled the freedom tradition of the First

[5] The ruling is available at https://etpcz.ms.gov.pl/etpccontent/$N/990000000000001_I_ETPC_030814_2006_Wy_2009-11-03_001 [accessed: 14.10.2024].

[6] More see Ożog 2010-2011; Piotrowski 2019, 107-13; Romanko 2014, 207-26.

[7] "Monitor Polski" No. 78, item 962.

Polish Republic, which was a model of ethnic and religious tolerance in Europe at the time; (iii) pointed out the essential and positive contribution of Christianity to the development of the rights of the human person, the culture of the peoples of Europe, and the unity of our Continent; (iv) underscored that both individuals and communities have the right to express their religious and cultural, religious and cultural identity, which is not limited to the private sphere; (v) recalled that in the past, especially during the era of Nazi and communist dictatorships, acts of hostility toward religion were linked to widespread infringements of human rights and led to discrimination; and (vi) was reminiscent of the words spoken by John Paul II in his historic address to the Polish Parliament in June 1999 that "democracy without values easily turns into outright or disguised totalitarianism."

2. THE POSITION OF THE SENATE

The Polish Senate in the Resolution of 4 February 2010 on respect for the Cross[8] stated: "The Cross, as the central symbol of Christianity, which gave Europe the rule of respect for the rights of the individual and principles of equality, freedom and tolerance, has accompanied Poland in all crucial moments of its history. In times of hardship, during the partitions, wars and occupations, the Catholic Church aided those in need regardless of their religion and was a place of national remembrance, with the Cross becoming a symbol not only of Christianity and its values, but also of longing for a free Homeland. […] The Cross, which is a sign of Christianity, has become for all Poles, regardless of their religion, an enduring symbol of commonly accepted universal values, as well as of the pursuit of truth, justice and freedom of our Homeland. In view of the above, any attempt to ban the Cross from schools, hospitals, offices and public spaces in Poland must be read as harmful to our tradition, memory and national pride."[9]

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[8] "Monitor Polski" No. 7. item 57.

[9] The Polish Senate added in its justification of the resolution: "During the communist regime, the Catholic Church, led by the Primate of the Millennium Cardinal Stefan Wyszyński, set itself the goal of preserving national values in Polish society, in response to which the communist state fought the Church. It was thanks to and in the Church that the Polish people were able to preserve at least a semblance of freedom, honour the memory of their heroes, celebrate historic anniversaries, and, when the time came, claim their dignity, truth and freedom under the banners of Solidarity. In the dark hours of martial law, the Church – as it had always done in the past – opened its arms to welcome those seeking support and to those fighting for freedom. What mattered was not religion but people's needs or their patriotism and commitment to the Polish Cause."

3. THE STATUS OF THE ORDINANCE WITHIN THE HIERARCHY OF NORMATIVE ACTS

According to Article 87 of the Polish Constitution:[10] "1. The sources of universally binding law of the Republic of Poland shall be: the Constitution, statutes, ratified international agreements, and regulations. 2. Enactments of local law issued by the operation of organs shall be a source of universally binding law of the Republic of Poland in the territory of the organ issuing such enactments."[11]

The constitutional legislator explains in Article 93: "1. Resolutions of the Council of Ministers and orders of the Prime Minister and ministers shall be of an internal character and shall bind only those organizational units subordinate to the organ which issues such act. 2. Orders shall only be issued on the basis of statute. They shall not serve as the basis for decisions taken in respect of citizens, legal persons and other subjects. 3. Resolutions and orders shall be subject to scrutiny regarding their compliance with universally binding law." Article 94 provides that "on the basis of and within limits specified by statute, organs of local government and territorial organs of government administration shall enact local legal enactments applicable to their territorially defined areas of operation. The principles of and procedures for enacting local legal enactments shall be specified by statute" (Article 94).

At the same time, Article 53 provides with respect to religious freedom:

"1. Freedom of conscience and religion shall be ensured to everyone. 2. Freedom of religion shall include the freedom to profess or to accept a religion by personal choice as well as to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing of rites or teaching. Freedom of religion shall also include possession of sanctuaries and other places of worship for the satisfaction of the needs of believers as well as the right of individuals, wherever they may be, to benefit from religious services. 3. Parents shall have the right to ensure their children a moral and religious upbringing and teaching in accordance with their convictions. The provisions of Article 48, para. 1 shall apply as appropriate. 4. The religion of a church or other legally recognized religious organization may be taught in schools, but other peoples' freedom of religion and conscience shall not be infringed thereby. 5. The freedom to publicly express religion may be limited only by means of statute and only where this is necessary for the defence of State security, public order, health, morals or the freedoms and rights of others. 6. No one

[10] The Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended.

[11] More see Haczkowska 2014, 218-24.

shall be compelled to participate or not participate in religious practices. 7. No one may be compelled by organs of public authority to disclose his philosophy of life, religious convictions or belief."[12]

Further, Article 233 of the Constitution provides as follows:

"1. The statute specifying the scope of limitation of the freedoms and rights of persons and citizens in times of martial law and states of emergency shall not limit the freedoms and rights specified in Article 30 (the dignity of the person), Article 34 and Article 36 (citizenship), Article 38 (protection of life), Article 39, Article 40 and Article 41, para. 4 (humane treatment), Article 42 (ascription of criminal responsibility), Article 45 (access to a court), Article 47 (personal rights), Article 53 (conscience and religion), Article 63 (petitions), as well as Article 48 and Article 72 (family and children). 2. Limitation of the freedoms and rights of persons and citizens only by reason of race, gender, language, faith or lack of it, social origin, ancestry or property shall be prohibited. 3. The statute specifying the scope of limitations of the freedoms and rights of persons and citizens during states of natural disasters may limit the freedoms and rights specified in Article 22 (freedom of economic activity), Article 41, paras. 1, 3 and 5 (personal freedom), Article 50 (inviolability of the home), Article 52, para. 1 (freedom of movement and sojourn on the territory of the Republic of Poland), Article 59, para. 3 (the right to strike), Article 64 (the right of ownership), Article 65, para. 1 (freedom to work), Article 66, para. 1 (the right to safe and hygienic conditions of work) as well as Article 66, para. 2 (the right to rest)."

CONCLUSIONS

Summing up our considerations above, the following can be stated follows:

1) The prohibition to display religious symbols associated with a particular religion or denomination on, for example, walls or desks, issued by the Mayor of Warsaw on 8 May 2024, infringes the basic right of every person to manifest his or her religious beliefs, which he or she has, whether they are baptised or not, whether they are believers or non-believers. This ban should be considered a usurpation of authority, at odds with normative acts of a higher order, and as illegal and not applicable. Religious freedom and the right to express one's beliefs in public life is a different category, higher than, for example, economic freedom. In a democratic state, it must never be infringed by a normative act of internal law such as an ordinance. This is confirmed by Article 31(3) of the Constitution: "Any limitation upon the exercise of constitutional

[12] More see Krukowski 2013.

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."

2) The ordinance that was supposed to introduce standards of equal treatment in the Warsaw City Hall, which is a set of rules and guidelines related to equal treatment, achieved the opposite effect: it has proven discriminatory against people who do not share the leftist idea of how offices should operate, Catholics, Jews, Muslims, or anyone "who, like the authors of the Polish Constitution, are grateful to their ancestors for the culture rooted in the Nation's Christian heritage and universal human values (as enshrined in the Preamble to the Constitution)."[13]

3) The appeals made by the Parliament in the following statements in resolutions still hold relevance:

– "We urge you to keep your distance from the judgement of the European Court of Human Rights in Strasbourg and to respect the Cross" (Senate resolution);

– "The Sejm of the Republic of Poland asks the parliaments of the member states of the Council of Europe to reflect jointly on ways to protect religious freedom in order to foster values that are the common heritage of the peoples of Europe" (Sejm resolution).

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[13] See the model complaint drafted by the Ordo Iuris Institute for Legal Culture: https://ordoiuris.pl/wolnosci-obywatelskie/rafal-trzaskowski-chce-zdejmowac-krzyze-zloz-skarge [accessed: 14.10.2024].

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OPERATION AND JURISPRUDENCE OF MUNICIPAL COURTS IN THE RADOM DISTRICT DURING THE GERMAN OCCUPATION (1939-1945)

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Abstract. The aim of this article is to analyse the functioning of municipal courts in the Radom district during the German occupation in the years 1939-1945. The paper aims to show how municipal courts, despite the restrictions imposed by the occupier, played an important role in ensuring basic legal order and resolving civil and criminal cases that concerned everyday social problems. The article analyses the jurisprudence of these courts, focusing on their efficiency, the length of proceedings, and the changing number of cases during the occupation. The research is based on archival material, using historical-legal methods and case law analysis, which allows for a better understanding of the impact of the World War II period on the activities of the Polish judiciary. The article also shows how municipal courts, despite the difficult conditions, contributed to maintaining the Polish legal system and national identity under the occupation.

Keywords: municipal court; judiciary; German occupation; Second World War.

INTRODUCTION

The municipal courts, established by the Decree of the President of the Republic of Poland of 6 February 1928 – Law on the system of common courts,[1] started their activity on 1 January 1929 and became an important element of the Polish justice system. The municipal courts dealt mainly with the settlement of minor civil and criminal cases. Operating at the level of the lowest instance, they played a key role in providing access to justice, especially in smaller towns. The rules of internal office of the municipal courts, were regulated, *inter alia*, by the Regulation of the Minister of Justice of 24 December 1928 – General Rules for the Internal Office of the Appellate, District and Grodzki Courts,[2] Order of the Minister of Justice of 1 December 1932 – Rules of internal office of appellate,

[1] Journal of Laws No. 12, item 93.
[2] Journal of Laws No. 104, item 934.

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district and borough courts in criminal matters[3] and Order of the Minister of Justice of 15 December 1932 – Rules of internal office of appellate, district and borough courts in civil cases.[4] In accordance with the above regulations, the *grodzki* court kept clerical aids, which were used, among other things, to register cases, in the form of repertories.

In terms of organisation, *grodzki* courts could operate on a one-person basis or in larger formations, and could be divided into divisions in the event of a heavy case load. An important function of the municipal courts was also to provide judicial assistance to other authorities and to implement legal assistance. Over the years, the competences of the *grodzki* courts were gradually extended, which relieved the higher courts and made the *grodzki* courts a key element of the Polish judiciary at the local level [Składanek 2021, 266].

The Nazi invasion of Poland in September 1939 interrupted the normal functioning of the judiciary. As the German army approached, the municipal courts suspended their activities. If this was not possible, some of the judicial personnel were evacuated to the east or south-east, which seemed safe due to the scale of the war effort. It was not until the attack of the Soviet army on the eastern border of the Second Polish Republic on 17 September and the defeat of the Polish side in the September campaign that the functioning of the municipal judiciary was finally disrupted.

The purpose of this article is to present how the municipal courts functioned in the Radom district in the years 1939-1945 and to examine the impact of German occupation law on their activities. The analysis of the jurisprudence of the municipal courts allows to show how the scope of their competences, the nature of the cases decided and the effectiveness of their functioning under wartime conditions changed. The article also presents the social and legal context of the functioning of these courts, which, despite numerous difficulties, constituted one of the few elements of the preserved Polish legal system during the occupation. In doing so, archival materials and the laws in force in the General Government were used to analyse in detail the changes and challenges faced by these institutions during the years of German occupation.

1. BEGINNING OF THE OCCUPATION AND REORGANISATION OF THE JUDICIARY

When the German army crossed the Polish borders, Radom, due to its location, became the target of incessant air raids by the enemy air force, which also completely destroyed other towns where municipal courts operated,

[3] Journal of Laws No. 110, item 909.
[4] Journal of Laws No. 114, item 941.

including Przedbórz and Zwoleń. When it became obvious on 6 September that the German army would reach the Vistula line, there was an evacuation from Radom and its surroundings of most of the judges with their families. Most of them stayed in the Eastern Borderlands until 17 September. Although the deserted court buildings in Radom and other cities were tried to protect them from theft and devastation, the material losses that occurred were very serious [Piątkowski 2018, 72].

It should be noted at this point that the area occupied by German troops was divided into two zones. By virtue of Hitler's decree of 8 October 1939, part of the Polish lands were directly incorporated into the Third Reich, i.e. the Pomeranian voivodeship, the Poznań voivodeship, the Upper Silesian voivodeship, part of the Łódź voivodeship with Łódź, the western districts of the Kraków voivodeship, the northern part of the Warsaw voivodeship – the Ciechanów district, the Suwałki district and the western part of the Kielce voivodeship [Wrzyszcz 2011, 163-64]. This meant that the new German legal system (gradually introduced already during the period of military administration) was in force in these areas, and consequently that Polish common courts were liquidated. For the remaining areas which had not been annexed by the Third Reich, including the Radom district, the decree on the administration of occupied Polish areas of 12 October 1939 established the General Government with its seat in Kraków, together with the German occupation administration [Konieczny 1972, 100-107].

In the General Government the previous Polish justice system was restored, but with very limited competences. The basis for this was the decree of 26 October 1939 on the restoration of justice in the General Government[5] and of 19 February 1940 on the Polish judiciary in the General Government.[6] Although the Polish judiciary was a separate division, it was subordinated to the German judiciary, which could review the verdicts of Polish courts and arbitrarily take over cases pending before them. On the basis of para. 4 of the ordinance of 26 October 1939 on the reconstruction of the judiciary in the General Government, the previous Polish legal order was preserved in these areas, which was regulated by Polish laws and ordinances, unless the General Governor decided otherwise. Subsequent provisions of the aforementioned ordinance contained many changes to the provisions of criminal procedure. The provisions of substantive law remained in force as long as they did not interfere with the takeover of the administration by the German Reich and the exercise of military supreme laws [Bereza 2015, 105].

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[5] Ordinance on the reconstruction of the judiciary in the General Government of 26 October 1939, in: *Ordinances of the General Government issued on loose sheets*, Frenken, Radom 1940 [hereinafter: GG Ordinances], part B.I.1.

[6] Ordinance on Polish Judiciary in the General Government of 19 February 1940, "Journal of Ordinances of the General Governor for the Occupied Polish Territories", Part I, No. 13, p. 64-68.

Due to the German occupation of part of the territories of the Republic of Poland, there was a rapid change in the organisation of the existing state administration, including the judiciary. By virtue of the decree of the General Governor for the occupied Polish territories of 26 October 1939 on the reconstruction of the judiciary in the General Government, a German and a Polish judiciary were established. The task of the German judiciary was to prosecute "attacks on the security and authority of the German Republic and Nation."[7] The Polish judiciary could be allowed to try cases provided that the scope of the case being tried did not fall within the jurisdiction of the German court. The scope of the Polish judiciary was regulated by a relevant decree of the GG of 19 February 1940.[8] According to its provisions, the entirety of criminal cases was excluded from the jurisdiction of the Polish judiciary,[9] and the Polish provisions on conditional suspension of liberty sentences or fines and pardons were abolished. The applicable Polish law remained in force if it did not conflict with German law. The Polish population residing in the GG was subject to Polish courts, while citizens of German nationality were subject exclusively to the German judiciary.[10] German courts had the right to review the verdicts of Polish courts. Polish laws and regulations applied to the execution of the Polish judiciary, unless the Governor General decided otherwise.[11] By virtue of the above-mentioned regulations, the labour courts were also abolished and their jurisdiction was transferred to the municipal courts. The Polish judiciary was subordinated to the supervision of the territorially competent District Chief, to whom the appointment of courts and changes of judicial districts also belonged. Judgments were handed down "in the name of the law" [Wrzyszcz 2020, 35]. Re-employed Polish officials and employees were required to submit a written declaration of obedience. The court heard cases in the composition envisaged by Polish laws. The Polish courts in the Radom district were activated and began their activities in November 1939. At that time, the District Court in Radom and the municipal courts subordinate to it started their work.[12] The first to resume work was the Radom district court,

[7] Ordinance on the reconstruction of the judiciary in the General Government of 26 October 1939, part B.I.1.; "Official Gazette of the Head of the Radom District in the General Government for the Occupied Polish Areas", No. 1 of 1939, p.2.

[8] Ordinance on Polish Judiciary in the General Government of 19 February 1940.

[9] Although the legislation allowed them to be considered as long as the case was referred to the German authority for judgment, this provision remained dead.

[10] Ordinance on the boundaries of the districts and court years of the German courts in the Radom District of 23 April 1940 by the Head of the Radom District.

[11] Para. 4 of the Ordinance on Polish Judiciary in the General Government of 19 February 1940.

[12] The following municipal courts were opened in the perimeter of the Radom District Court: Białobrzegi, Iłża, Końskie, Kozienice, Lipsko, Opatków, Opoczno, Ostrowiec, Przedbórz, Radom, Sandomierz, Skarżysko-Kamienna, Staszów, Wierzbnik and Zwoleń, "Official

and this took place on 17 November 1939. The institution retained its former seat, part of the pre-war panel of judges, as well as the area of jurisdiction covering both the city itself and many neighbouring municipalities. The prosecutor's office, mortgagee, notaries and lawyers resumed their work. Further, on 25 May 1940, the Court of Appeals in Radom started functioning, to which, by virtue of the Regulation of the General Governor of 19 February 1940 on Polish judiciary in the General Government, the district courts and township courts located in the Radom district were subordinate [Swajdo 2006, 52-54]. The operating municipal courts were under the supervision of the head of the Radom district.

2. MUNICIPAL COURTS IN THE RADOM DISTRICT IN THE YEARS 1939-1945

The fate of many members of the Radom judiciary from September 1939 and the following months remains largely unclear. Some were taken prisoner by the Germans, while others were detained by the Soviet authorities. Only a few managed to return to their previous places of residence, which often required illegally crossing the border between the occupation zones in the Bug region.[13] On 9-11 November 1939, the occupiers carried out the first mass action targeting the intelligentsia circles, aimed at intimidating the Polish society before the upcoming Independence Day. Nearly one hundred and fifty people were arrested in Radom and its surroundings, and then imprisoned at Malczewskiego Street, including judges: Teodor Dedewicz, Eugeniusz Jakimow, Stanisław Kuczkiewicz, Teodor Tomaszewski and Tadeusz Warzycki, notaries: Marian Kwapisiewicz, Romuald Przyłuski and Włodzimierz Zakrzewski, as well as attorneys: Stanisław Berger, Władysław Ferencowicz, Zygmunt Glogier, Bronisław Hassenbaim, Roman Szczawiński, Bolesław Wasilewski, Kazimierz Wereszczyński, Wacław Wędrychowski and Marian Węgliński. Some of them left prison after several days, but others regained their freedom only in early 1940 [Piątkowski 2017, 52].

In addition to acts of a clearly repressive nature, a significant part of the extermination actions undertaken by the Germans had their anchoring in Nazi legislation, being implemented by an extensive judicial apparatus. As early as September 1939, a special court-martial began operating in Radom, which sentenced defendants primarily to prison terms and fines,

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Gazette of the Head of the Radom District in the General Government for Occupied Polish Areas" No. 3 of 1939, p. 32.

[13] For example, Opatów magistrate Stanislaw Czajkowski set off home from Wierchy on the Stochod River in an attempt, unsuccessful as it was, to save the money and court deposits he kept.

applying the principle, however, that minors were to be punished in the same way as adults "[...] if in terms of physical development they equalled a person of eighteen years."[14] The power to punish by death was granted to ad hoc courts-martial, which operated at military units and therefore generally did not have permanent premises. The panel of judges consisted of the unit commander (or an officer authorised by him) and two soldiers. They dealt with cases of possession of weapons and military equipment, accusations of sabotage, etc. Information about sentences was often made public in the form of placards [Wrzyszcz 2008, 103-108].

The activity of lawyers was closely linked to the functioning of the courts. Each of them, in order to resume their practice under conditions of occupation, had to obtain permission from the German authorities every year, which was often a complicated and difficult process. It was readily apparent that the Germans sought to restrict access to the legal profession only to those who had not engaged in political activity before the war. This was evidenced by the questionnaires that lawyers had to fill in. From 1943 onwards, this document covered as many as twelve pages, on which detailed information was required not only about the lawyer himself, but also about his spouse, parents, grandparents and children, in order to confirm their Aryan origin. Lawyers were also required to provide details of their education, career, military service and membership of organisations between the wars.[15] The questionnaires also contained a specific set of questions concerning the fate of the attorneys after 1 September 1939. Lawyers who found themselves in the Eastern Borderlands had not only to give the exact date of their return to the General Government, but also to describe in detail the circumstances under which this return was possible. It can be assumed that this information was verified in detail by the German police services. Every lawyer was aware that even the slightest suspicion of involvement in conspiratorial activities or the display of anti-German attitudes could result in a refusal to renew his or her professional permit, which would deprive him or her of a livelihood [Piątkowski 2017, 58].

The period of occupation brought serious casualties to lawyers associated with the courts of Radom and the region. Already in December

[14] Journal of Regulations for Occupied Areas in Poland, No. 3, p. 7. A similar regulation was also issued by the Reich authorities. The Ordinance on Protection against Juvenile Serious Offenders of 4 October 1939 (Verordnung zum Schutz gegen jugendlische Schwerverbrecher, Reichsgesetzblatt 1939, Part I, No. 199, p. 2000) authorised the public prosecutor to bring indictments against minors aged 16-18 if they were physically and mentally well-developed and if the "protection of the German people" required it. Under it, minors were sentenced to the punishments prescribed for adults. See Wrzyszcz and Mielnik 2019, 89-114.

[15] These included sports associations, associations for veterans of the Polish Legions, the Polish Military Organisation, General Haller's Army and national uprisings, the Riflemen's Association, the Polish Scouting Association and Masonic organisations.

1939. Germans murdered the former Vice President of the Radom District Court, Stanisław Bryła, near Lublin (a few months earlier he had participated in the defence of the city, contributing to the rescue of Jan Matejko's paintings The Battle of Grunwald and The Sermon of Skarga). In the spring of 1940, at Firlej and at other places of mass execution, the attorneys Roman Rytel from Radom and Jerzy Cybulski from Sandomierz, as well as the secretary of the attorneys Aleksander Utnicki, were shot, among others. Two years later, during the liquidation of the Radom ghetto, the Germans murdered retired judge Józef Bekerman, who was completely blind, with a shot to the occipital bone. Many lawyers were also sent to concentration camps, suffering death there. Already in 1940, the well-known court defender from Radom, Bolesław Wasilewski, and the lawyer from Iłża, Władysław Wielechowski, were deported to the Sachsenhausen-Oranienburg camp, and the judge of the Przedborze Municipal Court, Jerzy Biriukowicz, was deported to the Buchenwald camp. In the following years, among others, the Radomsko advocates Marian Świątkowski and Roman Szczawiński, as well as the trainee Henryk Taedling, were imprisoned in the Auschwitz concentration camp. Roman Mazanowski, an advocate from Białobrzegi, managed to regain his freedom; he was imprisoned for taking the defence of a Jewish boy beaten in the street[Piątkowski 2018, 128]. The list of losses should also include, among others, the judge of the Zwoleń Municipal Court Ksawery Kotliński, murdered in 1943 during a bandit attack on the Czarnolas land estate.[16]

Many lawyers were also involved in the activities of the anti-German military and civilian Conspiracy. For example, the President of the Radom District Court, Adam Bobkowski, was a lecturer in Latin at clandestine education courses, having been arrested twice by the Germans. In turn, the Radom lawyer Witold Lis-Olszewski was one of the founders of the local command of the National Military Organisation, and later a member of the Delegation of the Government of the Republic of Poland at Home. It is also impossible not to mention the figure of Józef Lachorski – a retired judge and mortgage writer at the Grodzki Court in Radom, who was very active in the social field as the chairman of the Polish Welfare Committee Radom-Powiat (Rada Opiekuńcza Powiatowa), which was the local representation of the Central Welfare Council. These and other examples testify eloquently to the patriotism of the environment in question [Piątkowski 2008, 85].

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[16] The bandits, having recognised the judge in him, shot him in cold blood. As it was later written, "The funeral took place The funeral was held in Zwoleń at the town's expense, and was attended by crowds in their thousands, manifesting their indignation and grief, as well as their honour and tribute. For Judge Kotliński, as confirmed by the opinion of the most serious representatives of the society of the town of Zwoleń, during his several years of judging in Zwoleń, holding the banner of a judge with dignity and high esteem, earned himself universal recognition and respect. He lived with his whole family in privation."

3. ANALYSIS OF THE JURISPRUDENCE OF MUNICIPAL COURTS DURING THE YEARS OF OCCUPATION 1939-1945

The municipal courts, established by the Presidential Decree of 6 February 1928, functioned as an important element of the general judicial system in Poland until 1950. Throughout this period, these courts dealt with civil and criminal cases at the local level, playing an important role in solving the everyday legal problems of citizens. However, the period of occupation between 1939 and 1945 posed a particular challenge to the municipal courts, both in terms of the number of incoming cases and in terms of the scope of their powers, which were drastically restricted by German legislation.

This article analyses data on key elements influencing the efficiency of the municipal courts in the Radom district, including the mastery of case impact, i.e. the ratio of the number of all cases dealt with in a given reporting period to the number of pending cases, the duration of court proceedings, calculated from the day the case was received to the day the final decision was issued, and the waiting time for a trial date.

Materials from the Archive of New Files in Warsaw,[17] the State Archive in Radom[18] and the State Archive in Kielce[19] were used for the analysis. Due to the state of preservation of the sources, the analysis mostly took into account the activities of the municipal courts in Białobrzegi, Iłża, Kozienice, Radom, Skarżysko-Kamienna, Starachowice-Wierzbnik and Wierzbnik.

The analysis of the jurisprudence of the municipal courts during the occupation period allows for a deeper understanding of the functioning of these institutions in wartime conditions, when the Polish judicial system came under the control of the German occupier. In order to understand the impact of the war on the work of the municipal courts, it is worth tracing both the number of incoming cases, the type of cases adjudicated, as well as changes in the waiting time for their resolution and the level of backlog.

With the outbreak of the war, the number of cases arriving at the municipal courts fell markedly. Compared to the full period of activity of the municipal courts between 1929 and 1950, only 28% of cases were received during the German occupation. An example is the Radom Municipal Court, which before the war dealt with a large number of cases, and in the period

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[17] AAN in Warsaw, z. 285, ref. 7392; ref. 7396; ref. 7399; ref. 7402; ref. 7404; ref. 8090; ref. 8092; ref. 8095; ref. 8100; ref. 8110; ref. 7391; ref. 7392; ref. 7393; ref. 7399; ref. 7401; ref. 7398.

[18] APR, z. 58, ref. 1447; APR z. 448, ref. 1731; ref. 17326; ref. 17429; ref. 17432; ref. 17433; ref. 17439; ref. 17444; ref. 17448; ref. 17451; ref. 17460; ref. 17461; ref. 17478; ref. 17485; ref. 17551; ref. 17569; ref. 17682; ref. 17685; ref. 17686; ref. 17700; ref. 17702; ref. 17705; ref. 17708; ref. 17723.

[19] APK, z. 21/3285, ref. 1, ref. 2, ref. 633, ref. 988, ref. 1244, ref. 1946, ref. 1947, ref. 1948, ref. 1949, ref. 1950; APK z. 21/3046, ref. 3890, ref. 3894, ref. 3892.

1939-1945 recorded a significant decrease in their receipt, reaching 12,674 cases, of which 3665 cases remained backlogged. Similarly, in Kozienice the number of cases amounted to 1,600, of which 1,240 were backlogged, and in Wierzbnik 990 cases were received, of which 564 remained unsettled. The court in Skarżysko-Kamienna dealt with 3900 cases, of which there was a backlog of 526. These figures clearly show that during the war the number of new cases was decreasing and the backlog was increasing, which had a direct impact on the efficiency of the courts.

In civil cases, the most common issues dealt with were payment, eviction and interference with possession. Payment cases accounted for as much as 48% of all civil cases, while evictions accounted for 31% of cases. Cases concerning interference with possession accounted for about 21% of the total. Other types of civil cases, such as alimony, division of property, revocation of a clause or rent determination, appeared less frequently and had a marginal impact on the overall structure of case law during the period in question.

In the case of criminal cases, the surviving data shows that the most frequent adjudication was for offences against property, which accounted for 43% of all criminal cases. Offences of violation of bodily integrity were another dominant category, accounting for 26% of the cases dealt with. Offences of insulting officials accounted for 17%, and the remaining cases, such as offences against authorities and offices, included disobedience to authority, disruption of public order, theft, fraud or violation of sanitary regulations. Between 1939 and 1944, crimes against property accounted for between 40% and 50% of criminal cases, indicating the considerable scale of this type of crime during the war period. In contrast, offences against bodily integrity accounted for more than 20% of the cases dealt with during the occupation period.

One of the important indicators for assessing the efficiency of the municipal courts is the waiting time for the resolution of cases. Before the outbreak of the war, between 1929 and 1938, the settlement time in 73% of the cases closed within three months. However, during the occupation, especially between 1942 and 1944, this time increased significantly – only 55% of cases were adjudicated within a quarter of a year, and in the remaining cases the proceedings took longer. The marked decline in adjudication efficiency was the result of wartime organisational difficulties, as well as a reduced number of judges and a growing backlog.

The backlog of cases was a major challenge for the municipal courts, especially during the years of occupation. In the Radom Grodzki Court in 1939 it amounted to 26% of all cases, but in the following years, as a result of the escalation of the war, its number increased to 65% in 1942. In Kozienice, the backlog rate in 1942 was as high as 99%, and in 1944 – 93%.

In Skarżysko-Kamienna, on the other hand, although arrears in 1940 were 46%, they declined steadily in subsequent years, reaching only 2% in 1944. A similar trend was observed in the municipal courts of Starachowice-Wierzbnik and Wierzbnik, where the backlog decreased as the war years passed, although in 1944 it still stood at 50%.

An analysis of the jurisprudence of the municipal courts between 1939 and 1945 shows that the war had a significant impact on the functioning of these institutions, both in terms of the number of cases dealt with and the time taken to resolve them. Although these courts tried to continue their activities under the difficult conditions of occupation, the reduced flow of cases, the increased waiting time for sentences and the growing backlog had a negative impact on their efficiency. In particular, the increase in the backlog between 1942 and 1944 and the limited scope of competence of the Polish courts under the German occupation affected their ability to handle cases effectively. Despite these difficulties, municipal courts played an important role in maintaining legal order in local communities, being one of the few Polish institutions functioning under the German occupation.

CONCLUSION

The period of German occupation posed an enormous challenge for the municipal courts in Poland, including the Radom district, which required constant adaptation to the changing legal and political reality. The introduction of the German legal system, the transformation of the structure of the courts and the limitation of the competences of Polish institutions meant that the municipal courts had to function under conditions of extreme dependence on the occupation administration. Nevertheless, their activities, although drastically limited, constituted an important part of the legal life of the local population. From an organisational perspective, the township courts were one of the few institutions that continued to work in a form similar to that before the war, albeit under changed conditions and under strict supervision of the occupier.

An analysis of the jurisprudence of these courts shows that, although their main competences were limited to less complex civil and criminal cases, they still had an important function in society. Dealing with cases of payment, evictions, violations of bodily integrity or minor offences against property was important to ensure basic legal order as well as stability in uncertain times of war. In many cases, the municipal courts operated at the limit of their capacity, facing a lack of staff, an overload of cases and direct interference from the German occupation authorities.

It should also be noted that the municipal courts played an important role in protecting the Polish legal identity. Although their judgements could be challenged by the German courts and their activities were subjected to strict control, they retained a degree of autonomy, operating under Polish law as long as this did not conflict with German interests. Their functioning was a symbol of resistance to the imposed regime, as well as an attempt to preserve the continuity of the Polish legal system, even under such difficult conditions.

In conclusion, the functioning of the municipal courts during the German occupation is an example not only of the perseverance of legal institutions, but also of the determination of Poles in the struggle to preserve legal order and national identity. Their activities in the Radom district, despite many limitations and adversities, constitute an important element of the history of the Polish judiciary, which is worth highlighting in the context of Poland's difficult fate during World War II.

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PUBLIC FINANCE AS A CATEGORY OF FINANCIAL SCIENCES – THE LEGAL AND SOCIO-ECONOMIC PERSPECTIVE*

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Abstract. Public finance is concerned with the funds that the public sector creates and distributes. Public finances are to some extent similar to the finances of the so-called

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"third sector" (non-profit organisations), due to the type of activities that are geared towards meeting certain social needs. They are based on the authority of the public sector and are established in a coercive manner; they should be an instrument for pursuing the interest of the general public. They operate according to specific plans, and the size of the public resources and operations carried out through them are much larger than those of private entities. Thus, through public finances, the state significantly influences the socio-economic processes and the efficiency of the use of public resources. Through various instruments and tools of fiscal and monetary policy, the state pursues economic and social objectives. We can divide public finances into state finances, finances of local government units and finances of the social security system.

Keywords: public finance; public finance act; public management; economic policy; public administration; economic growth; public economics.

INTRODUCTION

It should be noted that enterprises – as suppliers of goods and services to domestic and foreign markets, implementers of investments and taxpayers – play a central role in the development process by increasing their productivity and innovativeness. Their capital needs are met by the financial sector, which at the same time enables investors to generate income from capital, thus directly influencing the implementation of economic and social development processes [Bogacki and Wołowiec 2021, 17-20]. The state in the system of public finance should play the role of setting the conditions for the income distribution process (through social and territorial cohesion policies, redistribution and services) and the actions of all groups (regulations, institutional governance, macroeconomic environment). This requires stable, efficient and sustainable public finances and sustained macroeconomic stability, including in the context of state fiscal policy (maintaining the sustainability of public finances while promoting inclusive growth).[1]

The stated goals of an efficient state and inclusive economic growth require consistent, rational and clear legal regulations (the Public Finance Act) that normalize the functioning of the entire public (government) sector. The Public Finance Act of 2009 is the third consecutive Public Finance Act, following the previous Acts of 1998 and 2005. The Act of 2009 is systemic in nature, defining not only the boundaries of the public finance sector, but also the basic rules of managing public financial resources by organisational units included in this sector [Wołowiec and Wolak 2009, 6-10].[2]

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[1] See Rada Ministrów. Strategia na rzecz Odpowiedzialnego Rozwoju do roku 2020 (z perspektywą do 2030 r.), Warszawa 2017.

[2] The current Public Finance Act 2009 is the third consecutive Act regulating the system and principles of operation of the public finance sector. Between 2006 and 2009, the Public

The legal regulations contained therein are, on the one hand, a continuation of the original concept, which was adopted in the Public Finance Act of 1998 and developed in the Public Finance Act of 2005, and, on the other hand, the experience gained during the period in which these Acts were in force made it possible to create conditions for more effective management of public funds, ordering of the organisational structures of the entities of the public finance sector, strengthening of the control of public expenditure and achieving greater compliance with the standards applied in the Member States of the European Union [Wojciechowski and Wołowiec 2021, 101-103].

In preparing the drafting assumptions of the Public Finance Act 2009, its key objectives were formulated, which included the following [Ofiarski 2019, 23-27; Zhuravka, Filatova, Šuleř, et al. 2021, 65-67]: strengthening and improving the transparency of public finance, first of all by limiting the organisational and legal forms of the public finance sector; introduction of the Multiannual State Financial Plan as a document orienting the state financial policy and multiannual financial forecasts in local government units; introduction of task-oriented budget solutions; adoption of stable solutions favouring rational financial management in the state budget and in the budgets of local government units, including supplementation of provisions concerning the principles of management of public funds through introduction of the possibility of granting reliefs in repayment of non-tax budget receivables of public-legal nature, as specified in the Act; improvement and strengthening of the internal audit system; strengthening prudential norms in the state budget and in the budgets of local government units; introduction of changes in the scope of management of European funds and other non-reimbursable funds originating from foreign sources.

1. PURPOSE OF ARTICLE, CRITERIA OF ANALYSIS AND RESEARCH METHODOLOGY

The social sciences use the typical methods found in the social sciences and humanities, i.e.: the study of documents (legal acts, expert reports, opinions, analyses), comparative methods (scientific articles, reports, analyses derived from linguistic, grammatical and historical interpretation) and case studies. The result of cognitive research is new claims or theories. On the other hand, the results of research for the purposes of economic practice are determinations of whether and by how much existing theorems and theories on entrepreneurial development are effective from the perspective of contemporary requirements of social and economic development. In other

Finance Act of 2005 was in force, with some of its provisions only becoming invalid at the end of 2013. Between 1999 and 2005, the Public Finance Act 1998 was in force.

words, they serve the purpose of clarification and piecemeal verification of existing theorems and theories. Induction was used as the main research method. It involves drawing general conclusions or establishing regularities on the basis of analysis of empirically established phenomena and processes. It is a type of inference based on details about the general properties of a phenomenon or object. Inductive methods include the various types of analysis of public and private institutions (including consulting forms), expert opinions, statistical data and scientific documents (scientific articles and monographs) used in social research, which were examined for the purpose of this study. In addition, the paper uses two general research methods, i.e. analytical and synthetic methods, characterized by a particular approach to the study of reality. Analytical treats reality as a collection of individual, specific features and events. Following this research method involves breaking down the object of study into parts and studying each part separately or detecting the components of that object [Wołowiec 2019a, 469-70].

The research methods used in the study are: comparative analysis, functional analysis, questionnaire, interviews with municipal managers through a direct interview with the respondent, and the method of research in dynamic terms. The synthetic method treats reality as a collection of characteristics, its implementation consists in searching for common features of various phenomena and events, and then tying them into a unified whole. Thus, the synthetic method examines and determines the totality of the object of study. Using a comprehensive (hybrid) research approach, the so-called triangulation of data sources, i.e. comparing information on corporate social responsibility from different periods, as well as economic systems, and theoretical triangulation – which consists in analyzing the acquired data from the perspective of many different theoretical concepts describing the functions, purpose and tools of managing the public sector, economic and social development of the national economy.

The object of research presented in the article is understood as a material object and its various formal objects – public finance law as a text of law, finance law as behaviour due to rules, finance law as the implementation of certain values, law and public economics as various argumentative strategies. In connection with this multidimensional (economic, social and prana) treatment of public finance, the following methods of research were used in the article: logico-linguistic methods, developed in the form of formal-logical and linguistic analysis (comparison of legal regulations taking into account formal logic and legal methodology); argumentative and hermeneutic methods; axiological methods in case of financial law and public economy; methods of rationality and economic efficiency analysis; comparative methods.

2. PUBLIC FINANCE AS A MULTIDISCIPLINARY CATEGORY OF FINANCIAL SCIENCES

Public finance is one of the most complex generic categories of the financial sciences. They concern issues related to the financing of the entire sector of the national economy, and at the same time, unlike other sub-disciplines of financial sciences, they are an important instrument through which the state can conduct redistributive, investment and stabilisation policies. S. Flejterski emphasises that public finance, or more precisely – the science of public finance – is a component of the broadly understood science of finance, and recognises J.E. Stiglitz, J.M. Buchanan, P.M. Gaudemet, J. Molinier and R.A. Musgrave as its leading representatives [Flejterski 2007, 78, Flejterski and Solarz 2015, 23-30; Owsiak 2015, 10-30].

A review of the definitions of public finance indicates that the main strands of research concern [Flajterski 2007, 77-79]: state activity and the role of the government in the economy; mechanisms of public decision-making and public management; public expenditure, its structure and purpose; public fundraising processes and problems of taxation, including the tax gap.

Also of note is the diversity of approaches to defining public finance, which are presented as [Bitner, Chojna-Duch, Grzybowski, et al. 2011, 11-19]: the stock of public funds and how they are collected; redistributive and investment transfers, treasury operations, monetary phenomena and processes; the financial form of GNP/GDP distribution and the impact of GNP/GDP on the state of public finances and their sustainability; the process of accumulation and distribution of monetary resources, taking into account the function of public finance and the role of the state (government) in the economy; social relations (the issue of social equality and inequality and how to counteract them) arising in connection with the accumulation and expenditure of public resources.

Conducting a selective analysis of the conceptual scope of public finance, it is worth pointing to the definition of A. Wernik, treating public finance as: "the system of financing the tasks of state power" [Wernik 2014, 12-15], as well as on the proposed definition by J. Wiśniewski, who understands public finance as the process of "the accumulation of funds by public sector entities and their allocation for the production and provision (distribution) of public goods" [Głuchowski, Huterski, Kołosowska, et al. 2006, 28-29]. J. Osiatyński extends the process approach to public finance to include the institutional and control aspect, recognising that these are "the processes and public-law institutions related to the processes of accumulation of public funds and their distribution and control of their disbursement" [Osiatyński 2006, 16]. A comprehensive approach to the issue of public finance in the sense of

the science of public finance is presented by S. Owsiak, indicating that the subject of this science are: "phenomena and processes related to the formation and distribution of monetary public funds, ensuring the functioning of the public sector" [Owsiak 2005, 21]. A similar approach is presented by M. Pietrewicz, defining the subject of the science of public finance as: "not only the rules relating to public monetary resources, but also the processes involved in their accumulation and distribution, as well as the economic, social and political effects resulting from operations with public funds" [Ostaszewski 2011, 95]. The duality of the approach to defining public finance is pointed out by B. Guziejewska, "considering the notion of public finance in the context of both the financial system link and public finance as a science. In the first aspect, this author points out that public finance consists in the accumulation, distribution and disbursement of financial resources by various public-law entities in order to satisfy various social and economic needs, both collective and individual" [Guziejewska 2010, 19]. On the other hand, public finance as a science understands in the context of the object of interest, which focuses on the study of the causes and consequences of the phenomena caused by the accumulation and expenditure of public funds. From the legal point of view, successive Public Finance Acts, starting from 1998, did not contain a definition of public finance. The concept was explained by the legislator by means of processes related to the accumulation and allocation of public funds, i.e. referring to financial management or management of public funds [Majchrzycka-Guzowska 2007, 12].

Currently, Article 3 of the Public Finance Act[3] clearly defines public finance by its material aspect, stating that public finance includes processes related to the accumulation of public funds and their distribution, in particular [Dylewski, Filipiak, Gorzałczyńska-Koczkodaj, et al. 2014, 9-19; Wołowiec and Nowak 2020, 239-41]: 1) collecting public revenue and income; 2) spending of public funds; 3) financing the borrowing needs of the state budget; 4) incurring liabilities involving public funds; 5) management of public funds; 6) public debt management; 7) settlements with the budget of the European Union.

It is also necessary to identify the source of law regulating public finance in Poland. The basic legal act is the Constitution of the Republic of Poland of 2 April 1997. In addition to the Constitution of the Republic of Poland, the sources of financial law are constituted by acts, including the Public Finance Act. Next are: European financial law, international agreements, acts implementing laws and acts of local law, as well as orders and other internal regulations, issued by authorised bodies [Wołowiec and Marczuk 2023, 128-30].

[3] Act of 27 August 2009 on Public Finance, Journal of Laws No. 157, item 1240.

Public finance science should therefore be concerned with [Lublimow-Burzyńska 2014, 8-9; Wołowiec and Białek 2020, 200-203]: 1) determining the scope and scale of the public authorities' demand for financial resources (level of fiscalism, tax burden, structure of the tax system and its design elements); 2) examining the ways of satisfying the demand of public authorities for financial resources (the system of public tributes); 3) determining the effects of shaping the demand for money by the public sector (impact on the course of socio-economic processes, income redistribution, social inequalities, etc.); 4) to determine the share of public funds in the financing of individual areas from the point of view of long-term socio-economic development of the country (scope and scale of public investment, role and importance of EU funds); 5) examination of the effectiveness of planning and spending of public funds in terms of objectives (efficiency, rationality, modern models of public management, audit and management control in the public sector); 6) the creation of scientific bases and models for the decentralisation of public funds in the context of the rationality of their spending and the effective satisfaction of social needs.

3. THE MULTIDISCIPLINARY AND DIVERSITY OF DEFINITIONS OF THE TERM "PUBLIC FINANCE"

Public finances are undoubtedly interdisciplinary and are therefore defined differently. For example, according to the theory of treasury, public finances examine the principles of creation and distribution of public funds, in particular the state budget, the budgets of local government units and various funds and budget units managing public funds. According to modern finance theory, public finance deals with the study not only of operations on public funds, but also tries to explain the economic, social and political issues of operations carried out with the entire public finance sector. Public finance according to the theory of economics – a sub-discipline of microeconomics, whose object is to study the influence of decisions of public authorities in the field of tax systems, taxation economics and spending programmes, on the equilibrium occurring in the markets of productive factors and markets of goods and services [Tyrakowski 2017, 179; Gołaszewski 2018, 6-13].

Public finances are therefore concerned with funds created and distributed by the public sector. Public finances are to some extent similar to public finances. "Third sector" (non-profit organisations), because of the type of activity that is aimed at meeting certain social needs. They are based on the authority of the public sector and are created in a coercive manner; they should be a tool for the pursuit of the interest of the general public. They operate according to specific plans and the size of public resources and

operations carried out through them is much larger than the resources and operations of private entities [Walczak 2019, 6-13; Wołowiec 2020, 25-28].

The scope of public finances includes processes related to the collection and disposal of public funds, and the Act identifies the most important of them (as evidenced by the phrase 'in particular') [Wołowiec 2021, 515-20]: 1) collection of public revenues and revenues; 2) expenditure of public funds; 3) financing the borrowing needs of the state budget; 4) making commitments involving public funds; 5) management of public funds; 6) managing public debt; 7) settlement with the European Union budget.

In doctrine, as well as in many legal acts, there are terms "derivative" sources in relation to the concept of "public finances", such as: the financial economy; financial activity and financial policy. Financial economy is defined as the process of creating, collecting, sharing and spending money by entities under public law, including a whole range of legal and organizational activities (e.g. planning, recording, etc.) that serve this process. The implementation of the financial economy can be carried out using 3 methods: self-financing (receipts cover the actual expenditure); refinancing (e.g. loans, loans) and non-recoverable financing (e.g. equipping budgetary units with cash) [Wołowiec, Skrzypek-Ahmed, and Gliszczyński 2021, 34-36].

Financial management is generally based on two methods [Ofiarski 2019, 34-37; Wołowiec 2012, 108-11]: 1) the non-refundable method, which consists in the non-refundable and unpaid transfer of monetary resources to specific economic agents, without any obligation to provide reciprocal benefits. These are transfers taking the form of pensions, annuities, subsidies, allowances; 2) the method of repayment based on the accumulation and distribution of monetary resources for a specified period of time, after which repayment takes place and these are streams of a credit nature. This method is applicable to enterprises, as the nature of their activities guarantees the repayment of credit.

Financial activity is the process of both collecting money and spending it. These activities can be carried out by both private and public law entities (government, local government and their organisational units). The financial activities of public law entities should be public, regulated by law and subject to continuous (internal) and periodic (external) controls [Wo**ło**wiec 2013, 73-75].

The terms: financial economy, financial activity and public finances, can be referred to in some simplification [Wójtowicz 2003, 17]: the processes of collecting funds by public law entities; how these funds are collected; operation of organizational solutions serving the process of collecting and spending money and establishing and applying the law to the extent indicated [Wołowiec, Skica, and Gercheva 2014, 52-55].

Financial policy consists in the appropriate selection of financial resources for the purpose of achieving certain objectives to be achieved within the financial economy. Financial policy consists of three elements [Wołowiec 2019b, 239-41]: 1) objectives (tasks) that result mainly from the nature and specificity of the socio-economic policy of the state; 2) cash for the achievement of the objectives, together with the identification of the sources of their acquisition and expenditure; 3) entities carrying out a specific purpose (the state, local government units, enterprises, etc.).

The financial system is a set of functioning and internally organized legal and financial institutions that regulate the financial economy of the state. We can talk about the financial system of the state and the financial system of local government. The financial economy of the state is regulated by law. Financial law is a set of legal norms regulating social relations formed in connection with the processes of collecting and spending financial resources. The branches of financial law are: budget law, tax law, banking law, the insurance law, the financial law of economic operators, customs law and currency and exchange law.

The source of financial law is: 1) the Constitution of the Republic of Poland, which defines the sources of law generally applicable in Poland (Article 87).[4] It includes both sources of domestic law (the Polish Constitution, laws, regulations) and external sources in the form of international agreements ratified by Poland; 2) the source of local financial law may also be acts of local law (e.g. resolutions of local government units).

Fundamental issues relating to public finances, especially those which impose certain obligations on citizens, require a form of law in accordance with the Constitution. Legislative acts of an implementing nature (e.g. regulations of the Council of Ministers, regulations of the Minister of Finance) are intended only to regulate matters arising from the implementation of public finance laws, and not to supplement or extend them.

4. FUNCTIONS OF PUBLIC FINANCE AND BASIC TERMS OF THE PUBLIC FINANCE ACT

The doctrine most often refers to four basic functions of finance: fiscal function, the stimulus function (stimulating), redistributing function (distributing) and information and control function (evidence and control).

The fiscal function is to provide the state and other public entities with revenue intended for the performance of their tasks. The concept of fiscal

[4] The Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended.

function should not be associated with fiscalism, which is an expression of financial policy geared towards excessive financial burdens on entities and usually has a pejorative connotation. The fiscal function should be regarded as the most important, primary, carried out in the framework of the financial activity carried out by the State [Zatonatska, Liashenko, Feraniuk, et al. 2023, 15473].

The incentive function (incentive) comes down to influencing through appropriate systemic solutions and the resulting targeting of financial flows to the behaviour of different actors. This can be a positive impact, encouraging these entities to engage in certain behaviours (e.g. tax incentives, preferential loans, etc.) or a negative impact, aimed at avoiding or reducing certain behaviours (e.g. high transport duties on agricultural products, high penalties for not reporting income, etc.).

Redistribution (separation) consists of the collection of funds by a specific fund (usually budget) and distribution (disbursement) to certain entities. It can therefore be concluded that this function includes both the fiscal and redistributive functions - the division of resources into different tasks and between different entities. Like public finances, it is objective, because without it there would be no possible division of national income [Artyukhova, Tiutiunyk, Bogacki, et al. 2022, 7057].

The information and control function (evidence and control) consists in the control of the course of economic processes by means of the analysis of the formation of financial flows. Its essence is connected with the fact that every economic process has its financial side. By analyzing this financial side, conclusions can be drawn about the course of economic phenomena. The concept of public revenue is not uniform in the law, which raises a lot of criticism. Public revenue is included in a broad "area" of public funds. Among the public revenues in the Act are: public taxes and other revenues. The Act includes taxes and other compulsory monetary benefits, which are to be paid to the public finance sector by separate Acts. Public tributes include, for example, customs [Wołowiec, Myroshnychenko, Vakulenko, et al. 2022, 8407].

The group of other income generated by public sector entities includes: charges; income from property, in particular from leases and leases and other agreements of a similar nature; dividends from the capital contributed; proceeds from the sale of property, things and property rights; inheritances, records and donations in cash; other revenue obtained under separate rules, insofar as it is collected by bodies financed from public revenue or by entities subordinated to or supervised by those bodies (e.g. fines imposed by courts, tickets, etc.).

Public resources include funds from non-reimbursable foreign sources (e.g. aid funds, foreign charitable aid, etc.). The concept of public resources also includes public revenues. They can be divided into two groups. The first is cash receipts resulting from financial operations of a repayable nature in

the public finance sector. They include [Wołowiec, Kolosok, Vasylieva, et al. 2022, 8857]: proceeds from the sale of securities and from other financial operations; repayments of loans granted from public funds; proceeds from loans and credits received.

Cash inflows included in the second group are of a pecuniary nature and relate to situations of disposal of assets or obligation to provide services as part of activities carried out by entities of the public finance sector (e.g. fees charged by public health care institutions). The second group includes: revenues from privatisation of State Treasury assets and assets of local government units and revenues of entities belonging to the public finance sector obtained in connection with their activity and coming from other sources [Majchrzycka-Guzowska 2005, 52-55; Ruśkowski 2000, 165-66].

The great diversity of public revenues has led the doctrine to develop a number of criteria for their division: (1) Considering the subjects from whom public revenues are collected, we distinguish two groups: collected from natural persons; collected from legal persons and organisational units without legal personality. (2) Considering the type of budget to which they are paid, we divide public revenues into: state budget revenues; revenues of local government budgets. (3) Taking into account the criterion of function, public revenues can be divided into: primary revenues, the main purpose of which is fiscal, e.g. taxes, fees and duties (non-fiscal purposes play a secondary role); incidental revenues, the primary purpose of which is to fulfil non-fiscal objectives, e.g. repressive or preventive (penalties, fines, fines). (4) Taking into account the criterion of the final collection of income, we distinguish: revenue of a non-refundable nature, which once paid is not refundable, e.g. taxes, duties or fees; revenues of a repayable nature, which are temporary contributions to the budget, as they are refundable after a certain period (credits, loans). (5) With regard to the criterion of reciprocity of benefit, we divide public revenues into: chargeable, if the entity paying the benefit in question receives a reciprocal benefit from the state or local government (e.g. payment of a fee, involves equivalence); free of charge, if the entity paying the benefit does not receive any reciprocal benefit (e.g. payment of tax is free of charge, as nothing is received directly in return). (6) With regard to the enforceability of revenue, we distinguish: coercive revenue, i.e. revenue that can be collected through administrative enforcement (e.g. deduction from wages, etc.). Such revenues include taxes, fees, fines, penalties, duties); voluntary revenues that cannot be enforced through coercion, e.g. donations. (7) With regard to the manner in which a given revenue is collected, we distinguish: compulsory revenue, collected without the need for additional conditions; optional revenue, collected under certain legal conditions (e.g. a municipal referendum allowing the introduction of additional compulsory benefits). (8) Public revenues, from the point of

view of the criterion of the circumstances of their collection, can be divided into: ordinary, collected in normal, recurring situations; extraordinary, introduced in special circumstances. (9) From the point of view of the source of revenue, we distinguish: own revenue, referred to as "own" revenue in current legislation; supplementary (external) revenue, which is revenue of a subsidy nature, e.g. grants or subsidies. (10) With regard to the place of origin of the source of public revenue, we speak of: revenue originating domestically; revenues from abroad.

According to Article 5 of the Public Finances Act, the appropriations collected in the public finance sector may be used for public expenditure and public expenditure. Public expenditure is: repayment of loans and loans received; the purchase of securities; loans granted; payments resulting from separate laws, the source of which is revenue from privatization of assets of the State Treasury and assets of local government units; loans granted to finance tasks carried out with the participation of funds from the budget of the European Union.

In addition, the basic concepts in the field of public finance include: surplus and deficit of the public finance sector. The public sector surplus was defined as the positive difference between public revenue plus non-recoverable foreign sources and public expenditure. The negative difference between revenues and public expenditure is referred to as the deficit of the public finance sector. Revenue and expenditure and the deficit or surplus of the public finance sector shall be determined after the elimination of financial flows between entities belonging to that sector. The creation of a deficit in the public finance sector (in the form of a state budget deficit) requires the determination of the borrowing needs of the state budget [Postuła and Wołowiec 2011, 335-37; Wołowiec and Skica 2011, 5-7].

CONCLUSIONS

Sustaining the stability and improving the efficiency of public finances. According to the Strategy for Responsible Development, the priority of the Polish economic policy is to maintain the stability of public finances while supporting the so-called inclusive economic growth. The ratio of general government debt to GDP, in the horizon to 2030, should be kept below 60%. Limitations on public debt result not only from European Union (EU) regulations, but also from national law: The Polish Constitution introduces a limit on the size of state public debt to a level not exceeding 3/5 of the value of annual GDP, and the Public Finance Act contains precautionary and sanctioning procedures, triggered if the thresholds of 55% and 60% of GDP are exceeded, as well as a stabilising expenditure rule, which limits growth with respect to more than 90% of government expenditure.

Analysis of long-term growth potential indicates that productivity growth of 3.4% in the period 1990-2015, sets an optimistic outlook for Poland for the next 15 years. When analysing and forecasting long-term productivity trends, attention must also be paid to international interdependencies. In the short and medium term, changes in the German economy, Poland's main trading partner, have the greatest impact on economic activity in Poland. However, in the long term, the source of the greatest impact on the EU and Polish economies is in the United States. This country sets technological trends in the world, and at the same time the size of its economy and its financial importance (dollar settlements, the role of US financial centres) mean that it influences the world through many channels. Development trends for the Polish economy take into account development scenarios for the US economy (the baseline scenario predicts productivity growth of 1.7%). The aggregate long-term productivity growth forecast for the EU is 1.6%.

On the basis of modelling studies and detailed analyses, it is assumed that long-term productivity growth for Poland will be in the range of 1.8-3.6% (2.6% is the baseline scenario). Such an assumption is in line with OECD long-term productivity forecasts. This forecast is also consistent with long-term growth and convergence trends. The growth rate will be lower than in the quarter century after the transformation, which is due to the acceleration and scale of economic transformations at that time (introduction of a market economy, privatisation of state assets, accession to the European Union and the consequent drop in the risk premium). In the baseline and optimistic scenarios, Poland will continue to converge towards the EU average, but in the pessimistic scenario, there will be a regression in this respect.[5]

The strategy is geared towards inclusive socio-economic development. It has been assumed that the main driving force of development and the public priority is social cohesion. The strategy subordinates activities in the economic sphere to achieving objectives related to the level and quality of life of Polish citizens. It emphasises that the beneficiaries of economic development, to a greater extent than hitherto, are ordinary citizens and areas so far neglected in the development policy. It is assumed that the adoption of such a pattern will be conducive to the release of human capital, the strengthening of social capital and thus the optimal use of the development potential of the entire country. In the development process, enterprises - as suppliers of goods and services to the domestic and foreign markets, implementers of investments and taxpayers – play the main role by increasing their productivity and innovativeness. Their capital needs are met by the financial sector. The state plays the role of setting the conditions for the income distribution

[5] See Rada Ministrów. Strategia na rzecz Odpowiedzialnego Rozwoju do roku 2020 (z perspektywą do 2030 r.).

process (through social and territorial cohesion policies, redistribution and services) and the actions of all groups (regulations, institutional governance, macroeconomic environment).

The Draft Law on Amendments to the Law on Public Finance and Certain Other Laws contains provisions aimed, *inter alia*, at implementing solutions to achieve the second milestone (A2G) set for the Reform of the Budget System in the National Plan for Reconstruction and Increasing Resilience. This milestone provides for the establishment of a new budget system, which will consist of three elements, i.e.: a new classification system, a redefined medium-term budgetary framework and a new model of state budget management. The RSB was included in the KPO as it responds to the recommendation of the Council of the European Union in 2019 (the so-called CSR 1). At that time, the Council of the EU recommended Poland to take further measures to increase the efficiency of public spending, including by improving the budget system. This recommendation was upheld in 2022 and its validity confirmed in 2023. The 2019 document also pointed to the need for new instruments for better expenditure management. As the EU Council pointed out, a comprehensive reform of the budget system is complex and will be implemented in stages over several years. An intermediate milestone (A1G) on the development of the concept of a new classification system, defining the structure and detailed classifications of the single chart of accounts integrated with the budget classification, was achieved in 2022. The concept of the new classification system was published on 31 March 2022 and forms the basis for the work on classification changes. The draft amendment to the Public Finance Act introduces modifications in all areas covered by the CSR recommendations, starting with planning for 2026, in line with these recommendations. CSRs (country-specific recommendations) are individual recommendations provided to Member States in the context of the European Semester.

The proposed amendments to the Public Finance Act aim at meeting the recommendations formulated in the CSR and introduce solutions in three areas: medium-term budgetary framework, state budget management and budgetary classification. Poland, as part of the medium-term budgetary framework, undertook, *inter alia*, to analyse and strengthen the currently existing solutions concerning the Medium-term Budgetary Framework, as a result of which it is planned to modify the existing solutions in the area of multiannual planning, which will cover the forecasting of expenditures of the state budget and entities referred to in Article 122(1)(1) of the Act of 27 August 2009 on public finance, i.e.: executive agencies, budget economy institutions, state purpose funds and state legal persons, in a detail not less than that resulting from Article 21, Article 4, Article 29 and Article 31 of this Act, which define the layout of financial plans of entities.

Budgetary forecasts will be prepared, as before, using an unchanged policy rate. According to the European Commission's guidelines, an invariant policy rate assumption should be used for budget forecasting purposes. This assumption implies extrapolating revenue and expenditure trends and including in the forecasts, those activities generating budgetary effects that are known with sufficient detail.

In addition, only those actions which have been specified and accepted by the Council of Ministers should be taken into account. In the current legal state, the scenario of an unchanged policy course has been defined in Section 3(1) of the decree of the Minister of Finance of 21 March 2022 on the detailed manner, procedure and deadlines for the preparation of materials for the draft budget law.[6] It shall apply to determine the initial amounts of expenditure for the following years following the year for which the initial amounts of expenditure have been established. The project envisages the development of this solution and the extension of the planning perspective – multi-year forecasts will be drawn up for years (n) to (n+3). In subsequent budgetary planning cycles, previously prepared forecasts will be updated and developed/completed within the adopted range of years, taking into account new variables resulting from macroeconomic conditions, demographic parameters and decisions of the Government and Parliament of the Republic of Poland implemented between planning periods. As a result, the four-year horizon of the budgetary framework will be maintained in each planning period. In the light of EU regulations, the extension of budgetary planning and the presentation of projected figures beyond the financial year will contribute to a more effective and realistic budgetary policy in the medium term. The main part of the changes will be regulated, on the basis of an appropriately developed legislative delegation, in an executive legal act that regulates the process of planning the state budget.

In the area of state budget management, it is primarily assumed that: strengthening analytical and decision-making processes by improving the presentation layer of the budget law; presentation of new data within the framework of justification for the Budget Act (financial plans of funds created, entrusted or transferred to the Bank of the National Economy); the introduction of a new budgetary instrument allowing expenditure to be reallocated (changes in the structure of expenditure) during the financial year.

It is assumed that the improvement of the presentation layer will take place through the presentation in the Budget Act of the budgets of individual ministers and other disponents of budget parts (and not as previously exclusively budget parts) and will allow to obtain a complete picture of what resources the minister has at his disposal. This will increase the readability

[6] Journal of Laws item 745.

of the data in the budget bill, and consequently strengthen the analytical processes. The presentation in the justification to the Budget Act of financial plans of funds created, entrusted or transferred to the Bank of the National Economy on the basis of separate Acts will contribute to strengthening the transparency and transparency of public finances and increase the level of availability of public data. A new important element of the management of the state budget will be the establishment of a budgetary instrument allowing for the relocation of expenditure – changing its structure during the financial year while maintaining control of the Sejm. The mechanism provides for the aggregation of savings in expenditure incurred during the financial year. The "renewable" allocation reserve will be operational and will allow the Minister of Finance to initiate appropriate management actions in the course of the implementation of the state budget.

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ISSUES REGARDING THE LEGAL RECOGNITION OF REGIONAL LANGUAGES

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Abstract. The article explores difficulties in acquiring the legal status of a regional language in the light of the principles of the European Charter for Regional or Minority Languages and the Act of 6 January 2005 on National and Ethnic Minorities and Regional Language. Regional language is a new element in the European language policy. The term "regional language", however, has proved useful, albeit controversial and also conflictive. To date, only Kashubian has been granted the status of a regional language in Poland, despite numerous initiatives and efforts by the Silesian and Wilamowice communities. The reasons for the denial of legal status lie in the long-lasting dispute over the concept of language and dialect. The debate over traditional and new paradigms in linguistics, including ethnolinguistics and sociolinguistics, has proved to be important in resolving this issue.

Keywords: regional language; European Charter for Regional or Minority Languages; protection of Polish language; Silesia.

INTRODUCTION

Regulations on the protection of the Polish language are primarily contained in the 1997 Constitution of the Republic of Poland,[1] as well as in ordinary legislation. According to Article 27 Polish shall be the official language in the Republic of Poland. However this provision shall not infringe upon national minority rights resulting from ratified international agreements. Poland shall ensure Polish citizens belonging to national or ethnic minorities the freedom to maintain and develop their own language, to maintain customs and traditions, and to develop their own culture (Article 35).

The preamble of the Act of 7 October 1999 on the Polish language[2] emphasises the importance of the Polish language for national identity and culture, and the protection of these values is considered to be the duty of

[1] Constitution of the Republic of Poland of 2nd April 1997, Journal of Laws No. 78, item 483 as amended.

[2] Act of 7 October 1999 on the Polish Language, Journal of Laws of 2021, item 672 as amended.

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citizens and of all bodies, public institutions and organisations participating in public life. The provisions of the Act of 6 January 2005 on National and Ethnic Minorities and Regional Language[3] are particularly important in relation to the above. In practice, there were difficulties in recognizing the legal status of a regional language. So far only Kashubian has been granted the status of a regional language in Poland. The debate over, in particular, traditional and new paradigms in linguistics, including ethnolinguistics and sociolinguistics, has proved to be important in resolving this issue. In the author's opinion the literature in administrative law does not pay enough attention to this problem although this issue should be the subject of scientific discussion.

1. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

The basic international legal regulation on regional languages is the European Charter for Regional or Minority Languages,[4] drawn up in Strasbourg on 5 November 1992, adopted and ratified by Poland in 2009.

The European Charter for Regional or Minority Languages is generally viewed positively, as it is "a document that speaks to the cultural richness of each state, and not a tool for cultural and linguistic impoverishment of the states that ratify it" [Tambor 2011, 1]. The Act was intended to reaffirm that regional and minority languages are "recognized as a crucial value" [Sagan-Bielawa 2016, 7]. It has been emphasized that it is a consequential document, both for individual European citizens and the signatory states, although it has flaws, of which the most serious is the use of vague terminology [Bill 2011, 1].

There are fewer than 300 languages in Europe, and only about 80 of these have official status. It is estimated that around 10% of Europe's population uses minority or regional languages, of which as many as a hundred are seriously endangered [Dołowy-Rybińska 2015, 3].

Originally, the term „lesser-used languages" was used alongside references to endangered indigenous or historical languages. The forerunner of efforts to improve the recognition of these languages was the European Bureau for Lesser-Used Languages (EBLUL), a non-governmental organization established in 1982 to support and promote linguistic diversity in Europe. The organization was active until 2010 and at that time cooperated with the European Commission, the European Parliament and the Council of Europe.

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[3] Act of 6 January 2005 on National and Ethnic Minorities and Regional Language, Journal of Laws 2017, item 823.

[4] European Charter for Regional or Minority Languages, drafted in Strasbourg on 5 November 1992, Journal of Laws 2009, No. 137, item 1121.

The organization's primary focus was to support and bring together communities using languages at risk. It is worth pointing out that the original term "lesser-used languages", which was rather long and therefore cumbersome, was much more accurate in capturing the essence of the object of protection. It was subsequently replaced by the term "regional or minority languages". The linguistic literature points out that regional languages are a new element in European language policy [Wicherkiewicz 2011, 71-78; Idem 2019, 17-28].

In consequence, the European Charter of Languages may include all languages that are not recognized as official languages in a particular country. This is why a language as widely-spoken as Catalan in Spain was included in the Charter [Dołowy-Rybińska 2015, 6-7]. Hence, the Charter may apply to linguistic communities of several million, as well as to small ones numbering in the thousands or even hundreds [Sagan-Bielawa 2016, 7].

Not only has the term "regional language" proved controversial, but also sparking major disputes. This is particularly the case in Poland, where "regional language", largely due to the implementation of the European Charter for Regional or Minority Languages, is being seen as a respectable, prestigious term in contrast to dialects, which have suddenly become synonymous with underdeveloped local language variations.

From the point of view of language endangerment, three factors stand out as important. The first is intergenerational transmission of language, that is, its transmission from parents to their children. The second factor is the recognition of the language in the territory where it is spoken and an active policy to support its development, which in turn is important for the prestige of the language concerned. The third factor is the size of the language community concerned [Dołowy-Rybińska 2015, 3].

Poland has declared its intention to apply the European Charter for Regional or Minority Languages in accordance with the provisions of the Act of 6 January 2005 on National and Ethnic Minorities and Regional Language. According to the Government Statement of 22 May 2009 on the binding force of the European Charter,[5] only Kashubian has been granted the status of a regional language. According to the official report: "For decades, Kashubian has not been recognised as a separate language, but only as a dialect of the Polish language. The written form of the Kashubian language in use today is an evolution of the form proposed in 1879 by Florian Ceynowa, in 'Zarés do Grammatikj Kašébsko-Słovjnskjè Mòvé', published in Poznan."[6]

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[5] Government Statement of 22 May 2009 on the binding force of the European Charter for Regional or Minority Languages drafted in Strasbourg on 5 November 1992, Journal of Laws 2009, No. 137, item 1122.

[6] See *VIII Raport dotyczący sytuacji mniejszości narodowych i etnicznych oraz języka regionalnego w Rzeczypospolitej Polskiej w latach 2019-2020*, Warszawa 2022, p. 69.

The European Charter does not provide a definition of the term "national minorities", nor of "minority languages" or "regional languages". As indicated in literature, this is due to the disparate situation of minority groups in Europe and their functioning, hence no single definition satisfactory to all parties has been arrived at [Dołowy-Rybińska 2015, 6]. Similarly, the Framework Convention for the Protection of National Minorities[7] does not contain a definition of "national minority" since, among the representatives of the states participating in the negotiation of the text of the Convention, there was no agreement on a single, common definition and concept of national minorities.

Under the European Charter, regional or minority languages are defined as languages which are traditionally spoken in a specific territory of a state by citizens of that state who make up a group smaller in number than the rest of the population of that state and which differ from the official language(s) of that state.

The Preamble defines the objectives of the Charter and how it operates. In particular, it points out that the preservation of Europe's historic regional or minority languages, some of which are in danger of complete extinction, contributes to the safeguarding and development of Europe's cultural richness and traditions. The right to use a regional or minority language in private and public life was recognised as an inalienable right in accordance with the principles of the United Nations International Covenant on Civil and Political Rights[8] (Article 27 mandates the rights of ethnic, religious and linguistic minority to enjoy their own culture, to profess their own religion, and to use their own language) and in the spirit of the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms. The Charter emphasizes the value of multiculturalism and multilingualism, and recognises that the protection of and support for regional or minority languages should not happen to the detriment of official languages and the need to learn them. The protection and promotion of regional or minority languages in the various countries and regions of Europe is recognised as an important contribution to building a Europe based on the principles of democracy and cultural diversity, within a framework of national sovereignty and territorial integrity. The measures taken should also consider the specific conditions and historical traditions of the various regions of European countries.

Part Two of the Charter lists nine main objectives and principles on which individual States ought to base the standards for the protection

[7] The Framework Convention for the Protection of National Minorities drafted in Strasbourg on 1 February 1995, Journal of Laws No. 22, item 209.

[8] International Covenant on Civil and Political Rights, Journal of Laws 1977, No. 38, item 168.

(policy, legislation and practice) of their languages. These principles include, i.a., recognition of regional or minority languages as an expression of cultural richness, the need to take strong action to promote regional or minority languages for their protection, the need to facilitate or encourage the use of regional or minority languages in speech and writing, in public and private life, to provide appropriate forms and means for the teaching and learning of regional or minority languages at all appropriate levels, and finally, to promote the study and research of regional or minority languages in universities or similar scientific institutions.

The specific commitments of the signatory states are incorporated in Part Three by identifying and designating the areas and principles in which their regional or minority languages should be supported. Each area contains a number of sub-areas – options – from which each state selects, for each of the designated languages, the obligations it will be able to fulfil. The areas indicated in the Charter are: education; judicial authorities; administrative authorities and public services; media; cultural activities and cultural objects; economic and social life; cross-border exchanges [Dołowy-Rybińska 2015, 37; Bill 2011, 1].

2. ACT OF 6 JANUARY 2005

The scope of its regulation stipulated in Article 1 of the Act of 6 January 2005 on National and Ethnic Minorities and Regional Language includes matters related to the preservation and development of the cultural identity of national and ethnic minorities, the preservation and development of the regional language, the civic and social integration of persons belonging to national and ethnic minorities, as well as the manner of implementing the principle of equal treatment of persons irrespective of their ethnic origin. It also defines the tasks and competences of government administration bodies and local government units within the scope of these matters.

From the outset, the Act evoked many conflicting emotions [Malicka 2017, 55-78]. It is highlighted in the literature that it took more than twenty years to work on the approved wording of the Act, and that "the numerous controversies that the consecutive drafts generated are symptomatic of the approach of state authorities and social organizations to the issue of national minorities living on the territory of Poland" [ibid., 56]. The issue that aroused the most controversy during the work on the law was the protection of the regional language. The early version of the draft law[9] (Draft Law on National

[9] Draft Law on National and Ethnic Minorities in the Republic of Poland of 11 January 2002, Sejm, 4th term, Sejm print No. 223.

and Ethnic Minorities, print no. 223) did not provide any regulation of the regional language at all and did not specify its definition [Kurzępa 2019, 39].

In the law that was finally passed, Chapter 4 – Regional Language contained a few provisions referring to the regional language, though other articles of the Law, provided for minority languages, also apply to the subject issue (in.a. Articles 7-15).

The way regional language, the subject of this statutory regulation also included in the regulation's title, was described should be critically appraised. In Article 19 of the Act, instead of providing a definition of regional language, the legislator simply lists its various characteristics and does so in a defective manner.

The Act on National and Ethnic Minorities and Regional Language, stipulates in Article 19(1) that a "regional language within the meaning of the Act, in accordance with the European Charter for Regional or Minority Languages", is considered to be a language that is "traditionally spoken on the territory of a State by its citizens who constitute a numerically smaller group than the rest of the population of that State" and at the same time differs from the official language of that State; the definition does not embrace dialects of the official language of the State or migrant languages. In turn, Article 19(2) of the Act states that Kashubian is a regional language within the meaning of the Act.

Firstly, compliance with the European Charter for Regional or Minority Languages is over-declared in the Act. It is emphasized in the literature that the "understanding of the Act" is not unequivocally "compatible" with the European Charter, as this document does not distinguish between "regional" and "minority" languages, hence the definition formulated in the Act has a different meaning in the European Charter, where it refers to virtually all minority indigenous languages [Wicherkiewicz 2011, 74; Idem 2014]. Moreover, the discrepancies in the scope and manner of regulation of the two Acts make it difficult to assess the compatibility of this law with the act which, under the Constitution, takes precedence in application. This assessment, moreover, does not rest with the ordinary legislator, but with the Constitutional Court and other courts, as well as the doctrine.

Secondly, the reference to "the territory of a given state" is dubious as it suggests a reference not only to Poland but also to other states, which is absurd. Similarly, the phrase "by its citizens who constitute a numerically smaller group than the rest of the population of that State" implies residents of Poland other than Polish nationals. Pursuant to the principle of the rationality of the legislator, one would have to make the absurd assumption that the regulation does not apply only to Poland, but also to a foreign state, referring to displaced persons from another state, e.g. Indonesia or Pakistan. Further on, however, the legislator excludes the issue of migrant languages

in this regard. Perhaps, therefore, this construct could be applied to Polish repatriates from Argentina or Kazakhstan, but it is debatable whether such protection makes sense in Poland.

Thirdly, the above-mentioned references to the "criteria of the Act" are overturned by the legislator's unambiguous conclusion: "The regional language within the meaning of the Act is the Kashubian language". Such wording suggests a departure from objective criteria, i.e. linguistic analysis of whether Kashubian or any other regional speech (in linguistic terminology: ethnolect) is a language or just a dialect. This also attests to the political nature of the statutory solution.

With regard to the regional language, Article 19 of the Act provides for appropriate application of the provisions of Articles 7 to 15, which regulate the situation of ethnic minority languages, with the reservation that the number of inhabitants of a municipality (indicated in Article 14 as the number of inhabitants of a municipality belonging to a minority) should be understood as the number of speakers of the regional language identified in the last census. In turn, Article 20 of the Act sets out rules for the implementation of the right to learn a regional language or to study in a regional language, as well as obligations of public authorities in this respect. The right of speakers of a regional language to learn or receive education in that language is implemented following the principles and the procedure laid down in the Act of 7 September 1991 on the Educational System.[10] Public authorities are obliged to take appropriate measures to support activities aimed at preserving and developing the regional language [Hauser and Szustkiewicz 2019, 24-25]. Important is also the right enables the use of a minority language in contacts with the municipal authority, although it will only be an auxiliary language, used in addition to and not instead of Polish [ibid., 30-34]. Measures may also include funds transferred from the budget of the local authority to organizations or institutions engaged in the preservation and development of the regional language.

3. RECOGNITION OR GRANTING THE STATUS OF A REGIONAL LANGUAGE

The status of a regional language has been granted only to Kashubian, despite numerous initiatives and efforts made by the Silesian and Wilamowice communities.

With regard to the last initiative taken by the Silesian community, the President of the Republic of Poland, Andrzej Duda, on the basis of Article

[10] Act of 7 September 1991 on the Educational System, Journal of Laws 2016, item 1943 as amended.

122(5) of the Constitution of the Republic of Poland of 2 April 1997, refused to sign the Act of 26 April 2024 amending the Act on National and Ethnic Minorities and Regional Language and certain other acts, eventually referring the Act to the Sejm for reconsideration on 29 May 2024.[11]

There are numerous doubts regarding this issue. The basic concern boils down to the question: Is it a matter of recognising a regional language on the basis of criteria which may or may not be objectively fulfilled, or is it, in fact, a matter of granting the status of a regional language driven by unclear political motives?

So far no consensus has been reached in the course of legislative efforts undertaken by various sides of the political scene in Poland. In principle, regional languages have been denied legal recognition on the grounds of various "substantive" arguments. However, have uniform and precise criteria for the recognition of a language variety (ethnolect) as a regional language been developed in this process?

Refusal to recognise the legal status of a regional language has for years been rooted in a dispute over the concepts of language and dialect. The dispute over traditional and new paradigms in linguistics in particular, including ethnolinguistics and sociolinguistics, has proved important in resolving this issue.

While it is generally accepted that regional languages are those that belong to the same family as the state language and that the group speaking them does not have a fully developed, distinct national identity other than the dominant national identity [Dołowy-Rybińska 2015, 6-7], the term itself is used imprecisely in sociolinguistics, ethnolinguistics and in classifications and typologies of languages [Wicherkiewicz 2011, 73].

The European Charter covers neither the dialects of the official language of the state nor the languages of immigrants. The 2005 Act does likewise. The legislator thus appears to refer to the common language and the commonly accepted findings of linguists. However, linguists point out that neither of these two pieces of legislation "clarifies and defines the concept of dialect or the concept of regional language or language in general" [Tambor 2011, 2].

The opinion of the Council of the Polish Language at the Presidium of the Polish Academy of Sciences of 20 May 2011, drawn up for the Minister of Internal Affairs and Administration, is cited to this day as evidence of an unequivocal linguistic assessment, or more precisely, assessment dictated by traditional linguistic paradigm. This opinion included a statement claiming that "the speech of native inhabitants of Silesia was and is considered by probably all Polish linguists to be a dialect of the Polish language,

[11] President of the Republic of Poland 2024, Legislative Veto to the Act on National and Ethnic Minorities, Chancellery of the President of the Republic of Poland.

encompassing many different dialects,"[12] from which some politicians, e.g. President Andrzej Duda in 2024, drew a conclusion that it "does not meet the formal conditions" of the aforementioned Convention and Act.

Elsewhere in this opinion, the Council of the Polish Language (CPL) opined that: "the status of the language spoken by Silesians should depend on how it is treated by Silesians themselves, but also on how it is perceived by users of the Polish language."[13] A significant change in the Council's position is also worth noting. At the meeting on 1 June 2021, the CPL's Presidium reminded that "the Council of the Polish Language is authorized only to provide opinions or, alternatively, share its position on a linguistic matter, but it is not within its competence, as defined in the 'Act of 31 October 1999 on the Polish language', to make judgements on any issues (apart from matters of spelling and punctuation), especially those concerning sociolinguistic issues."[14]

However, linguistic literature stresses that it is not possible to make a precise distinction between language and dialect, as there are no clearcut definitions that would allow to distinguish between the two concepts with the help of linguistic tools. This is particularly true of the concept of "regional language" as defined by the European Charter and the 2005 Act, since these are legal concepts, including the so-called "auxiliary language", created and popularized precisely by these Acts. The notion of "regional language" has no equivalent in linguistic terminology, "is not a linguistic category and is not a linguistic concept". No objective criteria or tools have been developed to distinguish a language from a dialect [Tambor 2024, 8].

A term used extensively today is "ethnolect" understood as the language spoken by a particular social group. The term comes in handy as "it carries no secondary connotations, contrary to such terms as 'language' and 'dialect'" [Wyderka 2011, 4].

The notion of regional language is a "legal-political category" and therefore "linguistic knowledge is not fully applicable to it. Linguists and their statements play merely an auxiliary function" [Tambor 2011, 1]. Similarly, in 2012 in the Sejm (the lower chamber of the Polish parliament), the author of the bill granting Silesian the status of a regional language emphasized that "a regional language is a socio-legal concept and not a linguistic one" and that the proposed amendment to the law specifically concerns "extending the status of a regional language to embrace the Silesian ethnolect. It is a matter of formally registering the Silesian language as a second regional

[12] See https://www.sbc.org.pl/dlibra/publication/100941 [accessed: 01.06.2024], p. 3.

[13] Ibid.

[14] Communiqué of the Presidium of the Republic of Poland of 2021, Communiqué of the Presidium of the Council for the Polish Language of 1 June 2021 on the language spoken by inhabitants of Wilamowice, https://rjp.pan.pl/dokumenty-rady?view=article&id=2031:wilamowice&catid=52:komunikaty-rady-jzyka-polskiego [accessed: 01.06.2024].

language alongside Kashubian, which currently enjoys legal protection and state support" [Plura 2012, 4]. On the basis of sociolinguistic criteria, the contemporary Silesian language is treated as an independent literary language that has emerged in the last two decades from the Silesian dialect of Polish. The following conditions are considered sufficient for the recognition of a separate Silesian language: the existence of a wide range of users who treat their regional ethnolect as an independent linguistic code; the functioning of literary Silesian in the public sphere; the existence of Silesian writing that is diverse in form, theme and style; and advanced work on codification [Jaroszewicz 2022, 77].

The largest global linguistic endeavor is the US-based Ethnologue, which has been published regularly since 1951 and is an updated catalog of all the world's languages. The Ethnologue is also currently the most widely used classification standard for over 7,000 of the world's natural languages [Cornwell 2019, 1]. The latest 27th edition provides another updated overview of the world's languages. There, Silesian is presented as the native language of Poland, i.e. the Polish state, and although it is not supported by public institutions, it is still the standard language used at home and in the local community [Eberhard, Simons, and Fennig 2024].

The concept of regional language as a language policy term has thus become a point of reference for numerous regional and local communities [cf. Kijonka 2016]. The literature points out that "for the wellbeing of the people living in Silesia, the recognition of the Silesian language(s) as a regional language is of colossal importance. Marginalized in the German state, forcibly repolonized in the Polish state, they can finally gain a sense of dignity and communal identity that is respected" [Szmeja 2011, 1].

Language is considered to be one of the most important factors for the expression of community in today's world [Tambor 2014, 39] and an essential element in the formation of regional identity [Synak 1993, 114-26].

In 2008, it was pointed out in the literature that "the most significant criterion from the point of view of a democratic law-based state is, undoubtedly, the fact that more than 56,000 Polish citizens have declared Silesian as their language of choice spoken at home. In the context of such a big number of speakers it is indeed regrettable that the administrative authorities, institutions or experts responsible for Polish language policy regarding regional or minority languages are not ready to engage in a dialogue. Over 50 thousand declarations of Polish citizens are simply being ignored ..." [Wicherkiewicz 2008, 1]. This view is still valid, but it referred to the 2002 census, whereas in the most recent census in 2021 the number increased tenfold, reflecting not an improved situation of the Silesian language, but rather the strengthening of regional identity.

CONCLUSIONS

The regulations on regional languages in the Act on National and Ethnic Minorities and Regional Languages of 6 January 2005 emerged at the last stage of the legislative process and contain a number of legislative shortcomings. The Polish Act, almost twenty years old, refers to Poland as "the territory of a given state" and to Poles as citizens of "that state". This wording should clearly be corrected.

The more serious, practical consequences relate to the fact that the term "regional language", as used in the Act, has proved useful, albeit controversial and also conflictive. The relationship between language and region is becoming increasingly more important. The regional movement in Silesia has evolved into a "regional issue", acquiring a political character. It was born from the sense of injustice, unfulfilled aspirations and unmet needs experienced by the community [Rusek 2015, 121-33; Jałowiecki 2000, 282-84]. The frustration, fueled by the non-recognition of the Silesian language, can be felt in Silesia, yet any change for the better may be a matter of the distant future [Rusek 2015, 131]. Absence of systemic solutions regarding language varieties (ethnolects) in Poland is palpable.

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ADAPTATION OF PREGNANT WOMEN IN THE CONTEXT OF SOCIO-DEMOGRAPHIC FACTORS AND LABOUR LAW

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Abstract. Occurrence of pregnancy puts a woman in a completely new situation not only physically, but also psychologically and socially. The process of adaptation to pregnancy is individual, depending on a number of factors such as age, current life plans, family and professional situation, or the ability to adapt emotionally. The aim of the study was to assess the degree of adaptation of pregnant women while determining the factors that can affect this process. The analysis considered education, professional activity, standard of living, housing conditions, number of past pregnancies, assessment of marriage/relationship, and parameters of sexual life included in the McCoy Female Sexuality Questionnaire (MFSQ). In the studied group of respondents, factors facilitating women's adaptation to pregnancy were professional activity and satisfaction with their partner in terms of sexual relations. This process was negatively affected by having children.

Keywords: adaptation; pregnancy; stress; motherhood; sexuality; professional activity.

INTRODUCTION

Holmes and Rahe included pregnancy in their Social Readjustment Rating Scale (SRRS) with a value of 40 out of 100 points, indicating the importance of this event in a woman's life [Holmes and Rahe 1976]. It is not uncommon for modern women to experience role conflict as they try to cope with both domestic, marital, and socio-professional responsibilities.

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For women who lack the ability to adapt quickly and completely to these changes, pregnancy may trigger negative emotions. Some scientific works on the specificity of the transition to motherhood, including the period of pregnancy, draw attention to the significance of this event, which can lead to stressful situations or maternal distress [Emmanuel and Winsome 2010; Light and Fenster 1974]. The aim of the study was to assess the degree of adaptation to pregnancy of the surveyed women and to determine what factors may shape this process. This study analysed education, professional activity, standard of living, housing conditions, number of past pregnancies, assessment of marriage/relationship and sexual life parameters included in the McCoy Female Sexuality Questionnaire (MFSQ) [McCoy 2000].

1. MATERIAL AND METHODS

The prospective research program included a group of 101 pregnant women between the ages of 17 and 41 who visited either gynecological clinics or private practices to confirm their pregnancy. 42 pregnant women were excluded from the study due to: cessation of sexual activity for medical and individual reasons – 19 respondents (45.2%), not consenting to participate in the study – 13 women (30.9%), and incomplete completion of the questionnaire research, preventing data processing – 10 respondents (23.9%). 59 respondents were qualified for the final analysis. Regarding the sphere of sexual life, the surveys were prospective in nature, and were conducted four times starting from qualification for the program (pregnant women up to 8 weeks into their pregnancy – 1st survey) consecutively at 12 weeks – 2nd survey, 24 weeks – 3rd survey and 36 weeks of pregnancy – 4th survey.

The research project was submitted and positively reviewed by the Bioethics Committee of the Medical University of Lublin.

Respondents with demographic characteristics such as age and education similar to the population of pregnant women in the Lublin Voivodeship were recruited for the study. The selection of research locations was purposive, with the intention of including women from a provincial capital city (Lublin), which is the largest academic center in eastern Poland, with schools and educational institutions at all levels. The city also boasts one of the highest ratios of students and academic staff to population in Poland. The selection of the second research center was made randomly from among other cities of similar size in the Lublin region. Biłgoraj is a small county town whose healthcare system serves both urban residents and surrounding rural areas.

A feature of the selection of respondents was also the type of health care provided, which the respondents used, with a distinction between paid

health care, which brings together a more affluent group of women, and free health care under contract with the National Health Fund, which is more often used by women of low or medium socioeconomic status.

The research tool was a questionnaire consisting of 3 parts-a general section on social status, a section characterizing attitudes toward pregnancy, and the McCoy Female Sexuality Questionnaire (MFSQ) relating to female sexuality. The effectiveness of the McCoy Female Sexuality Questionnaire (MFSQ) has been clinically proven many times.

The first part covered: age, place of residence, marital status, education, professional activity, standard of living, housing conditions, number of past pregnancies, assessment of marriage and planning for current pregnancy.

The part on women's adaptation to pregnancy included 8 statements on the evaluation of pregnancy in personal, partnership and family aspects. The statements referred to partner relationships during this period, self-esteem, feelings of fear and anxiety related to the expectation of offspring, perception of pregnancy as a difficult time, full of sacrifice and dedication. The test was based on a typical Likert scale, with five possible responses: strongly agree, agree, no opinion, disagree, strongly disagree. Positive statements (1, 3, 5, 7) were rated as follows: strongly agree – 5 points, agree – 4 points, no opinion – 3 points, disagree – 2 points, strongly disagree – 1 point. For negative statements (2, 4, 6, 8), the reverse scoring was applied [Łepecka-Klusek and Jakiel 2009]. For the purposes of the current study, an additional assumption was made: if women's adaptation of women to pregnancy is correct in the entire study group or the percentage of maladaptive cases is extremely low, a comparison will be made in the group of women who adapt well, based on the median of the obtained results – women who adapt well with scores from the test threshold of 16 points to the median, and those who adapt very well above the median in the test.

The MFSQ questionnaire consists of 19 items rated on a 7-point scale combined into 5 collective domains (subscales): I – sexual interest (6 questions), II – sexual satisfaction (3 questions), III – vaginal lubrication (3 questions), IV – orgasm (4 questions), V – sexual partner (3 questions). Undoubtedly, the advantage of the MFSQ questionnaire is the ability to obtain an overall assessment of sexual life and individual domains.

Interpretation of the above partial results and the global score relates to a linear relationship – a higher score corresponds to better overall sexual functioning, as well as with respect to individual categories [McCoy 2000]. Approval was obtained from the *Mapi Research Trust* (France) to use the MFSQ questionnaire in the presented research project.

2. STATISTICAL ANALYSIS

For measurable traits, the normality of the distribution of analyzed parameters was assessed using the Shapiro-Wilk test. The Mann-Whitney U test was applied to compare independent groups. For more than two groups, the Kruskal-Wallis test was utilized. To compare multiple dependent variables, the Friedman ANOVA test was employed. Logistic regression was used to assess the probability of experiencing poorer pregnancy adaptation, enabling the analysis of data in a manner where the dependent variable contains probabilities ranging from 0 to 1. In the medical problem under consideration, the dependent variable is dichotomous: 1 represents good adaptation of pregnant women, while 0 represents very good adaptation to pregnancy. The regression coefficient (Z) obtained from the analysis, after logarithmic transformation, falls within the range [0,1], indicating the probability of weaker adaptation to pregnancy concerning specific clinical cases. A significance level of $p<0.05$ was adopted, indicating statistically significant differences or dependencies.

3. RESULTS OF STUDIES

The average age of the respondents was 27.97 ± 5.15 years. The majority of the respondents had higher education (n=28; 47.46%), 38.98% (n=23) had secondary education, and 13.56% (n=8) had vocational education. Among the respondents, 79.66% (n=47) were married, 16.96% (n=10) were unmarried (in an informal relationship with the father of the child), and 3.38% (n=2) were single/divorced. More than half of the respondents were employed (n=36; 61.02%), while 38.98% (n=23) were unemployed.

The majority, 79.66% (n=47) of the women declared having very good housing conditions (independently large apartment or house with amenities), the next 18.65% (n=11) of respondents had good conditions (small apartment/room with kitchen or independent room at parents'), and only 1.69% (n=1) had poor housing conditions (shared room).

Almost half of the respondents stated that the standard of living they have is good (n=29; 49.15%). For 20.34% (n=12) of the respondents, their material status/standard of living was high, while 28.82% (n=17) of women had average conditions, and 1.69% (n=1) described their material status/standard of living as poor.

Primiparous women accounted for 69.49% (n=41), while the remaining 30.51% (n=18) of the respondents already had children. More than half of the respondents admitted that the current pregnancy was unplanned for

them (n=30; 50.85%), while for 49.15% (n=29), it was the result of conscious procreative plans.

The majority of women described their relationship with their husband/partner as relatively successful (n=26; 44.07%). The second largest group of respondents (n=24; 40.68%) considered their relationship to be very successful, while 13.56% (n=8) of women stated that the relationship with their partner could be better. Only 1.69% (n=1) of the respondents considered their relationship with their partner to be completely unsuccessful in their opinion.

3.1. Women's adaptation to pregnancy

The average score of adaptation to pregnancy obtained by the surveyed women was 28.61 ± 3.43 (Me=29), indicating proper adaptation across the entire study group. The Cronbach's alpha coefficient was 0.55, and the mean correlation between questionnaire statements was only 0.15. Therefore, an additional assumption was used, dividing women based on the median value (Me=29) into two groups. In the first group, women who scored up to 29 points were considered to adapt well to pregnancy, while those scoring above 29 points were grouped in the second group, considered to be very well adapted. Women with good adaptation accounted for 45.76% (n=27), while 54.24% (n=32) of the respondents were very well adapted. The statistical analysis did not reveal a significant relationship between women's adaptation to pregnancy and their age, place of residence, level of education, material standard of living, housing conditions, satisfaction with their relationship with the child's father, or whether the pregnancy was planned. However, the analysis showed a near-significant relationship (p=0.05) between the process of adapting to pregnancy and women's occupational activity. It was found that professionally working women were significantly more likely to demonstrate very good adaptation to pregnancy (63.89%) compared to non-working women (39.13%).

Furthermore, the relationship between women's adaptation to pregnancy and having children reached statistical significance (p=0.03). It was observed that surveyed women who already had children (33.33%) significantly less frequently exhibited very good adaptation in subsequent pregnancies compared to women who were primiparous (63.41%).

3.2. Assessment of factors influencing women's adaptation problems to pregnancy

The assessment of factors influencing women's adaptation to pregnancy included variables such as age, place of residence, number of pregnancies,

planning of pregnancy, occupational status, and evaluation of sexual parameters in the 6-8th week of pregnancy based on the MFSQ scale.

Stepwise logistic regression analysis with quasi-Newton estimation was used to analyze the effects of all the mentioned factors in the study group. The results showed that only two of the several variables analyzed had a statistically significant ($p<0.05$) effect on the constructed model and were therefore included in the regression equation. This is confirmed by the final incremental test value $x^2 = 36.19$ for the goodness of fit. The obtained model significantly ($p=0.01$) differed from the model with only the intercept, indicating a good fit to the obtained data (see Table I).

The calculated values of the parameter estimators of the model, which are confirmed to be significant by the t-Student and Wald tests, allow describing the model along with estimation errors. The model, described by the included variables, is as follows: logit P= – 1,29 professional activity – 0,22 sexual partner

The risk of poorer adaptation to pregnancy decreases by *0.28 times* in professionally employed women and by *0.80 times* with a higher rating of the partner in terms of sexual relationship in the 6-8th week of pregnancy.

Table I. Results of logistic regression analysis of analyzed parameters influencing adaptation to pregnancy

n=59	Constant B0	Professional activity	Rating of sexual partner in 6-8th week of pregnancy
Rating	5,763	-1,289	-0,225
Standard error	2,121	0,605	0,101
t-value	2,717	-2,132	-2,222
p-value	0,009	0,037	0,030
-95%CL	1,513	-2,500	-0,427
+95%CL	10,013	-0,078	-0,022
Wald's Chi-square	7,380	4,547	4,935
p-value	0,007	0,033	0,026
Odds ratio (unadj.)	318,308	0,276	0,799
-95%CL	4,541	0,082	0,652
+95%CL	22310,590	0,925	0,978
Odds ratio (adj.)		0,276	0,084
-95%CL		0,082	0,009

4. DISCUSSION

G.L. Bibring, one of the first psychoanalysts to focus on understanding the psychological changes preparing for motherhood, perceived pregnancy as one of the significant developmental crises in a woman's life [Bibring, Dwyer, Huntington, et al. 1961]. She noted that pregnant women experience a specific constellation of emotional changes resembling a crisis, which mobilizes energy and prepares them to engage in new roles, while also being a time for building a new identity. It is emphasized that during pregnancy, due to the ease of reactivating childhood memories, anxieties and latent conflicts that were previously repressed may be aroused [Davis and Narayan 2020]. Furthermore, the waiting period for offspring naturally promotes experiencing heightened levels of anxiety [Dipietro, Costigan, and Sipsma 2008]. The authors understand this as a sign of women's efforts to resolve conflicts with their maternal objects and to shape their identity. Sometimes the adaptation process can be so burdensome that it manifests as weakened functioning in various aspects of a pregnant woman's life, including sexuality. The biopsychosocial dimension of changes during pregnancy may serve as a triggering or exacerbating factor in sexual difficulties [Brtnicka, Weiss, and Zvěřina 2009; Erenel, Eroğlu, Vural, et al. 2011; Morof, Barrett, Peacock, et al. 2003; Sottner, Zahumensky, Krcmar, et al. 2007].

Numerous scientific publications regarding women's attitudes during the transition to motherhood, starting from pregnancy, emphasize the lack of fluidity in this process and the associated experience of stressful situations [Ribeiro, Gondim, Scorzafave, et al. 2022; Biaggi, Conroy, Pawlby, et al. 2016], anxiety [Dipietro, Costigan, and Sipsma 2008], distress or unhappiness [Armstrong 2002], as components of the phenomenon known as maternal distress experienced by mothers [Saur and Dos Santos 2021; Sjöström, Langius-Eklöf, and Hjertberg 2004; Emmanuel and Winsome 2010].

It seems that women's adaptive abilities to pregnancy may be determined by various factors, including previous experiences related to motherhood and childbirth, the current situation of the woman, her psychoemotional and socioeconomic status, as well as personality type [Biaggi, Conroy, Pawlby, et al. 2016; Wiklund, Edman, Larsson, et al. 2006]. Considering the intensity of anxieties and concerns depending on the advancement of pregnancy, it appears that pregnant women experience them least during the second trimester [Wilska, Rantanen, Botha, et al. 2021; Onah, Iloabachie, Obi, et al. 2002].

In the conducted study assessing women's adaptation to pregnancy, among several analyzed factors that could influence the attitudes of the participants, such as age, place of residence, education, standard of living, having children, planning the current pregnancy, professional activity, satisfaction with the relationship, and evaluation of sexual parameters in the

6-8th week of pregnancy based on the MFSQ scale (desire, lubrication, satisfaction, orgasm, sexual partner), only three showed statistical significance. The study demonstrated that factors positively influencing the adaptation process of the respondents were professional activity and satisfaction with the partner in terms of sexual relationship. Having children among the respondents was identified as a factor weakening the adaptation process to subsequent pregnancies. It may seem surprising that age, planning the current pregnancy, or standard of living, attributes commonly correlated with the process of adapting/women's attitudes to the existing pregnancy, did not have a significant influence ($p>0.05$).

In the publication by Gupton et al. [Gupton, Heaman, and Wang-Kit Cheu 2001] and Da Costa et al. [Da Costa, Larouche, Dritsa, et al. 1999], pregnancy planning also showed no significant correlation with the occurrence of emotional tensions or maternal distress. It is possible that in this context, unwanted pregnancy may have a stronger impact than unplanned pregnancy [Ross, Sellers, Evans, et al. 2004]. Many researchers note that the professional activity of pregnant women is associated with feelings of anxiety and stress [Kim and Chung 2018; Widowati, Kundaryanti, Ayuwan, et al. 2021; Lojewski, Flothow, Harth, et al. 2018]. In the study conducted by the researcher, the professional activity of the respondents was identified as a facilitating factor in adapting to the new situation. In the context of this result, the aspect of satisfaction with professional achievements, feelings of fulfillment, stability, and a lesser sense of loss regarding entering motherhood could be discussed. In the light of the current economic situation, frequent adjudication on temporary incapacity for work during pregnancy may be related to employers, reluctance to employ women of reproductive age, and may be a stress factor for women related to fear of competitiveness on the labor market or further professional development. In Poland, complications of pregnancy, childbirth and the postpartum period are one of the most common causes of sickness absence in general.[1] The reason for such a large number of medical certificates on temporary incapacity for work among pregnant women is primarily the diseases diagnosed in the mother and pregnancy complications. The basic provisions regulating the conditions and safety of employment of pregnant women are the Act of 26 June 1974 – the Labour Code (section VIII entitled "Employee rights related to parenthood")[2] and the Regulation of the Council of Ministers of 3 April 2017[3] on the list of strenuous, hazardous or harmful to health and may adversely affect their health, pregnancy or breastfeeding. The list is the basis for

[1] See https://www.zus.pl/documents/10182/39590/Absencja+chorobowa_raport_2023+.pdf/9be10057-0b2b-74f5-d397-2de1eefb1259?t=1710850664000 [accessed: 24.09.2024].

[2] Journal of Laws of 2024, item 878 as amended.

[3] Journal of Laws item 796.

determining (within the work regulations prepared by the employer) the type of work that, due to the severity and/or conditions of the working environment in a given workplace, cannot be performed by pregnant women. The general provisions of the Labour Code state that the working time of pregnant employees cannot exceed 8 hours a day and that a pregnant woman cannot be employed at night or delegated (without her consent) outside the place of permanent work. In own research, women's professional activity was analysed only on the basis of declarations in the first trimester of pregnancy. It seems reasonable to take into account in future research the impact of sickness absence in subsequent trimesters of pregnancy on the adaptation process and psychosocial functioning of women. It would also be valuable to learn about women's beliefs about their role in family and social life in the context of their willingness to continue professional activity or not during pregnancy. However, it is worth noting that the subjective assessment of the standard of living among pregnant women did not significantly differentiate the study group. In an era of increasing living standards and higher social expectations, it was anticipated that the financial benefits of professional activity would have a more significant influence on women's ability to adapt to pregnancy. For example, an analysis conducted on a group of 177 pregnant women in Sweden indicates generally better well-being in early pregnancy among respondents with higher economic status [Sjöström, Langius-Eklöf, and Hjertberg 2004; Nicholls-Dempsey, Badeghiesh, Baghlaf, et al.2023]. It is beneficial to refer to the study by Łepecka-Klusek and Jakiel (2009), which took place under similar conditions (Lublin Voivodeship) and utilized the same test to examine adaptation to pregnancy. In a retrospective study, the authors evaluated the adaptation of women to pregnancy in two groups, depending on the method of conception: natural and assisted reproductive technology. The adaptive difficulties identified by the researchers were significant for those better off than for those worse off, and furthermore, the necessity to give up professional activity was strongly associated with a weakening of adaptive capacities to pregnancy.

Karacam analyzed 1039 Turkish pregnant women for the occurrence of anxiety, stress, and depressive symptoms based on factors such as self-worth, marital satisfaction, employment status, domestic violence, unwanted pregnancy, etc. Their results indicate a higher risk of experiencing symptoms of decreased psychoemotional functioning during pregnancy among housewives/non-working women, attributed to financial dependence on their partners and the low status of women in traditional, patriarchal Turkish families [Karacam and Ancel 2009]. Among other factors contributing to the emergence of anxiety and depression during pregnancy, the authors listed marital problems, low self-esteem, recent stressful events, lack of support

from others, young age, and low level of education [Biaggi, Conroy, Pawlby, et al. 2016; Ohman, Grunewald and Waldenström 2003].

This study's finding that having children is associated with lower likelihood of very good adaptation to pregnancy diverges from most previous research [Deave, Johnson, and Ingram 2008] Most scientific reports on this topic have linked adaptive problems with primiparous women. Due to the lack of experience in childcare, the changes experienced during pregnancy are more strongly felt by primiparous women, making them particularly susceptible to adaptive problems during pregnancy [ibid.; Modh, Lundgren, and Bergbom 2011]. In this case, negative experiences of women from previous pregnancies and childbirth could be a source of anxiety and concerns about the course of the current pregnancy, although this issue was not considered in this study. Mauren O'Reily, observing the experiences of women in their second pregnancy, identified several problematic aspects of being a mother to another child. The author mentions sadness associated with the loss of a unique bond with the first child, concerns about meeting the demands of raising a larger number of children, or even planning the organization of life for a growing family [O'Reily 2004]. Similarly, Petersen (2009) while examining parents' concerns during pregnancy, noted anxiety about the reaction of older children to the birth of a sibling, although these were few cases. Data on the age of the children could contribute significantly to understanding these issues [Petersen, Paulitsch, Guethlin, et al. 2009].

In the presented study, a higher rating of the sexual partner (MFSQ) was accompanied by easier adaptation to pregnancy. The domain of the sexual partner in the MFSQ questionnaire referred to satisfaction with the man as a lover, friend, but also included his potential erection problems. Positive perception of the man in these aspects may be associated with having particularly strong mutual understanding between partners, providing support, and facilitating the woman's adoption of a constructive attitude in the new situation. However, it is puzzling that overall satisfaction with the relationship did not significantly differentiate how respondents adapted to pregnancy. Therefore, it is difficult to explain the causal nature of this situation: could it be that the relationship with the partner, emphasizing the sexual aspect (sexual partner domain – MFSQ), more strongly influences adaptation/attitude towards pregnancy than overall satisfaction with the relationship?

When attempting to relate the obtained results to studies by other researchers, it seems necessary to outline the limitations of the analysis. A one-time study of women's adaptation in the early stages up to 6-8 weeks of pregnancy may constitute a significant weakness due to the unique nature of early pregnancy. The initial period of pregnancy often exhibits an ambivalent attitude in women, even when the pregnancy was planned and anticipated, or conversely, an extremely narcissistic fantasy of being the

perfect mother and creating the perfect child. The realistic possibility of transformation in women's initial attitudes as pregnancy progresses does not provide entirely certain and reliable conditions for the conducted analysis. Therefore, it seems appropriate to conduct further in-depth research in this area and to ensure the psycho-emotional health of pregnant women in the care provided by midwives and doctors. This is particularly important considering the proven impact of prenatal anxiety on both the mother and the child. Anxiety disorders during pregnancy may predispose to somatic problems such as hypertension [Garza-Veloz, De la Rosa, Ortiz-Castro, et al. 2017], psychiatric disorders such as depression during pregnancy, postpartum depression, and anxiety disorders later in life [Biaggi, Conroy, Pawlby, et al. 2016; Rwakarema, Premji, Nyanza, et al. 2015; Huizink, Menting, Oosterman, et al. 2014]. Anxiety disorders during pregnancy also pose a greater risk of preterm birth, worse newborn parameters assessed on the Apgar scale, and behavioral disorders [Sandman, Glynn, Schetter, et al. 2006; Wallwiener, Goetz, Lanfer, et al. 2019; Hasanjanzadeh and Faramarzi 2017; Adamson, Letourneau and Lebel 2018].

CONCLUSIONS

The conducted analysis revealed that the pregnant women under study generally exhibited good and very good adaptation to pregnancy. In the surveyed group of respondents, factors facilitating adaptation to the ongoing pregnancy were professional activity and satisfaction with the partner in terms of the sexual relationship. Conversely, having children negatively impacted this process.

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EDUCATION FOR SUSTAINABLE DEVELOPMENT FROM THE PERSPECTIVE OF GERMAN SOLUTIONS

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Abstract. The aim of this article is to present selected German solutions in the field of education for sustainable development and an attempt to assess the possibility of their implementation in Poland. The starting point of the considerations is the conviction that successful social and ecological transformation is only possible through cooperation between nations, business and society, and education. Among other things, the decisions of the Federal Constitutional Court and the position of the German Council for Sustainable Development postulating an innovation policy were presented. The analyses presented led to a conclusion regarding the partial possibility of implementing German solutions in the field of sustainable development in Poland. The specificity of individual countries and societies and the consideration of their characteristic values in the planning of educational activities must not be forgotten

Keywords: education for sustainable development; German Council for Sustainable Development; innovation policy for sustainable development.

INTRODUCTION

The issue of education for sustainable development has become one of the key elements linking educational and economic processes in recent years. Measures in this field are being implemented especially by the European Union.

Socio-ecological transformation is one of the key issues analysed and implemented in the field of sustainable development. Related to the concept of sustainable development is the issue of sustainable regional development, which entails countering excessive or unreasonable interregional disparities. It primarily covers processes related to fair energy transition combined with responsible regional development. The issue of implementing energy transition measures should refer to solid educational grounds. This stems from the fact that educational measures are crucial for the transformation process, being key factors driving economic change through educating professionals and ensuring social stability.

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For several years, the issue of how to implement sustainable development has been the subject of a heated debate in Poland. When planning specific measures, including educational ones, it is worth paying attention to solutions which have already been in place in Germany. That country was chosen for two reasons. First, the processes related to implementing sustainable development are more advanced in Germany than in Poland. Second, the educational issues raised in Germany, which have an impact on developing the concept of the European educational area by the European Union, may soon become EU-wide solutions and, as such, they are likely to be incorporated by Poland.

The purpose of this article is to attempt at addressing the question of whether the socio-ecological transformation process, both postulated and implemented in Germany, along with the educational measures undertaken in this field, can become the basis for corresponding activities in Poland. The research hypothesis is that actions aimed at socio-ecological transformation and education for sustainable development, although they cover identical climate protection issues, must take into consideration the diversity of nations and societies, as well as development objectives and directions assumed by individual countries. To analyse the issue under consideration, the monographic and analytical methods will be employed, along with the historical method although the use of the latter will be minor.

1. EDUCATION FOR SUSTAINABLE DEVELOPMENT – A CONCEPTUAL FRAMEWORK

The issue of sustainable development has been raised in the socio-economic space of modern societies, including Poland, for several years. Recently, due to transformation processes aimed at energy transition, it has become particularly valid. Any transformations in the field of ecology would hardly be possible without taking into account the educational dimension. Education is a choice of values, and without an axiological reference it ceases to be so. It is particularly important in the human development process to focus on values that "belong to the underlying social ideal, are universal, have a universally applicable character, and are worth striving for regardless of the changing external conditions. They form the basis and substance of undertaken tasks. Without fundamental values that are common to all mankind, learning is only a process the purpose of which arises from *ad hoc* needs. Minimising the importance of universal values is a threat to education, translating into the uncertainty of life and existence of humans and their environment" [Szewczak and Szewczak 2020, 116].

Ecological education, together with education for sustainable development, cannot be devoid of reference to certain universal values. It should

be highlighted that "the underlying objectives of ecological education are to raise ecological awareness and to shape the eco-friendly attitudes of society, encompassing knowledge, skills and emotional attachment. Moreover, ecological education is an important element of education, aimed at building a society whose members accept the interdisciplinary principles of a sustainable and balanced development of the country, as well as take measures to improve it, and are aware of the need to care for the common cultural and natural heritage. Ecological education is also the underlying condition for changing social practices towards a sustainable consumption model" [Szewczak and Szewczak 2024, 295-96].

It therefore appears clear that ecological education issues should be based on a broad range of values, which cannot always be assigned to supranational areas due to multiple variations (e.g., socio-cultural, economic, religious). Can ecological education be considered (or is it considered) supranational or European education? In a certain aspect, it can. On the one hand, Poland is a member of the European Union. On the other hand, each Member State carries out its educational tasks based on its own set of values and principles. It is worth referring, at this point, to reflections shared by Blessed Cardinal Stefan Wyszyński, who perceived education from the angle of belonging to and participating in the life of the nation. He emphasised "the educational meaning of national culture for the overall development of a human being, including especially family values necessary for the proper development" [Rynio 2024, 189]. Every nation and every state, while striving for cooperation and peace among nations, must not forget its history and values inscribed in its national identity.

To conclude, it is worth noting that any processes aimed at fostering sustainable development, also taking into account the issue of energy transition, should be based on education, including education for universal values.

2. THE ENERGY TRANSITION PROCESS IN THE EUROPEAN UNION WITH A FOCUS ON GERMANY

It should be pointed that out "the major transformation towards climate-neutral business and lifestyles can only be made a success through collaboration between nations, the business world and society. Systemic action, i.e., an integrated approach across policy fields and sectors, is required. This action must recognise that human societies are inextricably linked with the biosphere that they call home. Prompt action is also needed to limit global warming and irreversible damage as much as possible, and in order for us to have at our disposal solution options which enable meeting the future challenges of the transformation process. What's needed are systematic and effective climate protection policies covering all transformation areas,

an absolute reduction in the consumption of resources, and a systematic application of the principles of avoidance, reduction and efficiency increase with regard to final energy consumption."[1]

From a wider point of view, "the European Union is amplifying a far-reaching transformation process towards climate neutrality by 2050, with the European Green Deal (EGD) and its climate protection legislation that includes a tighter reduction target for 2030. To achieve this, it focuses on a new growth strategy which aims to sever the link between economic growth, on the one hand, and the consumption of resources and environmental impact, on the other. The EU is striving for a climate-neutral, resource-efficient and competitive economy. The EGD seeks to combine emission reduction in all the relevant areas with measures for the preservation of biodiversity, the circular economy, sustainable mobility, good-quality employment, a social balance of the burdens related to transformation and the sustainable orientation of the financial markets. These intentions will form the framework for climate protection policy in the EU and its member states in the future. The EU now faces the challenge of achieving the EGD's ambitious climate targets while making use of economic resources as sparingly as possible ('efficiently')."[2]

As regards Germany, in terms of "formulating future climate protection legislation in the country, in addition to European requirements, the stipulation of the Federal Constitutional Court that the present generations should not excessively exercise their freedoms at the expense of future generations should, in particular, be taken into consideration. With its Climate Change Order dated 24 March 2021, the Federal Constitutional Court derives an obligation of intertemporal guarantees of freedom from the basic rights and the government objective of environmental protection (Article 20a of the Basic Law [GG]), with this obligation needed to be clarified by the legislature ("specification prerogative"). Germany's Basic Law requires the legislature to also apportion opportunities of freedom across generations reasonably, i.e., in a conservational manner, in the interest of the constitutional objective of climate neutrality. In relation to this principle of intergenerational equity, the court stipulates the key points of a fair intergenerational spread of burdens and thus also benchmarks for an "intergenerational contract" for the protection of the earth's climate system."[3]

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[1] German Council for Sustainable Development. Climate neutrality. Options for setting the right course and ambitious delivery. Position paper 2021, p. 14.

[2] Ibid., 19.

[3] Ibid., 20.

3. INNOVATION IN THE FIELD OF SUSTAINABLE DEVELOPMENT

Innovations are one of the factors which make successful socio-ecological transformation, including energy transition, possible. This standpoint has been adopted by the German Council for Sustainable Development [Rat für Nachhaltige Entwicklung (RNE)] – an independent advisory body of the Federal Government, operating continuously since 2001. The Council is composed of 15 officials representing civil society, business circles, science and politics. In its official paper of 2022, titled "Innovation Policy for Sustainable Development", the Council advocated boosting innovation, considering it to be the key to successful socio-ecological transformation. Innovation is expected to provide solutions to diverse global challenges, including climate change, biodiversity loss, resource depletion, social gaps and political instability. It appears indispensable to combine instruments consisting of regulations, incentives and research funding oriented towards pursuing sustainable development goals. Administrative reform is also essential. In addition to financing public infrastructure, private capital must be secured. The German Council for Sustainable Development calls for increased financial support for interdisciplinary and transdisciplinary research. Career paths, research institutions and projects, as well as funding criteria, must correspond, to a greater extent, to sustainable development goals. Equal opportunity and qualification programmes for educating professionals must be promoted. The ongoing innovation processes must engage whole societies while social projects must be systematically supported. Global challenges can only be effectively addressed from the global perspective. Therefore, new commercial agreements should include innovation clauses based on the UN Sustainable Development Goals (SDGs). It is essential to integrate both developing and newly industrialised countries into the global innovation landscape through international scientific and research cooperation. This is the only way for their own socio-ecological transformation to succeed.[4]

The Council advocates that innovation policy is necessary for sustainable development. With the outbreak of war in Ukraine, there has been a threat of diminishing interest in contemporary crises (climate crisis, extinction of species, natural resource depletion, growing inequalities). The UN SDGs and the goals adopted at the Paris Summit should be implemented, *inter alia*, by strengthening the power of the economy and society. The national spending on research and development in Germany should be raised from over 3 to 3.5 per cent in 2025. It also appears indispensable to support technical innovation (e.g., in the field of storage and hydrogen technology). Why

[4] Rat für Nachhaltige Entwicklung (2022). Innovationspolitik für nachhaltige Entwicklung. Stellungnahme des Rates für Nachhaltige Entwicklung, p. 2-3.

is an innovation policy for sustainable development necessary? A global perspective and international cooperation are of exceptional importance in this regard and special attention should be paid to problems such as biodiversity loss and climate crisis, digitisation, inequalities and the sharp decline in social cohesion, growing political instability which has been dramatically exacerbated by the war in Ukraine, and the consequences of the COVID-19 crisis. These can only be effectively addressed by taking into consideration global relationships. The prerequisites for a successful reorientation of innovation policy in Germany include a holistic approach to innovation, which is in line with international sustainable development goals, a clear scope of responsibilities, the readiness to engage all stakeholder groups, a high degree of openness to innovation, the readiness to implement changes, and integration with European and international innovation initiatives.[5]

A holistic innovation policy covers all fields of activity and requires a new form of cooperation, as each policy areas involve certain innovation potential that needs to be activated, i.e., industrial and financial policy, distribution policy, transformation policy, sufficiency policy, science policy, education policy, foreign policy, and development policy. This broad perspective requires shifting the paradigm while the transformation process, duly accounting for the precautionary principle, is consistent with this idea.

The German Council for Sustainable Development highlights the priority role of the state in this regard, along with a responsible participation of other actors in the fields of economy, science and society. The objective of a democratically legitimised policy at the federal, state and municipal levels includes, first of all, stimulating innovative measures aimed at implementing the SDGs by establishing the appropriate framework. Actions recommended at the state level include: a) drawing up legal regulations to encourage innovation and research funding aimed at implementing the SDGs, b) recognising the need to develop a cross-departmental innovation strategy aimed at implementing the SDGs (harmonising the existing federal strategies and programmes, i.e., the high-tech strategy, the biodiversity strategy, and the resource efficiency programme – ProgRess), c) implementing the administrative reform oriented towards a culture of cooperation between state departments and institutions, characterised by openness and focused on learning, d) securing public budgets for innovations in the public sector (e.g., in the fields of procurement and logistics), e) adopting legal regulations fostering innovation (e.g., the 2021 proposal of the Federal Ministry of Economy and Climate Protection concerning living labs), f) supplementing the sustainable development strategy with innovation indicators which, in addition to the level of research and development spending, also

[5] Ibid., p. 6.

provide information on the impact of innovation activities on sustainable development, g) introducing evaluation at each implementation stage (i.e., before, during and after) in relation to specific measures. In order to speed up the process of implementing certain solutions, it is recommended to establish an advisory board composed of representatives of the government, science and civil society, who would evaluate the results and make recommendations, h) developing communication strategies, both at the government level and pertaining to individual federal states, i) fostering social innovation by providing sustainable solutions, e.g., expanding rail transport in addition to car traffic, and j) sustaining the activities of the Federal Agency for Disruptive Innovation and establishing the Agency for Transfer and Innovation as a means of accelerating the socio-ecological transformation in the regions (e.g., by including non-profit research institutes).[6] The measures indicated above are crucial in terms of achieving the defined energy transition objectives.

The German Council for Sustainable Development has also formulated proposals pertinent to economy, pointing out that enterprises, employers and employees are key drivers of process and product innovation, as they translate research results into innovation. Measures aimed at economy include: a) stimulating innovation for a circular economy, climate neutrality and lower resource consumption, b) developing strategic markets with innovative and resource-saving products and services; new branches of industry with energy efficiency and renewable energy sources, c) securing private capital for the financing of innovation for sustainable development, mobilising increased venture capital for start-ups in Germany, e.g., from pension funds and insurance companies, d) supporting innovation through new business models and start-ups which are oriented towards lower resource consumption, e.g., by extending the shelf life of products and recognising the recyclability and reusability issues already at the product design stage, and e) strengthening alternative work forms and models (e.g., home office, research leave, partial retirement, time off work for undertaking voluntary activities).[7]

To sum up, it is important to note that the actions undertaken by the Council are not only consistent with the actions resulting from the rights and obligations of the state but they are, above all, oriented towards cooperation between different sectors, i.e., a multi-stakeholder cooperation, expected to bring positive outcomes to all parties engaged in it.

[6] Ibid., p. 7-8.
[7] Ibid., p. 9-10.

3.1. Innovation in the educational space

The German Council for Sustainable Development also offers its comments and suggestions on the implementation of measures of an educational character. Science (research) and education are prerequisites for any transformation process. The educational system is not only the foundation of science but also a key factor for economic performance and innovation through educating professionals and ensuring social stability. It is necessary to take into consideration the entire educational chain – from kindergarten to higher and vocational education. Proposed activities in the field of science include: a) allocating increased funds for interdisciplinary and transdisciplinary research, b) including new indicators in the evaluation of scientific work and involving stakeholders from outside the scientific community, c) making promotions in the field of science dependent on the transdisciplinary character of transformational knowledge, d) orienting research institutions towards sustainability and transformation research, e) expanding living labs and experimental space, f) developing financing criteria and evaluation instruments by taking into consideration the sustainable development perspective (both *ex-ante* and *ex-post*). Proposed changes to the educational system are as follows: a) recognising the need for innovation in the educational system in order to respond to the shortage of qualified staff, b) involving enterprises in staff training with socio-ecological transformation in mind, and c) strengthening and expanding research, projects and creativity in the educational system; enabling students to undertake commitments related to developing innovative and complex solutions, whether independently and in teams, to deal with risks and uncertainty, to manage conflicting goals, and to adopt a long-term thinking approach, and d) supporting voluntary activities as tools of fostering interest in socio-ecological transformation measures.[8] The activities indicated above fulfil the objectives of socio-ecological education in a complementary manner.

The successful transformation process also depends on changes in society, on raising awareness among citizens, households and civil society organisations to gain trust, and on accepting innovative ideas and policy changes. Proposed measures are as follows: a) incorporating social science knowledge into innovation policy: consumer behaviour, perceptions, habits, learning blockages, citizens' interests, and focus on consensus-based solutions and social engagement, b) supporting living labs as tools in overcoming crises and increasing resilience, accelerating transformation by changing consumption patterns and building new social practices, c) employing the Open Social Innovation working method as a public call for the whole society (including civil society, the private sector and the state) to participate

[8] Ibid., p. 12.

in developing solutions in the social innovation process, and d) creating transdisciplinary forums for citizens, politicians and business representatives as platforms to discuss the development of science and technology, and ideas for the future in relation to sustainable development challenges.[9]

Both the analysis of the Council's calls regarding education and science for sustainable development and research results indicate that the most expected effects occur when multi-level cooperation with different stakeholders takes place, which aims to build a kind of cooperation network in the field of environmental education [Singer-Brodowski et al. 2020, 1]. At the same time, research indicates that both German students and teachers believe that information on education for sustainable development should be more extensively presented across the educational system [Grund and Brock 2020, 1]. In conclusion, it is worth emphasising that educational measures are an important factor in the socio-ecological transformation forming part of sustainable development.

CONCLUSIONS

Sustainability issues have been gradually emerging for several years in Poland's socio-cultural, economic and educational space.

Education aimed at socio-ecological transformation cannot be implemented without reference to values. This implies assisting students in becoming independent, coherent and ready to live well and responsibly, in line with the values that apply in the socio-cultural space. "Adopting positive values, including honesty, integrity, conscientiousness, generosity, and commitment, helps one to function in society as an active individual, capable of striving for the common good. Students cannot function outside the value system. When they do not seek the truth, they become dishonest, irresponsible for their words and actions, conflicted with themselves and of little use to other people" [Magda-Adamowicz 2023, 20].

Education in general, including education for sustainable development, should take into account universal values, traditionally present in the national, state and cultural space.

Issues concerning environmental education were analysed by taking into account the trends present in German pedagogy. This was primarily due to the advanced energy transition processes taking place in Germany, which is also reflected in the activities of the German Council for Sustainable Development.

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[9] Ibid., p. 12-13.

The above reflections clearly indicate the need for continuous improvement of educational processes in the field of sustainable development. Is it possible to extrapolate German solutions under Polish conditions? Apparently, the difference between the two countries in their approaches to economic development and education is significant. The general recommendations proposed in Germany are consistent with Polish postulates and actions, but actions for environmental education must take into account the specificity of the given society, nation and state.

However, there is certainly a radical need to propose a solution in Poland comparable to an advisory body as the German Council for Sustainable Development, in which representatives of the scientific, economy and political circles could work on the goals and tasks of education for sustainable development, taking into account EU legislation and the unique character of the Polish educational system.

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THE LEGAL CONDITIONS FOR IMPLEMENTING A COMPLIANCE MANAGEMENT SYSTEM IN PUBLIC ADMINISTRATION

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Abstract. The implementation of compliance management systems is surely related to the introduction of integrated compliance management models which will be adopted separately in business and in the public administration sector. The introduction of legal changes in the form of the Whistleblower Protection Act should be followed by a prompt adoption of legal regulations concerning the implementation of the compliance system in public administration. A prerequisite to the successful implementation of the compliance management system in public administration is to undertake measures aimed at promoting compliance culture in public administration.

Keywords: public administration; Polish legal system; European Union directives; Whistleblower Protection Act.

INTRODUCTION

The legal basis for implementing a compliance management system results from both European Union laws and domestic regulations included in the Polish legal system. The Polish legal system has been waiting long for a law governing the issues that arise from relevant European Union directives, as it was nearly four years. The Whistleblower Protection Act, enacted in June this year and in force as of the end of September, was anticipated not only by European institutions but also by Polish consumers and those taking active part in economic life. While compliance systems have been functioning in business for several years now, the public administration sector has never encountered such solutions before.

This area has not been subject to in-depth legal research, as the institution of compliance management system in public administration has not been functioning until recently. The studies that are referred to in the theoretical part of this paper take into account the grounds for establishing the compliance management system in the public administration sector. In the analytical part, selected legal provisions related to the process for the implementation of the compliance management system in the public administration sector have been analysed.

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The objective of this paper is to analyse the legal aspects of implementing the compliance management system in the public administration sector. The research hypothesis is the statement that legal regulations concerning the implementation of the system must be organised not only in general terms but also need to allow for the specific nature of certain public administration sectors (from the perspective of personal and material scope). The proposed research field was analysed with the use of the doctrinal legal research method, the monographic method and, in a minor extent, the historical method.

1. PROTECTION OF WHISTLEBLOWERS

The work on preparing a domestic act as a response to EU legal regulations lasted for nearly four years. The Whistleblower Protection Act is aimed at implementing the provisions of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.[1] It is noted that "the legal regulations applicable in the European Union demonstrate how insufficient level of protection in one Member State negatively affects the functioning of the other Member States and the European Union as a whole" [Socha and Wołoch 2022, 82]. The new Act replaced the term "a person who reports breaches" with the term "whistleblower", which the legislator justified with the fact that the notion is present in social perception in the context of breaches of law.

First, the subject-matter of the legal regulations should be analysed. The statutory subject-matter of the legal regulation includes: 1) the conditions for providing protection to whistleblowers reporting or publicly disclosing information on breaches of law, 2) measures for the protection of whistleblowers reporting or publicly disclosing information about breaches of law, 3) the rules of procedures for internal reporting of breaches and following up on reports, 4) the rules for reporting breaches to a public authority, 5) the rules for public disclosure of information on breaches, 6) the responsibilities of the Commissioner for Human Rights related to reporting information on breaches of law, 7) the responsibilities of public authorities in relation to reporting information on breaches of law and to following up on such reports.[2] The enumerated subject-matter of the legal regulations demonstrate the full scope of the functioning of the Act.

The detailed analysis of the scope of the Act is inherently related to the conceptual framework that has been assigned to this issue. The first notion to be discussed here, namely "information on breaches", is of key

[1] OJ EU L 305 of 26.11.2019, p. 17 as amended.

[2] Article 1 of the Act of 14 June 2024, the Whistleblower Protection, Journal of Laws No. 928 [hereinafter: WP].

importance. Such information should be understood as "information, including reasonable suspicions, about actual or potential breaches, which occurred or are very likely to occur in the legal entity in which the whistleblower has participated in a recruitment process or in other negotiations preceding the conclusion of an agreement, works or has worked or in another legal entity with which the whistleblower is or was in contact through his or her work, and/or information about attempts to conceal such breaches of law" (Article 2(3) WP).

Another important term is "follow up" which should be understood as "any action taken by the recipient legal entity or public authority, to assess the accuracy of information included in the report and to counteract the breach of law reported, including through actions such as an investigation, institution of inspection or administrative proceedings, prosecution, an action for recovery of funds, or the closure of the procedure carried out as part of internal reporting of breaches and taking follow up measures or procedures for external reporting and taking follow up measures (Article 2(1) WP). Both these notions fully illustrate the scope that has been stipulated in the Act.

Both the above concepts in the context of the issue under analysis in respect of public administration refer to the definition of a public authority which means "supreme and central government administration authorities, local branches of government administration, local government entities, other state authorities and other entities performing statutory tasks in respect of public administration, competent for taking follow up measures" (Article 2(6) WP). This is an exhaustive definition of a public authority which covers a full range of administration entities. In line with the legislator's thought, it is worth providing more specific information which would provide guidance, counterparties to whistleblowers, as to exactly which specified public administration authorities are covered by the provisions of the Act.

The key issue in understanding the Act is to provide a detailed explanation of the term breach, which means "an act or omission that is unlawful or aimed at circumventing the law, and which concerns: 1) corruption, 2) public procurement, 3) financial services, products and markets, 4) prevention of money laundering and terrorist financing, 5) product safety and compliance, 6) transport safety, 7) protection of the environment, 8) radiation protection and nuclear safety, 9) food and feed safety, 10) animal health and welfare, 11) public health, 12) consumer protection, 13) protection of privacy and personal data, 14) security of network and information systems, 15) the financial interests of the State Treasury of the Republic of Poland, local government entities, and the European Union, 16) the internal market of the European Union, including competition and state aid rules, and rules of corporate tax, 17) the constitutional human rights and freedoms – in relationships between individuals and public authorities and not

related to the spheres listed in points 1-16" (Article 3(1) WP). The list was taken from the aforementioned Directive and constitutes a comprehensive approach to the issues of compliance. Due to the focus of the discussion relating to the public administration sector, it is worth exploring the spheres of public finance and corruption.

Moreover, the legislator provided the possibility to report information on breaches concerning internal regulations or ethical standards in place at a given legal entity, established by this legal entity under generally applicable legal regulations and in compliance with such laws. This wording is particularly important from the point of view of promoting ethical conduct among public officials, which seems to be an issue that is pushed aside in the operations of public administration.

The legislator further compiled a comprehensive list defining a whistleblower who, according to the Act, may be "a natural person who reports or publicly discloses information on breaches acquired in the context of his or her work-related activities, including as a 1) an employee, 2) a temporary worker, 3) a person performing work under other legal basis than a contract of employment, including under civil-law agreements, 4) entrepreneur, 5) registered commercial representative, 6) shareholder or partner, 7) member of a governing body in a legal entity or in an organisational unit without a legal personality, 8) a person performing work under the supervision and management of a contractor, subcontractor or supplier, 9) an intern, 10) a volunteer, 11) a trainee, 12) an officer within the meaning of Article 1(1) of the Act of 18 February 1994 on the provision of retirement benefits for the officers of the Police, Internal Security Agency, Intelligence Agency, Military Counter-Intelligence Service, Military Intelligence Service, Central Anti-Corruption Bureau, Border Guard, Marshal's Guard, State Protection Service, State Fire Service, Customs and Revenue Service, Prison Service, and their families (Journal of Laws of 2023, Items 1280, 1429 and 1834), and a soldier within the meaning of Article 2(39) of the Homeland Protection Act of 11 March 2022 (Journal of Laws of 2024, Items 248 and 834)" (Article 4(1) WP). In my opinion, based on the analysis of the above list, it has certain inaccuracies which might ultimately affect the functioning of the entire compliance management system. Particularly controversial issues concern interns and volunteers, as the whistleblower's actions do not necessarily need to be taken in good faith, because such individuals might not feel any connection with the entity where they are trained or do volunteer work, or are willing to act in bad faith if they have no prospects for employment there. It seems that such comprehensive and in-depth catalogue of matters covered by the Act should also concern persons who have long-term connections with a given entity.

Furthermore, it should be noted that a person who is awarded the whistleblower status enjoys special protection which mainly includes the prohibition of retaliation, or any attempts or threats of such actions. If work, "was, is, or is expected to be performed under a contract of employment, the whistleblower may not be subject to retaliation, consisting in: 1) refusing to enter into a contract of employment, 2) terminating employment with or without notice, 3) failure to make a temporary employment contract or a contract of employment for an indefinite term upon the termination of a trial period, failure to enter into a contract of employment for an indefinite term upon the termination of a temporary employment contract – where the whistleblower could reasonably expect that such contract would be made with him/her, 4) reducing remuneration for work, 5) withholding promotion or omitting a given person in promotion procedures, 6) omitting a given person in the award of work-related benefits other than salary or reducing the amount of such benefits, 7) transferring to lower-rank positions, 8) suspending a given person in his/her performance of work or official duties, 9) transferring the whistleblower's existing work duties to another employee, 10) an unfavourable change to the place of work or working hours, 11) a negative performance assessment or employment reference, 12) imposing or administering disciplinary measures, including financial penalties or similar measures, 13) coercion, intimidation, or ostracism, 14) harassment, 15) discrimination, 16) unfavourable or unfair treatment, 17) withholding training or omitting the whistleblower in the selection of employees to take part in training aimed to improve their professional qualifications, 18) unjustified medical referrals, including psychiatric examination referrals, unless separate legal regulations provide the possibility to refer an employee to such examinations, 19) actions aimed at hindering future employment in the sector or industry on the basis of a sector or industry-wide informal or formal agreement, 20) causing financial loss, including loss of business or loss of income, 21) other non-pecuniary harm, including infringement of personal interests, particularly harm to the whistleblower's good reputation" (Article 12(1)). It is an extensive list which meets all applicable standards and is properly constructed.

The above elements of the personal and material scope of the Act seem to be fully justified, with minor exceptions regarding the personal-scope issues related to such persons as interns or volunteers. The material scope indicated in the said Act will surely be reviewed in the process of implementing laws referring to whistleblowers. From the perspective of public administration, it is necessary to point to two aspects. Firstly, the material scope of the Act is significant from the perspective of the areas which are particularly vital to public administration, i.e., public finance and corruption issues. Secondly, it is a positive thing that the legislator has provided

the possibility to include in the compliance system the issues of responding to the breach of internal regulations and/or codes of ethics, as it is often indispensable and crucial for the full transparency of clerical work. It should also be noted that, according to the views found in the literature on the subject, "whistleblowing plays a crucial role in a democratic society, allowing a better response to a call for public life transparency and a verification of the functioning of public institutions and persons in public positions" [Pietruszka 2020, 128].

2. THE COMPLIANCE SYSTEM IN PUBLIC ADMINISTRATION

The implementation of the compliance management system in the public administration sector began after the Whistleblower Protection Act entered into force. Before that, the system was not fully in place in public administration, although some of its elements could have been implemented. It should be stressed that "the flexible and comprehensive approach to compliance highlights the fact that, in addition to the legal obligations organisations are bound by, they may independently define their compliance targets that reach beyond the statutory framework and outline them in their compliance policies, as non-obligatory compliance rules. The main tasks of compliance functions are: a) identification or monitoring of risk resulting from violations of legal norms and internal regulations; b) early warning, understood as an assessment of the potential impact of changes taking place in the regulatory setting on the functioning of a given organisation; c) provision of advice to senior management on observing internal regulations and procedures adopted in line with legal guidelines, and in the matter of new products and services from the compliance perspective; d) identification and evaluation of all management's actions or decisions that might pose or increase risk of non-compliance or the risk that the organisation's reputation might be infringed" [Wiatrak 2012, 132-33]. It can be stated with certainty that compliance functions are aligned with public administration functions.

It should be stressed that the process of transposing European Union law to the Polish legal order took much too long, and "as regards the public administration sector, the discussion on current trends in administration management processes has been held for years. Without doubt, the application of a code of good practices, in combination with modern management and legal regulations, will allow a full integration of compliance processes into the public administration system" [Szewczak 2020, 164]. The ultimate success in the process of implementing the compliance management system in the Polish legal system through the enactment of the Whistleblower Protection Act will surely have a positive influence on the issue. Legal commentators are right to say that "a proper and effective compliance

programme in this sphere is to ensure that statutory and contractual obligations are fulfilled, including in particular the effective protection of employees' lives and health. Compliance might also contribute to the success of enterprises and reduce the number of events which affect a company's reputation or result in the payment of high fines or suspension of permits and licences, which might make further business operations impossible. Of particular significance is the need to intensify compliance measures aimed at protecting employees' lives and health through detecting and effectively penalising persons who are responsible for failing to ensure safety measures to prevent accidents at work, either due to fraudulent intent or negligence. If penal and/or administrative liability is proven, it is necessary to apply relevant, useful and effective sanctions that would deter other entities from causing further harm" [Ramirez Barbosa 2023, 61-63].

All processes related to the implementation of the compliance management system in the public administration sector must go hand in hand with the process of adopting a compliance culture. "A preliminary list of tasks related to compliance culture" is said to include "a) a requirement to formulate a list of values and organisations, b) a proper verification of work candidates, c) assurance of uniform treatment of all organisation members, d) regular training on compliance issues, e) ongoing compliance communication outside training, f) provision of information about successes in the sphere of compliance" [Jagura and Makowicz 2020, 33-34]. It is, of course, only an example of a task list. It is by no means exhaustive, and it is bound to be extended as the implementation of the compliance management system in the public administration sector advances.

It goes without saying that the process related to the implementation of compliance culture is not a short-lasting one, and will not be "forced" through the application of statutory provisions. Public administration, both at the government and local-government levels, will need to engage in a number of actions with a view to developing compliance culture. The list of tasks related to compliance culture is far from being final and exhaustive. It is also worth noting that the development of compliance culture is due to be closely related to the development of artificial intelligence and its role in public administration. It is believed that employers will be responsible for "determining a) the scope and basis of administrative liability for damage caused by artificial intelligence, b) the technical properties of artificial intelligence ensuring safety and human control over its operations, c) the administrative structure dealing the certification of artificial intelligence devices or services" [Stasikowski 2024, 146]. In such specific sphere as the implementation of the compliance system in public administration, artificial intelligence is bound to become a considerable challenge.

In conclusion, it should be noted that the process of implementing the compliance management system in public administration will not be an easy task to complete quickly, as it requires specific preparation of public administration staff, particular to the implementation of compliance culture.

CONCLUSIONS

The implementation of the compliance management system in public administration is not a process that can be considered completed once the Whistleblower Protection Act entered into force. In fact, it is only the beginning of an arduous road to the development of compliance culture in the public administration sector. The implementation of compliance management systems is surely related to the introduction of integrated compliance management models [Biggeri, Borsachi, Braito, et al. 2023]. Integrated models depend on the sphere that is shaped by the compliance system. It can be said with certainty that such models will be adopted separately in business and in the public administration sector.

Based on the above analysis, emphasis should be placed on two aspects. First of all, the introduction of legal changes in the form of the Whistleblower Protection Act should be followed by a prompt adoption of legal regulations concerning the implementation of the compliance system in public administration. This particularly refers to the functioning of local government entities and their organisational units, and to a number of other entities, for example local government cultural institutions or educational establishments. Detailed legal provisions should directly touch upon the specific nature of individual entities and the range of their operations. Secondly, a prerequisite to the successful implementation of the compliance management system in public administration is to undertake measures aimed at promoting compliance culture in public administration.

It should be asserted that after four years of waiting for the national transposition of the EU directive, the process of implementing the compliance management system is sure to advance, in particular in respect of its adoption in the public administration system which is also experiencing rapid transformation and facing numerous challenges. The final outcome will depend on the due application of the system in the operations of public administration entities.

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THE PROBLEM OF INTERNALLY DISPLACED PERSONS IN GEORGIA AS A CONSEQUENCE OF RUSSIA'S AGGRESSION IN GEORGIA*

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Abstract. Living in one place for years creates strong ties between people, their shared cultural heritage, and the place itself, hence providing both security and a sense of belonging. When people are forced to leave places that were once their homes, they experience the loss of these important connections and, consequently, they are becoming internally displaced persons (IDPs) within their homelands.

Keywords: Georgia; war; Ukraine; internally displaced persons.

INTRODUCTION

Living in one place for years creates strong ties between people, their shared cultural heritage, and the place itself, hence providing both security and a sense of belonging. When people are forced to leave places that were once their homes, they experience the loss of these important connections and consequently, they are becoming internally displaced persons (IDPs) within their homelands.

International human right instruments apply to all individuals within the borders of the state and are crucial during both peace and war. While they do not explicitly impose a person's "right to stay", they create a framework of rights that collectively prohibit forced displacement [McFadden 1996, 27-28]. Often, internal displacement is seen as temporary condition

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however, in reality, IDPs suffer from lasting vulnerability [Rekhviashvili 2015, 3]. Although their fears, needs, desires are similar with those of refugees, they do not have international status and therefore, do not receive special protection [Schimmel 2022, 505].

Georgia has experienced the huge wave of internal displacement twice (1991 to 1994 and 2008) [Rekhviashvili 2015, 4]. According to the UNHCR as for 2009, more than 220 000 persons were registered as IDPs. Approximately 138. 000 persons were displaced following Russian war against Georgia in 2008, with around 108, 600 of them having returned to their homes.[1] The problems and concerns of IDPs were taken more seriously after the war in 2008, when Georgian political elite finally admit that the return of IDPs to their homes in foreseeable future was not realistic.

Therefore, they shifted their focus on long-term solutions which was not the case for example with the first wave IDPs. Following the war in August 2008, the government shifted its focus to the socio-economic needs of IDPs rather than solely on their return. As a result, it implemented important measures and made considerable efforts to develop appropriate legal frameworks. Nevertheless, this does not mean that the process was flawless. In fact, state-provided solutions were often criticized such as poor housing quality, lack of transparency in resettlement of IDPs and other concerns [Rekhviashvili 2015, 4-6].

1. LEGAL FRAMEWORK

Internally displaced persons have individual and different needs, even though they share some common requirements such as safety and dignity. Therefore, it is of vital importance for the state to carefully consider these needs and implement all necessary measures, including legal frameworks, to address their unique circumstances, rather than applying general rules [Hickel 2001, 700]. In this regard, it is always important to assess if the state meets its international obligations as a signatory party of various legal instruments at the regional or international levels. Georgia, a country that is party to all widely recognized legal instruments, including European Convention on Human Rights (ECHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR) has a duty to fulfill obligations derived from these instruments. This is particularly important since Georgian Constitution recognizes international treaties joined by the country as supreme over

[1] Protection of Internally Displaced Persons in Georgia: A Gap Analysis, The UN Refugee Agency, 2009, 5.

national legislation.[2] At the earlier stage, the major criticism was that only Georgian Constitutional Court was referring to the ECHR and international law, while other general courts or state officials were hesitant to apply international treaties to address all those essential issues and concerns of IDPs that were not covered by national law.[3]

In Context of Georgia, it is important to mention that since 1992, soon after the forcible internal displacement took place in Georgia, the government issued more than 200 normative acts (some specific and some general) addressing issues related to internal displacement. Georgia was among pioneering states to enact law specifically for IPDs on June 28, 1996, and it has been amended several times [Mooney 2011, 193]. However, there was a strong demand for improvements in certain areas, such as allowing persons to exercise their right to vote in their place of displacement, reviewing the monthly financial support, and updating legal norms to safeguard rights related to and ownership and internally displaced persons' right to participate in the property privatization process [ibid., 195]. Given that the law was adopted prior to the UN Guiding Principles on International Displacement, it was inconsistent with these broad principles.[4] Apart of these issues and problems, one of the major challenges was the accurate determination of legal status of IDPs. As the Public defender of Georgia stated in 2010, the government's delay to determine the legal status of IDPs highlighted the slow pace of decision-making, which in turn affecting access to some benefits, including housing [ibid., 194]. The Council of Europe Commissioner also urged national authorities to grant IDP status in timely manner and without discrimination because for this reason, as those still lacking access to benefits, particularly housing, were in a vulnerable situation.[5]

The law of 1996 was declared invalid upon the entry of the new law of 6 February 2014 (in force since 1 March 2014).[6] The current Georgian law on Internally Displaced persons from the occupied territories of Georgia is a comprehensive legal instrument adopted to protect IDPs. This new law aims to safeguard persons during their forced displacement, provide assistance for their integration, and address their needs.[7] Considering the importance of these measures and policies, the government agencies while undertaking this

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[2] Constitution of Georgia, Article 6.

[3] Protection of Internally Displaced Persons in Georgia: A Gap Analysis, The UN Refugee Agency, 2009, 11-12.

[4] Ibid., 12.

[5] Council of Europe, Commissioner for Human Rights, Report on Human Rights Issues Following the August 2008 Armed Conflict in Georgia, by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Strasbourg, 7 October 2010, paras 17-18.

[6] Law of Georgia on Internally Displaced Persons from the Occupied Territories of Georgia, Parliament of Georgia, 24 February 2014.

[7] Ibid., Article 3.

obligation must act in line with the Georgian constitution other legislative or/and subordinate normative acts, and international human rights norms.[8] According to the existing legislation, IDP status seeker is a person who applied to the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health, and Social Affairs of Georgia and waiting for the final decision (positive or negative) which the ministry takes within a month. After receiving IDP status, a questionnaire must be filled, and the IDP card will be issued. If the Ministry denies IDP status, the decision may be challenged to court within one month of receiving the refusal notification.[9]

One of the remaining key challenges in the law of 2014 is definition of who qualifies as a forcibly displaced person because for instance, the Guiding principles on Internal Displacement include those individuals who left their permanent residency due to both human-made and natural disasters,[10] while Georgian law defines them as citizens or stateless people with recognized status in Georgia who have been forced to leave a place of permanent residency and have no opportunity to return to place of origin due to threats to his/her or family member's life, freedom or health that is caused by foreign occupation, armed conflict, widespread violence, or serious human right violations.[11]

The law highlights two important points that should be noted: first, the definition of IPDs in Georgian domestic law is narrower than the one outlined in the guiding principles and second, the correct understanding of permanent residency. The issue with permanent residency is crucial because an individual can have multiple places of residency, and simply owning property does not establish it as their permanent residency, therefore for purposes of IDP status it is vital to determine a place of permanent habitation [Lomidze 2020, 9-11]. The law defines it as a "place of residence chosen by an IDP, his/her IDP parent(s), or a biological lineal ancestor, from where one or both of his/her parents or a biological linear ancestor have been forcibly displaced, and where he/she cannot return" due to the above-mentioned reasons.[12] The existing new law does not link the fact of permanent residence with the registration of a person. A person's permanent place of residence does not exclude his freedom of movement within and outside the country. The residence is based on actual living conditions (where persons spend quality time, paying taxes and desires to belong to the place) rather than merely a legal address. In other words, it should reflect a person's preferred place of residency, assessed through their lifestyle, family connec-

[8] Ibid., Article 1.
[9] Ibid., Article 8.
[10] See: Guiding Principles on Internal Displacement, OCHA, 1998.
[11] Law of Georgia on Internally Displaced Persons from the Occupied Territories of Georgia, Parliament of Georgia, 24 February 2014, Article 6.
[12] Ibid., Article 4 (c).

tions, and other circumstances. Thus, the law focuses on two relevant factors for granting the status: the determination of the place of normal habitation (which helpful criteria for identifying a person) and the requirement that an individual left the place against their will [Lomidze 2020, 9-11, 25-28].

Furthermore, the new law adheres better to international standards and focuses on state's responsibility to ensure safe and dignified living circumstances until they are in displacement. Under this law, the previous concept of compact and private settlement facilities is abolished and IPDs are now better protected against eviction from their legitimately owned residences [ibid., 7]. Moreover, the law introduced the concepts of proper housing and long-term housing for the first time, stating that the state is obliged to provide proper housing to the IDPs who remain homeless.[13] Nonetheless, the problem with monthly allowance is unsolved. The law states that the state provides financial support to IDPs on monthly basis, with an amount of 45 gel[14] (approximately 17 dollars), which is inadequate.

2. ISSUES OF CONCERNS OF INTERNALLY DISPLACED PERSONS

2.1. Challenges

Forced Displacement takes place when people have no choice but to leave their homes to protect own lives. Unlike refugees, internally displaced persons do not fall under protection of United Nations 1951 Refugee Convention that focuses on legal definitions, rights, and national-states responsibilities to recognize these rights [Schimmel 2022, 505]. These shows the importance of the state to guarantee rights of own population within the state boundaries, as Amnesty International called upon the Georgian government and recommended to "devote the maximum available resources to progressively achieving the full realization of economic, social and cultural rights.[15] Often the needs of IDPs are underestimated because unlike refugees (cross-border element), they are considered to be within their homeland. However, this perspective overlooks the important fact that in a country like Georgia, with diverse culture and traditions varying by region, forcibly relocating from one part of the state to another and rebuild one's life can be extremely challenging. According to the UN Guiding Principles on Internal Displacement, the states themselves (not international community)

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[13] Ibid., Article 14.

[14] Ibid., Article 12 (1) (a), Law of Georgia on Internally Displaced Persons from the Occupied Territories of Georgia, Parliament of Georgia, 24 February 2014.

[15] See: In the Waiting Room: Internally Displaced People in Georgia, Amnesty International, August 2010.

"have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction."[16]

The problem of displacement does not begin and finish with suitable shelters; It is a long process in which the state needs to continue taking measures to ensure that its approach is tailored to IDPs' needs. It is important the state to promote integration within host society and enable resettlement in any safe part of the country. Internally displaced persons like other citizens of the country possess the fundamental rights including right of free movement and the freedom to choose the place of stay based on individual preferences. Furthermore, the state has responsibility to establish requisite conditions for IDP resettlement and ensure their full engagement in the processes of return, resettlement, and reintegration. Additionally, when the time comes, the decision for IDPs to return should be made under dignified circumstances that guarantee a safe living environment, while economic, social, and political conditions must meet standards ensuring human dignity. Moreover, displaced persons should be free from discrimination, and in cases of property loss or damage, they should be entitled to property restitution and compensation.[17]

2.2. Housing

The brutal attack of Russia Georgia caused people to flee their homes and seek shelter elsewhere in the country, where they became shelter seekers within their homeland. One of the immediate tasks of the government was to provide adequate housing for people as it was evident from the beginning that some would not be able to return to their homes in the near future. The IDPs were either placed in newly built cottages or provided with a 10.000 USD voucher to secure their own accommodation [Rekhviashvili 2015, 5]. The government was in a rush to build thousands of individual family cottages as the existing collective centers were not suitable for long-term habitations therefor, as a result, within a few months, new villages appeared across the country. The rushed construction of the cottages led to significant challenges, including poor conditions such as dripping ceilings and moldy walls, due to the use of inadequately dried materials and insufficient time for proper settings.[18] However, as it was explained by the engineer, the quality of the houses was reasonable and met the expectations even if it was far from perfect, given the limited time for construction and the budget of under 28.000 gel per house[19].

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[16] Principle 3, Guiding Principles on Internal Displacement, OCHA, 1998.

[17] See: Civilians in the line of fire: Georgian-Russian Conflict, Amnesty International Publications 2008.

[18] Internally Displaced Persons in Georgia: Issues of Concern, Transparency International Georgia, 3 April 2009, 1-2.

[19] Civil Georgia. "Ministers Brief on IDP Housing Project." 24 December 2008, http://www.

According to the Institute for War & Peace reporting, tension over the housing issue resurfaced in January 2022 after the suicide of Zurab Kiria, a person who was forcibly displaced from Abkhazia.[20] He spent 29 years in a 14m^2 room, waiting for adequate accommodation. The Mstkheta-Mtianeti Regional Hub reports that, the issues with living standards and housing have persisted throughout the entire period of displacement. It is worth mentioning that the war in 2008 highlighted the importance for a change in state's approach. Approximately, three billion USD was allocated for housing but the problems with right management of these founds the process was delayed, only in past 2-3 years the pace of house construction has increased.[21]

2.3. Health

Given the vulnerability of internally displaced persons, who have been forced not only to leave their houses but also their normal lives, work, study and start all over again in a new place even if within their own homeland, there are numerous challenges for IDPs especially in the beginning of displacement. One of such important and challenging concern is Health care issue due to confusion over insurance coverage. For instance, there were issues with overlapping insurance programs and short-term polices. On numerous occasions it was claimed that while the consultations of doctors are free, the prescribed medicine are not free and most of IDPs were not able to cover these expenses.[22] Considering that the monthly based financial support is currently 45 gel (approximately 17 USD) it is clear why these expenses are difficult to cover. Additionally, it should be noted that a significant majority of households (84%) has a collective monthly income below 1250 gel (approximately 465 USD), with 22% earning less than 300 gel per month (approximately 111 USD).[23]

2.4. Predictability and Representation

The IDPs were resettled in various areas of Georgia. The government was distributing aid packages which were different among settlements due to poor coordination leading IPDs to receive unequal treatment. Such unpredictability was

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civil.ge/eng/article.php?id=20189 [accessed: 02.08.2024].

[20] Institute for War & Peace Reporting (2022), Georgia: IDP's Death Reopens Debate Over Housing.

[21] Understanding Displacement in Georgia: An In-Depth Analysis of IDP Needs, Estonian Refugee Council 2024, 6.

[22] Internally Displaced Persons in Georgia: Issues of Concern, Transparency International Georgia, 3 April 2009, 3-4.

[23] Understanding Displacement in Georgia: An In-Depth Analysis of IDP Needs, Estonian Refugee Council 2024, 8.

highly related to the informal representation, particularly as aid providers relied on 'mamasakhlisi' of a settlement as the primary contact point. Despite their important role as intermediaries between IPDs and resource providers, 'mamasakhlisi' lack both a clearly defined role and formal legitimacy. Considering the situation and challenges brought by forced displacement, along with the state's responsibility for prompt action, such informal representation could only be effective in short term. In long term such poor coordination proved to be insufficient, as aid distribution was often chaotic and unpredictable, making it difficult to people to plan for its arrival in advance. This, of course, highlights the problem of lack of access to information. The lack of information not only reduces but also impedes person's ability to plan and reclaim control over their own lives. Providing information about aid is essential, not optional.[24]

2.5. Employment

The state's decisions regarding the location of settlement for internally displaced individuals has significant impact on people and their life choices because the place of settlement is connected to future studies, employment and etc. The settlement areas for IDPs are often located in areas with limited job perspectives, making it hard to people to find employment and resume a normal life they left behind. The issue is linked to economic resources; those with normal or no income are frequently forced to leave their families and migrate abroad. While economic hardship is not unique to IDPs, forced displacement exacerbates their vulnerability and worsens their situation. Very often, IDPs may accept any type of work, even outside their professional skills, or become depended on the state support. These can lead people to emotional distress. After the war, when people were resettled in different areas, the problem with employment was addressed by some programs designed to help IPDs to earn for living were mainly of pilot nature, lacking national wide coverage, comprehensiveness, and long-term sustainability due to absence of follow up measures.[25] According to Mtskheta Regional Hub, the problem with employment is still unresolved because as they note the income of IDPs whether from state or personal employment falls short of barely covering the basic expenses. Thus, economic difficulties of IPDs should be adequately addressed. The attention should be given to displaced women as their vulnerability creates "feminization of poverty" and they are at serious risks of domestic violence.[26]

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[24] Internally Displaced Persons in Georgia: Issues of Concern, Transparency International Georgia, 3 April 2009, 4-5.

[25] See: In the Waiting Room: Internally Displaced People in Georgia, Amnesty International, August 2010.

[26] Understanding Displacement in Georgia: An In-Depth Analysis of IDP Needs, Estonian

3. CONCLUDING REMARKS

The voices of IDPs are often lost in war and aftermath. The immediate attention should be placed on their needs and long-term solutions should be made. Although Georgian law on Internally Displaced persons from the occupied territories of Georgia places attention on importance of integration of IDPs in host communities and as well as upon their eventual return to place of origin, it is crucial that IDPs themselves should be actively involved throughout the process. Furthermore, as the issue of unemployment remains problematic, the government should develop various long-term programs to encourage employment. Moreover, it is important to take into account the needs of Internally displaced women and encourage their economic empowerment.

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CASES CONCERNING THE MINISTRY OF JUSTICE IN THE LEGAL PRACTICE OF THE NATIONAL PUBLIC PROSECUTOR'S OFFICE OF THE REPUBLIC OF POLAND IN 1919-1939

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Abstract. The aim of this paper is to present the most important activities of the National Public Prosecutor's Office of the Republic of Poland in cases concerning operation of the Ministry of Justice, one of the many agendas of the legal practice of the National Public Prosecutor's Office of the Republic of Poland, a centralised state organ of legal representation of material and public interests of the Polish state in the period of the Second Polish Republic. The legal practice of the National Public Prosecutor's Office covered legal representation before private law or public law courts and in proceedings carried out by administration authorities, issuing legal opinions on request of public authorities or other authorised entities, and collaboration in executing agreements in material matters of the state or of entities entrusted by virtue of the law to the legal care of the Office. In cases concerning the Ministry of Justice, the National Public Prosecutor's Office undertook all types of office-related activities. This study presents an analysis of yearly reports of the President of the National Public Prosecutor's Office, jurisprudence and rulings from courts and tribunals issued on the initiative of the Office. The research results demonstrate that the activity of the Office contributed to protection of material and public law interests in Poland reborn after the period of partitions in the context of operation of the Ministry of Justice.

Keywords: Second Polish Republic; State Treasury; Ministry of Justice; legal representation; material and public interests of the state.

INTRODUCTION

The National Public Prosecutor's Office of the Republic of Poland[1] was appointed in the organizational system of a reborn Polish state under the decree of the Temporary Chief of State of 7 February 1919. As part of uniforming sources of the Polish law, on 31 July 1919 the Legislative Sejm revoked the decree on appointing the National Prosecutor's Office and enacted an act that replaced the thus far binding normative act [Buczyński and

[1] Hereinafter: Office.

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Sosnowski 2016, 119].[2] This founded a system of concentrated legal protection of material and public law interests of the state in Poland [Bendetson 1951, 243]. As part of the savings programme carried out by the government of the Republic of Poland, intended to repair the operation of the State Treasury, the National Public Prosecutor's Office was reorganized in 1924. A regulation with the force of a statute of the President of the Republic of Poland provided a legal basis of the operation of the Office [Tkaczuk 2007, 288].[3] The National Public Prosecutor's Office in the inter-war Poland was a state body which, under statutory acts, provided on-going legal assistance to the Polish state and other entities treated equally with the state when it came to material and public interests [Idem 2001, 151-60; Idem 2006, 725-37; Idem 2007, 285-302; Organiściak 2002, 141-54].[4] The Office's broad scope of the legal subject matter may be studied on the basis of reports issued yearly by the President of the Office,[5] reports of presidents of Branches of the Office, of delegates of the Offices and of managers of departments at the Office's branches and in case files of individual cases maintained by officials of the National Public Prosecutor's Office of the Republic of Poland, which are kept in the Polish archives.[6] The legal practice of the Office in the inter war period covered activities taken up in many cases which, were

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[2] Decree of the Chief of State of 7 February 1919 on establishing the National Public Prosecutor's Office of the Republic of Poland, Journal of Laws No. 14, item 181; Act of 31 July 1919 on establishing the National Public Prosecutor's Office of the Republic of Poland, Journal of Laws No. 65, item 390.

[3] Decree of the President of the Polish Republic of 9 December 1924 on changing the organizational system of the National Public Prosecutor's Office of the Republic of Poland, Journal of Laws No. 107, item 967.

[4] Archive of New Acts – Presidium of the Council of Ministers, ref. no. 56-15, Document of 13 May 1919 – Principles of the Decree establishing the National Public Prosecutor's Office presented to the Minister of the Interior by the President of National Public Prosecutor's Office; order of the First Chamber of the Supreme Court of 7 February 1921, ref. no. C.932/20 – recital 6: The National Public Prosecutor's Office of the Polish Republic shall be treated as a statutorily established permanent general representative of the State Treasury ("Orzecznictwo Sądów Polskich" C. item 185).

[5] Pre-war reports of the President of the National Public Prosecutor's Office of the Polish Republic are dispersed. A review of acts in the archives, such as the Archive of New Acts in Warsaw or the State Archive in Poznań, allowed me to collect individual reporting annals. The library of the Chair of the History of Law of the Faculty of Law of the University of Szczecin houses reports for the following years: 1919, 1920, 1921, 1922, 1925, 1926, 1928, 1929, 1930, 1931, 1933, 1934, 1935, 1936, 1937, 1938.

[6] Reports of presidents of branches of the National Public Prosecutor's Office, delegates of the National Public Prosecutor's Office and managers of divisions and case files of individual cases may be found, for example, in archive teams of e.g. the Archive of New Acts in Warsaw: in the team for the National Public Prosecutor's Office of the Polish Republic in Warsaw (1919-1939); in the State Archive in Poznań, in the team for the National Public Prosecutor's Office of the Polish Republic – Poznań Brach (1919-1939).

grouped adequately due to their subject matter in reports of the President of the Office [Tkaczuk 2006, 729]. Cases involving the Ministry of Justice were one of such reporting categories. The agenda of activities undertaken by the National Public Prosecutor's Office in matters that were the competence of the Ministry of Justice was not too extensive. It involved primarily legal representation, though it also issued opinions on binding law and legislative drafts and other legal acts that were to regulate the matter of broadly understood Ministry of Justice, also in the administrative and economic realm.

1. LEGAL REPRESENTATION CARRIED OUT BY THE NATIONAL PUBLIC PROSECUTOR'S OFFICE IN CASES INVOLVING THE MINISTRY OF JUSTICE

Legal representation performed by the National Public Prosecutor's Office focused on civil law matters examined in litigious and enforcement proceedings. The State Treasury was sued most often due to damage caused by violation of duty by officials of the Ministry of Justice or faulty application of the institution of criminal law by state authorities.

The activity of court enforcement officers was the most frequent source of cases for compensation, in particular in the former Prussian Partition. The Office, defending the State Treasury, brought in its prime argument that court enforcement officers were not part of the group of state officials for whose activity the State was liable. However, the Office failed to convince the Supreme Court to its line of defense. In 1931 the Supreme Court ruled that court enforcement officers in the former Prussian Partition under the 1922 Act on state civil service[7] and so-called Provisions Law of 1923[8] were to be regarded as permanent officials for whose activity the State Treasury was liable according to the regulation of the Prussian Law on officials of 1 August 1909 and the Law on liability of the state of 22 May 1910.[9] The case is similar with recognition in the decisions of the Supreme Court of liability of the State Treasury for actions of court enforcement officers in the former Russian Partition.[10] The Code of Civil Procedure (CCP) dispelled all doubts as to the liability of the State Treasury for actions of court enforcement officers. Article 521(1) and (2) CCP expressly provided for several liability of

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[7] Act of 17 February 1922 on the State Civil Service, Journal of Laws No. 21, item 164.

[8] Act of 11 December 1923 on old-age pension provisions of state officials and professional soldiers, Journal of Laws No. 6, item 46.

[9] Judgement of the Supreme Court of 16 October 1931, ref. no. III. 2/C.175/ 31 (Report of the President of the National Public Prosecutor's Office of the Republic of Poland for 1931) [hereinafter: SPPG and the relevant year], p. 120.

[10] SPPG – 1931, p. 120.

the State Treasury for damage caused by negligence or malice of court enforcement officers.[11]

In the territory of the former Austrian Partition, branches of the National Public Prosecutor's Office in Lviv and Cracow were involved in protection of the State Treasury in so-called trustee cases, that is in cases launched pursuant to the Austrian Law of 12 July 1872 on liability of the state for damage caused by faulty operation of bodies of the justice department.[12] In 1935, in relation to procedural action of the Lviv branch of the National Public Prosecutor's Office, the Supreme Court issued a judgment that had significant importance for the interpretation of the 1872 law. According to the Supreme Court, the condition for claims against the State Treasury was to exhaust legal means that may prevent the damage. The Supreme Court held that the ruling court should also examine the possibility of repairing the damage from the property of third persons who may be liable under a separate rule, different than the one following from the 1872 law.[13] In a 1937 case concerning financial liability of a judge and the State Treasury for allowing a carer's allocation of funds belonging to a minor contrary to Article 205 of the Austrian Civil Code, the Lviv branch of the National Public Prosecutor's Office held that the State Treasury's liability was subsidiary and encumbered it only when it was impossible to obtain compensation from the offender. The Supreme Court took into account the Office's line of defence in the judgement issued in this case.[14]

Compensation suits for unfounded confiscation ruled in criminal cases or in cases of wrongful conviction or arrest as a rule closed in favour of the State Treasury. This resulted from the fact that compensation claims were brought on the basis on rulings of the criminal court that recognized the disputed ruling as faulty and, as a consequence, not causing effects in criminal law. The defense of the State Treasury taken by the Office in these cases boiled down to questioning the validity of the amount requested.

The consequence of claims brought against the State Treasury included resource claims directed by the National Public Prosecutor's Office against judges and other officials of the judiciary against their official activity that caused damage. These cases were legally complicated and very difficult to run because they needed to take into account various by-laws, internal documents of court authorities and local regulations.[15] In 1937, the Main Office of the National Public Prosecutor's Office examined the question of liability

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[11] Journal of Laws No. 112 item 934.

[12] SPPG – 1931, p. 120.

[13] Judgement of the Supreme Court of 30 December 1935, ref. no. C.III. 1852/35, SPPG – 1936, p. 108.

[14] Judgement of the Supreme Court of 15 January 1937, ref. no. C.II. 2090/36, SPPG – 1937, p. 116.

[15] SPPG – 1935, p. 95; SPPG – 1936, p. 107.

of a judge for drawing a draft division of the enforced sum that exposed the State Treasury to losses. The Office ultimately held that the only way to repair the damage was through a lawsuit against the judges who caused damage to public property, also in instance proceedings, by their negligence.[16]

Such disputes usually ended in favour of the State Treasury.[17] In the group of compensation cases against court secretaries and treasurers for misappropriation of funds and against their superiors for failing to exercise due supervision, the Office received favourable rulings when it came to the former wrongdoers, while in the case of the supervisors, the suits usually closed by dismissing the State Treasury's claims. Courts often recognized no fault of judges, justifying this by courts' being permanently overloaded with work.[18] In another similar case, the courts of two instances in Lviv dismissed claims brought in by the Office holding that the sued judge did not have knowledge about abuses and that a judge's cooperation with court secretaries had to be based on division of labour and trust. Courts mostly adopted the same rulings in majority of analogical cases.[19]

A permanent group of activities of this agenda included cases of enforcement of fines and inquiry deposits (financial guarantees) and opposing proceedings emerging from these activities for excluding property from enforcement. The number of such cases increased significantly in 1933 as a result of entry into force of new legislation that regulated civil proceedings. The Office started receiving orders from court's prosecutor's offices or courts themselves for executing the State Treasury's receivables through enforcement against real estate, based on Article VII of Provisions introducing the law on court enforcement proceedings.[20] In such cases, the National Public Prosecutor's Office advised court authorities concerned, given the usually small amounts claimed and difficulties and costs of execution againsy real estate, that they rather implement or reopen enforcement against movable property, including carrying out of proceedings to reveal the debtor's assets. Alternatively, that they only request that the Office enter a security mortgage or carry our court actions intended to reveal the debtor's assets.[21]

In 1937, on request of the National Public Prosecutor's Office, the Minister of Justice issued a circular that recommended that courts and prosecutors thoroughly examine the purpose of enforcement against the debtor's immovable property and that they not implement enforcement against real

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16 SPPG – 1937, p. 117.
17 SPPG – 1935, p. 95.
18 SPPG – 1937, p. 117.
19 SPPG – 1938, p. 126.
20 Decree of the President of the Republic of Poland of 27 October 1932, the Provisions introducing the law on court enforcement proceedings, Journal of Laws No. 93, item 804.
21 SPPG – 1933, pp. 139-40.

estate to obtain a due amount that does not exceed PLZ 100.[22] The circular caused a noticeable drop in enforcement actions in the Office.[23] This decrease of enforcement actions, mostly of requests for entry of a security mortgage, was also down to the entry into force of the Decree of the President of 21 November 1938 on improving court proceedings.[24] The Decree amended the wording of Article XVII of the provisions introducing the law on enforcement proceedings by making it impossible to obtain a security mortgage on State Treasury receivables with the value less than PLZ 200. The Office held such solutions harmful to the interest of the Treasury. Most claims executed under Article VII involved amounts less than PLZ 200 and for this reason, in the Office's opinion, the Treasury was denied the possibility of securing receivables resulting from financial penalties and fines imposed by courts or court fees in criminal and civil cases.[25] Apart from enforcement proceedings resulting from Article VII of provisions introducing the law on court enforcement proceedings, upon an order of courts, the Office also performed enforcement of auction deposits forfeited pursuant to Article 692(2) CCP and requested that fines be imposed against debtors who refuse to submit declarations stipulated in Article 636 CCP.[26]

The court's case list also featured cases associated with economic and administrative actions of the authorities of the Ministry of Justice. They included disputes over leasing, construction, maintaining and management of court real estate and prisons. Administration of prisons provided many cases for payment for deliveries of foodstuffs to prisons or those resulting from Prisons' Labour Departments.

2. OPINIONS OF THE NATIONAL PUBLIC PROSECUTOR'S OFFICE IN CASES INVOLVING THE MINISTRY OF JUSTICE

The opinion-giving activity of the National Public Prosecutor's Office in cases relating to the Ministry of Justice included consultation activities for *de lege lata* and *de lege ferenda* court law. This case list, however, did not include consultations pertaining to fundamental legislative acts of the court law, such as the code of civil procedure or the code of criminal procedure,

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[22] Circular of the Minister of Justice of 6 August 1937 on examining the rightness of enforcement no. 1848. II. A./37, Official Gazette of the Minister of Justice 1937.

[23] SPPG – 1937, p. 114.

[24] Decree of the President of the Republic of Poland of 21 November 1938 on improving court proceedings, Journal of Laws No. 89, item 609.

[25] SPPG – 1938, p. 129.

[26] SPPG – 1937, p. 115; Notice of the Minister of Justice of 1 December 1932 on announcing a consolidated text of the Code of Civil Procedure, Journal of Laws No. 112, item 934.

because such activities were carried out by the Office under the list of general cases [Tkaczuk 2006, 729; Idem 2011, 59].

When it comes to the Ministry of Justice-related case list, the Office issued opinions on, i.e. legislative drafts, such as the 1926 amendment to the Russian civil act on suspending the course of limitations during the war or the 1926 Regulation on entitlements for witnesses. In 1927 the Main Office of the National Public Prosecutor's Office issued an opinion on amending numerous articles (such as Article 91, 94 or 300) of the Russian act on civil proceedings and Articles 69 and 72 of the Russian act on criminal proceedings.[27] The Main Office also issued a number of opinions on insufficient specification of legal effects of court supervision in the 1917 Decree of the General Government of Warsaw.[28] The Kraków Branch of the National Public Prosecutor's Office, as a result of a competence conflict between a court and a treasury administration authority, issued an opinion on the courts' right to defer payment of fines imposed by it pursuant to Article 98 of the Act on industrial tax.[29] However, the greatest quota of activities of the Office included opinions on provisions on enforcement of penalties, fines and court fees. The opinion issued by the Main Office in 1938 deserves a special mention. The Office held that in ten event of enforcement of the State Treasury's claims laid down in Article VII of provisions introducing court enforcement proceedings by way of receivership of real estate, only the National Public Prosecutor's Office was authorised to represent the interest of the Treasury, even though this type of enforcement was not expressly named in Article VII. The Office justified its stance by saying that pursuant to Article VII enforcement of receivables by courts was stipulated to proceed only through issuing direct instructions to court enforcement officers. Therefore, where such enforcement was the responsibility of a court, not a court enforcement officer, the rule laid down in Article VII did not apply and a general rule was in effect, according to which representation of interests of the State Treasury in proceedings before courts rested with the National Public Prosecutor's Office.[30]

The Office traditionally issued opinions or drafted general specimen contracts used in the administration of the Ministry of Justice, such as contracts for deliveries to prisons, contracts of lease or construction works contracts.

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[27] SPPG – 1928, p. 114.
[28] SPPG – 1926, p. 80.
[29] Ibid.
[30] SPPG – 1938, pp. 129-30.

CONCLUSION

The presented inter-war legal practice of the National Public Prosecutor's Office of the Republic of Poland in cases concerning the Ministry of Justice allows the following conclusions:

1) the National Public Prosecutor's Office executed the case list employing all kinds of official activities that were its competence resulting from the legislation in force. In practice, its case list included predominantly legal representation in litigation and enforcement cases. Opinion giving was another element of its activity in the sphere of legal assistance given to the State Treasury in cases pertaining to the Ministry of Justice. However, a lion's share of legal opinions concerning legislation that regulated court proceedings were issued as part of the Office's general case list;
2) legal assistance in the form of the National Public Prosecutor's Office's legal representation in cases pertaining to the Ministry of Justice contributed to protection of material interest of the state through ordering rules of the State Treasury's liability for damage caused by public officials who acted on behalf of the justice system;
3) given the importance of the justice system for the reborn Polish state, the activity of the National Public Prosecutor's Office who provided legal assistance to the authorities of the judiciary and the management of the Ministry of Justice deserves much credit as it contributed to reinforcement of the regained independence.

Translated by Agnieszka Kotula-Empringham

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THE LEGAL STATUS OF UKRAINIAN CITIZENS IN THE LAW OF THE FEDERAL REPUBLIC OF GERMANY*

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Abstract. There are currently around 1.1 million Ukrainian citizens in Germany who have entered its borders since February 24, 2022. The legal status of Ukrainian citizens in the Federal Republic of Germany is primarily regulated by Section 24(1) of the Act on Residence, Establishment and Integration of Foreigners in the Federal Republic of Germany. Only 21% of them are employed: 113,000 have found employment that allows them to pay social security contributions, while 36,000 perform the so-called mini-job, i.e. minimum employment. The basis of professional integration is taking an integration course. Integration courses are designed to teach the German language and the basics of functioning and the rule of law in Germany. It should be noted that approximately 55,000 Ukrainian citizens are currently continuing their school, vocational or higher education.

Keywords: migration of Ukrainian citizens; migration policy; Germany; right to education; social benefits.

INTRODUCTORY REMARKS

There are currently around 1.1 million of Ukrainian citizens living in Germany who have entered Germany since February 24, 2022 in connection with Russia's war of aggression against Ukraine. About 350,000 of them are children and adolescents under 18 years of age. About two-thirds of adult migrants are women.[1]

According to the Federal Employment Agency, currently in Germany, of which 1.1 million people from Ukraine are of working age, i.e. between 15 and 65 years of age. In November 2023, 21 percent of them were employed: 113,000 found employment subject to social security contributions

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[1] See https://www.bundesregierung.de/breg-de/themen/arbeit-und-soziales/ukraine-gefluechtete-arbeit-2166832 [accessed: 28.04.2024].

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in Germany, and 36,000 found a so-called mini-job, i.e. minimum employment.[2] It should be emphasized that the degree of employment of Ukrainian citizens on the German labor market is one of the problems of the migration policy of the German government, which looks with envy at the Polish labor market and the Polish legislator in this matter. Despite the current difficult economic situation, the German government is confident that even more people who have fled Ukraine due to the war will take up work.

1. LEGISLATION

Ukrainian citizens who entered Germany after the start of the war in Ukraine had, like other foreigners from outside the EU, the right to stay in Germany for up to 90 days. Given their plight, it has been agreed that they can remain in Germany until 2 June 2024 and will then have to apply for a residence permit.

The legal position of persons seeking legal protection is generally governed by Section 24(1) of the Act on Residence, Establishment and Integration of Foreigners in the Federal Republic of Germany[3] – this is the so-called residence law.

Pursuant to Section 24(1) of the same Act, a foreigner who has been granted temporary protection under a decision of the Council of the European Union issued pursuant to Directive 2001/55/EC and who has expressed his or her wish to be admitted to the territory of the Federal Republic of Germany is granted a residence permit for the duration of the temporary protection determined in accordance with Articles 4 and 6 of the Directive. The residence permits of refugees from Ukraine who have fled Russia's war of aggression and have been granted protection in Germany will be valid until 4 March 2025. On the basis of Section 24(1) of the Residence Act, the Federal Ministry of the Interior (BMI) adopted a legal decree called the Regulation on the Extension of Section 24(1) of the Residence Act on temporary legal protection for eligible persons from Ukraine.[4] This means

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[2] Mini-jobs are jobs with a monthly salary of no more than EUR 538 per month or a maximum of employment of up to 70 days in a calendar year. The number of hours that mini-jobbers can work per month depends on the hourly rate. Due to the lack of social security contributions, mini-jobs do not provide social security, https://www.arbeitsagentur.de/lexikon/minijob [accessed: 29.04.2024].

[3] See *Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet 1) (Aufenthaltsgesetz – AufenthG)*, https://www.gesetze-im-internet.de/aufenthg_2004/__24.html [accessed: 29.04.2024].

[4] See *Verordnung zur Regelung der Fortgeltung der gemäß § 24 Absatz 1 Aufenthaltsgesetz erteilten Aufenthaltserlaubnisse für vorübergehend Schutzberechtigte aus der Ukraine (Ukraine-Aufenthaltserlaubnis-Fortgeltungsverordnung — UkraineAufenthFGV)*, 28.11.2023, https://www.gesetze-im-internet.de/ukraineaufenthfgv/BJNR14E0A0023.html [accessed: 29.04.2024].

that citizens from Ukraine do not have to apply for an extension of their residence status and no related formalities or a visit to the immigration office are necessary. The basis for further extension of the temporary protection is the decision of the EU member states at the end of September 2023.

Residence permits issued pursuant to Section 24(1) of the Residence Act that are valid on 1 February 2024 shall remain valid until 4 March 2025, including their requirements and additional provisions, without extension in individual cases. The renewal shall expire with the renewal of the residence permit in individual cases or if the residence permit has been reissued due to a change in a condition or additional provision.[5]

The provisions of the Residence Act concerning the cessation of the legality of stay, in particular on the basis of Article 51 of the Residence Act and concerning restrictions on the right of residence, remain unaffected. The obligation to submit according to Section 57a No. 2 of the Residence Ordinance does not apply.[6]

Possession of a residence permit in accordance with Section 24(1) of the Residence Act (AufenthG) does not require the renewal of this document. Residence permits in accordance with Section 24(1) of the Residence Act that are valid on 1 February 2024 will continue to be valid until 4 March 2025, without extension in individual cases. This means unlimited access to the labor market and training for Ukrainian citizens, which also means having a work permit. In this document issued by the Office for Registration of Foreigners, the entry "permission for gainful employment" should be noted. In principle, Ukrainian citizens can take up any job or training in Germany. Ukrainian citizens can therefore work as employed or by setting up their own professional activity, but without access to regulated professions, such as doctors, teachers, pedagogues.

2. ACCESS TO THE LABOUR MARKET

Taking up work in non-regulated professions is possible without the need for additional recognition of professional qualifications of a Ukrainian citizen.[7] This represents a significant step forward in regulating the legal position of Ukrainian citizens, as the German labor market is very restrictive in this respect and in principle every professional qualification of a foreign citizen must be recognized by German authorities. Nevertheless, the recognition of professional qualifications or the assessment of certificates can help

[5] Ibid., § 2(1).

[6] Ibid., § 2(2).

[7] Information from the Federal Ministry of Labor and Social Affairs, https://www.bmas.de/DE/Europa-und-die-Welt/Europa/Ukraine/FAQ-DE/faq-art-de.html [accessed: 29.04.2024].

you find a job that matches your skills and pay in line with your qualifications [Brückner, Ette, Grabka, et al. 2022].

Upon fulfilment of the relevant conditions, Ukrainian citizens can also apply for a (other) residence permit for the purpose of work or permission to undertake vocational training at the local immigration office. For example, a residence permit under Section 16a of the Residence Act may be issued in the case of undertaking vocational training or a residence permit in accordance with Section 18a of the Residence Act in the case of skilled workers with vocational training or Section 18b of the Residence Act in the case of qualified workers with academic training.

A residence permit in accordance with Section 24(1) of the Residence Act is issued by the Foreigners Registration Office,[8] It must include the annotation "Work Permit", which it allows together with a temporary document confirming the right of residence. The work permit then includes a permit to undertake vocational training. However, it should be emphasized that the vocational training must fit within the validity period of the residence permit.

3. ACCESS TO EDUCATION AND SOCIAL BENEFITS

3.1. General rules for allocating financial aid

EU Member States activated the Temporary Protection Directive as early as the beginning of March 2022. War refugees from Ukraine did not have to go through a complicated asylum procedure to be able to live and work in Germany. It should be emphasized here that Germany's migration policy is very restrictive and de facto a migrant from the so-called safe countries has no chance of obtaining a residence permit in the Federal Republic of Germany. Granting a residence visa means that you must attend an integration course and only after completing it can you apply for a job.

3.2. Integration course

In January 2024, 124,000 Ukrainian citizens took part in integration course aimed at learning German and the basics of state functioning. Three-quarters of Ukrainian citizens will complete such courses by mid-2024, and the rest by January 2025. People who have completed integration course remain under the control of the Job Center, which will immediately try

[8] See *Ausländerbehörde*, i.e. a department of the municipal office, subordinate to the Federal Ministry for Migration and Refugees, Bundesamt für Migrationen und Flüchtlinge https://www.bamf.de/DE/Startseite/startseite_node.html [accessed: 29.04.2024].

to direct them to the labor market. In addition, 55,000 Ukrainian citizens are currently pursuing school, vocational or higher education.[9]

3.3. Social benefits – Grundsicherung

In October 2023, 686,000 Ukrainian refugees were included in basic income support for jobseekers at a level that provides basic means of subsistence in case the jobseeker's own resources are not sufficient (*Grundsicherung*).[10] Of this number of citizens mentioned above, 471,000 Ukrainian citizens are of working age, but 215,000 are unable to work for very different reasons. Persons who are beneficiaries of this benefit in the form of social benefits – *Grundsicherung* – are also children from Ukraine.

Ukrainian citizens who are in Germany can receive basic income support (*Grundsicherung*) from June 2022. The point of contact is labour offices. Here, help is available on the basis of participation in integration and language courses and the labor market, as well as assistance in organizing childcare [Butenop, Brake, Mauder, et al. 2022].

The amount of these benefits is determined by Book XII of the Social Rights – 12. (*Sozialgesetzbuch*).[11] Singles have standard receive support of 502 euros per month. Married couples receive 451 euros per month per person, or 902 euros per couple. A child aged 6-13 receives 348 euros. A child between the ages of 14 and 17 receives 420 euros. In addition to the standard needs, children and adolescents also receive pocket money of 20 euros per month.[12] In addition, there is a subsidy to the rent of the apartment depending on the size of the apartment.

Number of people in the household	Appartment size in m²	Amount of rent subsidy per month in euros
1 person	50	426,00 €
2 persons	65	515,45 €
3 persons	80	634,40 €
4 persons	90	713,70 €

[9] See Federal Government Information, https://www.bundesregierung.de/breg-de/themen/arbeit-und-soziales/ukraine-gefluechtete-arbeit-2166832 [accessed: 29.04.2024]; Brückner, Ette, Grabka, et al. 2023.

[10] It is a cash benefit for jobseekers granted by the Jobcentre until they find employment, https://www.arbeitsagentur.de/lexikon/grundsicherung [accessed: 12.05.2024].

[11] See *Das Zwölfte Buch Sozialgesetzbuch – Sozialhilfe – (Artikel 1 des Gesetzes vom 27. December 2003, BGBl. I S. 3022, 3023).* Last modified on 8 May 2024 (BGBl. 2024 I No. 152), https://www.gesetze-im-internet.de/sgb_12/BJNR302300003.html [accessed: 12.05.2024].

[12] Federal Government website: https://www.germany4ukraine.de/hilfeportal-de/arbeit-und-soziales/ukrainer-sozialleistungen [accessed: 29.04.2024].

3.4. Student loans

The condition for receiving benefits is that the interested person submits an application for a residence permit in order to obtain temporary protection, registers in the Central Register of Foreigners and meets the other conditions for receiving basic social benefits. Anyone who completes an integration course should be able to receive benefits under the Federal Social Grant Act, or BAföG for short, under the same conditions. It is a scholarship in the form of an interest-free loan, aimed at financial support during studies at a university.

CONCLUSIONS

The legal position of Ukrainian citizens in the Federal Republic of Germany is primarily regulated by Section 24(1) of the Act on Residence, Establishment and Integration of Foreigners in the Federal Republic of Germany (*Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet – Aufenthaltsgesetz – AufenthG*), This is the so-called residence law. In relation to Ukrainian citizens, Directive 2001/55/EC is of fundamental importance. Pursuant to Articles 4 and 6 of the Directive and Section 24(1) of the Residence Act, Ukrainian citizens have the right to reside in Germany until 4 March 2025.

On the basis of Section 24(1) of the Residence Act, a legal decree of the Federal Ministry of the Interior (BMI) called the Regulation on the Regulation for the Extension of the Term of Residence of Section 24(1) of the Residence Act on temporary legal protection for eligible persons from Ukraine was adopted.[13] Citizens from Ukraine do not need to apply for an extension of their residence status and no further formalities are necessary.

There are currently around 1.1 million Ukrainian citizens in Germany who have entered Germany since February 24, 2022, of which 1.1 million people 725,000 from Ukraine are of working age, i.e. between 15 and 65 years of age. About 350,000 of them are children and adolescents under 18 years of age. About two-thirds of adult migrants are women.[14]

Of this number, only 21% are employed: 113,000 have found employment that allows them to pay social security contributions, while 36,000 perform the so-called mini-job, i.e. minimum employment.

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[13] Ordinance on the Regulation of the Continued Validity of Residence Permits for Persons Entitled to Temporary Protection from the Ukraine issued pursuant to Section 24(1) of the Residence Act (Ukraine Residence Permit Continuation Validity Ordinance – UkraineAufenthFGV), 28.11.2023, https://www.gesetze-im-internet.de/ukraineaufenthfgv/BJNR14E0A0023.html [accessed: 29.04.2024].

[14] See https://www.bundesregierung.de/breg-de/themen/arbeit-und-soziales/ukraine-gefluechtete-arbeit-2166832 [accessed: 28.04.2024].

The basis of professional integration is taking an integration course. Integration courses are designed to teach the German language and the basics of functioning and the rule of law in Germany. In January 2024, 124,000 able-to-work Ukrainian citizens took part in such integration courses. About 3/4 of Ukrainian citizens will complete such courses by mid-2024, and the rest by January 2025. People who have completed integration courses have the opportunity to immediately start working in non-regulated professions.

It should be noted that approximately 55,000 Ukrainian citizens are currently continuing their school, vocational or higher education.[15]

Jobseekers in Germany are entitled to the so-called *Grundsicherung*, i.e. basic financial support provided to jobseekers in an amount that provides basic means of subsistence, if the jobseeker's own resources are not sufficient). In October 2023, 686,000 Ukrainian citizens received such support. Persons who are beneficiaries of this benefit in the form of *Grundsicherung* are also children from Ukraine. Participation in an integration course, treated by the German legislator as the first step to looking for a job, is the basis for the payment of such a benefit. Applications are submitted to the Jobcenter, which is the equivalent of employment offices.

An exception to the legal position of migrants from Ukraine is the granting of interest-free loans in the case of taking up studies – *Bafög*.

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[15] Information from the Federal Government, https://www.bundesregierung.de/breg-de/themen/arbeit-und-soziales/ukraine-gefluechtete-arbeit-2166832 [accessed: 29.04.2024].

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ENTRY CONDITIONS, RIGHTS AND OBLIGATIONS OF UKRAINIAN CITIZENS IN ACCORDANCE WITH SLOVAK LAW*

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Abstract. The armed, unjustified Russian aggression against Ukraine prompted a response from all neighbouring countries, including Slovakia. It obviously took on a legal form. Changes of the law, adapting it to the real needs of Ukrainians seeking help, but also to the need to ensure security and public order in Slovakia, concerned primarily: the possibilities and methods of legally entering the territory of Slovakia, legalizing stay there, enabling and later also facilitating residence, health care and education at various levels. The possibility of obtaining temporary refuge status proved to be a particularly convenient solution for Ukrainian citizens seeking refuge in Slovakia. Most of the considerations in this cross-sectional study are devoted to this issue.

Keywords: temporary refuge; war in Ukraine; helping refugees.

INTRODUCTION

Slovak lawmakers reacted very quickly to the start of the Russian Federation's aggression against Ukraine in 2022. Already on February 25, the day after the Russian attack, new regulations and amendments to the previously applicable ones were prepared and in order to ensure the security of the state border and to enable the efficient organization of humanitarian aid for Ukrainian refugees [Walczuk 2023, 407-408, 417]. The first act containing amendments after the express legislative process[1] entered into force on the date of its promulgation, i.e. on 26 February 2022.[2] The processing of

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[1] See also Deset 2023, 71-74.

[2] Act of February 25, 2022 on certain measures in connection with the situation in Ukraine, no. 55/2022 Z. z.

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other laws and regulations also proceeded smoothly – some of them came into force just one month after the legislative initiative.[3]

1. ENTRY INTO THE TERRITORY OF SLOVAK REPUBLIC

On 11 June 2017, visa-free travel between the Schengen countries and Ukraine was introduced. As a result, in most cases Ukrainian citizens fleeing the war in Ukraine have the opportunity to move to countries in this area. Slovakia is part of the Schengen area, so citizens of Ukraine possessing a biometric passport can enter Slovakia under the visa-free regime and stay in Slovakia without a visa for a maximum of 90 days in any 180-day period. Since the beginning of the war, all people fleeing the war conflict have been allowed to enter. Entry to the territory of the Slovak Republic is permitted after individual assessment even for persons who do not have a valid travel document – a biometric passport or a visa.[4] In general, all persons fleeing from a military conflict who have been granted entry permits through the Slovak border (usually they have a Slovak entry stamp in their passport) are entitled to a short-term stay of up to 90 days.[5] It should be emphasized here that border controls on the Slovak-Ukrainian border are still ongoing and there is no automatic procedure for allowing people to cross it. All the more so because after entering a country belonging to the Schengen area, in principle you can travel without border controls to other countries belonging to this area – i.e. to the EU member states and Iceland, Norway, Switzerland and Liechtenstein. This option is available for 90 days within 180-day period. However, rights related to international or temporary protection may differ in EU countries from those granted in other Schengen countries. But Denmark, for example, in an EU Member State in the Schengen Area but does not participate in the temporary protection system and does not apply EU asylum rules.[6]

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[3] See https://www.minv.sk/?tlacove-spravy&sprava=v-suvislosti-s-konfliktom-na-ukrajine-platia-zmeny-v-zakonoch-o-civilnej-ochrane-azyle-a-kybernetickej-bezpecnosti-zriadi-sa-fond-vzajomnej-pomoci [accessed: 03.07.2024].

[4] See https://www.mzv.sk/en/services/information-for-foreigners/visas-for-foreigners-to-enter-sr [accessed: 03.07.2024].

[5] Cf. European Commission, 28.10.2022, C(2022) 7591 final. Annex to the Commission Recommendation establishing a common "Practical Handbook for Border Guards (Schengen Handbook)" to be used by Member States' competent authorities when carrying out the border control of persons and replacing Recommendation (C (2019) 7131 final), 22-3. Brussels.

[6] See https://eu-solidarity-ukraine.ec.europa.eu/information-people-fleeing-war-ukraine/fleeing-ukraine-travel-inside-eu_en [accessed: 17.07.2024].

2. STAYING IN SLOVAKIA

Depending primarily on citizenship, but also on other circumstances, there are several possibilities for formalising a longer stay in Slovakia: 1) applying for a temporary refuge;[7] 2) applying for an international protection (asylum, subsidiary protection); 3) applying for a temporary residence; 4) applying for a permanent residence.[8]

Applying for a temporary refuge, seems to be the easiest and the best way of protection for citizens of Ukraine and their families (if family members resided in Ukraine before 24 February 2022), fleeing from war (currently in force until March 4, 2025).[9] It should be emphasized that if one has a permanent or temporary residence in Slovakia, has a status of 'asylum seeker' or if already been granted asylum or subsidiary protection, the possibility of applying for temporary refuge is excluded. Taking all this into account, only the possibility of obtaining and using the status of temporary refuge will be discussed in more detail.

Possibility of awarding 'temporary refuge' was processed very urgently, in order to use it as soon as possible after the sudden influx of refugees from Ukraine attacked by Russia.[10]

In the context of granting protection to family members of Ukrainian citizens, it should be noted that a family member is considered to be: 1) a spouse; 2) a minor child of the person or their spouse; 3) the parent of a minor child (only if the child is a citizen of Ukraine); 4) another close relative who has lived in the same household with a citizen of Ukraine or with a person granted protection and has been wholly or partially dependent on his/her relative.[11]

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[7] Act of March 22, 2022 on certain additional measures in connection with the situation in Ukraine, no. 92/2022 Z. z., Article V.

[8] Information and assistance in connection with the war in Ukraine, https://www.mic.iom.sk/en/news/758-info-ukraine.html [accessed: 17.07.2024].

[9] Apart from the persons mentioned temporary refuge protection can be granted to: persons who have enjoyed international or equivalent national protection in Ukraine, foreigners who are not citizens of Ukraine, yet are permanent residents of Ukraine and cannot return under safe and stable conditions to their country or region of origin (International Organization for Migration).

[10] See https://rokovania.gov.sk/RVL/Material/26992/1 [accessed: 17.07.2024].

[11] Information and assistance in connection with the war in Ukraine. See also European Parliament and of the Council of the European Union, Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), OJ L 180, 29.6.2013, p. 31-59, Article 2(g); European Parliament and of the Council of the European Union, Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending

All applicants for temporary refuge must provide credible proof of identity and Ukrainian nationality or family relationship and (at least in some cases) indication of inability to return to Ukraine, as well as of the facts that justify request.

Citizens of Ukraine can prove their identity with a valid or even invalid document, such as: 1) travel document; 2) an identity card; 3) a driving licence; 4) any other document with a photograph together with a birth certificate.[12]

According to Slovak law, in the first instance/place parents represent a minor child in legal actions for which he is not competent.[13] But generally for minors, the declaration shall be made by a legal guardian or a guardian appointed by the court (§ 31(2)-(4) of Act of 19 January 2005), and the minor must be present when the declaration is made.

The Slovak Ministry of Interior has made it possible to make a simple online temporary refuge registration,[14] which speeds up the entire procedure, but does not replace it – ultimately, personal, physical presence is necessary.

If Ukrainian citizen has the documents indicated above that can confirm identity, it will be given temporary shelter immediately. If not, application will be processed within 30 days at the latest. If application for temporary refuge is approved, it will be issued with a tolerated stay document marked „DOČASNÉ ÚTOČISKO" – temporary shelter.[15]

3. RIGHTS AND OBLIGATIONS

After receiving this type of protection, you can work in Slovakia (based on an employment contract and other work contracts) without having to meet additional conditions. However, you cannot run a business, including (of course) being self-employed. Employers must inform the employment

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Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance), OJ L 158, 30.4.2004, p. 77-123, Article 2(2); Council of the European Union, Council Directive 2003/86/EC, of 22 September 2003 on the right to family reunification, OJ L 251, 3.10.2003, p. 12-18, Recital 9 and Article 4; The Office of the High Commissioner for Human Rights, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families Adopted by General Assembly resolution 45/158 of 18 December 1990, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers [accessed: 17.07.2024], Article 4.

[12] *Information and assistance in connection with the war in Ukraine*.

[13] See § 9 of *Občiansky zakonnik z 26. februára 1964, č. 40/1964 Zb.* and § 31(1) of *Zákon z 19. januára 2005 o rodine a o zmene a doplnení niektorých zákonov, č. 36/2005 Z. z.*

[14] *Temporary refuge registration*, https://portal.minv.sk/wps/portal/domov/ecu/ecu_elektronicke_sluzby/ECU-UA [accessed: 18.07.2024].

[15] *Information and assistance in connection with the war in Ukraine*.

office about the commencement of employment by a person with 'temporary refugee' status within 7 working days, using the general form for the registration of workers from third countries.[16]

The Ministry of Labour, Social Affairs and Family of the Slovak Republic is actively involved in helping refugees from Ukraine [Veselková and Hábel 2024]. One example of such activity is a project 'Prevention of crisis situations in relation to citizens of Ukraine on the territory of the Slovak Republic' (*Predchádzanie krízovým situáciám vo vzťahu k občanom Ukrajiny na území SR*), whose main assumption is the active integration of 'emigrants' from Ukraine into Slovak society with the aim of promoting equal opportunities and active participation and improving their employment on the labor market.[17] Provides also a range of detailed information in Ukrainian.[18] Additionally, a national refugee assistance project was in operation until the end of 2023 (*Národný projekt Pomáhame odídencom*) within the framework of which the financing of a contribution to an educational course was ensured for emigrants who have been granted temporary refuge in the territory of the Slovak Republic (issued a document of tolerated stay in the territory of the Slovak Republic with the designation "Odídenec" or the designation "Dočasné útočisko"), and who expressed an interest in financial support for their education or training.[19]

Persons who are granted temporary refuge and do not have public health insurance in Slovakia or another EU member state, have the right to receive urgent medical care and needed medical care as defined by the Ministry of Health on 'Determining the scope of the necessary health care. Reimbursement of urgent and necessary health care for persons granted temporary shelter' (*Určenie rozsahu potrebnej zdravotnej starostlivosti. Úhrada neodkladnej a potrebnej zdravotnej starostlivosti pre osoby s poskytnutým dočasným útočiskom*). The amount of reimbursement for medicines, medical aids and dietetic foods is governed by the currently valid 'List of categorized medicines, medical aids and dietetic foods' (*Zoznam kategorizovaných liekov, zdravotníckych pomôcok a dietetických potravín*). In the event that there is

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[16] See https://www.upsvr.gov.sk/buxus/docs/SSZ/OISS/CUDZINCI/2022/Informacna_karta_o_vzniku_pracovnopravneho_vztahu_a_o_zaciatku_vyslania_na_vykon_prace_statneho_prislusnika_tretej_krajiny-Priloha9a.docx [accessed: 18.07.2024].

[17] See https://www.employment.gov.sk/sk/uvodna-stranka/koronavirus-pracovna-socialna-oblast/predchadzanie-krizovym-situaciam-vo-vztahu-k-obcanom-ukrajiny-uzemi-sr/ [accessed: 18.07.2024].

[18] See https://www.employment.gov.sk/sk/uvodna-stranka/informacie-odidencov-z-ukrajiny/informacie-odidencov-z-ukrajiny.html [accessed: 18.07.2024].

[19] See https://www.upsvr.gov.sk/sluzby-zamestnanosti/nastroje-aktivnych-opatreni-na-trhu-prace/vzdelavanie-odidencov-narodny-projekt-pomahame-odidencom.html?page_id=1178160 [accessed: 18.07.2024].

a surcharge for medicine, medical aid and dietetic food, this is paid by the person for whom the medicine, medical aid or dietetic food is indicated.[20]

In order to receive urgent medical care, it is sufficient to prove that particular person is an applicant for temporary refuge or that he has been granted temporary refuge. To receive needed medical care, is needed to prove temporary refuge status. Particular persons residing in Ukraine are entitled to reimbursement of urgent care even before applying for temporary refuge as well as asylum, subsidiary protection, but for no longer than 30 days from the date of entry into the territory of the Slovak Republic.[21]

As of 1 January 2023, the Ministry of Health have adjusted the scope of health care for children and adolescents from birth to 18 years + 364 days, who have been granted temporary protection in Slovakia in connection with the ongoing Russia's aggression against Ukraine. The scope of health care from 1 January 2023 covers the same scope of health care as public health insurance and includes preventive examinations, urgent medical care and medical procedures and spa care (§ 2, § 3 and § 7 of the Act of October 21, 2004 on the scope of health care paid on the basis of public health insurance and on payments for services related to providing health care, no. 577/2004 Z.z.).[22]

As of 1 September 2023, the Ministry of Health have adjusted the scope of health care for adults, who have been granted temporary protection in the Slovak Republic in connection with the ongoing armed conflict in Ukraine. The scope of health care from 1 September 2023 covers almost the same scope of health care as public health insurance and includes preventive examinations, urgent medical care and medical procedures (§ 2 and § 3 of the Act of 21 October 2004)[23].

Slovakia supports free accommodation for Ukrainian refugees in accordance with the Asylum Act, which has been amended several times in response to the conflict situation in Ukraine (Act of June 20, 2002 on asylum and amendments to certain acts, No. 480/2002 Z. z.). As of March 1, 2024, the allowance for accommodation in an apartment has been adjusted to 5 euros per night, regardless of the age of the accommodated person. However, from April 1, 2024, the allowance for accommodation in non-residential premises was adjusted to 6 euros per night, regardless of the age of the person staying. Due to the natural changeability of circumstances, combined with the prolongation of the conflict, from July 1, 2024, were

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[20] See https://www.health.gov.sk/?urcenie-rozsahu-potrebnej-zdravotnej-starostlivosti [accessed: 18.07.2024].

[21] *Information and assistance in connection with the war in Ukraine.*

[22] See https://www.health.gov.sk/?urcenie-rozsahu-potrebnej-zdravotnej-starostlivosti [accessed: 18.07.2024]; *Information and assistance in connection with the war in Ukraine.*

[23] See https://www.health.gov.sk/?urcenie-rozsahu-potrebnej-zdravotnej-starostlivosti [accessed: 18.07.2024]; Information and assistance in connection with the war in Ukraine.

introduced new rules apply to the payment of the allowance (Act of June 13, 2024, which amends Act no. 480/2002 Z.z. on asylum and on the amendment of certain laws as amended later regulations and which amend some laws. no. 144/2024 Z.z.).

From July 1, 2024, the allowance will be provided only for the accommodation of the emigrant within 120 days from the first provision of temporary refuge on the territory of the Slovak Republic. After this time, only for the accommodation of 'vulnerable persons', which are: 1) a member of the household that is a recipient of aid in material need; 2) a person with a serious disability who is provided with a subsidy to support humanitarian aid according to a special regulation; 3) a person who has reached the age of 65; 4) one of the parents who takes care of a child under the age of 5 or a natural person who personally takes care of a child under the age of 5 based on a court decision, 5) a child under 5 years of age of the person according to the previous point.

The following is entitled to an allowance for accommodation: 1) a person who owns real estate used for housing in its territorial district, which provides free accommodation to a migrant; an allowance for accommodation is provided to them in the amount of 5 euros per one night of accommodation of the expatriate (one room – max. EUR 390 per calendar month, two rooms – maximum EUR 540 per calendar month, three rooms – max. EUR 720 per calendar month, four or more rooms – max. EUR 900 per calendar month); 2) a juristic person that provides free accommodation to a migrant in a non-residential building used for short-term accommodation, which it owns or manages (the condition is that it does not operate in the area of accommodation services); 3) a municipality or a higher territorial unit, if it provides free accommodation to the emigrant directly or through a budget organization or contribution organization within its scope of establishment, while the contribution is not provided to the state budget organization and state contribution organization.

As of April 1, 2024, the allowance for accommodation is provided to them in the amount of 6 euros for one night of accommodation for a foreigner. What's important, from July 1, 2024, juristic persons operating in the field of accommodation services are no longer entitled to the allowance for the accommodation of emigrants (conditions for receiving the accommodation allowance effective until June 30, 2024.[24]

After applying for temporary protection, Ukrainian child can start school in Slovakia. As advised by the International Organization for Migration Information Center in Slovakia 'Visit the kindergarten, primary or secondary school where you would like to place your child. The school will check his/her level of education and knowledge of the Slovak language and place him/her in

[24] See https://www.minv.sk/?prispevok-za-ubytovanie [accessed: 18.07.2024].

the appropriate grade. Your child will also be provided with Slovak language tuition.'[25] This advice is confirmed by materials prepared by the Ministry of Education, Research, Development and Youth of the Slovak Republic.[26]

Ukrainian youth, especially those with temporary refugee status, can pursue free higher education in Slovakia if they are conducted in Slovak. Studies organised in other language than Slovak may be (and most often are) paid on general terms.[27]

CONCLUSION

As in any other frontline country (even leaving aside the nuances of a political and geopolitical nature) Slovakia had to and still has to weigh and balance the need to open up to those in need, to refugees (regulated, among others, in humanitarian law *sensu largo*) with the need to ensure the broadly understood security of the state [Walczuk 2013, 293-306]. It turned out to be necessary to closely combine international and national (Slovak) regulations, resulting from the need to adapt (primarily) domestic law to the specific situation resulting from the need to immediately respond to the sudden influx of refugees (primarily women and children) from a country affected by armed operations.

The variability of the internal situation in Slovakia, the variability of the refugee structure, but also the prolongation of the actual war in Ukraine result in changes in Slovak law concerning the title issue. Awareness of this and knowledge of the content and direction of changes can help shape the law in other areas as well, both domestically and internationally.

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[25] Information and assistance in connection with the war in Ukraine.

[26] See https://ukrajina.minedu.sk/data/att/c1b/24492.e4ea10.pdf [accessed: 18.07.2024]. See also Píšová, Csiba, and Ďuranová 2022.

[27] See https://www.studyinslovakia.saia.sk/en/main/study-in-slovakia/aid-for-ukrainian-refugees [accessed: 18.07.2024].

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TORTIOUS LIABILITY FOR USING ARTIFICIAL INTELLIGENCE

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Abstract. This article discusses the principles of and premises for liability for damage caused by AI systems. It applies to liability models based on the principles of risk and guilt. It indicates that different groups of entities, e.g. programmers, may be responsible for the creation of AI under the principle of guilt, while producers and merchants may put it into circulation under the principle of risk. The liability of AI system users should be tempered and based on the principle of guilt. This article includes a critical view of the AI Act and the relevant directives. It points out that effective liability for damage should be related to the level of harm caused (harm to a person, human death) and not dependent on whether it was inflicted by a high-risk system or any other AI system.

Keywords: artificial intelligence (AI); AI liability for damage; tort liability for AI systems; liability for artificial intelligence; AI system flaws; product liability; removal of product liability.

GENERAL REMARKS

Seeking a solution to the issue of liability for damage caused by artificial intelligence is related to the implementation of the next stage of development – the so-called fourth industrial revolution. Artificial intelligence can be used in different spheres of life. Its application entails the risk of damage, in particular damage suffered by human beings. Therefore, the notion of legal protection against such phenomena arises. What prompted this contribution was the adoption of the Artificial Intelligence Act by the European Parliament on 13 March 2024 (a regulation on artificial intelligence) and the Parliament's work on the directive proposal on liability for damage caused by AI systems. In this context, the following issues need to be determined: the principles of liability for damage caused by AI, the premises of liability, the group of liable entities and the circumstances exempting liability, as well as the position of the consumer using AI with regard to damage liability.

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1. THE CONCEPT OF AI

Artificial intelligence (AI) is the ability of machines and computer programs to demonstrate human abilities, such as reasoning, learning, planning and creativity [Księżak and Wojtczak 2023. 16].

In general terms, artificial intelligence enables technical systems to perceive their environment, handle what they can perceive and solve problems while they are in operation working towards a specific aim. Descriptively speaking, this phenomenon involves the situation when the computer (an IT system) receives data (prepared and collected by its sensors, i.e. a camera), processes it and provides a response based on the ability of associating facts and drawing conclusions. Systems and devices using AI can modify their behavior to some extent as a result of the analysis of their former actions and autonomous activity, which happens in, e.g., cars, drones[1] or chat GPT. At the same time, it cannot be unanimously declared that at present AI has self-awareness.

The term "artificial intelligence" was proposed and defined for the first time in 1955 by John McCarthy [Różanowski 2007, 109]. Until today, a number of different AI definitions have been formulated. They are descriptive, place emphasis on technical or legal aspects and point out functional aspects, including IT.

In a technical sense, artificial intelligence (AI) is the field of science which deals with problem-solving on the basis of models of knowledge. AI explores the possibilities of human intelligence modelling as well as aspects of logical thinking and conclusion-drawing by machines. The question that arises, however, is to what extent such conclusions may be independent and autonomous [ibid., 111]. AI is part of information science, which tries to explain and emulate intelligent behavior using calculation methods that would make it possible [for machines or systems] to perceive the environment, draw conclusions and act [ibid., 112]. This field is focused on constructing machines and algorithms whose operation bears the attributes of intelligence as they can learn and draw autonomous conclusions.

In a legal sense, AI is the system which enables the performance of tasks that require learning and taking into account new circumstances in the process of solving a given problem and which – to a different extent, depending on the configuration – may operate autonomously and interact with the environment [Zalewski 2020, 2; Staszczyk 2022, 24-30]. Instead of defining artificial intelligence, some authors rather focus on its functional aspects claiming that the aim of AI is to "automate intellectual abilities of humans,

[1] See https://www.europarl.europa.eu/news/pl/headlines/society/20200827STO85804/sztuczna-inteligencja-co-to-jest-i-jakie-ma-zastosowania accessed: 24.07.2024].

such as drawing conclusions, associating facts and selecting information" [Janowski 2019, 24]. In its communication of 2018 "Artificial Intelligence for Europe", the European Commission indicated that artificial intelligence referred to systems that displayed intelligent behavior by analyzing their environment and taking actions – with some degree of autonomy – to achieve specific goals.[2]

In its "White Paper on Artificial Intelligence. A European approach to excellence and trust of 2020", the European Commission indicated that "AI is a collection of technologies that combine data, algorithms and computing power."[3] The European Parliament proposed its own definition of AI[4] and of an AI system.

AI may not be identified with simple algorithms as it has the ability to learn and improve in the future [Księżak and Wojtczak 2023, 18].

2. AI CLASSIFICATION

Artificial intelligence is subject to special classification. There are two categories – the so-called top-down AI and bottom-up AI.[5] The AI Act distinguishes and defines the so-called high-risk AI systems[6] and other systems. High-risk systems are defined partially by referring to an annex to the regulation (Article 6(1) of the AI Act).

People need intelligent machines to create and discover new relationships in the world. AI is applied in such disciplines as medicine, economy, law, creativity or management. The prospect of creating autonomous intelligent machines that could think and make decisions independently is worrisome. The arising concerns regard the unpredictable and unplanned consequences of AI application, including the possibility of damage and the liability related to it. Machine learning and association of facts may result in making wrong or flawed conclusions or decisions (e.g. in autonomous vehicles). Therefore,

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[2] Communication from the Commission, Artificial Intelligence for Europe, COM(2018) 237 final.

[3] White Paper on Artificial Intelligence – A European approach to excellence and trust COM(2020) 65 final.

[4] Article 3(1) of the AI Act defines an AI system as "a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments."

[5] Bottom-up AI systems are designed to carry out tasks as indicated and their capacities are limited by the technology applied, while top-down systems have the capacity to solve any problems and are constructed in a similar way to the human brain. See Rojszczak 2019, 4 (supra note 7).

[6] See footnote 22 for the definition.

the rules of liability need to be determined and the scope of liability should be regulated both for the liable entity and the authorized entity. When liability rules are defined, it is necessary to achieve an adequate balance in the relationship between the interests of the authorized entity – the injured entity and the interests of the entities responsible for the damage resulting from the development, marketing and use of AI.

These reflections are devoted to the modelling of liability foundations in relation to the damage that may arise as a consequence of AI use.

3. AI DAMAGE LIABILITY MODELS IN THE EU LEGISLATION

Legislative work with an aim to regulate AI, including its "ability to cause damage", is in progress at the moment. As it has already been mentioned, the application of AI entails the risk of damage.

The legislative framework which serves as the starting point for these considerations is the European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics.[7] One should also mention the European Parliament resolution of 3 May 2022 on artificial intelligence in a digital age,[8] which defines the essence of new AI solutions and their influence on individual spheres of life and states that it is the beginning of the fourth industrial revolution.

There is also the European Parliament resolution of 20 October 2020 with recommendations to the Commission on a civil liability regime for artificial intelligence, which includes an annex with specific recommendations for the individuals preparing the Proposal for a Directive of the European Parliament and of the Council on adapting non-contractual civil liability rules to artificial intelligence.[9]

The European Parliament resolution of 2017 adopted Asimov's Laws as the starting point for legal regulations. They provide that (1) a robot (AI) may not injure a human being or, through inaction, allow a human being to come to harm; (2) a robot must obey the orders given it by human beings except where such orders would conflict with the First Law; (3) a robot must protect its own existence as long as such protection does not conflict with the First or Second Law (cf. "Runaround") and (4) a robot may not injure

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[7] European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics, 2015/2103 (INL).

[8] Report on Artificial Intelligence in a Digital Age 2020/2266 (INI).

[9] Directive of the European Parliament and of the Council on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive) 2020/2014(INL); the product definition under directive 85/374/EEC is understood in a broad sense and AI may be a product. Cf. Twigg-Elsner 2021.

humanity or, through inaction, allow humanity to come to harm [Asimov 1943]. These laws are addressed to AI creators, robots and the products of their work. Thanks to the development of science, new entities were created, such as intelligent robots and artificial intelligence.

The direct application of these laws in the development of civil liability for AI led to the proposals of two directives and assumptions for a regulation (the AI Act,[10] which was followed by the regulation of 13 March 2024 awaiting the formal approval of the Council[11]). This regulation is addressed above all to the persons creating and introducing AI systems to the EU market. Considering the fact that the application of AI systems entails risk, it defines AI handling standards and categorizes the risk involved. Unacceptable risk is forbidden and the regulation applies to AI with high and medium-level of risk.

As for directives, the first was a proposal for a directive on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive).[12] Moreover, work is continued on the directive of the European Parliament and the Council on waiving liability for defective products that is to overrule directive 85/374/EWG and include AI systems within its thematic scope.[13]

The proposal for the first directive focuses on evidence simplification when liability is based on the principle of guilt (Article 2(5) of the directive proposal). The injured party may have serious problems with determining the entity responsible for damage. Article 3(1) of the directive proposal provides that a court may issue an order to disclose evidence concerning specific high-risk AI systems[14] which have allegedly caused damage.

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[10] Proposal for a regulation of the European Parliament and of the Council laying down harmonized rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts of 21 April 2021, COM(2021) 206 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0206 [accessed: 29.01.2024]. Final version: Regulation (Eu) 2024/1689 Of The European Parliament And Of The Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), Text with EEA relevance, O.J. UE. L. of 2024, item 1689, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401689 [accessed: 25.10.2024].

[11] See https://www.prawo.pl/biznes/ai-act-zasady-korzystania-ze-sztucznej-inteligencji,526385.html [accessed: 23.04.2024].

[12] AI Liability Directive Proposal: https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX%3A52022PC0496&qid=1665410785599 [accessed: 29.01.2024].

[13] See https://www.europarl.europa.eu/RegData/seance_pleniere/textes_adoptes/definitif/2024/03-12/0132/P9_TA(2024)0132_PL.pdf [accessed: 26.02.2024].

[14] Under Article 6(1) of the AI Act, an AI system is considered to be high-risk where both of the following conditions are fulfilled: (a) the AI system is intended to be used as a safety component of a product, or the AI system is itself a product, covered by the Union

Evidence requests are directed to the supplier of the AI system, to the person who is subject to the supplier's obligations defined in Article 24 or Article 28(1) of the AI Act or to the user under the AI Act. Such evidence may be secured (Article 3(3) of the directive proposal). Secondly, under general terms (also the national law), it is required to demonstrate guilt when damage was caused in connection with AI. Thirdly, the alleged existence of a causal relationship in the case of guilt is introduced (Article 4(1) of the directive proposal). For high-risk AI systems defined in the AI Act, in Article 4(4) of the directive proposal, there is an exemption from demonstrating the alleged causal relationship if a respondent can prove that the claimant may obtain a relatively easy access to evidence and expert knowledge sufficient to prove a causal relationship.[15]

In the light of the AI Act, high-risk systems include also those listed in Annex III to the regulation (Article 6 (2) of the AI Act), such as biometric identification systems, systems for emotion recognition to evaluate and recruit employees or polygraphs used by the public authorities. The catalogue is closed, but it can be updated by the European Commission (AI *numerus clausus*). It is also indicated that high-risk systems should include: unmanned aircraft, autonomous vehicles, autonomous traffic management systems, autonomous robots and autonomous appliances used to clean public space. In this regard, it is proposed to extend liability based on the principle of risk to include AI systems within the scope of liability for a hazardous product, an aspect to be further explored.

4. HOW TO SHAPE LIABILITY FOR AI?

The issue of liability for AI may be analyzed from the perspective of determining the entity responsible for damage caused by AI as well as from the perspective of liability regimes and rules applicable to damage liability. It should be noted that the issue of damage liability is extremely complex. From the perspective of the liable entity, the relationship between the injured party and the entity responsible for damage should be analyzed bilaterally each time. The AI creator (programmer) may be responsible for causing damage by violating the provisions of the contract with the contracting

harmonization legislation listed in Annex I; (b) the product whose safety component pursuant to point (a) is the AI system, or the AI system itself as a product, is required to undergo a third-party conformity assessment, with a view to the placing on the market or the putting into service of that product pursuant to the Union harmonization legislation listed in Annex I. Additionally, a list of high-risk AI systems is introduced in Annex III, which will be updated on a regular basis (Article 6(2) of the AI Act).

[15] See https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX%3A52022PC0496&qid=1665410785599 [accessed: 29.01.2024].

party, e.g. an automobile corporation (contractual liability). The AI producer or marketer (deploying an AI system) has influence over the system testing stage and decides to make it available to a larger group of clients, including consumers, in the situation when any hazards related to its use (e.g. in autonomous cars) have been excluded in its opinion. The producer or marketer also derives profits from the application of such a technology. Therefore, this entity should be responsible before third parties for the stage of putting the device using AI or the software itself into circulation. Contractual liability may be implemented between the creator and the entity putting the product into circulation or between the entity putting the product into circulation, the producer, the distributor and the contracting entity. Contractual arrangements and the liability following from them may not change the scope of responsibility before the injured third persons. As a rule, contractual relationships are outside the scope of this analysis. The parties may determine the rules of liability which apply to each of them in a contract. They may indicate the principle of guilt in the contract, mitigate this liability or tighten it up and make it more objective. In this way, compensation, rules of liability, circumstances for which the contracting party is liable and maximum liability amounts may be regulated in the contract. As for contractual liability, if AI is used, it seems axiologically important to implement a civil liability insurance system, which may be voluntary or mandatory.

These consideration are limited to tortious liability with regard to the third parties who were injured by AI application.

Separate regulations should govern liability for the use of an AI system (AI user, end operator) by a professional or final user (non-professional), in particular a consumer. In such situations, liability will be associated with the fact of AI use. However, a distinction needs to be made between the situation when a causal relationship is related to the act of an entity using AI and the decision, or its absence, of the AI system itself. If the causal relationship is related to the decision (or its absence) made by an AI system, this circumstance in itself should not determine the arising of liability, in particular liability based on the principle of risk.

As for the subject, it needs to be determined who bears responsibility for damage caused by AI and who should be entitled to compensation. Initially, it should be established what event causing damage should be linked with the responsibility of a specific group of entities. Damage may occur both in connection with the creation or production of artificial intelligence (programme creation) causing damage (the first stage), its marketing after the testing stage or without it (the second stage) as well as its application in trade or social life (commercial AI user, AI operator such as a drone operator, non-commercial user – consumer (the third phase).

Initially, it ought to be recognized that liability should apply both to the programme creators and producers, i.e. those that develop a tool with the potential to cause damage and make it available, as well as the entities that 'use' artificial intelligence, owners (proprietors) who use the appliance equipped with AI. In general terms, it should be accepted that liability is related to the fact of putting into circulation and using AI (and not exclusively to machines or systems using AI) that may cause damage, so that it is possible to apply the obligation of compensation to the largest possible pool of cases. On the other hand, if AI is not applied, the causal relationship between damage and a specific entity is non-existent.

It needs to be precisely defined what form of damage and what kind of harmful behavior a specific group of entities is responsible for, what liability rules apply, what circumstances waive or limit liability and what causal relationship is required for liability to arise.

Firstly, liability is borne by AI producers, programmers or programme producers. It remains an open question on what basis the above entities are liable. Potentially, just like in other cases, liability may be based on three principles: guilt, risk and legal certainty.

Because of limited consequences of the mere fact of AI creation on the one hand and on the other – the need to develop science and technology, liability borne by this group of entities should be based on the principle of guilt with optional evidence facilitation as indicated in the directive proposal (with regard to third persons). Liability for the creation of AI excluding the option of causing damage to the entire range of entities does not justify the burden of risk (on, e.g. programmers, for damage caused by AI). The mere creation of AI without its application and making it available to recipients or for experimental use does not entail any high or prevalent risk of damage. In the phase of experiments, it is relatively insignificant. Experiments are needed both for the development of science and the elimination of errors in AI operation. However, when AI is made available for commercial use or for consumers, it may become a source of serious damage and prevalent risk. The liability between the creator, contracting entity, system producer or marketer will be contractual by nature. In this case, it would be justified to apply a civil liability insurance system with the maximum amount of liability defined (which is provided for by the AI Act (Article 31(9)) with regard to the so-called notified units). Liability with regard to third persons would be tortious.

Secondly, separate considerations should be devoted to the liability of an AI operator, producer, entity who owns the rights to AI and the producer of the system that profits from marketing and using AI. In such cases, liability should be based on the principle of risk, in particular liability for a hazardous product, or on the principle of risk with a narrow list of cases when liability may be waived. In this respect, liability would be related to the act of

making AI, which is defective and causes damage, available to a large group of clients. It may be the result of insufficient testing before putting it into circulation or violating obligations imposed by the AI regulation, in particular neglecting the critical update of the system.

Thirdly, there arises a question about the responsibility of an AI user (system user) or AI system operator and the consumer using the AI available who is not its producer, operator or creator. The consumer's role in the causal relationship boils down to using an AI tool which caused damage. Such use may have occurred with or without the awareness of using AI or in a way that is contrary to the purpose of the AI system. It is unclear whether the entity that does not derive profits from the risk of using AI or gains or benefits related to it should be responsible for AI. The party entitled to compensation should be the entity that suffered damage. It is easy to imagine a situation when damage is suffered by an entity, a group of entities (consumers) or third parties that are anonymous. In such a situation, it is possible that, e.g., consumers' organizations may represent the injured party or injured groups.[16]

While liability based on the principle of risk could be considered reasonable for AI operators and commercial users, for consumers this liability should be excluded or mitigated – based on the principle of guilt for failing to exercise due care in using an AI system. In the situation when, e.g. an autonomous drone makes an independent decision without the operator's participation or even against the operator's intentions, it may not be confirmed that there is an adequate causal relationship between damage and the operator's behavior. In the situation when liability is based on the principle of risk, it is theoretically possible to accept the operator's responsibility for damage, including broadly defined exonerating premises. Liability would then apply to the situations of AI use.

There are also views that advocate empowerment – awarding legal personality to AI, i.e. "bringing to existence" an electronic person that would be liable for its own acts or omissions causing damage [Księżak and Wojtczak 2023, 19].[17]

Recognizing the concept of AI development, its possible empowerment and the creation of its liability, one needs to solve a number of issues related to the "existence" of a legal electronic person. Awarding special legal personality to AI would make it possible to assign the legal consequences of its activity (limited legal capacity, tortious capacity) to AI. Thus, it would be necessary to define the standard of AI "awareness" needed to consider it

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[16] Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC, OJ L 409/1.

[17] For the distant perspective on such an approach see Lohsse, Schulze, and Staudenmayer 2019, 8-9.

as possessing its own free will and ability to freely and consciously direct its own behavior (sufficient discernment, saneness). The question is whether it is possible to objectively verify the existence of AI's "awareness" and free will. On the other hand – is it at all necessary if legal persons, including entities, are guided by the "human will" assigned to them by way of legal fiction? Undoubtedly, where AI dominates decision-making processes (choice between 2 options), legal consequences should be borne by the entity that owns or uses AI (liability of humans or legal persons). If AI is empowered, legal consequences would arise for AI itself. The rationality of equipping AI into a personality to achieve tortious liability would be expressed in the axiological layer by recognizing AI's separate existence as an entity. Nowadays, it seems to be too early for that, in particular considering the uncertainty regarding the list of premises conditioning the recognition of an electronic entity as a subject of law. Civil liability has the nature of financial liability. It would be reasonable to empower AI to bear liability for damage if it was equipped with separate assets. The same effect, regardless of numerous doubts regarding AI empowerment, can be achieved by mandatory or voluntary liability insurance for damage caused by AI.

As it has already been said, liability may be based on a tortious or contractual regime in the situation when the injured party is bound by a contract with the party responsible for AI. Contractual liability may follow from a contract of civil liability insurance against damage caused by AI – concluded voluntarily or as a consequence of the legal obligation to do so. Thus, the protection of the injured party may be additionally strengthened by the system of civil liability insurance against damage caused by AI.

As a sidenote, it needs to be added that AI may be a component of more complex machines and appliances, such as autonomous vehicles or flying objects (drones with autonomous functions), mechanical vehicles or autonomous robots directing traffic for which there are separate liability regimes provided under the law. In practice, however, only with regard to the liability of groups of entities – owners and users of autonomous vehicles and autonomous aircraft (drones), parallel civil liability of the owners of autonomous vehicles and aircraft using AI will be of fundamental importance for the authorized (injured) party. As for the drone operator's liability for damage, the provisions of the Aviation Law apply. Under Article 206 (1) in connection with Article 207 of the Aviation Law of 3 July 2002, liability[18] for damage caused by aircraft traffic is subject to civil law provisions on civil liability for damage caused by operating mechanical means of transport propelled by a force of nature (Aviation Law provisions of 2002). Article 436 of the Civil Code is important here as it includes a reference to Article 435 of

[18] Uniform text in O.J. 2023, item 2110.

the Civil Code, which provides for liability for mechanical vehicles, including those with autonomous functions. This kind of liability is based on the principle of risk, which creates the liability of the vehicle owner – a positive mechanism for the injured party. The liable person is the person operating the aircraft (Article 207(1) of the Aviation Law).

Liability regimes may overlap in this regard.

5. PRODUCT LIABILITY AS THE FOUNDATION OF LIABILITY FOR AI

One solution is to extend liability for a hazardous product to include the cases of AI software (which is put into circulation).

In its resolution of 20 October 2020, the European Parliament proposed the introduction of a limited liability system based on the principle of risk with regard to some technologies based on artificial intelligence and facilitated the determination of the party carrying the burden of proof under the provisions regulating liability based on the principle of guilt (Article 5(2) of the directive proposal).[19] The directive proposal includes the concept of liability for an AI system with the assumption that AI does not operate in a vacuum but makes an element of a "complex whole" (artificial intelligence systems) instead [Staszczyk 2022, 25].

It should be noted that product liability was introduced into the EU legal order by Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products.[20] It assumes the producer's liability, which is independent of the demonstration of the producer's guilt in the case of damage caused by the final product created by the producer. In such a situation, the burden of proof is what makes the liability of the producer and the entities equivalent to the producer for a hazardous product more objective.

After the implementation of the directive to the Polish legal order by introducing Article 449[1] and the following to the Civil Code, the predominant opinion in the doctrine is that product liability is based on the principle of risk [Gnela 2000, 286; Łętowska 2001, 126; Bielsa-Sobkowicz 2017, 308],

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[19] See https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX%3A52022PC0496&qid=1665410785599 [accessed: 29.01.2024]. As it has already been mentioned, the EU tries to solve the issue of liability for damage caused by the use of AI systems by including AI in the regulations governing product liability. This is the focus of a proposal for a directive on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive) of 28 September 2022, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022PC0496) and a proposal for a product liability directive

[20] O.J. WE L 210.

although this idea has not been fully implemented [Byczkowska 2001, 71]. It should be considered that liability in the light of the Civil Code is based on the principle of risk, including special exonerating premises as defined.[21]

At present, when the concept of extending the scope of product liability to include AI systems is implemented, a new (second) directive is envisaged, which will replace directive 85/374/EEC of 25 July 1985.[22] For the purpose of the directive, the way of delivering an AI product (appliance delivery, access to a program available online or in the cloud) is irrelevant. What is important is the act of putting the product into circulation or making it available by the distributor. The liable entities are creators and producers of software as part of their business activity that put the software into circulation or make it available, including those entities that have significantly modified the software (Article 11(2) d of the directive proposal). Compensation would apply to both direct and indirect damage suffered by consumers. Exonerating circumstances have been limited (and rightly so) as compared to the first directive to the cases when the product flaw involves the absence of the software update or new version. Liability would not apply to any open source software or putting the product into circulation outside the entity's business activity (Article 2(2) of the directive proposal).

It should be assumed that liability for traffic accidents involving autonomous vehicles or drones should be borne by the producer of the vehicle, drone or the part that failed in certain circumstances which led to an erroneous maneuver and, in consequence, an accident, regardless of the liability of the vehicle owner or aircraft operator [Marchant and Lindor 2012, 13-28]. However, the operator or driver should be liable under the principle of guilt if, e.g. he or she could or should have responded to the dangerous situation by taking control over the autonomous car in a dangerous situation.

The EU regulations which are being designed provide for strict liability in the case of high-risk AI systems.[23]

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[21] Exonerating premises under Article 4493 of the Civil Code include 1) the product was not put into circulation; 2) the product was put into circulation outside the scope of the manufacturer's business activity; 3) hazardous properties of the product were revealed after it was put into circulation; 4) the hazardous properties of the product could not have been foreseen based on scientific and technological conditions at the time the product was put into circulation; 5) the hazardous properties resulted from the application of legal regulations.

[22] See European Parliament legislative resolution of 12 March 2024 on the proposal for a directive of the European Parliament and of the Council on liability for defective products (COM(2022)0495 – C9-0322/2022 – 2022/0302(COD), which will replace directive 85/374/EEC, currently in force, https://www.europarl.europa.eu/RegData/seance_pleniere/textes_adoptes/definitif/2024/03-12/0132/P9_TA(2024)0132_EN.pdf [accessed: 04.04.2024].

[23] High-risk signifies a high potential of an autonomous AI system to cause harm or damage to one person or a larger group of people in a random way, which is impossible to foresee. High potential depends on the mutual relationship between the scale of possible harm or

CONCLUSIONS. LIABILITY RULES. HOW TO SHAPE LIABILITY FOR AI? *DE LEGE FERENDA* REMARKS

As demonstrated by the reflections presented above, two principles should be applied to liability, both the principle of risk and the principle of guilt [Wałachowska 2020, 61, 66]. In extreme situations, liability based on the principle of certainty should not be excluded. However, it should be remembered that a similar effect may be achieved by adequate modelling of liability based on the principle of risk and indicating exonerating circumstances or introducing a civil liability insurance system against damage caused by AI. The premises for damage-tort liability include: 1) causing damage, 2) as a result of an event whose occurrence was linked by the legislator with damage liability to be borne by specific entities, 3) the existence of an adequate causal relationship between damage and the event. If the principle of guilt applies, the second premise is related to the guilty party's behavior (usually, the absence of due care) and liability is waived, should exonerating circumstances arise. If the principle of risk applies, the second premise is related to the risk of a harmful event defined by a standard. Liability may be waived if exonerating circumstances arise.

The second premise and the liability rule applicable to AI creators (programmers) should be shaped separately. Making AI systems available to the public, deactivating software updates by a defined group of people – operators, producers, creators or authors of software updates – or updating AI systems during their operation should make a separate tort (harmful event) based on the principle of risk by extending the scope of liability for the product under directive 85/374/EEC.

The third kind of a tort is causing damage by the fact of using an AI system. It can be committed by an AI user.

Adopting liability based on the principle of guilt raises the question about the effectiveness of such a solution, which may be illusory and ill-suited to today's times and the resulting need of effective protection. Introducing the liability of a certain category of entities which is based on the principle of risk, while in other cases (e.g. programmers) liability will remain to be based on the principle of guilt and linked with evidence facilitation,[24] seems to be a move in a good direction.

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damage, the likelihood of the risk occurrence and the way of AI system use. It is assumed that there is a list of high-risk AI systems. See considerations above.

[24] Liability solutions adopted in the EU legal order and by, e.g., the Expert Group on Liability and New Technologies – New Technologies Formation, Liability for artificial intelligence, Publications Office of the European Union, Luxembourg 2019, p. 35 [Labuhn 2020, 265].

Firstly, it is a good idea to regulate a tort which involves putting AI into circulation or using an AI system. However, it should not be based on where the risk of damage occurs - whether it is in a high-risk AI system or not – as there is no flexible method of qualifying high-risk AI systems. The AI Act provides only for a *numerus clausus* of systems which are updated in the relevant annex.[25] In my opinion, this aspect should be analyzed from the perspective of the harmed entity. Liability for an AI system under the principle of risk should not change if it is qualified as a high-risk system, but it should depend on the type of damage and the level of harm caused by its use. When damage is suffered by a person, i.e. it involves health damage or a loss of life, liability for an AI system should be based on the principle of risk. This rule should at least be extended to include damage to a person regardless of the kind of an AI system (with regard to liability for the stage of putting AI into circulation, except for consumers). What should rather be moderated is the scope of liability for property damage unrelated to a person. There is no justified interest of an entity introducing AI to the market that would require a limitation of its liability for damage caused to a person. The type of damage and its harmfulness should determine strict liability based on the principle of risk, and not the type of the tool that caused it.

Secondly, a synthetic definition of a high-risk AI system including examples should be provided instead of a closed list of systems in the annex, which will be regularly updated. This kind of regulation does not take into account the circumstance that "the law is one step behind the reality" or does it to an insufficient extent. The final version of the AI Act introduces definitions of high-risk AI systems and refers to the annex to the regulation (Article 6(1) and Article 6(2) of the AI Act).[26]

Thirdly, the scope and criteria of contractual liability are defined and liability to third persons cannot be excluded.

Fourthly, there should be a system of mandatory insurance against the use of AI, and in particular AI systems. Depending on the type of damage, minimum amounts should be defined with an option of extending the coverage. Estimating the value of a human life in the situation of AI-caused damage as a specific sum (2 or 10 million euros) raises objections.

Fifthly, liability under the principle of risk in the case of drones or autonomous vehicles should apply both to the stage of liability for AI deployment (the second stage) and AI system use (the third stage). Within this scope,

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[25] For rightful criticism of this solution see Staszczyk 2022, 28 (supra note 6).

[26] Regulation of the European Parliament and of the Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts COM(2021) 206 final, 2021/0106(COD), https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX:52021PC0206 [accessed: 19.07.2024].

liability would be borne by different groups of entities and concern different harmful events (tort types) under the principle *cuius commodum eius periculum*. Because of the need to protect third persons, liability based on the principle of risk should be extended to include the users of dangerous technologies. Extending the list of liable entities would strengthen the compensating function of damage liability. The repartition of risk for these entities may be achieved by a civil liability insurance system.

Burdening those who introduce (deploy) AI systems to the market with responsibility for risk makes it possible to achieve an impeding (preventing) effect as regards hasty, ill-considered AI system deployment which has not been sufficiently tested (prevention of an "arms race" in pursuit of profit). The above are the guidelines to be observed if damage was caused to a person. Liability for damage to property should be regulated in a different way. Protective regulation should not lead to the obstruction of scientific development. Instead – where universal access and risk of harm to a person are at play – compensation protection should be effective and real. Fundamental rights should also be subject to protection (such as sensitive personal data, biometric identification or privacy).

Liability for damage to a person under the principle of risk should be severe and may even exclude liability in the situation of a *force majeure*. The amendment of directive 85/374/EEC provides for the absence of a producer's exemption (and rightly so) in the situation when a flaw was discovered (arose) after the product was marketed if the flaw was related to the software and the possibility (impossibility) of its update.

Sixthly, liability should be based on the basis of the principle of guilt (regarding the choice or absence of due diligence – regulations is this regard should be adopted accordingly) [Ziemianin 2021, 14] – of consumers or AI users (AI system owners) with the status of consumers [Jagielska 2009, 73].[27] Their guilt would boil down to using an AI system in a way lacking due care as to the system choice, application and the awareness of an AI component. No adequate causal relationship between the consumer's behavior involving AI use and the resultant damage should exclude the consumer's liability.

Summing up, AI's self-awareness and free will to survive may lead to a conflict between AI and its creator – the human being, who may inevitably lose this battle at some point. A disciple may surpass the master and the master will have to leave the stage. What needs to be determined is the unalterable framework for the operation of AI directed at its creators, users and AI itself in the aspect of damage.

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[27] The author indicates that the category of guilt should apply to all users. In favour of limiting the liability of the consumers of AI, see Caufffman 2018, 530.

In principle, liability for AI should not be limited to the type of damage, the way of compensation or the circumstances in which damage was not caused by a human being. It seems more justified to base liability on the principle of risk combined with the system of mandatory or optional civil liability insurance against AI damage. A good solution in transborder trade would be to accept the law of the state where damage was caused as the applicable law in the cases of non-contractual liability following from a tort.

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ON THE EFFECTS OF RENUNCIATION OF SUCCESSION IN THE LIGHT OF THE RIGHT OF THE RENOUNCING PARTY'S DESCENDANTS TO LEGITIME*

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Abstract. In the current legal setting, a contract to renounce succession is the only permissible agreement concerning the inheritance of a person who is still alive. The construction of this instrument may, however, raise reasonable doubts given the normative regulation of its effects. The binding force of a contract to renounce succession depends on the will of the parties thereto, as the provision of Article 1049(1) of the Polish Civil Code is of a dispositive nature. According to this provision, the renunciation of succession also affects the descendants of the renouncing party, unless agreed otherwise. Given that the Civil Code (Article 1049(1)) provides that the renouncing party and their descendants are to be treated as if they did not live to see the opening of the succession, as a result of the contract, not only will they not inherit under the law, but they will not be entitled to a force share of the estate (legitime), either. In view of the protective function of legitime and its *ratio legis*, such a normative solution can hardly be endorsed. The point is that it results in abstract disinheritance, that is, a situation in which individuals entitled to legitime are deprived of their right without any justification, i.e. despite the absence of grounds for disinheritance. In addition, the deprivation of their forced share is decided by the testator and a third party, i.e. the heir at law, who, when entering into the contract, does not act on behalf of his or her descendants but only on their own.

Keywords: renouncement of succession; descendants of the renouncing party; right to legitime; deprivation of legitime.

* Although this paper looks at a contract to renounce succession, it should be noted that, *de lege lata*, no more doubts exist as to whether it is possible to enter into a contract to renounce a reserved share of the estate (legitim) only. The legal basis is provided in Article 1048(2) of the Act of 23 April 1964, the Civil Code (Journal of Laws of 2023, item 1610 as amended [hereinafter: CC]). It reads that the renunciation of succession may be limited only to the right to a legitim in whole or in part. The cited provision was incorporated in the CC by the Act of 26 January 2023 on the Family Foundation (Article 129(12), Journal of Laws of 2023, item 326).

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1. THE *RATIO LEGIS* OF A CONTRACT TO RENOUNCE SUCCESSION

As regards contracts concerning the inheritance of a person who is still alive, the Polish Civil Code only allows a contract to renounce succession. In accordance with Article 1048(1) CC, a heir at law may renounce succession from the future testator through a contract. Any heir at law (with the exception of the municipality of the testator's last place of domicile and the State Treasury) may be a party to this contract, regardless of whether and in what sequence they would acquire the title to inherit from the future testator by law as at the time the contract is concluded [Kosik 1986, 560; cf. Pazdan 2015, 1140]. The consequences of the contract can be far-reaching, indeed, since, unless the parties agree otherwise, the renouncement of succession also extends to the renouncing party's descendants (Article 1049(1) CC). In principle, these consequences affect both the renouncer's descendants who live at the time of entering into the contract and those born thereafter. Also, any changes made to the contract aimed to modify its effects may also eliminate them with regard to selected descendants of the renouncing party [Pazdan 2021, Article 1049, Nb 2 and 3]. Following the contract, pursuant to Article 1049(2) CC, the renouncer of succession and his or her descendants, who are affected by the renunciation, are denied the succession as if they had been already dead during the opening thereof. The effect that Article 1049 CC produces is relevant not only for intestate succession from the testator, who is a party to the renunciation contract, but also for any extra rights vested with the renouncing party under intestate succession, including the right to a legitim, if, of course, the contract was concluded with the testator's spouse, descendant, or parent (and taking account of the legal consequences arising from adoption, see Articles 936 and 937 CC). If, as highlighted above, the renouncing party and, as a general rule, his or her descendants, are treated as if they had been already dead during the opening of the succession, and this is tantamount to the fact that they "who would not have been appointed to inherit by virtue of statutory law" (Article 991(1) CC) from that testator, they will not be entitled to a legitim, either.

From the testator's perspective, the significance of a contract to renounce succession is primarily reflected in the fact that those entitled to inherit under Article 991 CC will not be able to lodge any claims after his or her death, in particular to claim any pecuniary benefit as their reserved share. The doctrine shows that this kind of contract is most often concluded with a view to depriving a heir at law of his or her right to a legitim [Gwiazdomorski 1959, 74-76; cf. Kosik 1986, 590; Pazdan 1997, 186 and Rott-Pietrzyk 2006, 112-13], thus the effects of the renouncement contract are primarily manifested in the denial of that right [Księżak 2012, 121]. The doctrine further shows

that the renouncing of succession "coincides" with the renouncing party's acquisition of a significant pecuniary benefit. In other words, a fair distribution of the estate among the heirs takes places owing to the renunciation. If the renouncer enjoys a measurable benefit while the testator is still alive, there is no justification for receiving it by inheriting from that testator [Kordasiewicz 2015, 1048-1049]. Certainly, the entering into a contract to renounce succession should circumstances justifying the disinheritance of a person entitled to a reserved share occur must not be ruled out (Article 1008 CC). Not always, however, will the testator be willing to disclose the improper conduct of a close relative that creates grounds for disinheritance. Such a disclosure is more than likely to cause grief, humiliation, and shame.

2. THE *RATIO LEGIS* OF LEGITIM

Those can enjoy the right to a legitim who are related to the testator in a particular line and degree or remain in a marital bond with them. Upon the opening of the succession, this is the only formal criterion that is subject to verification. It means that the legal status of the potential beneficiaries of the estate is the same regardless of the actual relations among them. However, these actual relations, for reasons attributable to the entitled or the testator, may vary due to the different types of ties existing among them. In exceptional cases, such ties may not have even been established or may have been permanently broken. Anyways, this purely formal criterion, which looks at the familial nexus that comes from kinship or marriage, seems legitimate [Wierciński 2009, 84; Zachariasiewicz 2006, 201]. There is no doubt that the special status of the parties of relationships governed by family law, which is also reflected in their special status in succession law, has been awarded to them based on the legislator's assumption that a certain family pattern exists under family law where the legal bond stems from the actual bond based on intimacy, support, and care [cf. Strzebińczyk 2009, 477]. This assumption, however, is somewhat idealistic. Life shows that there can be major discrepancies between the legal situation (i.e. there is a legal bond between persons in formal terms) and the actual state of affairs where the actual bond is not only significantly weakened or broken, but also the conduct of one of the parties towards the other calls for social disapproval or should even be criminalized. As pointed out above, in extreme cases, such bonds may not have been established at all. In such circumstances, the legal status of a person who is a party to a particular relation under family law should be revised with regard to the "model" or "pattern" adopted by the legislator by depriving them of certain benefits, as such benefits should be hinged not only upon the existence of a bond in the legal sense but also upon the persons maintaining a de facto relation under family law.

Otherwise, the consequences of being a party to a relation under family law, including with regard to succession, would be difficult to accept [Witczak 2021, 108-10 and the literature referenced therein]. To eliminate such situations, the legislator provides for the option of denying the succession to a potential heir or depriving a potential beneficiary of the estate of the benefits that they could obtain after the testator's death. This option is available to the testator in the first place. Not only can they exclude a heir at law from succession, but they may also disinherit him or her; moreover, in cases of the heir's unworthiness of succession, if the court so decides, the option is available to anyone who has an interest in it (Article 929 CC, sentence two). Disinheritance and debarment from succession have a profound ethical justification and help prevent situations in which a heir who persistently and wilfully fails to fulfil his or her family duties towards the testator or who intentionally commits an offence against the latter obtains any advantage, either from the estate or as a result of the testator's death.

As noted elsewhere, maintaining family relations under family law, especially in a marriage or close kinship, goes with certain rights and duties both during the life of the parties and also in the event of the death of one of them. It happens that the testator's exercise of their testamentary freedom is misaligned with the expectations of the members of the deceased's close family and can be more than disappointing for them inheritance-wise. This is due to the fact that the testator can appoint anyone to succession or transfer the estate to anyone that he or she chooses, i.e. anyone with a capacity to inherit, while ignoring the members of the closest relations. As a consequence, these parties will be deprived of the protection that was provided while the deceased was still alive, such as, for example, child support maintenance. Since the person responsible, due to their position in the family, for providing for the family members is no longer there, these needs could still be satisfied from the assets left by the testator. As ruled by the Court of Appeal in Katowice, "The right to a legitim, as contributing to the maintenance of the testator's immediate family members, should be considered an extension of the child support obligation incumbent on the deceased."[1] The Court of Appeal in Warsaw shared a similar view that "The key functions of the right to a legitim are to contribute to the maintenance of the testator's immediate family members (as an extension of the child support obligation) ...and to secure the performance of the intergenerational contract, as well as securing the family's duty to render support and assistance."[2] The right to a legitim protects "direct heirs at law from being harmed by the testator."[3]

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[1] Grounds to the judgement of 18 November 2020, ref. no. VI ACa 374/20, Lex no. 2583919.

[2] Grounds to the judgement of 23 January 2014, ref. no. V ACa 742/13, Lex no. 797350.

[3] Judgement of the Court of Appeal in Katowice of 23 January 2014, ref. no. V ACa 742/13, Lex no. 1439043.

How the testator's immediate family will be safeguarded depends on the legislator and the choice of a legal instrument that can supply relevant safeguards. Certainly, it imposes restrictions on testamentary freedom, since the deceased's closest family members will receive certain benefits after the testator's death, regardless of what the testator decides to do with their estate mortis causa [Księżak 2012, 23]. In other words, the testator will never be able to dispose of their estate entirely freely, including with the exclusion of his or her relatives.[4] Some authors are right to argue that "since the deceased was a member of the family, he or she cannot ignore this fact by demanding certain action mortis causa, given the crucial importance of family interests if so happens" [ibid., 56-57].

De lege lata, the protection of the deceased's immediate family members is afforded primarily through the institution of a legitim. Both the doctrine and case-law seem to highlight that an individual has at least a moral duty to support his or her family. Part of this duty is to allow their relatives to enjoy certain benefits from the estate. However, as noted elsewhere, who benefits from succession and on what terms is determined by virtue of statutory law. "In this regard, there are individuals among the family members, to whom it is obligatory to transfer certain benefits from the deceased" [Załucki 2019, Article 991, thesis 1]. And this is in fact the role of a legitim: to transfer to the testator's immediate family members named in the law certain benefits from the estate independently of, or even against, the testator's will.[5] Deprivation of a reserved share may only take place when some strictly defined statutory grounds exist. They depend on the legal nature of an event under civil law that renders this protection ineffective. This is to be discussed below. A legitim falls to heirs who "would have been appointed to inherit by virtue of statutory law" (Article 991(1) CC)[6] if no will had been drawn up. These heirs should (obviously) enjoy a statutory title of succession and who would inherit in the face of negative conditions for the acquisition of the inheritance, i.e. the absence of events under civil law that create grounds for exclusion from succession. It should be emphasized that such circumstances do not involve negative will. Deprivation of the right to a reserved share upon the will of the testator may in fact occur only

[4] Judgement of the Court of Appeal in Łódź of 25 July 2013, ref. no. I ACa 141/12, Lex no. 1356561.

[5] Cf., for example, justification to the judgement of the Supreme Court of 28 April 2005, ref. no. III CK 569/04, Legalis no. 265946; justification to the judgement of the Court of Appeal of 31 August 2012, ref. no. I ACa 1349/11, Lex no. 1120012; judgement of the Court of Appeal in Szczecin of 8 June 2017, ref. no. I ACa 102/17, Lex no. 2379141; decision of the Supreme Court of 5 April 2018, ref. no. II CSK 85/18, Lex no. 1770069 and judgement of the Court of Appeal in Szczecin of 28 January 2021, ref. no. I ACa 544/20, Lex no. 2584157.

[6] I do not include cases of supplementation of the reserved share.

in disinheritance in the strict sense (Article 1008 CC)[7] [Księżak 2012, 153 and the literature referenced therein].

Testamentary freedom is not, therefore, of an absolute nature. Any limitations thereto are closely linked to the requirement to respect the constitutional guarantees of the protection of marriage, parenthood, family (Article 18 of the Polish Constitution), and family life (Article 47 of the same). In the view of the Constitutional Tribunal, the right to a legitim remains intertwined with the imperative to protect marriage, parenthood, and family and clearly serves the purpose of strengthening the family bond. The title of the members of the testator's family to have a share in his or her estate combined with confining the testator's testamentary freedom stems from the constitutional principle of protecting the values named in Article 18 of the Polish Constitution [Borysiak 2016, Article 18, Nb 182; Justyński 2019, 7]. The Constitutional Tribunal clearly says that the constitution does not stipulate any guarantees for the institution of a legitim, nor does it prescribe that it be established or indicate its legal nature. Guarantees, if any, only concern the protection of the testator's immediate family members, yet the model of this protection is at the discretion of the legislator. Undoubtedly, the absence of any control of testamentary freedom in the context of protecting the testator's closest relations would go against the basic law. Despite the fact that the constitutional standards do not warrant a constitutional subjective right to a legitim, the legislator assumes the obligation to create relevant legal solutions that, in the event of having to dispose of an estate mortis causa, will safeguard the financial and legal situation of certain persons who cultivate constitutionally relevant family relations with the testator. The Constitutional Tribunal unequivocally held that the right to a legitim does not violate the institutional guarantees of the right of succession and does not render an estate non-permanent in the event of death. Finally, the tribunal leaves the model of protection of the testator's closest relations to the legislator's discretion.[8]

3. WAYS TO DENY THE RIGHT TO A LEGITIM

Albeit any deprivation of the right to a legitim is immanent to the institution of disinheritance, it is clearly not the only way to produce this kind of effect. The list of circumstances under civil law that result in the loss

[7] Cf. justification of the resolution of the Supreme Court of 14 June 1971, ref. no. III CZP 24/71, Lex no. 1299 and the resolution of the Supreme Court of 10 April 1975, ref. no. III CZP 14/75, Lex no. 1875.

[8] See grounds to the judgement of the Constitutional Tribunal of 25 July 2013, ref. no. P 56/11, Legalis no. 722201.

of the right to a reserved share is relatively long and they can be of a different legal nature.

The legislator has defined disinheritance as a concept (Article 1008 CC). It should be understood as the act of depriving the parties named in Article 991(1) CC of the right to a legitim based on the testator's will due to improper conduct [Kordasiewicz 2015, 1051; Idem 2008, 418-19; Skowrońska-Bocian 2004, 152; Załucki 2010, 48; Witczak 2013, 104]. What follows, disinheritance is considered an exceptional institution: a private punishment for (at least) unethical conduct of the righholders [Księżak 2012, 161]. It cannot be ignored that disinheritance involves a penalty "which goes beyond the mere exclusion from succession; more than that, it essentially suppresses the exclusion itself" [ibid., 163].

The specific nature of disinheritance is that it is the only civil-law instrument to be employed by a testator to independently deprive their heir of a reserved share [Gwiazdomorski 1959, 403]. The testator's subjective right, having the normative power of unilaterally creating new legal circumstances, has a special character [Borysiak and Górniak 2024, Article 1008, Nb 6]. The testator can only exercise his or her power to disinherit in one way, i.e. by drawing up a last will; by extension, they can only personally deprive someone of the right to a legitim (Article 944(2) CC), provided that they exercise the full capacity to perform acts in law (Article 944(1) CC). The testator's will to deprive a specific person of his or her right to a reserved share of the estate must be exercised and expressed in a defectless manner and in an appropriate form, along with indicating the rationale for disinheritance.

As pointed out above, disinheritance in the strict sense, besides depriving the rightholder of the right to a legitim, has "a very weighty and severe effect for the disinherited person, namely excludes them from intestate succession" [Gwiazdomorski 1972, 1582]. Although such an effect is not stipulated anywhere in the CC and, therefore, it cannot be assumed that exclusion from intestate succession occurs *ex lege* as a consequence of disinheritance, yet it is unassailable that disinheritance, as resulting even in the loss of the right to a legitim (*argumentum a minore ad maius*), also deprives the rightholder of the option if inheriting by virtue of statutory law [Witczak 2013, 45-51; Kosik 1986, 544; Niezbecka 1992, 22].[9] In other words, disinheritance in the strict sense "involves a penalty which goes beyond the mere exclusion from succession; more than that, it essentially suppresses the exclusion itself" [Księżak 2012, 163]. The strict understanding of disinheritance therefore entails the exclusion from inheritance and from a reserved share [Skowrońska-Bocian 2004, 152; cf. Niedośpiał 1993, 119]. The literature on the subject

[9] See also grounds to the resolution of the Supreme Court of 14 June 1971, ref. no. III CZP 24/71, Lex no. 1299.

even contains a view that the deprivation of the right to a legitim, which embraces the exclusion from succession, is a single testamentary instruction which "should not be divided by creating a guise of having two different instructions but only linked externally" [Gwiazdomorski 1972, 1581].

In most cases, disinheritance is a penalty for failure to fulfil family duties, provided that the failure can be attributed to the individual entitled to a reserved share, as well as being culpable and persistent.[10] It is no more challenged that the effect of depriving a disinherited person of the possibility to inherit by virtue of statutory law is independent of the effectiveness of disinheritance *sensu stricto*, i.e. the indication in the last will of a reason from among those listed in Article 1008 CC. Failure to provide such a reason or to indicate one beyond those provided for in Article 1008 CC results in disinheritance while keeping the right to a reserved share.[11] Should this be the case, such disinheritance is considered groundless, ineffective, or invalid [Witczak 2013, 105 and the literature referenced therein]. The drawing up of a negative will also produces this effect. Negative will stands out due to its content. It contains a disposition or dispositions excluding the heir or heirs at law from intestate succession, and the testator does not nominate another person as heir instead [Idem 2015, 35-39 and the literature referenced therein]. Exclusion from inheritance in a negative will is "essentially purely abstract (i.e. causeless)" [Biernacki 1949, 133, 135-36]. Therefore, the direct effect of a negative will is the heir's failure to be admitted to succession (the heir does not succeed at law). The effect is the same as in all the other cases of exclusion from succession (cf. Articles 928(2), 940(1), 1020, 1049(2) CC).[12] Yet, under a negative will, an excluded heir does not lose the right to a legitim[13] [Niezbecka 1992, 24].

As pointed out above, the effect of losing the right to a reserved share will also be seen if the testator enters into a contract to renounce succession,

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[10] Grounds to the judgement of the Court of Appeal in Katowice of 6 March 2013, ref. no. I ACa 4/13, Lex no. 1293610.

[11] See the resolution of the Supreme Court of 13 March 2008, ref. no. III CZP 1/08, OSNC 4(2009), item 52.

[12] Cf. also Articles 8(1), 12(2), 26(1) and 43(1) of the Decree of 8 October 1946, the Law of Succession (Journal of Laws No. 60, item 328 [hereinafter: LS]).

[13] Cf. Article 31 in fine LS which provides that the exclusion from intestate succession does not affect the rights of a heir at law (see Article 145 LS) to claim a legitim. Correspondingly, the effect of exclusion from intestate succession is independent of the act of forgiving a disinherited person. Yet, the sole result of this act is the right of the forgiven person to keep the legitim. Condonation eliminates the effect of deprivation of the right to a legitim, but it does not neutralize the effect of denying succession to a heir at law. Exclusion from succession can only be invalidated by an appropriate modification or revocation of the last will. Mere forgiveness beyond the testamentary reality will not suffice (resolution of the Supreme Court of 14 June 1971, ref. no. III CZP 24/71, Lex no. 1299).

provided that the other party thereto is heir at law, as provided for in Article 991(1) CC. Deprivation of the right to a legitim will also take place after a court ruling on debarment from succession (heir's unworthiness to inherit). In accordance with Article 928(2) CC. an unworthy heir is excluded from succession as if he or she had predeceased the opening of the succession. Likewise, a judgment passed under Article 940 CC has the effect of depriving the testator's spouse of the right to a legitim, although the law does not prescribe that the spouse excluded from succession be treated as if he or she had not lived to the opening of the same [Witczak 2013, 393-94 and the literature referenced therein]. The rightholder may also waive his or her right if they make a declaration of rejection of the inheritance. If so happens, he or she is regarded as not living up to the opening of the succession (Article 1020 CC) and, therefore, they deprives themselves of the reserved share, since in such a situation he or she "would not hold the title to inheritance by the action of the law." The application of the provision of Article 5 CC[14] by a court of law in a process involving a legitim may lead to a partial or, in extreme cases, even complete deprivation of the right thereto. This conclusion can be drawn from the legal practice. It should be stressed, however, that the literature on the subject clearly shows that what determines the abuse of the law "by a claim for payment of a legitim are only circumstances occurring between the rightholder and the heir. Only they can be subject to change prospectively. Now, the circumstances occurring between the rightholder and the deceased testator ... can only be taken into account as additional and amplifying the state of contradiction with the criteria of abuse of the law. In isolation, they cannot stand behind a declaration of such an abuse" [Justyński 2005, 115; Idem 2023, 5-6].[15] Whereas the claim for a legitim is legitimate on grounds of the special family bond existing between the entitled persons and the testator and enables the testator to fulfil

[14] However, it should be noted that extreme approaches can be found across the Supreme Court's case-law, i.e. allowing, although only in exceptional cases, deprivation of the right to a legitim under Article 5 CC and definitely challenging such a possibility due to the fact that, in principle, the application of Article 5 CC may not cause a permanent loss of a subjective right (see in particular the judgement of the Supreme Court of 28 March 2018, ref. no. V CSK 428/17, Lex no. 2519624) with grounds and grounds to the judgement of the Supreme Court of 27 March 2024, ref. no. II CSKP 2091/22, Legalis no. 3063433.

[15] As in grounds to the judgement of the Court of Appeal in Białystok dated 31 March 2011, ref. no. I ACa 99/11, OSABG 1 (2011), p. 25. Cf. the resolution of the Supreme Court of 19 May 1981, ref. no. III CZP 18/81, Lex no. 2666 and the position of the Court of Appeal in Poznań, according to which reference to the principles of social co-existence when assessing a claim for a legitim "should rather protect the testator in a situation where the amount of the legitim proves excessive, e.g. as a result of a sudden economic shift or other phenomena beyond the heir's control but affecting the value of the inheritance" (as in the judgement of 16 December 2009, ref. no. I ACa 896/09, Lex no. 628229); see also the grounds to the judgement dated 13 February 2012, ref. no. I ACa 1121/11, Lex no. 1133334.

his or her moral duties towards the immediate family members, "the application of Article 5 CC should not therefore erode the aim of the provisions on legitim but should only save the testator from having to pay an excessive or disproportionate reserved share or from feeling aggrieved by the obligation to pay."[16] The rightholder's conduct cannot be ignored, which shows whether and how he or she had met their family duties, particularly towards the testator. Also, when ruling on a reserved share, the court cannot refuse to perform the moral assessment of the behaviour of the person entitled to it.[17] Due to the exceptional nature of Article 5 CC, refusal to grant legal protection or its significant limitation on the basis of the article "must be justified by circumstances that are glaring and unacceptable against the backdrop of the commonly respected social values."[18]

4. LOSS OF THE RIGHT TO A LEGITIM AS A RESULT OF A CONTRACT TO RENOUNCE SUCCESSION. THE LEGAL STATUS OF THE RENOUNCING PARTY'S DESCENDANTS

Obviously, the deprivation of the right to a legitim following the conclusion of a contract to renounce succession differs significantly from the other civil law events discussed above. The fundamental differences occur in two areas. The first one is the very procedure of deprivation; the other is the cause of disinheritance, in this case understood as effect in the form of deprivation of a legitim.

Succession is renounced under a contract, yet the effects thereof do not only affect the parties but extend, by the action of the law, to third parties (who are not parties to that act in law). In point of fact, the primary outcome of the contract to renounce succession is to exclude the renouncing party, as well as his or her descendants, from intestate succession. As noted elsewhere, the provision contained in Article 1049(1) CC is dispositive, in other words, the effects provided for in the law occur in the absence of the parties' will to act otherwise. Since the law requires that the renouncing party be

[16] Grounds to the judgement of the Court of Appeal in Gdańsk of 27 January 2016, ref. no. I ACa 820/15, Lex no. 2259351. See also the judgement of the Court of Appeal in Łódź of 25 July 2013, ref. no. I ACa 141/12, Lex no. 1356561. Cf. judgement of the Court of Appeal in Wrocław of 31 August 2012, ref. no. I ACa 1349/11, Lex no. 1120012.

[17] Grounds to the judgement of the Court of Appeal in Warsaw of 21 October 2010, ref. no. I ACa 332/10, Lex no. 785393.

[18] Grounds to the judgement of the Court of Appeal in Szczecin of 8 June 2017, ref. no. I ACa 102/17, Lex no. 2379141. However, cf. the position of the Court of Appeal in Wrocław, according to which if no conditions provided under Article 928 CC or Article 1008 CC occur, the claim for a legitim is not regarded as conflicting with the principles of social co-existence" (grounds to the judgement of 31 August 2012, ref. no. I ACa 1349/11, Lex no. 1120012).

treated as if he or she had not lived to the opening of the succession, a further-reaching effect of the contract is to deprive the renouncer and their descendants of their right to a reserved share.

In view of the special protection that a legitim affords to the deceased's immediate family members, the testator can deprive persons entitled to that share of the estate only, as highlighted earlier, if the statutory conditions are met as named in Articles 1008-1010 CC. First and foremost, the so-called abstract disinheritance is not allowed, i.e. one without pointing to the cause thereof from among those listed in Article 1008 CC. Moreover, where the deprivation of a legitim follows a court ruling, as in the case of unworthiness to inherit or exclusion of the testator's spouse from intestate succession under Article 940 CC, the reasons for deprivation must occur as expressly indicated in the relevant provisions of the CC – an unethical behaviour of the rightholder towards the testator at a minimum (which, in the latter case, is a breach of marital duties leading to the discontinuation of the conjugal community). Even in a situation of "judicial disinheritance," in its decision to reduce the amount of legitim due to the claimant, the court, applying Article 5 CC, is most often guided by his or her behaviour of persistent and culpable failure to fulfil family duties towards the testator. Such cases are likely to occur where, despite existing grounds for disinheritance, the testator failed to disinherit or was unable to do so for reasons beyond his or her control, or, despite existing grounds justifying the unworthiness of the heir, no one brought the case to court in due time. In such situations, only having resort to Article 5 CC can help seek justice by reducing a legitim or, in extreme cases, depriving a person, whose behaviour towards the testator was reprehensible enough, of that share of the estate. Beyond that, it should be noted that the case-law has also seen opinions that the provisions of Articles 1008 and 928(1) CC cover only cases of discreditable and particularly reprehensible conduct of heirs towards testators, thus referring only to a gross violation of the principles of community life and providing for the complete deprivation of the entitled person of a reserved share as a consequence of such a conduct. In contrast, they do not cover heirs' behaviours towards testators which are contrary to the principles of community life to such an extent that, in the view of the general public, it would be considered unjust and immoral to grant the rightholder a full legitim. Yet, neither do they cover cases that are not so grossly reprehensible as to justify the deprivation of a person of the right to the entire reserved share as a result of disinheritance or unworthiness to succeed.[19]

[19] Grounds to the judgement of the Court of Appeal in Łódź of 11 July 2017, ref. no. I ACa 1718/16, Legalis no. 1675861.

In cases where a contract to renounce succession has been entered into, the rightholder is actually deprived of their legitim without a cause. Obviously, the rejection of inheritance does not require the statement of the cause, either, yet it is left solely to the discretion of the rightholder who has been appointed to inherit.

While the effects of renouncing succession are fully understandable as regards the renouncer, the effects of this contract in relation to the renouncer's descendants are somewhat puzzling. As noted earlier, it applies to situations in which the parties to a contract to renounce succession have not excluded the effect regulated by the dispositive provision of Article 1049(1) CC in its content. Indeed, whether the solution proposed by the legislator is systemically coherent can be thrown into doubt. On the one hand, as already mentioned above, the Polish legal order safeguards the interests of the testator's closest family members by the institution of a legitim, which is limited subject-wise, while, on the other hand, the applicable law allows the testator, by arrangement with a third party, to abstractly deprive specific persons of their reserved share. If it were not for the express "endorsement" by the legislator, this act in law performed by the testator with his or her legal heir could be viewed as aiming to circumvent the law (Article 58(1) CC), and, therefore, absolutely null and void, since its effect would be to deprive the rightholder of their "mandatory share of the estate." At this point, it should be noted that the literature on the subject proposes a view that only in exceptional cases will a contract to renounce succession have to be deemed invalid due to the aim of harming the descendants of the renouncing party and, for example, depriving them of their potential right to a legitim. To illustrate the point, imagine a situation in which a person, who meets the criteria of unworthiness to inherit and cannot expect the testator's forgiveness, enters into a renouncement contract with the testator which aims to "deprive the descendants of the renouncing party of succession and deprive them of their legitim because the testator wishes to do so," although the author himself admits that this case should be considered controversial [Borysiak and Górniak 2024, Article 1049, thesis 16]. This opinion is not common in the doctrine and often legitimately challenged, given the unambiguous wording of Article 1049(1) CC [Wolak 2016, 282]. This, in turn, leads to a question of the constitutionality of this solution.

A contract to renounce succession is also unique as it determines, next to the testator, the order of succession. The frequently cited provision of Article 941 CC says that an estate can only be disposed of mortis causa through a last will. Yet, a contract with a third party can also work in the same way. The point is not that a third party is excluded from intestate succession because this exclusion will not worsen the legal situation of the co-heirs at law (conversely, it may only improve it), besides he or she can decide their legal

situation, but that the third party, along with the testator, also makes a decision on the exclusion of the descendants, who would otherwise inherit in the third party's place by virtue of statutory law and, consequently, on depriving them of their reserved share.

To more points should be highlighted on top of that. First, is should be determined which parties are affected by a renunciation contract, as proposed by the legislator in Article 1049(1) CC, patently unfairly. According to the wording of the said article, these are "the descendants of the person who renounces." As noted elsewhere, any heir at law can renounce succession, with the exception of the municipality of the testator's last place of domicile and the State Treasury. However, in view of the scope of the subject in question, account should be taken of the descendants of those heirs at law who are entitled to a legitim, in particular three "categories" of persons: the testator's spouse, his or her children (descendants), and his or her parents; additionally, as already mentioned earlier, this group should also include the testator's adoptees.

First, it seems evident that the effects of a contract to renounce succession cover only those descendants of the renouncing party who, under the law on intestate succession, would replace the renouncing party if he or she were no longer alive during the opening of the succession or, pursuant to the provisions of the CC, would be regarded as deceased during the opening procedure (Article 928(2) CC; Article 1020 CC). *De lege lata*, the effects of the said contract extend to include the descendants of the renouncer in three cases: if the renouncing party is a child or a more distant descendant of the testator (Article 931(2) CC), the testator's siblings (Article 932(5) CC), or the testator's grandparents (Article 934 CC), however, in the case of the latter, *de lege lata* these can only be their children and grandchildren [Pazdan 2015, 1145]. The descendants of the renouncing party are therefore "those individuals who step in his or her place in intestate succession if he or she did not live to the opening of the succession or is deemed deceased in light of the provisions of the Civil Code. Therefore, it does not concern the testator's siblings when the testator's parents are those renouncing succession" [Księżak 2012, 122; cf. Pazdan 1997, 194]. Similarly, the parties concerned are not the testator's parents when the renouncing parties are his or her grandparents [Pazdan 2021, Article 1049, Nb 1 and the literature referenced therein].

The views in the doctrine are not unanimous when it comes to the renouncement of succession in relation to the descendants of a renouncing party. Debatable are the effects of the contract in which either the testator's mother or father renounces to succeed.

Pursuant to Article 932(4) CC, the share of a parent who dies before the opening of the succession (or who is regarded under the Civil Code as deceased during the opening) does not fall to his or her children but to

the testator's siblings. Such a wording of the provision shows a link between the title of the testator's siblings to inherit the share of the testator's deceased parent(s) and the relationship to the testator and not the relationship to that testator's parent whose share is to be inherited. In other words, the siblings have their own title to inherit that share of the estate that has been freed by the testator's deceased parent, and they do not take over that share as descendants. This interpretation seems convincing when comparing the content of Article 932(4) and that of Article 934 CC, the latter defining the terms of succession by the testator's grandparents and the consequences of their death before the opening of the succession. As worded in the first sentence of Article 934(2) CC, if any of the testator's grandparents died before the opening of the succession, that share in the estate which would have gone to him or her would pass to their children. If a child of any of the testator's grandparents died before the opening of the succession, the share of the estate which would have gone to him or her would go to their children in equal parts (Article 934(2^1) CC). In this provision, the legislator determines the order of succession as follows: the descendants (children and grandchildren) of the deceased with a title to the estate step in his or her place first. At the same time, the legislator specified the manner of succession if the first method fails due to the lack of descendants (children and grandchildren). The other grandparents, who are to inherit the share of the deceased childless grandparent, acquire their own right to his or her share of the estate, based on their family bond with the testator and not with the grandparent who did not live until the opening of the succession. The comparison of the last two paragraphs of Article 934 CC demonstrates that the legislator, wishing to mandate succession by the descendants (children and grandchildren) of a rightholder who died before the opening of the succession, uses wording that clearly reveals such an intention (cf. also Article 931(2) CC). If, on the other hand, the legislator's intention is to establish a separate group of persons entitled to the freed share, it provides a mode detailed solution by reference to their blood relationship (or relationship by affinity – cf. Article 934^1 CC) with the testator[20] [Pazdan 2005, 44-45, 47].

However, a view has also been proposed in the literature that, following the 2009 amendment to the terms of intestate succession, the effects of a contract to renounce succession should be construed differently if the renouncing party is a parent or parents of the testator. Thus, in the first case, the effects of the contract will affect the testator's siblings, but they will not affect

[20] Similarly on this point, the Supreme Court in the Resolution of the Chamber for Civil Matters of 14 October 2011, ref. no. III CZP 49/11, "Orzecznictwo Sądu Najwyższego Izba Cywilna" 3 (2012), item 35. The opinion of the Supreme Court was voiced before the amendment of Article 934 CC by the Act of 28 July 2023 amending the Civil Code and some other laws (Journal of Laws item 1615).

the testator's own descendants, who are more distant descendants in relation to his or her parents. Renouncement of succession by one of the testator's parents will only affect their descendants who are the testator's biological siblings (coming from the parent who has renounced the succession and the testator's other parent) and the testator's step-siblings (coming from the parent who has renounced the succession and another person); however, the renouncement will not extend to the testator's step-siblings who descend from the testator's other parent who has not renounced to inherit it from the testator [Borysiak and Górniak 2024, Article 1049, Nb 10-11]. At the same time, it has been acknowledged that the effects of a contract to renounce succession concluded by the testator's grandparents will not extend to the testator's parents. Still, the renouncement by both testator's grandparents will exclude their children and grandchildren, i.e. aunts and uncles and first cousins, from succession.

The normative structure of the succession renouncement contract as regards its effects actually deprives the descendants of the renouncing party of any influence over their held rights. Obviously, under the law, the effectiveness of such a contract does not dependent on the descendant's consent. Also, he or she has no control over the concluded contract. Even if the descendants of the renouncing party are minors, the renouncer does not need to seek the approval of the guardianship court as in the case with the rejection of succession. The situation in which the deprivation of the right to a legitim occurs in accordance with applicable law is unacceptable, given that the renouncing party does not act on behalf of his or her descendants but exclusively on their own. While, according to the view widely held in the literature, the descendants of the renouncing party can render a renouncement contract null and void by entering into an agreement removing its effects, this entitlement can hardly be considered sufficient to sanction the structural defects of the original contract. The representatives of the doctrine are unanimous about a view that a contract to renounce succession may be concluded not only between the first parties concerned but also between those descendants of the renouncer who will be affected by its execution. There are dissenting opinions, however, regarding the admissibility of entering into such a contract by the renouncer's descendants after his or her death. The prevailing view in the doctrine is that it is possible as long as the renouncing party dies before the testator. On the contrary, few representatives of the doctrine argue that the death of the renouncer does not affect the admissibility of such a contractual instrument primarily because it does not exert any impact on the legal position of the renouncer, and, therefore, it does not interfere with the rights of third parties [for more, see Borysiak and Górniak 2024, Article 1050, thesis 6 and 6.1].

CONCLUSIONS

Although the principle of contractual freedom does not find application in the law of succession, in the case of the contract provided for in Article 1048 CC, the legislator leaves its parties relative freedom to decide its effects. When assessing an act in law from the viewpoint of Article 58 CC, if not for the legal nature of the provision contained in Article 1049(1) CC, it can be inferred that in a situation where the parties to a contract to renounce succession do not neutralize its effects with regard to the renouncing party's descendants, the contract would in fact be aimed at circumventing the law because its execution would leave the persons entitled under Article 991 CC unprotected, although the law guarantees otherwise. Such a regulation is hard to understand, since an abstract, and causeless at the same time, exclusion from succession by the testator him or herself cannot produce such an effect, whereas a contract with a party that should have no influence on the rights of others actually does. System-wise, this solution should be deemed defective.

Full endorsement should be given to the view expressed in the literature and concerning the rules of determining a legitim fund. It says that the law of succession should "follow the principle that the testator may not, by his or her dispositions, create limitations or exclusions of the protection guaranteed by the reserved share" [Księżak 2012, 102]. It seems clear that this principle should apply even more to acts in law performed by the testator with third parties, regardless of what legal relationships exist between the other party to the act (performed with the testator) and parties secured by the statutory protection.

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MULTIPLE AUDIT SYSTEM FOR COOPERATIVES IN TURKISH LAW

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Abstract. In the jurisprudential landscape of Turkey, cooperatives occupy a unique position, regulated under the comprehensive purview of the Turkish Commercial Code with delineated prescriptions in the Cooperatives Code. Cooperatives are distinct from commercial entities in that they aim to procure economic advantages through collective solidarity and mutual aid, rather than through profit accrual and distribution. However, this does not exempt them from the rigorous auditing requirements that other commercial entities are subject to, necessitating a robust audit framework. The legislative architecture in Turkey has endorsed a multiplex audit regimen for cooperatives, thereby establishing a composite of external, independent, and mandatory internal audits conducted by the cooperative's governing body as the standard practice. This prescriptive embrace of internal audits, divergent from the practices in capital companies, serves to elucidate a strategic safeguard against the potential dilution of accountability mechanisms within cooperatives. However, the eclectic and fragmented legal foundation underpinning this multifaceted audit system presents analytical challenges, particularly with regard to the redundancy of mandated internal audits in the presence of comprehensive external and independent evaluations. This raises questions about the pragmatism and proportionality of such regulatory mandates within the cooperative sector. Therefore, the conglomerate audit structure, while demonstrating a commitment to enhanced transparency and fiduciary diligence, requires a critical re-evaluation of its alignment with the operational and existential ethos of cooperatives.

Keywords: Turkish company law; cooperatives in Turkish law; independent audit; internal audit; external audit.

INTRODUCTION

In the jurisdiction of Turkey, cooperatives are classified under a distinct category of commercial entities, governed by a specific regulatory framework that distinguishes them from other commercial organizations. Predominantly, cooperatives are oriented towards economic objectives; however, their distinctive feature lies in the pursuit of economic advantages not through profit generation and distribution but via a paradigm of mutual aid and collective welfare. This unique orientation does not detract from their

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identity as commercial entities. Like all commercial entities, cooperatives are subject to a bespoke regulatory audit framework.

Distinct from the internal or self-audit procedures applicable to personal companies, such as collective and limited partnerships, and the independent audit model mandated for capital companies, such as joint-stock and limited liability companies, the legislative architecture for cooperatives embraces a more intricate and hybrid audit protocol. Following amendments to the Turkish Cooperatives Code (CoC) in 2021, the pre-existing mandate for internal audits conducted by a designated cooperative body has been retained. Additionally, a new provision has been introduced, requiring cooperatives that meet specific criteria to undergo external or independent audits, though this requirement is not universally applied across all cooperatives. This nuanced approach underscores the significant role cooperatives play within the public sphere, prompting the legislature to adopt a protective and supervisory stance aimed at fostering a robust and sustainable cooperative ecosystem within the Turkish economy.

This scholarly examination delves into the complexities of the audit mechanisms uniquely tailored for cooperatives. It is structured under two primary sections: the initial segment elucidates the principles underpinning the multifaceted audit system as prescribed in Turkish law, while the subsequent section critically assesses the merits and demerits of this cooperative-specific audit framework from the perspective of *de lege ferenda*. The ultimate objective of this analysis is to furnish foreign legal practitioners and cooperative stakeholders with a comprehensive understanding of the legislative schema governing the multifaceted audit system of cooperatives within the realm of Turkish law.

1. MULTI AUDIT SYSTEM FOR COOPERATIVES IN TURKISH LAW

1.1. Fundamentals of Audit of Cooperatives

The discourse surrounding the juridical essence of cooperatives posits a notable differentiation from conventional commercial entities, engendering substantive debate within legal scholarship and judicial determinations [Tekil 1994, 91; Tekinalp 1972, 24; Kahyaoğlu and Kurt 2017, 712]. Despite divergent perspectives, the consensus delineates cooperatives as embodying the characteristics of a commercial corporation, albeit distinguished by an economic objective not predicated on profit maximization and distribution. Rather, cooperatives are conceptualized as vehicles for enhancing economic conditions through the principles of mutual aid and solidarity among members [Demir 2006, 15; Özmen 2012, 13; Aykan 2007, 18].

Predominantly, the legal framework governing cooperatives is encapsulated within the CoC and the provisions of the Turkish Commercial Code (TCC). The legislative revision introduced through Law No. 7339 in 2021 to the CoC No. 1163 (dating back to 1969) signifies a substantive overhaul of the cooperative auditing paradigm [Pınar 2014, 142]. This amendment instituted a dual-auditing mechanism, mandating external audits alongside internal audits for cooperatives exempt from independent auditing requirements. This development was aimed at bolstering the efficacy and reliability of cooperative audits. Furthermore, the TCC No. 6102 (enacted in 2012) explicitly extends its regulatory purview to cooperatives under its second section, which is dedicated to commercial entities. Thus, the general legal stipulations applicable to commercial enterprises are concomitantly pertinent to cooperatives, underscoring the legislative intent to integrate cooperatives within the broader commercial legal regime while acknowledging their unique operational ethos. The legislative emphasis on cooperatives underscores their pivotal role in fostering public benefit and contributing to the fortification of the Turkish economy. This is elucidated through specific regulatory measures such as the compulsory inclusion of a Ministry of Trade representative in cooperative general assemblies, the empowerment of the Ministry to initiate termination lawsuits against cooperatives infringing public order or their statutes, and the prerequisite of obtaining Ministry authorization for the establishment of cooperatives [Aykan 2007, 10; Coşkun 2023, 49; Aydın 2024, 38]. These regulatory provisions manifest the state's proactive oversight in the cooperative sector, indicative of a legal architecture that balances cooperative autonomy with public accountability mechanisms. Coupled with the fact that cooperative memberships can scale up to 10,000 partners, the significance of cooperatives as instruments of market stability and economic proliferation cannot be overstated. The legislative objective, therefore, has been to cultivate a pragmatic auditing schema to ensure cooperatives' adherence to financial and operational integrity [Poroy, Tekinalp, and Çamoğlu 2017, 1771]. Consequently, the 2021 amendment to the CoC inaugurated an external audit system, reinforcing the oversight mechanism without superseding the existing internal audit frameworks mandated by legal statute [Özmen 2012, 19; Çevik 1990, 179; Üstün and Aydın 2017, 30; Bozgeyik, Coşkunsu, and Parlak 2025, 5]. Such is the legal schema that independent audits and external audits are mutually exclusive, affirming the legislature's stance against the concurrent applicability of both auditing processes to cooperatives. Irrespective of the auditing methodology employed, the intrinsic internal auditing mechanism, under the jurisdiction of the auditor or auditing board (a legally mandated entity within cooperatives), perpetuates, thus ensuring a comprehensive and multifaceted auditing protocol for cooperatives [Yazıcı 2021, 115; Poroy, Tekinalp, and Çamoğlu 2017, 1751; Kahyaoğlu and Kurt 2017, 715].

1.2. Internal Audit

The practice of internal auditing within cooperative entities is mandated by law, distinguishing them significantly from corporate entities [Çevik 1990, 639; Yazıcı 2021, 144]. This differentiation arises notably in the context of the legislative abandonment of internal audits within limited liability and joint-stock companies, as per the TCC, which instead solely endorses an independent audit mechanism [Yüce 2023, 585; Bozgeyik, Coşkunsu, and Parlak 2025, 9]. Conversely, cooperatives persist in implementing internal audits, driven by legislative intent to circumvent the pitfalls observed in the audit mechanisms of joint-stock and limited liability companies. The TCC's shift from internal to exclusively independent auditing for said companies underscores this transition [Yüce 2023, 553]. Moreover, the criteria for capital companies to undergo independent audits are stipulated by the Presidency, albeit with an annual update, yet only about 1.5 percent of these companies currently meet the latest standards. This presents an opaque scenario concerning the audit system applicable to capital companies failing to satisfy these criteria. Despite anticipations for the Presidency to regulate an auditing system for joint-stock companies exempt from independent auditing, such regulatory action remains unexecuted for approximately eleven years, post-TCC enactment in 2012. Consequently, this regulatory inertia has perpetuated a de facto and, for certain entities, de jure auditing void in the corporate sector, particularly pronounced within limited liability companies which lack even a theoretical provision for an audit mechanism should they not meet independent audit criteria. The legislative approach towards cooperatives has been to mandate internal auditing universally, to avert replicating the oversight apparent in the corporate audit regime [Haberal, and Öztürk 2020, 1542; Bozgeyik, Coşkunsu, and Parlak 2025, 9-10; Yüce 2023, 585; Pınar 2014, 145]. Nevertheless, the coexistence of internal and external (independent) audits within cooperatives does not negate the requirement for internal audits, posing questions of efficacy and realism. This legislative strategy thus ensures, at minimum, the implementation of internal audits across cooperatives, reflecting a cautious approach to maintaining audit integrity within these entities.

In the governance structure of cooperatives, an imperative statute stipulates the election of no less than one auditor to scrutinize and regulate all transactions and accounts on the behalf of the general assembly. This mechanism serves as a fiduciary bridge ensuring transparency and accountability within cooperative entities [Poroy, Tekinalp, and Çamoğlu 2017, 1959; Deryal 2013, 918; Coşkun 2023, 1072; Çevik 1990, 640]. In instances where the general assembly decides to elect multiple auditors, this group coalesces into a formal entity known as the Board of Auditors or Audit Board [Bilgili and Demirkapı 2018, 523; Üstün and Aydın 2017, 157]. The formation

of such a board, whether through the election of a singular auditor or multiple auditors, underscores the establishment of a legally mandated entity within the cooperative's governance framework. Furthermore, the statutes provide for the election of an equivalent number of alternate auditors, commensurate with the primary auditors elected. The designation of substitute members is articulated as not a mandatory requisite but rather a discretionary prerogative vested in the general assembly. In the event of the resignation or the vacancy of a main auditor for various reasons before the termination of their mandated tenure, the substitute auditor who has garnered the highest number of votes is bestowed the responsibility to occupy the vacated position on the board [Yüce 2023, 585-86].

The prerogative to elect auditors is exclusively reserved for the general assembly. This authority is inherently non-transferable and indelible under the cooperative's constitutional documents or governance policies. The autonomy vested in the general assembly to elect auditors is insusceptible to limitation, except under statutory constraints [Eriş 1998, 1191]. These constraints include, but are not limited to, the stipulation regarding the tenure of the auditors, which, as per the authority of the general assembly, shall not exceed a term of four years. An exceptional caveat to the inviolability of the general assembly's electoral authority is the provision allowing remaining auditors to appoint provisional auditors in the event the total number of auditors, including substitutes, dwindles below the minimum threshold predefined by the general assembly. This temporary appointment persists until the convening of the subsequent general assembly. Conversely, the absence of any auditors triggers an immediate convocation of the general assembly by the board of directors, specifically to address the exigency of electing new auditors. This elucidation not only affirms the sacrosanct autonomy of the general assembly in the auditorial elections but also delineates the legal frameworks ensuring the continuity and the integrity of financial oversight within cooperatives [Eriş 1998 1192; Pınar 2014, 145].

1.3. External Audit

The revision to the Cooperative Code (CoC) through Law No. 7339 in 2021 introduced an additional regulatory oversight mechanism for cooperatives, namely, external auditing. Unlike the pre-existing internal audit requirements, the proviso for external audits does not apply universally to all cooperatives. Instead, it is selectively enforced on entities as designated by the Ministry of Commerce. In its determination, the Ministry leverages specific criteria such as the cooperative's operational domain, membership size, and financial turnover. The imperative for undergoing external audits is imposed upon cooperatives satisfying the stipulated benchmarks

drawn from the aforementioned factors. Non-compliance with this mandate renders the cooperative's financial statements, the annual activity report by the board of directors, and resolutions regarding the discharge from liabilities, adopted at the general assembly, as invalid [Coşkun 2023, 1093].

External audit, when distilled to its essence, represents the examination of financial statements. The scope of external audit encompasses the assessment of whether the financial statements of cooperatives comply with the applicable statutory framework, whether the foundational documents underpinning their revenue and expenditures adhere to the pertinent legislation, and whether the income and expense accounts along with balance sheet accounts are congruent with the official records, books, and documentation [Ertugay 2024, 441]. Furthermore, the audit extends to ascertain whether the financial data presented in the annual activity report by the board of directors aligns with the audited financial statements and accurately portrays the true financial condition, thereby embodying the breadth of external audit's domain [Coşkun 2023, 1093; Ertugay 2024, 442].

In accordance with the governing statutes, the prerogative to appoint the external auditor is vested in the general assembly. The selection of external auditors, as circumscribed by the principles outlined in the Code of Conduct (CoC), is limited to professionals within specific categories. These categories comprise: 1) independent auditors who have received authorization from the Public Oversight, Accounting, and Auditing Standards Authority, 2) professional individuals governed by the Law on Certified Public Accountants and Sworn-in Certified Public Accountants, and 3) affiliated central unions sanctioned by the Ministry of Trade for the purpose of external auditing, or, in the absence of such central unions, affiliated unions. It is incumbent upon the general assembly to exercise this selection prerogative from among the enumerated professional groups when appointing the external auditor [Coşkun 2023, 1096; Ertugay 2024, 448].

Moreover, the dispensation to terminate the services of the selected external auditor prior to the expiration of their term of office is granted exclusively under circumstances deemed to be justified. In the event that a reserve (substitute) external auditor has not been previously appointed, it becomes imperative to undertake the selection of a new external auditor during the same session of the general assembly. Acts of contravention against legislative mandates, omission, or the intentional failure to execute assigned duties, among other analogous reasons, may be recognized as valid grounds for the termination of the external auditor's engagement.

The Ministry of Trade, pursuant to its regulatory authority, has promulgated an Auditing Regulation tailored specifically to govern the audit procedures of cooperatives. This regulatory framework stipulates that cooperatives engaged in active operations shall be subjected to external audit oversight

if they fulfil any of the criterions enumerated below: 1) cooperatives engaged in sectors such as agricultural sales, agricultural credit, credit and guarantees for merchants and artisans, and sugar beet cultivation; 2) cooperatives that possess a building permit and are operational in sectors pertaining to construction, tourism development, and real estate management and have a partnership base comprising 100 or more individuals; 3) cooperatives that have recorded a net sales revenue equal to or in excess of 30 million Turkish Liras, irrespective of the sector of their operational activities; 4) cooperatives that boast a membership total of 2,000 or more partners, independent of their field of endeavour.

It is pertinent to note that cooperatives which are already subjected to independent auditing by virtue of relevant provisions within the TCC are exempted from the mandate of this external audit requirement [Coşkun 2023, 1095; Ertugay 2024, 442].

1.4. Independent Audit

The institution of independent auditing, guided by the fundamental tenets of impartiality, obligation, professional conduct, integrity, and continuity, is reserved exclusively for authorized individuals and entities. This form of auditing is executed within the ambit of regulatory frameworks pertinent to joint-stock companies as delineated in the TCC. Independent and external auditing modalities are distinguished from internal auditing mechanisms employed by cooperative entities, due to their orientation towards external review. Yet, legislative prescriptions have delineated the application of independent auditing to federations of cooperatives rather than singular cooperative entities. In the context of cooperatives affiliated with unions, the legislative framework endorses the conduct of auditing by impartial professionals exclusively under the category of external auditing. This bifurcation, while initially precipitating some ambiguity with respect to the multiplicity of auditing forms and the regulatory authority derived therein, has been embraced as a pragmatic delineation. This endorsement is predicated on the rationale that it aptly highlights the distinction between cooperatives and capitalistic corporate structures. Hence, in the realm of capital companies, what is constituted as independent auditing finds its parallel in external auditing for cooperatives. The role of professional auditing within the ambit of cooperative unions similarly parallels the framework for independent auditing in capitalistic entities. This demarcation confers the regulatory oversight of external auditing in cooperatives upon the Ministry of Trade, whilst bestowing the authority to regulate independent auditing within cooperative unions to the Public Oversight, Accounting, and Audit Standards Authority. This nuanced differentiation underscores a legislative intent to balance the unique

operational dynamics of cooperatives against the structured governance requirements of capital companies. It embodies a legislative attempt to reconcile the inherent disparities between these entities while preserving the integrity and effectiveness of the auditing processes [Ertugay 2024, 441-42].

The breadth of the independent audit encompasses a comprehensive evaluation of the financial statements alongside the reports of the board of directors' activities [Çevik 1990, 639; Üstün and Aydın 2017, 317]. Auditors are tasked with assessing the conformity of these financial presentations and reports to pertinent legal frameworks, the Turkish Auditing Standards, and the stipulations set forth within the articles of association pertaining to financial statements and activity reports. Should these financial documents and narratives of activity eschew the process of auditing, their legitimacy is forfeited, rendering them neither valid nor enforceable.

The designated entity responsible for the election of the independent auditor is the general assembly. Said independent auditors are designated by the general assembly for each respective period of activity, optimally preceding the termination of the period within which they are to fulfil their obligations. The prerogative vested in the general assembly to select the independent auditor is both non-transferrable and imperative, underscoring the intrinsic value and autonomy of this process. Exceptionally, provisions exist allowing for the appointment of an independent auditor by judicial decree or election through the Board of Directors, albeit in extraordinary circumstances. In events where the general assembly is either incapable of convening or fails to reach a consensus concerning the appointment of the independent auditor, and such appointment remains unfulfilled within the initial four months subsequent to the commencement of the activity period, judicial intervention is permitted to mandate the appointment of an independent auditor. Additionally, the judiciary possesses the authority to assign a new auditor in replacement of one whose contract has been terminated or whose tenure has concluded. As an extraordinary measure, the Board of Directors retains the discretion to appoint an independent auditor. This measure is contemplated in instances where the incumbent auditor prematurely vacates their position due to resignation, demise, dismissal, or the loss of auditor status for any other contention. In such a scenario, the Board of Directors is entitled to appoint a provisional auditor. This temporarily appointed auditor enjoys full auditing powers and retains such status until the subsequent general assembly, which is convened with the specific agenda of auditor selection. At this juncture, the general assembly may either elect a new auditor to replace the temporary appointee or resolve to extend the tenure of the temporary auditor.

The classification of eligible entities for the role of independent auditors has been distinctly categorized into three primary groups, these

are: 1) Independent Auditing Firms, 2) Certified Public Accountants, and 3) Independent Accountants and Financial Consultants.

The selection of independent auditors is conducted on an individual basis for each respective activity period, ensuring a rigorous and unbiased auditing process. Within the context of cooperative unions, an auditor who has fulfilled the role for a cumulative duration of seven years over the preceding decade is subject to specific eligibility constraints for reappointment. Precisely, such an individual is only reconsidered for the role in the same cooperative union if a minimum interlude of three years has transpired following the conclusion of their most recent auditing engagement. This provision is instituted to uphold the principles of independence and impartiality, which are paramount in the auditing profession.

The completion of the audit, the demise of the auditor, incapacitation in exercising civil rights, dissolution of the cooperative union, and the cessation of conditions requisite for independent auditing delineate the primary grounds for the cessation of an auditor's obligations. Besides these conventional grounds, the auditor's duties may be abrogated for extraordinary reasons. The juridical essence of the concord between the independent auditor and the cooperative union is encapsulated within the audit contract. Despite the general assembly or the board of directors possessing the prerogative to select the auditor, the unilateral removal of the auditor from their position or the voluntary resignation of the independent auditor is precluded. While the association is contractual, it precludes the termination of the auditor's responsibilities through mutual agreement. Exclusively a judicial decree can effectuate termination for extraordinary causes. This provision aims to fortify the audit's independence, veracity, and transparency, converging towards the public interest [Çevik 1990, 639; Üstün and Aydın 2017, 318, Yazıcı 2021, 195]. Upon such extraordinary circumstances, the judiciary extinguishes the auditor's mandate and nominates a successor. The board of directors, representing the cooperative union, or the auditor independently, can petition the judiciary to dissolve the auditing engagement. In either scenario, the petitioner is obliged to substantiate the necessity of terminating the auditor's mandate with justifiable grounds, compelling the judiciary to ascertain the legitimacy of these grounds.

In delineating the framework for the inclusion within the scope of independent audits, it is pertinent to elucidate that only those cooperative entities, specifically unions, are eligible for such reviews, with a distinction drawn conspicuously narrower than the ambit applicable to cooperatives and unions undergoing external audits. It is imperative to note that the purview of independent auditing within cooperatives is circumscribed to only those unions affiliated with agricultural sales cooperatives. The pertinent legislation, the Law on Agricultural Sales Cooperatives

and Unions, stipulates that the agricultural sales cooperative unions, subject to independent auditing, are to be designated by the Ministry of Commerce. This designation takes into account specific parameters such as the quantum of partners and the turnover. The Ministry of Commerce has operationalized the Communiqué on the Determination of Agricultural Sales Cooperative Unions Subject to Independent Audit, therein making independent auditing compulsive for certain agricultural sales cooperative unions. This Communiqué establishes quantifiable criteria, including total assets, annual net sales revenue, the number of partners within affiliated cooperatives, and the employment threshold, as benchmarks to ascertain eligibility for independent auditing. Concretely, agricultural sales cooperative unions that surpass the threshold in three out of these four criteria are mandated to undergo independent auditing. The enumerated criteria are as follows: 1) the possession of total assets valuated at or exceeding 40,000,000 Turkish Lira (TL), 2) the realization of annual net sales revenue of or exceeding 50,000,000 TL, 3) the affiliation of a cooperative with a partner base that numbers 3,000 individuals or more, and 4) an employee count reaching or surpassing 150 individuals.

This delineation underscores the regulatory framework's intent to impose rigorous financial and operational transparency on agricultural sales cooperative unions, thereby facilitating more stringent oversight and ensuring fiscal prudence within this sector.

The oversight framework pertinent to agricultural sales cooperative unions, excluding those identified for mandatory independent auditing, incorporates an architecture of dual scrutiny, encompassing both internal and external auditing dimensions. Moreover, a distinctive scenario emerges pertaining to the domain of independent auditing within cooperative entities.

In this context, it is provisioned that unions possess the delegation from the Ministry of Trade to enact external auditing procedures, whilst central unions are imperative participants in the independent auditing process. This regulatory alignment underscores the stratified approach towards auditing within cooperative frameworks, delineating a nuanced governance structure aimed at enhancing accountability and operational transparency.

2. EVALUATION OF THE MULTIPLE AUDIT SYSTEM IN COOPERATIVES

The genesis of the multiple audit system within cooperative entities is attributable to a discernible necessity. The inefficacy of internal audits, compounded by the contingent nature of auditors' tenure – subject to dismissal by the general assembly at any juncture – coupled with a predominant

unprofessional rapport between auditors and board members, underscore the imperfections inherent in the existing audit framework. Whilst the appointment of non-cooperative entities as internal auditors is theoretically viable, its practical application remains nominal. Such internal auditors frequently lack the requisite legal and accounting acumen, delineating significant deficiencies within the internal audit mechanism [Bozgeyik, Coşkunsu, and Parlak 2025, 12-13]. The institution of a multiple audit system seeks to ameliorate these shortcomings, positioning cooperatives distinctively amongst commercial entities. Contrastingly, sole proprietorships eschew internal audits entirely, opting instead for a system predicated upon each partner's right to information and scrutiny. Conversely, in capital companies, the notion of an internal audit conducted by an organizational body has been eschewed in favour of a theoretical framework endorsing independent audits. Yet, the stringent criteria for such independent audits render them a practical challenge. Presently, a mere 15,000 out of 1,000,000 capital companies are subjected to independent auditing. This paradigm reflects a considerable deviation from legislative intent and the overarching objectives of transparency and accountability within capital enterprises. Alarmingly, this evidences that approximately ninety-nine percent of capital companies remain effectively outside the purview of audit scrutiny.

In examining the legislative approach towards cooperative entities, it is evident that the legislator has diligently avoided replicating the oversight observed in the regulatory framework applicable to capital corporations, particularly concerning the implementation of a multiple audit system. This decision underscored the nuanced recognition of the legislative body in acknowledging the distinct nature of cooperative entities as compared to their corporate counterparts. The institutionalization of the multiple audit system for cooperatives signifies a deliberate and informed legislative choice. It enables cooperatives meeting predefined criteria to engage in a more comprehensive and sophisticated audit process, facilitated by external and independent specialists. This mechanism not only elevates the standard of scrutiny these entities are subject to but also fosters a culture of accountability and professional oversight, thereby enhancing the integrity of the cooperatives' operational and financial modalities. Conversely, the legislation ensures that cooperatives, which do not qualify for external or independent audits, are not exempt from the obligation of audit altogether. Through the validation of internal audits, the legislative framework accommodates a method of oversight for such entities. Despite scepticism regarding the efficacy and objectivity of internal audits – stemming from concerns over non-professional conduct and the potential compromise of impartiality due to the capability of cooperative members serving as auditors – the alternative, which would entail a complete absence of any form of audit, is categorically

considered less favourable. This nuanced legislative strategy reflects an acute awareness of the operational realities of cooperatives, and the indispensable need for a tailored regulatory approach that acknowledges the unique challenges and dynamics within such entities. Thus, the legislator's foresight in designing a dual audit system manifests not only a commitment to ensuring financial propriety and transparency within cooperatives but also a broader intention to cultivate an environment conducive to their sustainable and responsible growth.

In examining the systemic critiques applicable to the multiplicity of audit mechanisms within cooperative entities, it becomes evident that the integration and validation of internal audits, within cooperatives undergoing external or autonomous evaluations, present a dubious necessity. The redundancy and potential superfluity of internal audits, in the presence of comprehensive external or independent scrutiny, raises significant inquiries regarding their added value, coverage of unaddressed oversight dimensions, and the amelioration of existing oversight deficiencies. Furthermore, it is imperative to recognize the implications of internal audits in terms of labour allocation and supplementary financial burdens on cooperatives already subject to outsider evaluations. Therefore, it is advocated that a re-evaluation of audit regime frameworks, favouring the implementation of internal audits exclusively within cooperatives exempt from external or independent audits, constitutes a more efficacious and resource-optimal approach. This recommendation stems from a critical analysis of operational efficiencies, cost-benefit considerations, and the overarching objective of ensuring rigorous and comprehensive cooperative oversight.

An additional critique that can be leveled against the multiple audit system within cooperatives pertains to the disperse legislative sources governing such audits. The norms applicable to the auditing of cooperatives are primarily contained within the CoC. Conversely, regulations encompassing the guidelines for both internal and external auditing of cooperatives also constitute a part of the legal framework undergirding the multiple audit system. Moreover, provisions related to joint-stock companies within the TCC further serve as a reference point for the intricate audit mechanism within cooperatives. In instances where cooperatives are mandated to undergo independent auditing, the criteria stipulated in the TCC concerning the appointment of auditors, the qualifications requisite for independent auditors to conduct said audits, alongside the responsibilities and prerogatives of the auditor, are invoked. Additional stipulations relevant to the mandatory independent auditing of cooperatives find their place within the specialized statute for agricultural sales cooperatives. The dispersed state of these legal provisions across various legislative documents inherently breeds issues concerning legal certainty. From an ideal standpoint, the entirety of norms

pertinent to the multiple audit system in cooperatives ought to be consolidated within the CoC to mitigate such issues.

CONCLUSION

In the legal framework of the Republic of Turkey, a Cooperative represents a distinct archetype of commercial entity, which is regulated not only under the TCC but also by a specialized statute, the CoC. The state exercises a significant degree of oversight over cooperatives, implementing both direct and indirect supervisory mechanisms. This heightened level of surveillance is attributed to the pivotal role cooperatives play in serving the public interest, setting them apart from conventional commercial entities in multiple respects. One of the most salient distinctions between cooperatives and other forms of commercial companies is manifested in the auditing processes to which they are subjected. Unlike the trajectory observed in the TCC pertaining to capital companies, where internal auditing mechanisms were overlooked, the legal framework governing cooperatives has diligently preserved these internal audit systems. This preservation applies universally across various types of cooperatives, in spite of whether they are also subjected to external or independent audits, thereby avoiding a significant oversight made in corporate legislation. The legislative approach toward ensuring rigorous oversight of cooperatives was further augmented in 2021 through an amendment to the CoC, which extended the requirement of an external audit mechanism to cooperatives. Nevertheless, this requirement is not universally applied but is conditional upon the cooperative fulfilling certain criteria as stipulated by a Regulation promulgated by the Ministry of Trade. Additionally, the Turkish legal system has introduced the concept of an independent audit as a potential oversight mechanism for cooperatives. At present, this framework is exclusively applicable to the federations of agricultural sales cooperatives, which must meet specific standards established in a Communiqué issued by the Ministry of Trade in order to be eligible for independent auditing. It is noteworthy that federations which are subject to independent audit are exempt from the external audit requirement, indicating a tailored approach to ensuring financial and operational accountability in these entities. The preservation of such diversified audit mechanisms, particularly the maintenance of internal audit alongside the introduction of external and independent audits, underscores a legal recognition of cooperatives' unique position within both the market and society. Furthermore, these legislative choices reflect a deliberate effort to safeguard the public interest by enhancing the transparency and accountability of cooperatives, which are integral to Turkey's socio-economic landscape.

The robustness and efficacy of the multiple auditing systems utilized within cooperative entities are subject to considerable scrutiny due to inherent limitations. The divergence of legislative foundations underpinning each auditing modality presents an unequivocal impediment with regard to legal stability. In the optimal regulatory framework, it is imperative that all statutes governing the multifaceted auditing schema within cooperatives be amalgamated within the Cooperative Code (CoC). Whilst the preservation of internal auditing mechanisms serves to safeguard cooperatives from an audit deficit, mandating such internal audits for cooperatives concurrently subjected to external or independent audits may culminate in inefficiencies and superfluous expenditures. Moreover, the incremental value derived from internal audits, when juxtaposed with the assessments executed by professionals of higher qualification and expertise in the realm of external and independent auditing, remains dubious. Accordingly, it is posited that the internal audit mechanism should be selectively applicable solely to those cooperatives not already under the purview of external or independent audit processes.

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THE PROTECTION OF PERSONS WITH DISABILITIES IN INTERNATIONAL HUMANITARIAN LAW

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Abstract. The article addresses the issue of protecting persons with disabilities in the context of armed conflicts, analysing the effectiveness of international humanitarian law (IHL) in this regard. It highlights that persons with disabilities are particularly vulnerable to the effects of warfare, with their needs being often overlooked in the planning and implementation of humanitarian actions. The author discuss the evolution of the concept of disability and its various models, such as the charity, medical, social, and human rights-based models, emphasizing the need to reinterpret IHL provisions in accordance with modern human rights standards. The article notes that while IHL provides protection to persons with disabilities as civilians and as "wounded and sick", it often uses terminology and approaches that are outdated by contemporary standards. Furthermore, it identifies practical challenges, such as the lack of adequate procedures and information, which can lead to the marginalization of these individuals in conflict situations.

Keywords: conflict; war; human rights; disability.

INTRODUCTION

The protection of persons with disabilities in the context of armed conflicts is one of the critical challenges faced by contemporary international humanitarian law (IHL). Persons with disabilities are disproportionately affected by the consequences of warfare, as confirmed by numerous reports and studies conducted by organizations such as the International Committee of the Red Cross (ICRC), the Geneva Academy of International Humanitarian Law and Human Rights, and the United Nations.[1] These reports emphasize

[1] ICRC, Frequently asked questions on the rules of war: Does IHL protect persons with disabilities? (07.03.2022), https://www.icrc.org/en/document/ihl-rules-of-war-FAQ-Geneva-Conventions [accessed: 10.08.2024]; ICRC, The ICRC's Vision 2030 on Disability (06.08.2020), https://www.icrc.org/en/publication/4494-icrcs-vision-2030-disability [accessed: 10.08.2024]; ICRC, Advisory Service: International Humanitarian Law and Persons with Disabilities, (2017), https://www.icrc.org/en/download/file/56906/ihl_and_persons_with_disabilities_en_clean.pdf [accessed: 10.08.2024]; Human Rights Watch, Under Shelling in Kharkiv People with Disabilities Need to Evacuate Safely (07.03.2022), https://www.hrw.org/news/2022/03/07/under-shelling-kharkiv [accessed: 10.08.2024].

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that support mechanisms and access to essential services, such as water, food, shelter, and healthcare, are often inaccessible to persons with disabilities during armed conflicts. Barriers include both physical obstacles and the lack of appropriate consultation during the planning and implementation of humanitarian actions. Persons with disabilities are also at a higher risk of injury or death, and their needs are regularly ignored within the framework of international humanitarian interventions. Additionally, armed conflicts exacerbate existing barriers faced by persons with disabilities, further hindering their access to essential services and support [Breitegger 2023, 100].

This article aims to examine whether the existing standards of International Humanitarian Law (IHL) effectively protect persons with disabilities, or whether they are merely a "set of pious wishes," insufficient to bring about real improvements in the situation of these individuals. The analysis will explore both the theoretical legal frameworks and the practical challenges associated with implementing these norms in conflict zones. Attention will also be given to the compatibility between the International Convention on the Rights of Persons with Disabilities[2] (CRPD) and IHL in the context of protecting persons with disabilities during armed conflicts. Through a critical analysis of current regulations and their implementation, the article seeks to answer whether international humanitarian law can fulfill its obligations towards the most vulnerable groups in conflict situations, or whether further reforms and actions are necessary to enhance their protection.

1. THE CONCEPT OF DISABILITY IN INTERNATIONAL HUMANITARIAN LAW

As highlighted in the doctrine, the concept of disability has evolved over centuries and is subject to various interpretative changes driven by medical, social, sociological, and legal factors, making its conceptual scope ambiguous and multifaceted [Giełda 2015, 1]. This term is used to describe the consequences of a person's health condition and functioning, for the purpose of legally constituting their unique social situation [Fajfer-Kruczek 2015, 13]. In this context, we can identify four main models of understanding this phenomenon: the charity model, the medical model, the social model, and the human rights-based model. The first, the charity model, views disability as a personal tragedy or misfortune, where persons with disabilities are seen as victims of their impairments. To function properly, they are believed to require the goodwill of others, manifested in special social assistance programs. The second approach, the medical model, focuses on disability as a disease

[2] Convention on the Rights of Persons with Disabilities adopted by the UN General Assembly on 13 December 2006, Journal of Laws of 2012, item 1169.

or defect in the human body, which causes the person to deviate from the norm – becoming "abnormal" [Retief and Letšosa 2018, 5-6]. The third model is based on the view that disability is a socially constructed phenomenon arising from discrimination and oppression. In this perspective, it is important to distinguish between two concepts: impairment and disability. The difference between them lies in the fact that impairment refers to a condition of the body or mind, while disability is the way society responds to those impairments. This model emphasizes that societal barriers, rather than the impairments themselves, are the primary cause of the disadvantages faced by persons with disabilities [Priddy 2019, 19]. Thus, in this model, there is an emphasis on eliminating all barriers and forms of discrimination that may exclude persons with disabilities from full participation in social life. The focus is on ensuring that societal structures do not impose unnecessary restrictions on individuals with impairments, enabling them to engage equally in all aspects of society. The final model, the human rights-based model, underscores the agency of persons with disabilities, emphasizing the inherent dignity of every human being and the rights and freedoms that arise from this dignity. This approach centers on the idea that persons with disabilities are entitled to the same rights as all other individuals and should be empowered to claim those rights on an equal basis, without discrimination [Retief and Letšosa 2018, 5]. This model is reflected in the CRPD, which states that disability "is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others." According to the CRPD, persons with disabilities "include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." In this model, the world should be designed universally (inclusively) to eliminate all forms of discrimination and ensure that persons with disabilities have equal access to all human rights and freedoms stemming from the inherent dignity of the human person. This understanding represents the most holistic approach to disability issues, breaking away from stereotypical frameworks and viewing disability not merely as a statistical measure but as a progressive phenomenon [Rushing, Kabbara, Ngum Ndi, et al. 2023, 2].

When analyzing IHL, particularly Geneva law, it can be observed that it leans towards two of the models described above – the medical model and the charity model – treating persons with disabilities "as passive, weak, defective, and vulnerable and, as such, in need of special, paternalistic protection" [Priddy 2019, 52]. This is indicated by the terminology used, which in today's context could be considered exclusionary, such as terms like "infirm," "wounded and sick," "disabled," "injured," "sick," "blind," or "mental

disease." However, it is important to remember that the language used "was a product of the social and historical context of its time, and is certainly outdated in light of contemporary understandings of disability." Despite this, it does not diminish the fact that as early as 1949, and subsequently in 1977, persons with disabilities were recognized as requiring protection under IHL [Breitegger 2017, 7]. Can IHL be criticized for adopting such an approach towards persons with disabilities? It seems not, as one must consider the context in which IHL was developed, as well as the *ratio legis* that underpinned it. This context and purpose explain the use of terminology and approaches that, while now considered outdated, were appropriate and necessary at the time of IHL's formulation. The legal framework of IHL was designed to address the pressing humanitarian needs during and after conflicts, rather than to drive social change, which is the focus of more modern instruments like the CRPD [Priddy 2019, 52]. IHL becomes effective only during armed conflicts, and due to its specificity and intended audience, it must be characterized by a certain pragmatism and the rigorous legal language that may now seem archaic. However, this does not preclude the possibility of interpreting the specific terms used in Geneva law in the spirit of the social or human rights-based approach. While IHL was developed with the primary goal of providing immediate protection in the context of warfare, its provisions can and should be reinterpreted in light of contemporary understandings of disability and human rights. This re-interpretation allows for the adaptation of IHL to modern standards, ensuring that it remains relevant and inclusive, even if the original language may appear outdated [Breitegger 2023, 103]. However, caution must be exercised here to avoid an extreme approach that could lead to unexpected legal consequences. For example, applying a broad interpretation of disability as any kind of barrier or obstacle that may hinder or prevent proper functioning in society could imply that, at some point in life, everyone experiences such situations. This becomes even more relevant in the context of armed conflict. Such an approach could lead to unforeseen legal outcomes, as under IHL, persons with disabilities receive double legal protection – firstly as civilians and secondly as "wounded and sick," which entails specific rights and obligations..

Is there a connection between the CRPD and IHL? This relationship was explained by Janet Lord, who stated that "CRPD is a new normative landscape against which IHL obligations must be assessed and accordingly refreshed" [Lord 2015, 172]. However, it is important to maintain the specificities of these two legal orders. The above statement is reinforced by Article 11 of the CRPD, which stipulates that "States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations

of risk, including situations of armed conflict, humanitarian emergencies, and the occurrence of natural disasters." Thus, the CRPD becomes a specific interpretative directive for the provisions of IHL, under which the legal situation of persons with disabilities affected by armed conflict should be interpreted, particularly in the context of the principle of humane treatment of civilians. As highlighted in the ICRC report,[3] "IHL and the CRPD require specific measures for persons with disabilities under the power or control of an adverse party to a conflict, based on principles of non-adverse distinction or positive discrimination." This means that the CRPD serves as a guiding framework for interpreting IHL, ensuring that the rights and needs of persons with disabilities are fully considered and protected during conflicts.

2. PROTECTIVE REGULATIONS IN IHL

Persons with disabilities who do not take an active part in hostilities under IHL possess a dual legal status, which grants them two types of legal protection. The first protection arises from their membership in the civilian population, and the second from their classification within the category of "wounded and sick," thus falling under the group of individuals considered *hors de combat* (out of combat), which entails specific rights and obligations. This dual status is highlighted in Article 8 of Additional Protocol I[4] to the Geneva Conventions (I AP), which states that "wounded" and "sick" mean persons, whether military or civilian, who, because of trauma, disease, or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility. These terms also cover maternity cases, new-born babies and other persons who may be in need of immediate medical assistance or care, such as the infirm or expectant mothers, and who refrain from any act of hostility. The 1987 Commentary on Additional Protocol I emphasizes that when interpreting the category of individuals described as "wounded and sick," one must look beyond the literal meanings of terms like "wounded" or "sick." The definition provided in the Protocol is described as being "at the same time wider and narrower than the more common definition of these terms." It is wider because it includes individuals who may not be considered wounded or sick in the usual sense but narrower because it only offers protection to such individuals if they abstain from all hostile acts (Commentary 1987, p. 117). A crucial criterion for obtaining this status is the need for medical assistance or care. However, the person's condition does not necessarily have to

[3] ICRC, How law protects persons with disabilities in armed conflict, p. 2.

[4] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

require immediate medical attention at that moment but must be such that it could necessitate urgent medical care at any time. This aspect is particularly relevant for persons with disabilities, who may not require immediate care at all times but whose condition could quickly deteriorate, requiring medical intervention (Commentary 1987, p. 118).

3. GENERAL PRINCIPLES OF THE PROTECTION OF CIVILIANS

Under the concept of a civilian, as defined in Article 50, paragraph 1 of Additional Protocol I (AP I), it is understood to mean anyone who is not a member of the armed forces or a *leveé en masse*. Furthermore, this provision establishes a presumption that in case of doubt, a person should be considered a civilian. However, it is important to note that a civilian who takes a direct part in hostilities is not protected. Such a person does not lose their civilian status but temporarily loses their protection, becoming a legitimate target for the duration of their participation in hostilities [Grzebyk 2018, 112].

The general standard of protection for civilians is established by the fundamental principles of IHL, including the principle of humanity. Humanity is one of the key principles governing armed conflicts, emphasizing the prevention of human suffering and the provision of assistance to all those in need [Falkowski 2022, 22]. The principle of humanity seeks to protect values such as life, health, and human dignity, including the physical and mental integrity of individuals, which is particularly significant for persons with disabilities [Priddy 2023, 246]. The manifestation of the principle of humanity is twofold: on one hand, it prohibits the use of unjustified violence or inhumane treatment, and on the other, it ensures at least a minimum standard of life and dignity for those under the control of one of the parties to the armed conflict [Marcinko 2019, 8].

In non-international armed conflicts, the scope of humanity is outlined in Article 3 of the Fourth Geneva Convention[5] (IV GC) – which is included in all the Geneva Conventions. According to this article, civilians must be treated humanely at all times during the conflict, which means that the following acts are prohibited: "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment; the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording

[5] Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, Commentary of 1958, https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949?activeTab=1949GCs-APs-and-commentaries [accessed: 08.07.2024].

all the judicial guarantees which are recognized as indispensable by civilized peoples." A similar provision can be found in Article 4 of Additional Protocol II to the Geneva Conventions.[6] These provisions are fundamental in ensuring that even during the chaos of non-international conflicts, there are basic protections for civilians, reflecting the broader principle of humanity in IHL.

In the context of international armed conflicts, the Fourth Geneva Convention and Additional Protocol I provide a more detailed scope of protection grounded in the principle of humanity. According to Article 27 of the IV GC, "protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity." This provision guarantees the physical and intellectual integrity of protected persons (Commentary 1958, p. 202). It requires the parties to the conflict to treat all civilians equally, while also taking into account their health, age, and gender, which could be described as positive discrimination. IHL further prohibits the use of physical or moral coercion against protected persons (Article 31 of the IV GC), the use of measures that could cause physical or psychological suffering, such as murder, torture, corporal punishment, mutilation, medical or scientific experiments (Article 32 of the IV GC), the use of reprisals (Article 33 of the IV GC), and taking hostages (Article 34 of the IV GC).

To ensure the protection of the integrity of civilians, the parties to the armed conflict are obligated to protect civilian objects (Article 52 of I AP) and objects indispensable to the survival of the civilian population (Article 54 of I AP). The principle of humanity is also manifested in the possibility of creating demilitarized zones aimed at protecting protected persons from the dangers of combat (Article 15 of the IV GC). These provisions highlight the emphasis placed on safeguarding human dignity and the physical and psychological well-being of civilians during armed conflicts, consistent with the overarching principles of IHL. The fundamental principles that define the scope of protection also include the principle of proportionality (Article 57 of Additional Protocol I), the principle of distinction (Articles 48 and 51(5)(b) of Additional Protocol I), and the principle of military necessity, which establish the standards for conducting military operations. These principles apply to both international and non-international armed conflicts, as they have been recognized as customary norms.[7]

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[6] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

[7] See: International Court of Justice, Legality of the Threat or Use of Nuclear Weapons,

The principle of proportionality refers to maintaining a specific balance, weighing the values and objectives that must be considered in planned military actions. It serves to determine the legality of an attack and "establish the relationship between the anticipated military advantage and the expected civilian casualties and damage to civilian objects" [Marcinko 2015, 184]. This principle imposes several restrictions on the parties to a conflict that should be considered when planning attacks, ensuring that actions are controlled and precise.

This aligns with the principle of military necessity, which dictates that force should be used "only to the extent necessary to achieve, in the shortest possible time, the partial or total submission of the enemy, and that the scope of force applied against the enemy is no greater than required to achieve this objective" [Idem 2019, 8]. Additionally, the principle of distinction, whose "essence lies in directing attacks during armed conflict only against legitimate military targets, such as combatants and objects considered military targets under IHL, while attacks on civilians and civilian objects are prohibited" [Falkowski 2022, 24], must also be adhered to.

However, applying this principle in the field can present challenges and requires military commanders to exercise excellent judgment and discernment.

4. SPECIAL PROTECTION FOR PERSONS WITH DISABILITIES

The special legal status of persons with disabilities, including their special protection, is addressed in Article 16 IV GC, which states that "the wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect." Individuals in this category cannot be attacked, and furthermore, the parties to the conflict are obligated to search for, collect, and evacuate them from areas affected by hostilities (Article 15 I GC[8], Article 10 I AP, Article 8 II AP). This provision ensures that persons with disabilities, who may be more vulnerable during conflicts, receive the protection and assistance necessary to safeguard their well-being. The protection arising from belonging to the "wounded and sick" category is supplementary and strengthens the protection afforded to civilians. It is based on the obligation of the parties to the conflict to provide medical assistance and to create conditions that allow for the preservation of the physical and intellectual integrity of those in need. As part of fulfilling this obligation, the

Advisory Opinion, ICJ Reports 1996, par. 79; ICRS, Customary IHL Database, https://ihl-databases.icrc.org/en/customary-ihl/v1 [accessed: 10.06.2024], chapter 1, 4 and 5.

[8] Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949.

parties to the conflict should strive to organize the evacuation of individuals in this category to areas where military operations are not taking place. There is also the possibility of establishing special sanitary zones where people in need of assistance can be gathered and, as far as possible, provided with access to basic healthcare services. These zones should be properly marked to ensure they do not become targets of attack.

5. CHALLENGES FACED BY IHL IN THE CONTEXT OF PROTECTING PERSONS WITH DISABILITIES

Knowing the theoretical foundations of the protection of persons with disabilities, it is worth examining the implementation of specific IHL norms in practice. It is useful to start with the issue of qualifying persons with disabilities for the group of the wounded and sick. As already mentioned, to belong to this category, individuals must meet two criteria – they must not be participating in ongoing military activities, and their condition must require medical care. This medical approach to the issue of disability may therefore exclude persons with disabilities who do not require immediate medical assistance but face other barriers to fully and properly functioning. Consequently, IHL does not fully recognize the diversity associated with the concept of disability [Priddy 2019, 56; Idem 2021, 11]. The issue may also be complicated by the lack of a defined concept of medical care. Does it refer exclusively to emergency situations, or does it also include access to services such as rehabilitation or other medical services that improve quality of life? [Idem 2019, 56].

Doctrine also highlights the issues related to the implementation of the principle of proportionality by parties to a conflict in the context of protecting civilians, particularly persons with disabilities [Breitegger 2023, 105-107; Priddy 2023, 248-50; Lord 2023, 76-77]. This is evident in the current situations during the ongoing conflict in Ukraine and in the Gaza Strip, with media reports of civilian casualties. Concerns arise from the military doctrine's view that civilians form a homogeneous group, which implies that they are assumed to have the same ability to understand and respond to danger [Priddy 2019, 61]. This approach fails to consider the needs of persons with disabilities, who, due to specific circumstances, may have different cognitive abilities.

For example, consider a situation where a military commander receives information that enemy forces and an arms cache are located in a residential building housing civilians. After conducting targeting and analyzing the situation, the commander may conclude that the military advantage outweighs civilian casualties and decides to carry out the attack. Adhering to IHL, the commander sends a voice warning to the building's residents two minutes before the attack, instructing them to evacuate as quickly as possible. Although the commander's actions may seem rational, they do not account for situations

where, for instance, deaf-mute individuals who cannot hear the warning or wheelchair users who cannot evacuate in such a short time are among the residents. Military procedures, as well as IHL itself, do not provide any specific guidelines for dealing with persons with disabilities in such scenarios.

The implementation of IHL may also be less effective in organizing the evacuation of persons with disabilities, setting up sanitary zones, and delivering humanitarian aid without prior consultation with those in need. These issues, however, do not stem from the lack of appropriate regulations in IHL but rather from the lack of goodwill on the part of one of the parties to the conflict or simply from a lack of information. This is because no registry of persons with disabilities is created, either in peacetime or during conflict. Without adequate information, it is difficult to plan effective interventions. Therefore, the lack of data regarding the number of persons with disabilities and the specific threats they face in armed conflicts also poses a significant challenge.

Should IHL be revised, or perhaps a new treaty should be adopted that specifically addresses persons with disabilities during conflicts? The answer to this question should likely be negative. As mentioned earlier, the purpose of IHL is not to reshape the world or alter reality. IHL has a clearly defined task – to legally regulate the conditions under which armed conflicts are conducted, with the greatest possible protection of civilians, but in a pragmatic manner that does not provoke objections from the state parties to the conventions.

We must remember that any change in IHL, to be effective and enforceable, requires acceptance and recognition by the individual states that are signatories. Moreover, there is a prevailing belief that "states believe that international law will in the future be overloaded with ineffective treaties, which in effect result in violations of international law norms, international liability, and ultimately a weakening of relations between states" [Kun-Buczko 2019, 49].

This perspective suggests that while there may be specific gaps or challenges in the application of IHL concerning persons with disabilities, the solution may not lie in creating new treaties but rather in enhancing the implementation and interpretation of existing norms [Al-Dawoody and Pons 2023, 354]. Improving data collection, promoting awareness, and ensuring that the principles of IHL are applied in a manner that fully considers the needs of persons with disabilities may be more effective strategies. These efforts could address the unique challenges faced by this group without the need for additional legal instruments, which might be difficult to achieve consensus on and could potentially dilute the strength of existing IHL provisions.

How, then, can the effectiveness of protecting persons with disabilities be increased? It appears that this goal can be achieved by interpreting of the existing legal framework in a way that adapts to contemporary realities and incorporates current perspectives. Soft law also has a role to play in this aspect. Although it does not binding on the parties, it points to the

directions of desired changes and highlights significant issues. Unlike treaty law, soft law can also be shaped by entities that do not have legal personality under international law [Kun-Buczko 2019, 49]. An example is the Security Council Resolution No. 2475, initiated by Poland, which calls for greater protection of persons with disabilities affected by armed conflicts. Additionally, there is a call for ongoing monitoring of the conditions in conflict-affected areas, for publicizing any irregularities, and for increasing the involvement of persons with disabilities in humanitarian efforts. Changes in military procedures and soldier training also seem important to raise awareness of the diversity encompassed by the concept of the civilian population.

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LIABILITY FOR FAILURE TO ENSURE SECURITY IN CIVIL LAW

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Abstract. Pursuant to Article 5 of the Constitution of the Republic of Poland, the Polish State is obliged, among other things, to safeguard security for its citizens. Therefore, the public authorities are required to undertake actions aimed at keeping the state of non-threat, allowing the citizens to pursue their interests. A question arises about the effect of failure to perform these obligations. This paper seeks to assess the effect of failure to safeguard security in the civil-law sphere. In particular, the paper discusses the concept of security, delineates the circle of entities burdened with security obligations and indicates the legal regime and conditions for liability for damages for failure to safeguard security. The article also provides an analysis of admissibility of approaching the sense of security as a personal right.

Keywords: civil liability; security; damage; compensation; State Treasury; local government unit; sense of security; personal rights.

1. INITIAL REMARKS

Security issues are now of particular interest to scholars representing various fields and disciplines, including legal sciences. This article discusses civil liability for failure to ensure security. The considerations addressed herein aim, in particular, at determining whether or not the failure to provide security may constitute a factor determining the emergence of civil law liability (compensatory liability) and who, and according to what rules, is to be held liable.

The main research assumption is that failure to provide security may cause damage to legally protected rights and interests of various legal entities, and if these are considered as behaviour constituting a violation of the rules of conduct resulting from the provisions of generally applicable law, it becomes justified to demand compensation for the resulting damage within the framework of a civil-law relationship. In order to verify the above thesis, it is necessary to conduct research in several partial areas. The first concept that needs to be clarified (for civil liability purposes) is security. Next, it is necessary to identify the group of entities who are responsible for ensuring security. Then it is necessary to list the conditions of civil

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liability for failure to ensure security, paying particular attention to the event entailing the liability. In addition, it is worth considering the permissibility of recognizing sense of security as a personal right.

2. CONCEPT OF SECURITY

Security is a concept within legal language. This concept is used by the Constitution of the Republic of Poland[1] (see Article 5, 126 and 135) and other legislation. It should however be noted that the concept of security was not defined in these provisions [Karpiuk 2019, 4]. As a general understanding, security appears to be a condition characterised by the absence of threat [Szykuła-Piec 2021, 325]. This notion of security refers to its Latin origin *sine cura* (*securitas*), translated as a state of tranquillity, certainty and lack of threats [Rosicki 2010, 23].

Social sciences scholars (in particular in the fields of security sciences, political and administrative sciences, legal sciences and sociological sciences) are making numerous steps to define the concept of security [Babiński 2020, 93; Osierda 2014, 90]. When explaining this concept, it is emphasised that it is a certain state of non-threat to society members, determined by external factors [Gromek 2018, 156], which gives members of society (and, seemingly, organisational units formed by them) the possibility of continued existence and pursuit of their interests [Rosicki 2010, 24] (also of a property nature) [Pieprzny 2012, 14-45].

The literature classifies security, taking into account numerous and varied criteria [Rosicki 2010, 29; Gromek 2018, 164]. Namely, the application of the subjective criterion allow distinguishing state (national) security and international security. The objective criterion involves spheres of relationships in which the state of non-threat is sought after. This criterion distinguishes between environmental, energy, economic, ideological, cultural, political, humanitarian, military, social, biological, epidemiological, atomic and space security. The spatial criterion, on the other hand, distinguishes global, regional and local security. Finally, taking into account the dynamics of processes related to the state of non-threat makes it possible to determine stages in implementing security postulates (the process criterion).

The way security is approached and systematised is evidently determined to a large extent (in particular in the subjective and objective perspectives) by identified risk factors and their sources. These factors are dynamic, and their evolution is a consequence of the changing sense of threat perceived by individuals and groups. This, in turn, results in that more and more

[1] Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended [hereinafter: the Constitution].

numerous areas of public life are assessed in the context of security (see in particular the comprehensive catalogue of objective criteria of security).

This may bring forth a question about the reasonability of invoking the above mentioned definitions and classification of security in the context of civil liability. This issue cannot be explained without first providing general characteristics of civil liability. Civil liability is one of varieties of liability as such, understood as an obligation to bear the consequences of occurrence of negatively qualified events [Kaliński 2023, 36]. A distinction can be made here between moral, political or legal liability and, as part of the latter, criminal, official (employee's), disciplinary or civil liability. Compared to other varieties of liability (especially legal liability), civil liability is distinguished by its basic function. The fundamental purpose of criminal, official or disciplinary liability is to identify and punish those behaving in an undesirable manner and to have a preventive effect on third parties of refraining from similar behaviour in the future. Civil liability, on the other hand, is not aimed at imposing a penalty on the person responsible for the event, but at redressing the damage suffered by a specific entity in connection with the causative event [Czachórski, Brzozowski, Safjan, et al 2009, 86-87]. Civil liability can therefore be regarded as compensatory liability which seeks to remedy the damage resulting from a specific event for which the entity is liable (however, it should be noted here that the literature also adopts a broader understanding of civil liability as the fulfilment of obligations arising from different legal titles, including in particular the obligation to remedy the damage) [Kaliński 2023, 17; Idem 2016, 68-69]. Its emergence depends on the fulfilment of the conditions established under the provisions of the Civil Code, namely the occurrence of damage (see Article 361(2) of the Civil Code), the occurrence of an event with which the law links the liability of the entity in question (see, in particular, Article 415 et seq. of the Civil Code, Article 471 et seq. of the Civil Code) and the occurrence of an adequate causal link between the damage and the causal event (see Article 361(1) of the Civil Code) [Kaliński 2023, 38].

Civil liability (compensatory liability) for failure to ensure security will therefore be reduced to compensating the damage suffered by the injured party as a result of the unlawful conduct of the entity that is obliged to ensure security. In this context, two issues become important. Firstly, the damage caused to legally protected rights or interests of the injured party must be a consequence of the lack of security. It seems, however, that the kind of security (among the aforementioned) is of secondary importance. The occurrence of damage may be a consequence of insufficient security in the social, political, welfare, environmental and epidemiological spheres in various territorial perspectives (national, regional, local). Thus, it can be concluded that civil liability is related to failure to ensure security in general terms

[Gromek 2018, 172, 162, 169] (understood as a certain state of non-threat, the provision and maintenance of which is the responsibility of normatively specified entities). The second important issue is to identify the entity that is encumbered with security obligations. Most definitions of security do not focus on this issue (see the introductory remarks). But it is of fundamental importance for civil liability for failure to ensure security. It is impossible to compensate for the damage without first pointing out who is responsible for it. *Prima facie*, civil liability for failure to ensure security should be imposed upon entities encumbered with security obligations; it is therefore necessary to identify such entities.

3. ENTITY OBLIGED TO ENSURE SECURITY

The first guidelines regarding the entity responsible for providing security are contained in the norms of the Polish Constitution. Namely, Article 5 the Constitution provides that the Republic of Poland shall ensure, apart from the freedoms and rights of persons and citizens, also the security of its citizens. Security is therefore one of the fundamental values protected by the State [Szykuła-Piec 2021, 325]. Detailed issues related to the implementation of State's responsibilities related to ensuring and protecting security are regulated in further constitutional provisions. Namely, according to Article 126 of the Constitution, the President of the Republic of Poland safeguards the sovereignty and security of the state and the inviolability and integrity of its territory, and its advisory body in the field of internal and external security of the State is the National Security Council (Article 135 of the Constitution). In turn, Article 146(4) of the Constitution includes, among the specific tasks of the Council of Ministers, ensuring the internal security of the state and public order (para. 7) and ensuring external security of the State (para. 8).

These responsibilities were specified in more detail in statutory provisions. The Council of Ministers and local bodies of central government administration (provincial governors [*wojewodowie*]) were assigned crisis management tasks (see Article 7 and 14 of the Act on emergency management of 26 April 2007[2]). Specific tasks in the field of State security have been entrusted to the Internal Security Agency (in the field of internal security – Article 1, Article 5 of the Act on the Internal Security Agency and the Intelligence Agency of 24 May 2002,[3] see also Article 3 of the Act on anti-terrorist activities of 10 June 2016[4]) and to the Intelligence Agency (in the field of exter-

[2] Act of 26 April 2007 on crisis management, Journal of Laws of 2023, item 122.

[3] Act of 24 May 2002 on the Internal Security Agency and the Intelligence Agency, Journal of Laws of 2024, item 812.

[4] Act of 10 June 2016 on anti-terrorist activities, Journal of Laws of 2024, item 92.

nal security), the Police, etc. In view of these examples of regulations, it can be concluded that the security obligations are incumbent upon the State and that their implementation is the domain of state bodies and institutions.

The provision of security is also referred to in the laws governing the system of local government. According to Article 7(1)(14) of the Act on municipal government of 8 March 1990[5], the municipality's own tasks include meeting the needs of the municipal community in terms of public order and security of citizens and fire and flood protection. In turn, the provisions of the Act on district government of 5 June 1998[6] impose public tasks of a supra-municipal nature on the district (*powiat*) in the field of public order and security of citizens (Article 4(1)(15)) and flood protection, including equipping and maintaining the district flood storage facility, fire prevention and the prevention of other extraordinary threats to human life and health and the environment (Article 4(1)(16)). Local government bodies are also competent in matters of crisis management (Article 17-18 of the Act on emergency management of 26 April 2007[7]).

4. MODE OF LIABILITY

Civil (compensatory) liability can be exercised in several modes (types), and the criterion for distinguishing different types of compensatory liability is the event that is the source of the damage. In the traditional approach, a distinction is made between contractual liability (for non-performance or improper performance of an obligation, arising between entities that have already been linked by a legal relationship of the obligatory type), tort liability (arising in connection with the infliction of damage outside the legal relationship) and contractual liability (which boils down to the redress of damage by the entity that has assumed such an obligation under a contract) [Czachórski, Brzozowski, Safjan, et al. 2009, 85-86; Kaliński 2023, 27-31; Idem 2016, 70-72]. Those responsible for providing security do not have a legal relationship of a contractual type with potential victims that includes security obligations. This means that the damages related to the failure to provide security will be redressed under the tort mode (Article 415 et seq. of the Civil Code).

The findings made above (see para. 3) as to the entities burdened with security obligations (which may potentially be liable to compensate for the damage caused by the failure to provide security) is conducive to recourse to the Civil Code provisions on liability for damage caused by the exercise of public authority. This is about Articles 417 to 417[2] of the Civil Code.

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[5] Act of 8 March 1990 on municipal self-government, Journal of Laws of 2024, item 1465.

[6] Act of 5 June 1998 on district self-government, Journal of Laws of 2024, item 107.

[7] Act of 26 April 2007 on crisis management, Journal of Laws of 2023, item 122.

The aforementioned provisions on liability for damage caused by the exercise of public authority attribute the obligation to compensate for the damage to the State Treasury, a local government unit or an entity that exercises public authority by the operation of law. The general provision of Article 417 of the Civil Code provides for liability for the damage caused by an unlawful act or omission in the exercise of public authority. The subsequent article (Article 417^1 of the Civil Code) refers to specific forms of unlawful exercise of public authority (the issuance of a normative act – see para. 1 and failure to do so – see para. 4, issuance of an unlawful final ruling or administrative decision – see para. 2 and the failure to issue them – see para. 3). Article 417^2 of the Civil Code provides for, by way of exception, liability for personal injury caused by the lawful exercise of public authority, subjecting its attribution to considerations of equity.

The prerequisites for the liability referred to in the aforementioned provisions are (as in any case of compensatory liability) the occurrence of the damage, the occurrence of the event indicated in these provisions and the adequate causal link between the damage and the event [Kaliński 2016, 69; Czachórski, Brzozowski, Safjan, et al. 2009, 211, 241].

5. EVENT TO THE OCCURRENCE OF WHICH THE EMERGENCE OF LIABILITY IS RELATED

When analysing civil liability due to failure to ensure security, we should consider at least two types of circumstances as the event giving rise to such liability. Firstly, account must be taken of inactivity of entities obliged to ensure security (see para. 3), which boils down to a breach of the rules of conduct in the field of general security, set out in legal provisions, resulting in events that occur in specific subjective and objective circumstances, causing damage to property or a person, in particular bodily injury, health disorder, deprivation of liberty (resulting in property and non-property consequences). Secondly, we can consider treating as a causative event (determining the occurrence of civil liability) the behaviour consisting in the failure to take into account systemic guidelines, generally formulated in normative acts of a systemic and organisational nature. It seems that such omissions may result in negative experiences that could potentially affect anyone. Specific facts in the first group of situations could include, for example, incorrectly securing a mass event or public gathering, failure to dissolve a public gathering, failure to intervene by the competent services (police, fire brigades, etc.). As regards the second category of situations, these could include e.g. failure to develop or implement general assumptions, strategies in the field of public security (e.g. formulated in the "National Security

Strategy of the Republic of Poland",[8] "Poland's Energy Policy until 2040"[9]). This distinction appears to be relevant for determining whether the failure to ensure safety may give rise to an obligation to remedy the damage.

The admissibility to hold liable those obliged to provide security under Article 417 et seq. of the Civil Code depends on the qualification of the above-mentioned causal events as manifestations of unlawful conduct in the exercise of public authority; taking into account, of course, the two types of events indicated above. Two considerations are worth noting at this point.

In the first place, it is necessary to consider, in the light of Article 417 of the Civil Code, how the exercise of public authority is to be approached. The interpretation of this statutory phrase raises some doubts in civil law literature [Bagińska 2006, 243; Banaszczyk 2012, 105-106]. It is beyond dispute, however, that the exercise of public authority includes undertaking measures falling within the sphere of *imperium*, which consist in shaping the legal position of individuals in a sovereign manner, subject to the application of State coercion to safeguard their implementation. Such behaviour is characterised by binding decisions in individual cases (final rulings, final administrative decisions), generally applicable rules (see Article 417^1 of the Civil Code) and purely factual activities undertaken by people involved in the structure of public authorities (police, fire brigade, etc.) [Bagińska 2006, 243, 251; Banaszczyk 2012, 105].

The subject of some controversy is (or perhaps rather was) the qualification as the exercise of public authority of behaviours of central government or local government entities that do not have the nature of a sovereign shaping of the situation of individuals, but fall within the sphere of organisational activities related to public tasks [Machnikowski 2024]. The literature on the subject presents, as examples of such activities, the organisation of the health care system, the education system; the organisation of the social welfare system, and the pension insurance system [Bagińska 2006, 249, 276, 303-304; Banaszczyk 2012, 108, 113].

Another issue that raises interpretive doubts related to the event entailing civil liability under Article 417 of the Civil Code is unlawfulness of the causative event [Machnikowski 2024]. The Civil Code uses such wording only in the context of liability for damage resulting from the exercise of official authority. However, it is common in the Civil Code to link sanctions with conduct referred to as "unlawful" (see Article 24, Article 43^{10}, Article 87, and Article 423 of the Civil Code), unlawful conduct being considered to

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[8] National Security Strategy of the Republic of Poland, https://www.bbn.gov.pl/ftp/dokumenty/Strategia_Bezpieczenstwa_Narodowego_RP_2020.pdf [accessed: 31.10.2024].

[9] Announcement of the Minister of Climate and Environment of 2 March 2021 on the state's energy policy until 2040, "Monitor Polski" of 2021, item 264.

be both the behaviours contrary to the regulations and those that contradict the model of obligatory behaviour reconstructed based on indications from extra-legal normative systems (principles of social coexistence, socio-economic purpose of the right) [Pietrzykowski 2004, 168]. The question therefore arises as to whether illegality referred to in Article 417 of the Civil Code has designata that are identical [Bagińska 2006, 315, 321] or narrower than "unlawfulness" referred to in other above-mentioned regulations (civil-law unlawfulness).

One should support the view that the concepts of "illegality" (within the meaning of Article 417 of the Civil Code) and "unlawfulness" are not identical [Banaszczyk 2012, 115, 127; Czachórski, Brzozowski, Safjan, et al. 2009, 244; Safjan 2004, 39-40; Radwański 2004, 973; Pietrzykowski 2004, 179]. This assessment is supported first of all by linguistic arguments. The terminological convergence of the wording of Article 417 et seq. of the Civil Code and in Article 77(1) of the Constitution should not be ignored. The constitutional concept of "illegality" has been given a narrow meaning in the case-law of the Constitutional Tribunal,[10] which boils down to incompatibility with the norms of law reconstructed on the basis of generally applicable provisions that fit in the constitutional catalogue of sources of law (Article 87 of the Constitution). It should also be borne in mind that the causative event referred to in Article 417 of the Civil Code, although may give rise (if there are other conditions for compensatory liability) to a civil-law relationship, occurs outside the civil-law relationship [Sobolewski 2024]. Therefore, the causative behaviour should not be assessed by confrontation with a model of conduct reconstructed according to the rules typical of civil law, i.e. with reference to the principles of social coexistence, socio-economic purpose of the right or good practices. This is so because it takes place within a relationship governed by rules of public law. The correctness of conduct should be assessed in terms of its compliance with generally applicable law. Consideration of extra-legal assessment criteria can only take place if the relevant references to general clauses are provided for by the (public-law) provisions governing the exercise of official authority [Safjan 2004, 40; Banaszczyk 2012, 123].

These findings (concerning the two issues outlined at the outset) influence the assessment of whether failure to ensure security may constitute a prerequisite for liability under Article 417 of the Civil Code. At this point it is advisable to return to the distinction made at the outset between two categories of situations (causal events). As regards the former, there is no doubt that they can be prerequisites for compensatory liability. This refers to the actual behaviour of specialised law enforcement services, or those whose statutory responsibility is to protect citizens (the Police, Forest Guard, Railway

[10] Judgment of the Polish Constitutional Tribunal of 4 December 2001, ref. no. SK 18/00, OTK 2001 No. 8, item 256.

Protection Service) or other behaviour of entities exercising public authority (e.g. failure to issue a decision to prohibit or dissolve a public assembly – see Article 14, 20 of the Law on public gatherings of 24 July 2015[11]) Any possible failures to act are a manifestation of the (non-)exercise of sovereign powers. There is also no doubt that such behaviour is contrary to the provisions of generally applicable law. As regards the second category of situations, the issue is more complex. These events may be counted as a manifestation of failure to exercise public authority in the organisational sphere [Banaszczyk 2012, 107]. While the very admissibility to hold somebody liable for omission under Article 417 of the Civil Code is not disputed [Bagińska 2006, 215; Safjan 2004, 24], doubts are raised by the issue of the non-compliance of such omissions with the provisions of generally applicable law.

Failure by a public authority to take certain actions is contrary to law if it violates a legally defined obligation [Safjan 2004, 24; Machnikowski 2024]. The legal norm must therefore provide for a specific obligation of designated behaviour addressed to a designated addressee.[12] Moreover, taking such an action is expected by other legal entities, and failure to do so results in a damage [Safjan 2004, 24; Machnikowski 2024]. This means that the omission is linked to the damage by an adequate causal link, in such a way that failure to perform a given specific obligation, due to its normal consequences, causes damage. As an example, under Article 7 of the Act on municipal government, it is assumed that the non-performance of duties in the field of public order and security of citizens cannot constitute grounds for the unlawfulness of the omission in question. Non-compliance, on the other hand, may relate to the failure of the relevant specialised service to take a specific action (in the case of municipalities, this may be the Municipal Police), examples of which are presented above.[13]

Legal norms reconstructed through interpretation of the rules pointed out in para. 3 above may be referred to as systemic and organisational. They assign the obligation to ensure security to specific public authorities and define the organisational framework for its implementation. They do not list specific activities to be performed by the entities that were assigned the general obligation to ensure security. Nor can specific duties be derived from the "National Security Strategy of the Republic of Poland" (which takes into account the context of Poland's presence in the North Atlantic Alliance and the European Union).[14] Indeed, it is clear even from the introduction to the Strategy that its provisions should be further developed

[11] Act of 24 April 2015, the Law on assembly, Journal of Laws of 2022, item 1389.

[12] Judgment of the Supreme Court of 8 May 2014, ref. no. V CSK 349/13, Legalis no. 1061024.

[13] Judgment of the Supreme Court of 8 April 2005, ref. no. III CK 367/04, Legalis no. 69535.

[14] See https://www.bbn.gov.pl/ftp/dokumenty/Strategia_Bezpieczenstwa_Narodowego_RP_2020.pdf [accessed: 20.08.2024].

and reflected in national strategic documents in the field of national security and development of Poland. The guidelines on energy sector security provided for in the "Energy policy of Poland by 2040",[15] and in the acts replaced by it, in particular the strategy "Energy Security and Environment – The perspective by 2020"[16] should be assessed in a similar way.

The above considerations lead to the conclusion that it is inadmissible to seek compensation under Article 417 of the Civil Code for damage resulting from failure to ensure security in general terms (unlike the damage caused by the breach of specific orders to ensure security).

6. FAILURE TO ENSURE SECURITY AND PROTECTION OF PERSONAL RIGHTS

It has been argued in the foregoing discussion that the failure to provide security (in the second perspective mentioned in para. 5) causes psychological discomfort, undermining the sense of security. The sense of security is defined in literature as a state in which a person feels calm and is free from the feeling of being endangered [Bieńkowski 2017, 180; Gromek 2021, 39; Jancz 2016, 136; Lewicka-Zelent 2019, 263-64; Łabędź 2018, 46; Marciniak 2009, 58]. It includes the sense of being informed (a person has knowledge of institutions responsible for security and practical knowledge about ensuring security on a daily basis), of stability (a person perceives the surrounding reality as relatively stable and predictable), belonging to a social community (a person receives emotional, material and social support from the community), and of agency (one is convinced of their own competence, abilities and effectiveness of one's actions) [Marciniak 2009, 60]. Maintaining the sense of security is important for meeting one of the most basic human needs – the need for security [Maslow 2009, 116], which in particular boils down to freedom from fear and insecurity [Łabędź 2018, 46].

Failure to satisfy the need for security results in a negative psychological experience – insecurity – which, from the civil-law perspective, can be considered as a personal injury. In this context, it appears appropriate to consider the admissibility of the classification of failure to ensure security by the persons responsible for it, resulting in a negative psychological experience (lack of the sense of security) as an event giving rise to protective claims in the context of the protection of personal rights.[17]

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[15] Announcement of the Minister of Climate and Environment of 2 March 2021 on the state energy policy until 2040, "Monitor Polski" of 2021, item 264.

[16] Resolution No. 58 of the Council of Ministers of 15 April 2014 on the adoption of the Strategy "Energy Security and Environment – perspective until 2020", "Monitor Polski" of 2014, item 469.

[17] Judgment of the Supreme Court of 21 April 2010, ref. no. V CSK 352/09, Legalis no. 381612.

It is possible to compensate for damage under the personal rights protection regime is possible in the event of at least an unlawful (in civil-law terms – see remarks in para. 5) violation of a personal right. A violation of a personal right occurs if a particular person suffers negative psychological experiences as a result of interference in axiological values related to the human person (personal rights). The provision of Article 23 of the Civil Code lists personal rights, and that list is not enumerative. Therefore, other values which show traits typical of personal rights in general may also be considered to be personal rights. These features include: close relationship with its holder (a natural person, a legal person, a so-called entity with limited legal capacity), non-property character (they refer to the non-property sphere of individual values of the world of feelings and the state of mental life inherently related to humanity), objective character[18] [Pazdan 2012, 1233-234; Szpunar 1979, 106-107; Sadomski 2024].

The following are considered (more or less widely) as non-Code personal rights: privacy (and personal data as an element thereof), the Internet user name (login), sense of attachment to particular gender (sexual integrity), voice (recognisable sound "image"), family ties, the emotional bond with the child, the name of an artistic ensemble, the family tradition seen as heritage (legacy) which boils down to identification with the achievements and values represented by the ancestors.[19] On the other hand, the attribute of personal right is not given to e.g. creditworthiness,[20] postponement of the possibility to move into a newly built house,[21] the possibility to drive a car,[22] the right to uninterrupted use of electricity[23] and the right to visit the debtor's place of residence.[24] When considering the issue of non-Code personal rights, it must be noted that whether a certain state of affairs relating to a person is a personal right is determined by the attribution of value (a highly valued state of affairs) by general public and not by the qualification of it as such a right by legal practice. The legislature and judicature identify existing personal rights but do not create them. In this context, a doubt appears whether the sense of security is a personal right or not.

The sense of security meets the criteria of the first two features of values identified as personal rights (close ties to the individual, non-property character)

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18 Judgment of the Supreme Court of 28 February 2003, ref. no. V CK 308/02, Legalis no. 58520.

19 Ibid.

20 Judgment of the Court of Appeal in Warsaw of 18 September 2019, ref. no. VI ACa 254/18, Legalis no. 2267135.

21 Judgment of the Court of Appeal in Poznań of 24 January 2019, ref. no. I ACa 574/18, Legalis no. 2108534.

22 Judgment of the Supreme Court of 23 February 2022, ref. no. II CSKP 232/22, Legalis no. 2698172.

23 Decision of the Supreme Court of 17 November 2021, ref. no. II CSK 64/21, Legalis no. 2642511.

24 Judgment of the Court of Appeal in Warsaw of 11 October 2021, ref. no. V ACa 501/21, Legalis no. 2631309.

[Puchała 2017, 29-30; Sadomski 2024; Bidziński and Serda, 1986; Grzybowski 1957, 17-18]. Personal rights are vested in every person regardless of their individual ability to experience and feel. However, it must be kept in mind that an objective approach to personal rights presupposes a uniform measure of rights for all. Therefore, personal rights according to this approach are values generally assessed in this way in the social perspective. Values of special importance only for a specifically designated person are not personal rights. Otherwise, just the mere feeling of any discomfort by the person concerned would mean that there was a violation of a personal right. The assessment of whether there has been a violation of personal rights should take place according to an objective social response [Bidziński and Serda 1986, 8, 64; Zielonacki 1986, 209]. The covering of a certain value by protection typical of personal rights cannot take place where the demand for protection is a result merely of oversensitivity or excessive self-image of the person seeking protection.

The feeling known as the sense of security is highly subjective. While security itself, understood as a state consisting of the absence of threats, can be assessed using objective measures, the perception of this state by individuals has a purely subjective dimension [Jancz 2016, 134]. A person concerned perceives and interprets particular events as endangering his or her security individually, depending on personal and situational factors [Marciniak 2009, 61]. That person's feelings do not need to be reflected in objective reality. This may make an individual sense of threat inadequate to the actual situation [Lewicka-Zelent 2019, 264]. This is often linked to the development of the sense of threat by mechanisms of social influence (information provided by politicians, media, etc.) in order to pursue the interests of certain groups (e.g. political ones) [Bieńkowski 2017, 183; Gromek 2018, 39].

Moreover, it seems difficult to clearly identify an individualised source of concern. The source of distress in a designated person may be different circumstances, both those which may affect more people (war, pandemic, climate change, etc.) and those only related to a specific entity (job loss, family situation, illness). It cannot be also ruled out that a lack of the sense of security would be caused by the simultaneous occurrence of several of the aforementioned circumstances.

These findings lead to the conclusion that the sense of security, although being a state not economically conditioned, inherently linked to the human individual and its basic needs, cannot be considered as a personal right. This is hindered by the highly subjective nature of this state and the factors determining it. The possibility of seeking redress for breach of the sense of security through the procedure applicable to the protection of personal rights is therefore excluded. However, it cannot be ruled out that the sense of security may be regarded as a "component" in the context of other personal rights,

e.g. inviolability of the home (along with the right to rest, domestic peace and privacy).[25]

CONCLUSIONS

Security is considered to be a state of absence of threat from external factors, the persistence of which enables particular entities to exist undisturbed and to pursue their non-property and property interests. According to the constitutional rules, the provision of security is one of the fundamental responsibilities of the State. Statutory provisions set out the rules for the performance of this task in more detail.

Failure to perform the tasks related to ensuring security may result in a detriment to legally protected rights and interests of individual legal entities. These damages are compensated for under the tort liability regime, and (due to the scope of entities encumbered with security obligations) the provisions of the Civil Code concerning liability for damages arising in the exercise of public authority apply (Article 417 et seq. of the Civil Code). When analysing the liability of the State Treasury or local government units for damage related to the failure to ensure security, it should be pointed out that there are two types of groups of cases. The first group includes omissions (inactivity) in the field of security, the expression of which is the occurrence of damage or injury to a specific person. They take the form of, for example, incorrectly securing a mass event or public gathering, failure to dissolve a public gathering, failure to intervene by the competent services (police, fire brigade, etc.) and are directly related to the unlawful violation of specific obligations imposed on a specific entity obliged to act for security. The second group, on the other hand, covers failure to ensure security in systemic terms (rather than a breach of specific obligations, as in the first group of cases), the effects of which (taking the form of negative psychological experiences) can potentially affect any entity, and this in isolation from the specific circumstances of a given case. Civil liability may be a consequence of events from the first group; events from the second group may not constitute grounds for liability (as it is impossible to indicate specific obligations that have not been met).

The sense of security (although it is of a material nature and its perception is closely related to the person concerned) cannot be regarded as a personal right. Experiencing it (or its absence) depends on subjective personal

[25] Judgment of the Court of Appeal in Gdańsk of 29 December 2000, ref. no. I Aca 910/00, Legalis no. 52319; Judgment of the Supreme Court of 6 March 2009, ref. no. II CSK 513/08, Legalis no. 244060; Judgment of the Supreme Court of 21 April 2010, ref. no. V CSK 352/09, Legalis no. 381612.

and situational circumstances concerning a particular person. Furthermore, a sense of insecurity in a particular person does not necessarily correspond to an objective threat (moreover, a sense of insecurity in certain individuals or communities can even be artificially induced in the interest of certain groups). It is therefore excluded to protect a sense of security under rules applicable to the protection of personal property.

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THE ROLE OF THE PRESIDENT OF THE ENERGY REGULATORY OFFICE IN RESOLVING DISPUTES RELATED TO REFUSAL TO CONNECT A RENEWABLE ENERGY INSTALLATION

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Abstract. The competences of the President of the Energy Regulatory Office include, inter alia, resolving disputes between parties of specific contractual relations in which at least one party is an energy enterprise. One of the categories of such disputes is refusal to connect a renewable energy installation. The analysis presented in this paper leads to a conclusion that due to the multidimensional goals laid down in energy law, technical and economic conditions should be examined while taking into account interests of all stakeholders. This article presents analyses the law in force, involving a case study of a Polish example and a comparative analysis. As a result, the author has come to the conclusion that resolving disputes by the President is a legal instrument that serves to ensure equal treatment and connection of market participants who request it, at the same time facilitating reduction of CO2 emissions and energy neutrality pursuant to the principles adopted by the European Union and the international community. The article draws on selected acts of ordinary law, the relevant literature, decisions made by courts and tribunals, as well as data published by the President and by industry entities.

Keywords: energy law; President of the Energy Regulatory Office; resolving disputes; renewable energy sources.

INTRODUCTION

The aim of research in this article is to establish criteria that should guide the President of the Energy Regulatory Office (hereinafter President) in resolving disputes concerning a refusal to connect an RES installation to the grid.

In the legal system of countries and international organizations, legislators refer to the question of axiology in many instances [Działocha and Jarosz-Żukowska 2009, 82]. Therefore, law is not an aim in itself, it is a tool applied to achieve intended goals (they are directly expressed in provisions of the law or may be interpreted out of them). It is assumed that the legislator always acts intentionally. The basic pillar for administrative law is the protection of the common good, optimally harmonized with the interest of the individual [Duniewska 2015, 104-105].

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The Energy Law of 10 April 1997,[1] is one of the legal acts in Poland in which the legislator refers to the entire pool of values already in the first provisions. Pursuant to Article 1(2) EL, the purpose of the Act is to create conditions for sustainable development of the country, energy security, efficient and rational use of fuels and energy, development of competition, counteracting negative consequences of natural monopolies, consideration of natural environment protection requirements and obligations stemming from international agreements and balancing the interests of energy enterprises and fuel and energy customers. The broad array of goals emphasizes the importance of the energy sector and provides reasons for regulating it.

The set of objectives of the Polish energy law is impacted by the EU's laws, including primary legislation, the Treaty on the Functioning of the European Union,[2] secondary legislation and international law. Pursuant to Article 194(1) TFEU, in the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States, to: (a) ensure the functioning of the energy market; (b) ensure security of energy supply in the Union; (c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and (d) promote the interconnection of energy networks.

The provisions of Article 194 TFEU are further elaborated in the entire EU climate and energy package, where the EU takes independent action and supports and initiates global action. During the 21st session of the Conference of the Parties to the United Nations Framework Convention on Climate Change – COP21 and the 11th session of the Meeting of the Parties to the Kyoto Protocol, held from 30 November to 11 December 2015 in Paris, 195 countries executed an international climate agreement that will limit global warming by up to 2°C by reducing greenhouse gas emissions.[3] The European Union and all its Member States have signed and ratified the Paris Agreement and are determined to implement it.[4]

The decisions of the Paris Agreement are explicitly referred to in Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources.[5] Its recitals 2, 3 and 4 indicate that the increased use of energy from renewable sources is an important part of the package of measures necessary to reduce greenhouse gas emissions and meet the EU's commitments under the 2015 Paris Agreement on Climate Change.

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[1] Journal of Laws of 2024, item 266 as amended [hereinafter: EL].

[2] OJ EU C 83, 30.03.2010, p. 47-403.

[3] See https://unfccc.int/event/cop-21 [accessed: 04.12.2023].

[4] See https://www.consilium.europa.eu/pl/policies/climate-change/paris-agreement/ [accessed: 04.12.2023].

[5] OJ EU L 328, p. 82-209.

The mere vows to improve the condition of and to protect the environment by changing the technologies used or various restrictions on human activity may be insufficient. Therefore, we need legal instruments that on the one hand will encourage positive environmental attitudes and behaviours (e.g., support systems for energy production from specific sources or compensation for entrepreneurs for investing in modern technologies), and on the other will oblige partiers to exercise such attitudes and behaviours while maintaining and respecting the rights of individuals and entrepreneurs. Such a model is prescribed for, e.g., by Article 9(2) of Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU:[6] "Having full regard to the relevant provisions of the TFEU, in particular Article 106 thereof, Member States may impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security, including the security of supply, regularity, quality and price of supplies and environmental protection, including energy efficiency, energy from renewable sources and climate protection […]."

Going back to the objectives set out in Article 1(2) EL, it should be pointed out that they constitute an interpretative directive for the public administration bodies that apply energy law, including the President, courts, and entities which are parties to relations under administrative law created by EL's provisions [Czarnecka and Ogłódek 2012, 3]. A number of specific objectives of the regulation of the energy sector also result from EL's complementing statutes, which concretize the obligation to implement the above-cited acts of the EU law. They include the Renewable Energy Sources Law of 20 February 2015,[7] which sets out, among other things, terms and conditions for running an activity that involves electricity generation from renewable energy sources and mechanisms and instruments to support electricity generation from renewable energy sources in RES installations.

The state energy policy, which is adopted every 5 years by resolution by the Council of Ministers at the request of the minister responsible for energy, also has a major impact on the implementation of these regulatory objectives. The purpose of the state energy policy is to ensure national energy security, to increase the competitiveness of the economy and its energy efficiency, as well as to protect the environment, including the climate (Article 13 EL).

The current national energy policy is the "Energy Policy of Poland until 2040" which was adopted by the Council of Ministers on 2 February 2021.[8]

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[6] OJ EU L 158, p. 125-99.

[7] Journal of Laws of 2022, item 1378 as amended [hereinafter: RESL].

[8] Announcement of the Minister of Climate and Environment of 2 March 2021 on the national energy policy until 2040, Polish Monitor of 2021, item 264 [hereinafter: PEP2040].

As it explains, "Shaping the national energy strategy is strongly affected by the European Union's (EU) climate and energy policy, including its long-term vision of striving for EU climate neutrality by 2050 and the regulating mechanisms stimulating the achievement of effects in the coming decades."[9]

In order to achieve the above assumptions, the development of renewable energy sources was identified as one of the specific objectives of PEP2040 (no. 6). Increasing the share of RES in gross final energy consumption is one of the three priority areas of the EU climate and energy policy, as well as global policies and actions to combat climate change.[10]

To sum up, the aim of this study was to determine the criteria that the President must follow in resolving disputes concerning the refusal to connect a micro-installation of a renewable energy source to the grid.

1. SPECIAL STATUS OF THE PRESIDENT OF THE ENERGY REGULATORY OFFICE

At the outset, it should be explained that until 2015 there had been no law of statutory rank in Poland that would deal exclusively with the broadly understood renewable energy sector. Partial solutions concerning this energy sector were included in the Energy Law. The Polish legislator, guided by the scale of the challenges related to the development of the use of renewable energy sources, decided to enact a separate act, i.e. the currently binding Renewable Energy Sources Law of 20 February 2015. An important effect of the adoption of the Renewable Energy Sources Law was the separation and systematisation of the support mechanisms for RES energy contained so far in the provisions of the Energy Law. This solution was based on the experience of other EU Member States that had enacted dedicated laws that made it possible to guarantee sustainable development of an energy economy based on the use of RES resources in the context of climate and environmental protection.[11]

The President of the Energy Regulatory Office plays an important role in ensuring that the assumptions adopted for the remodelling of the Polish electricity system and increasing the use of renewable energy sources are implemented. Therefore, a brief presentation of the systemic position of this regulatory authority is in order.

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[9] PEP2040, p. 3.

[10] PEP2040, p. 63-69.

[11] Cf. Explanatory Memorandum to the Government Draft Law on Renewable Energy Sources of 7 July 2014. Printing No. 2604 Part I, the Sejm of the 7th term, p. 3, https://orka.sejm.gov.pl/Druki7ka.nsf/0/64BB00DA8D2BD103C1257D150044500D/%24File/2604%20cz%20I.pdf [accessed: 05.12.2023].

The legal status of the President and his status may be analysed on different levels [Przybylska 2012, 130-47]. Firstly, the President is a national regulatory authority that enjoys independence understood in many dimensions and that performs a number of regulatory functions both at the level of national law and the European Union law. These, in turn, play an important role in implementing EU law into the legal systems of Member States [De Somer 2018, 581]. The notion of a *national regulatory* authority is a legal concept as it features in many EU regulations and directives that address grid sectors. This concept emerged as a result of progressive Europeanisation of administrative law, which then resulted in the progressing convergence of different legal systems [Widdershoven 2002, 289-306; Schwarze 2005; de Lange, Prechal, and Widdershoven 2007, 6-9; Schwarze 2011, 7-11].

Pursuant to Article 57(1) of Directive 2019/944/EU, each Member State shall designate a single regulatory authority at the national level. The obligation to ensure independence of such an authority[12] derives from Article 57(4) of Directive 2019/944/EU. It imposes an obligation on Member States to guarantee the independence of the regulatory authority and to ensure that it exercises its powers impartially and transparently. For that purpose, Member States shall ensure that, when carrying out regulatory tasks conferred upon it by this Directive and related legislation, the regulatory authority: a) is legally distinct and functionally independent from other public or private entities [Kaschny and Lavrijssen 2023, 715]; b) ensures that its staff and the persons responsible for its management: (a) act independently from any market interest; and (b) do not seek or take direct instructions from any government or other public or private entity when carrying out the regulatory tasks; this being the case, this requirement is without prejudice to close cooperation, as appropriate, with other relevant national authorities or to general policy guidelines issued by the government not related to the regulatory powers and duties under Article 59.

On the basis of the above catalogue, it can be concluded that this independence spans multiple dimensions and manifests itself in personal, organisational, financial and decision-making aspects [Larsen et al. 2006, 858-870; Nowak 2010, 113-16]. Analogous requirements for national regulatory authorities are stipulated in Article 39(1) of the Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC.[13]

In a different approach, the President is the central body of government administration that performs tasks in the field of regulation of fuel and

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[12] The Independence of National Regulatory Authorities Council of European Energy Regulators. White Paper series (paper # V) on the European Commission's Clean Energy Proposals, 30 June 2017, https://www.ceer.eu/documents/104400/5937686/The+independence+of+National+Regulatory+Authorities/d20f3828-2679-782d-d0d7-81bd4619bfc5 [accessed: 08.12.2023].

[13] OJ EU L 211, 14.8.2009, p. 94.

energy economy and competition promotion enumerated in statutes (Article 21(1-2) EL). These statutes primarily include the Energy Law with consideration to the state energy policy. Thus, it is evident that the national (independent) regulatory authorities were formed in the organisational structure of the national public administration under a strong influence of the EU law [Kiczka 2013, 54].

2. OBLIGATION TO CONCLUDE A CONNECTION AGREEMENT

This analysis must now move on to a presentation of the legal basis for dispute resolution carried out by the President.

First of all, it should be pointed out that, pursuant to Article 7(1) EL, an energy enterprise that deals with the transmission or distribution of gaseous fuels or energy is obliged to enter into a grid connection agreement with entities that request connection to the grid, on the basis of equal treatment and equal connection, as a priority, of a renewable energy source installation if there are technical and economic conditions for connecting it to the grid and supplying these fuels or energy and if the entity requesting the conclusion of the agreement meets the conditions for grid connection and reception. However, in the case of connecting a source or storage of electricity, the connection capacity of this source or storage of electricity may be less than or equal to its installed electrical capacity. In the event that the energy enterprise refuses to enter into a grid connection agreement or to first connect a renewable energy source installation, it is obliged to immediately notify the President and the interested entity of its refusal in writing, stating the reasons for the refusal. The grid connection obligation does not apply to the case where the entity applying for the conclusion of a grid connection agreement does not have the legal title to use the real property, facility or premises to which the gaseous fuels or energy are to be supplied (Article 7(3) EL).

To that end, the entity applying for a grid connection should file a request for determining requirements for grid connection (that is to obtain connection requirements) with the energy enterprise to whose grid it is requesting to connect.

Pursuant to Article 2(22) RESL, a renewable energy source is a renewable non-fossil energy source including wind energy, solar energy, aerothermal energy, geothermal energy, hydrothermal energy, hydropower, wave energy, current and tidal energy, energy obtained from biomass, biogas, agricultural biogas and bioliquids. A renewable energy source installation is defined in Article 2(13) RESL, as an installation that is a separate set of: a) energy generation facilities described by technical and commercial information, in which energy is produced from renewable energy sources, or, b) buildings

and equipment forming a technical and functional whole that is used to produce agricultural biogas and also an electricity storage unit or an agricultural biogas storage unit connected to it.

A small installation is defined as an installation of a renewable energy source with a total installed power capacity of more than 50 kW and no more than 1 MW, connected to a power grid with a rated voltage of less than 110 kV, or with a cogenerated thermal input of more than 150 kW and less than 3 MW, with a total installed capacity of more than 50 kW and no more than 1 MW (Article 3(18) RESL). Pursuant to Article 2(19) RESL, a micro-installation is defined as an installation of a renewable energy source with a total installed capacity of no more than 50 kW, connected to an electromagnetic grid with rated voltage of less than 110 kV, or with a cogenerated thermal capacity of no more than 150 kW, where the total installed capacity is no more than 50 kW.

Therefore, in order to classify an installation as a micro- or small installation, all prerequisites regarding the level of installed capacity and rated voltage of the power grid must be met.

In summary, for an electricity company to have a legal obligation to enter into a contract, the following conditions must be met: 1) there are technical (on the part of both the power company and the entity being connected) and economic conditions in place for connection to the grid and for fuels or energy supply (Article 7(1) EL); 2) the party requesting the conclusion of the agreement meets the conditions for connection to the grid and for reception (Article 7(1) EL); 3) the entity applying for the conclusion of a grid connection agreement holds the legal title to the use of the real property, facility or premises to which the gaseous fuels or energy are to be supplied (Article 7(3) EL).

As it is accepted among legal scholars [Kościuk 2023] and in judicial decisions,[14] the abovementioned obligation on the part of energy enterprises under Article 7(1) EL is of public law nature and is fulfilled when the statutory prerequisites are met.

In the event of a dispute as to the existence of such an obligation, the consequence of the existence of an obligation under public law to connect an entity to the grid involves the drafting of a grid connection agreement with the amount of the connection fee set pursuant to Article 7(8) EL. The fee is charged for connecting (joining) the installation of a new energy producer to the grid of an energy enterprise and covers the expenditure for the execution of that connection. The fee is not charged for the extension of the enterprise's grid for the purpose of the connection. As stipulated in the law itself, the execution of the connection of facilities, installations or networks to the grid or heating grid shall be understood to mean the construction of

[14] Judgment of the Supreme Court of 8 May 2014, ref. no. III SK 46/13, Lex no. 1482418.

a section or element of the grid that serves to connect the facilities, installations or network of the entity applying for their connection to the electricity grid or heating grid to the rest of the grid.

It should be further pointed out that neither the concept of technical conditions nor the concept of economic conditions has been defined by the Polish legislator. Legal scholars and commentators believe that the lack of technical conditions for connection should be understood as a permanent technical impediment that cannot be removed, despite attempts made to do so. Therefore, there must be objective and insurmountable obstacles preventing the execution of the investment intended to connect the real property, facility or premises of the entity applying for the conclusion of the agreement in order to state that there are no technical conditions for connection [Muras et al. 2016, 866].

Judicial decisions demonstrate that the technical and economic conditions of connection should always be applied to a specific facility to be connected, taking into account the content of the declarations of intent made by the parties during the process of applying for the connection and the entire context of the operation of network enterprises, the principles and mechanisms of network infrastructure development (and its financing in particular), and investments in new connection capacity. There is no doubt that, when viewed independently, the premise of technical conditions of the connection refers to the possibility, already existing as of the date of issuing the connection conditions, to connect a newly-built generation installation to the grid of the enterprise obliged to conclude a connection agreement. It can also be assumed that the technical conditions premise is fulfilled when such conditions exist on the planned date of execution of the connection agreement in connection with modernisation works conducted by the network enterprise.[15] By analogy, this also applies to the customer's holding of a legal title to the property. Where such works are not conducted (or are planned with a completion date allowing for the connection of a new installation by the date specified in the connection terms and conditions), the premise of the technical conditions of the connection loses its independent character. It is because whether and when such conditions come into existence shall be determined by the premise of the economic conditions of the connection, which affects the scope of the grid enterprise's obligation to finance the works necessary to connect new generation facilities.[16] In fact, these premises overlap. With the current state of technology, it is in fact al-

[15] See judgment of the Supreme Court of 11 April 2012, ref. no. III SK 33/11, OSNP 2013, no. 9-10, item 120; judgment of 22 May 2014, ref. no. III SK 51/13; judgment of the Court of Competition and Consumer Protection of 16 January 2017, ref. no. XVII AmE 109/16, http://orzeczenia.Warsaw.so.gov.pl [accessed: 08.12.2023].

[16] Order of the Supreme Court of 22 October 2014, ref. no. III SK 13/14, http://www.sn.pl [accessed: 08.12.2023].

most always possible to create technical conditions for connection and supply; it is only a question of the amount of outlays to be incurred.[17] Thus, it may be concluded that the existence of technical conditions is correlated with the existence of economic conditions.

An assumption that the technical conditions must be in place as at the date of submitting the application, without taking into account evidence in the form of the company's development plans and network development capacities, leads to an unacceptable conclusion that the existence of the obligation to connect is not determined by the prerequisites arising from Article 7(1) EL, but only by the will of the network or distribution enterprises that have a monopolistic position on that market.[18] Therefore, if the prerequisites for the fulfilment of the public obligation to conclude an agreement by the energy enterprise are stipulated in the provisions of Article 7(1) EL and, *a contrario*, Article 7(3) EL, it should be concluded that they do not include the requirement for the physical existence of the facility to be connected, which also cannot be construed as a failure to fulfil the technical conditions for connection. It is possible to conclude a grid connection agreement in the physical absence of the facility to be connected.[19]

In its decision of 29 January 2019 (I NSZ 1/18), the Supreme Court stated, on the other hand, that in order to determine "whether the prerequisites set out in Article 7(1) EL exist, it is necessary to examine whether the economic conditions for the connection to the grid exist." The economic conditions should be assessed taking into account the content (scope) of the development plan referred to in Article 16 EL, agreed by the energy enterprise with the President. This also requires an assessment of whether the network enterprise's tariff – approved by the President – actually allocates funds for the implementation of the investment included in the development plan. In one of the rulings, the Court of Competition and Consumer Protection pointed out that from the axiological point of view, a state of a lack of economic conditions for supply may only occur in exceptional cases, e.g. when the recipient's facility is located at a considerable distance from the grid or in a place that is particularly difficult to access.[20]

These shortcomings in the statutory regulation unfortunately leave energy enterprises with considerable discretion in determining whether the

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[17] Judgment of the Court of Appeal in Warsaw of 9 June 2016, ref. no. VI ACa 92/15, http://orzeczenia.waw.sa.gov.pl [accessed: 08.12.2023].

[18] Judgment of the Court of Appeal in Warsaw of June 16, 2015, ref. no. VI ACa 890/14, www.orzeczenia.ms.gov.pl [accessed: 08.12.2023].

[19] Judgment of the Court of Appeal in Warsaw of 26 April 2012, ref. no. VI ACa 1500/11, www.orzeczenia.ms.gov.pl [accessed: 08.12.2023].

[20] Judgment of the Court of Competition and Consumer Protection in Warsaw of 18 September 2002, ref. no. XVII Ame 100/01, Lex no. 1727654.

premises in question are met. In order to clarify the premises to be applied in the assessment of the existence of the economic conditions, on 29 June 2010 the President of the Energy Regulatory Office issued its position No. 10/2010 concerning the procedure in the case of refusal to connect to the grid due to the lack of economic conditions (application of Article 7(1) and Article 8(1) of the Energy Law).[21] In this position, the authority indicated the evaluation criteria it would follow when resolving disputes concerning refusal of connection to the grid due to a lack of economic conditions.

In section 3(1), the President reinforced that energy enterprises build and expand electricity transmission or distribution networks for their area of operation based on the draft development plan agreed with him (Article 16 EL). This agreement means that the President, by approving the tariff, provides the enterprise with financial resources to implement the plans indicated in the draft development plan (both by name and by area). For the company, on the other hand, this agreement entails an obligation to connect entities seeking a connection from the area covered by the agreed draft plan, and relieves the enterprise from having to conduct an effectiveness analysis for each connection request.

Subsequently, in section 3(2) the President indicated that the refusal to connect entities to the grid other than those specified in section 3(1) must be preceded by an economic analysis. The method for assessing economic efficiency consists in the assessment of the internal rate of return [IRR] with additional consideration of the net present value [NPV] and the net present value ratio [NPVR]. In the case of the enterprise's future customers, the calculation of the efficiency indicators should take into account provisions set out in section 3(5). The economic efficiency analysis shall be conducted on the basis of a discounted cash flow statement over a period of at least 20 years. The share of the connected entity in the investment outlays corresponding to its share in the use of the increased transmission capacity should be taken into account in the analysis if the grid must be extended. The IRR threshold constituting the basis for the assessment of the lack of economic conditions should correspond to the weighted average of the average profitability of 10-year Treasury bonds with fixed interest rates from tenders from the year immediately preceding the year of the efficiency assessment (section 3(3)). The President further explains that pursuant to the Law, by approving an electricity tariff, an energy enterprise engaged in the transmission or distribution of electricity obtains revenue in an amount allowing it to cover its planned justified own costs (operating costs, taxes, depreciation), carry-over costs and return on capital employed in this activity (section 3(5)).

[21] See https://www.ure.gov.pl/pl/urzad/informacje-ogolne/komunikaty-prezesa-ure/3599,Informacja-nr-102010.html [accessed: 08.12.2023].

The President also clearly indicates that electricity is an indispensable and universal good, whereby any potential refusal to connect to the grid for economic reasons should be preceded by a detailed analysis based on an economic calculation, taking into account all entities applying for connection from a given area. It is also impermissible to make the entry into force and execution of grid connection agreements conditional on the signature of such agreements by a certain number of entities.

3. DISPUTE SETTLEMENTS BY THE PRESIDENT OF ENERGY REGULATORY OFFICE

The possibility to submit a dispute concerning a refusal to connect renewable energy sources to the grid for adjudication by the President is one of the types of cases falling within the competence of the regulatory authority.

The need for independent regulatory authorities in each Member State to be able to resolve disputes is referred to in recital 84 of Directive 2019/944/EU. It lays down that regulatory authorities should have the power to issue binding decisions in relation to electricity undertakings and to impose effective, proportionate and dissuasive penalties on electricity undertakings which fail to comply with their obligations or to propose that a competent court impose such penalties on them. To that end, regulatory authorities should be able to request relevant information from electricity undertakings, to conduct appropriate and sufficient investigations, and to settle disputes.

This obligation of granting the President with relevant powers is concretized in Article 8(1) LE. Pursuant to this provision, in cases of disputes concerning refusal to conclude a grid connection agreement, including those related to increasing connection capacity, a sale agreement, an agreement for the provision of fuel or energy transmission or distribution services, an agreement for the provision of natural gas transport services, an agreement for the provision of gas fuel storage services, an agreement referred to in Article 4c(3), a natural gas liquefaction agreement or a universal agreement, as well as in cases of non-substantiated suspension of gas or energy supply, refusal to connect as a priority a renewable energy source installation or a public road transport charging infrastructure or a public charging station referred to in Article 7(1), as well as a refusal to connect a micro-installation, failure to connect a micro-installation despite the lapse of the 30 day time limit referred to in Article 7(8d[7])(2), non-substantiated limitation of operation or disconnection of a micro-installation from the grid, or a refusal to amend the agreement referred to in Article 7(2a) as regards the date of the first delivery of electricity to the grid, shall be resolved by the President of the *Energy* Regulatory Office upon a request from a party.

Therefore, the resolution of disputed issues does not only arise from the obligation set forth in Article 7(1) EL. Pursuant to further provisions, where the entity applying for connection of a micro-installation to the distribution grid is connected to the grid as a final customer, and the installed capacity of the micro-installation to which the entity is applying for connection is no greater than that specified in the terms and conditions for the connection, the grid connection shall take place pursuant to an application for connection of the micro-installation, filed with the energy enterprise to whose grid the micro-installation is to be connected, after installing appropriate protection systems and metering and billing devices. Otherwise, the connection of the micro-installation to the distribution grid shall be made pursuant to a grid connection agreement. The cost of installing the protection system and the metering and billing equipment shall be borne by the electricity distribution system operator (Article 7(8d[4]) EL.

Pursuant to Article 7(8d[7]) EL an electricity distribution enterprise: 1) shall acknowledge the filing of the application by noting the date of its filing; 2) shall be obliged to connect the micro-installation to the grid based on the application within 30 days from the submission of the application.

An energy enterprise that deals with the transmission or distribution of electricity is required to specify in the terms and conditions of connection the projected schedule for the connection of the renewable energy source installation, taking into account individual stages of the grid extension, as well as the schedule of planned works (Article 7(8d[8]) EL.

It should be noted that dispute resolution by the President is one of the few cases of interference of a public administration body in the regulation of civil law relations between private law entities. The dispute resolution procedure can be initiated by an individual consumer (natural person who is the final consumer) or by the energy enterprise.[22] The decision of the President of the Energy Regulatory Office issued pursuant to Article 8(1) EL must take into account the objectives of the energy law as indicated in Article 1(2) EL, including the obligation to balance the interests of both parties, and not only the entity requesting the connection.[23] Moreover, pursuant to Article 23(1) EL, the President regulates the activities of energy enterprises not only in accordance with the law, but also in accordance with the national energy policy, aiming to balance the interests of energy enterprises and fuel and energy consumers.

The well-established line of judicial decisions demonstrates that the catalogue of cases specified in Article 8(1) EL is closed and should be interpreted

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[22] See Information of the President of the Energy Regulatory Office of 15 December 2006 on the decision on resolving the dispute between Polskie Sieci Elektroenergetyczne S.A. and STOEN S.A., "Biuletyn Branżowy URE – Energia Elektryczna" 52 (2006), p. 20.

[23] Judgment of the Court of Appeal in Warsaw of 9 June 2016, ref. no. VI ACa 92/15, http://orzeczenia.waw.sa.gov.pl [accessed: 08.12.2023].

strictly. As the Supreme Court noted: "The decision of the President of Energy Regulatory Office 'replaces' the declarations of intent of the parties, in the functional sense of 'replacement', while according to the legal nature of the decision, it constitutes the basis for an independent formation of an obligation relationship with regard to the matters disputed between the parties."[24] A constitutive[25] administrative decision of the President: "creates, independently and directly, an obligation relationship between the grid entrepreneur and the entity applying for connection" [Walaszek and Walaszek-Pyzioł 2006, 9-12; Pokrzywniak 2013, 142]. Vesting a public administration body with the competence to resolve disputes between civil law entities is an example of an exception to the principle of the administration of justice by common courts [Czarnecka and Ogłódek 2012, 207].

The established line of judicial decisions provides that: "a refusal to conclude a connection agreement occurs not only when the energy enterprise expressly declares that it will not conclude the agreement but also when it presents such terms and conditions for connection to the grid (and a draft agreement) that are unacceptable to the entity seeking connection to the grid. The refusal to conclude an agreement cannot be reduced only to the case when the grid enterprise expressly does not agree to conclude the agreement."[26]

Where it is the President who resolves the dispute, he is obliged to take into account the provisions of Article 7(2) and (2a) EL when drafting the content of the agreement. A grid connection agreement should include at least the following information: 1) the date of the execution of the connection, 2) the connection fee, 3) the place of separation of the ownership of the grid of the energy enterprise and the installation of the entity to be connected, 4) the scope of works necessary to carry out the connection, 5) the requirements concerning the location of the metering and billing system and its parameters, 6) the connection schedule, 7) the conditions of making the real property belonging to the connected entity available to the energy enterprise in order to construct or extend the grid in the scope necessary for the connection, 8) the anticipated date of conclusion of the contract on the basis of which gas or energy will be supplied, the anticipated quantities of gas or energy to be received, 9) the connection power, 10) the liability of the parties for breach of contract, and in particular for delay in the completion of works in relation to that agreed in the contract, 11) the duration of the contract and the conditions for its termination.

In addition to the above provisions, an agreement for connecting a renewable energy source installation to the grid should also contain provisions

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[24] Judgment of the Supreme Court of 12 April 2011, ref. no. III SK 42/10, Legalis no. 432332.

[25] Judgment of the Court of Appeal in Warsaw of 4 June 2012, ref. no. VI ACa 1508/11, Legalis no. 532610.

[26] Judgment of the Supreme Court of 6 October 2016, ref. no. III SK 50/15, http://www.sn.pl [accessed: 08.12.2023].

specifying: 1) the deadline for the first delivery of electricity produced by that installation to the grid, where this deadline shall not be longer than 48 months from the date of conclusion of that agreement, or 120 months in the case of a renewable energy source installation that uses offshore wind power to produce electricity; 2) that failure to deliver the electricity produced by that installation to the grid for the first time by the date specified in the connection agreement shall constitute grounds for the termination of the connection agreement.

One should also note the exception provided for RES installations. Pursuant to Article 7(8d) EL, if an energy enterprise that deals with the transmission or distribution of electricity refuses to connect an RES installation to the grid due to a lack of technical conditions for the connection resulting from a lack of the necessary grid capacity within the timeframe proposed by the entity applying for the connection of an RES installation, the energy enterprise shall specify the planned date and conditions for the necessary grid extension or upgrade, as well as the date of connection.

Proceedings before the President are governed by the principles set forth in the provisions of the Act of 14 June 1960 – the Code of Administrative Procedure,[27] which implies in particular the need to take into account the protective (guarantee) function of the administrative procedural law consisting in the protection of interests of individual entities subject to the process of law application and the protection of social interest. Pursuant to Article 30(2) and (3) EL, the decision of the President may be appealed at the Regional Court in Warsaw – the anti-monopoly court, within two weeks from the date of receipt of the decision. The appeal proceedings against the decision of the President shall be carried out in accordance with the provisions of the Code of Civil Procedure on proceedings in *energy* regulatory cases. The court proceedings take into consideration the evidence gathered in the administrative proceedings, but this does not deprive the parties of the possibility to bring new claims in fact and new evidence, according to the rules applicable in separate proceedings in commercial cases.

CONCLUSIONS

The analysis presented here leads to the conclusion that the criteria applied by the President in adjudicating disputes may be divided into legal, technical, economic and axiological as set out in Article 1(2) EL.

Giving the President the competence to adjudicate disputes has a protective function by ensuring a legal possibility to protect the interests of

[27] Journal of Laws of 2022, item 2000 as amended.

consumers against arbitrariness of energy companies which refuse to connect RES installations or micro-installations in the first place without a justified reason. The institution of dispute settlement by an independent regulator also has a preventive function. This conclusion stems from the fact that an energy enterprise, conducting its business activity rationally, should bear in mind that in the event of an unjustified refusal, the content of the agreement and the obligation to connect will be determined by the President by way of a decision. In the author's opinion, the dispute resolution process is also beneficial to the energy enterprises themselves, as the model thus established allows the reasons for the company's refusal to be verified by a specialised and independent body (and subsequently by a court). Thus, the addressee of the refusal can obtain an impartial assessment of its validity and accept the fact that there are objective reasons preventing connection to the grid, which increases trust in energy enterprises. The proper drafting by the President of the justification for the decision resolving the dispute, taking into account the application of the principles of objective truth (Article 7 of the Code of Administrative Procedure), the principle of trust (Article 8(1) of the Code of Administrative Procedure) and persuasion (Article 11 of the Code of Administrative Procedure), plays a significant role in this. The factual justification of the decision resolving the dispute should, in particular, contain an indication of the facts which the authority found to be proven, the evidence on which it relied and the reasons why it denied the credibility and evidentiary value of other evidence, whereas the legal justification should include an explanation of the legal basis of the decision, quoting the provisions of law (Article 107(3) of the Code of Administrative Procedure in conjunction with Article 30(1) EL).

Taking into account the fact that not all criteria are sufficiently defined in the statute, *de lege ferenda*, in order to increase the transparency of reasons for refusal to conclude a grid connection agreement for an RES installation, the Polish legislator should define by law the notion of technical and economic conditions. This would help avoid misunderstandings and suspicions of arbitrary refusal to conclude a grid connection agreement by energy enterprises, and thus allow for increasing the number of installations connected to the grid.

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AI ACT AND PUBLIC PROCUREMENT LAW – AN OPPORTUNITY OR THREAT

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Abstract. The risks named in the regulation and other European documents diverge significantly from those generally identified in management standards as "conventional" IT risk. In the context of operational risks associated with the activities of a given entity and the varying perceptions of those risks by participants in the broadly understood market, a pressing need has arisen to develop a comprehensive legal framework that would not only chart the course for future development but would also name most critical pain points and ensure minimum protection. The AI Act responds to the rapid and dynamic development of artificial intelligence which has penetrated many aspects of everyday life, from healthcare to transport and safety. These regulations aim to safeguard society from the potential risks arising from the unchecked development and implementation of AI while fostering innovation and providing a framework for the safe, ethical, and responsible use of this technology. The public procurement market is leveraging AI tools, both contracting authorities and contractors. In sectors involving the expending of taxpayers' money, including in public procurement, AI promises immense capabilities, particularly in areas where data is available, and processes and tasks can be automated.

Keywords: public procurement; artificial intelligence; IT risk; AI act; public procurement act.

INTRODUCTION

As early as in 2019, the European Banking Authority's Guidelines on ICT and Security Risk Management[1] highlighted the necessity of addressing a broad spectrum of risks associated with technology and ICT security [Nowakowski 2023, 67]. The risks named in the regulation and other European documents diverge significantly from those generally identified in management standards as "conventional" IT risk. There is no one-size-fits-all model, and each organization should independently assess how to carry

[1] EBA Guidelines on ICT and security risk management, EBA/GL/2019/04, EBA, of 29 November 2019, https://www.eba.europa/eu/sites/default/files/document_library/Publications/Guidelines/2020/GLs%20on%20ICT%20and%20security%20risk%20management/872936/Final%20draft%20Guidelines%20on%20ICT%20and%20security%20risk%20management.pdf [accessed: 10.05.2024].

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out this mapping. For institutions that conduct regular reviews of available solutions, this task appears to be more straightforward than for those which will embark on it for the first time [ibid.].

In the context of operational risks associated with the activities of a given entity and the varying perceptions of those risks by participants in the broadly understood market, a pressing need has arisen to develop a comprehensive legal framework that would not only chart the course for future development but would also name most critical pain points and ensure minimum protection.

1. "AI ACT"

On 8 December, 2023, the European Union made a landmark achievement in the regulation of artificial intelligence by unveiling the world's first thoroughly comprehensive legal document, officially referred to as the AI Act.[2] The European Parliament endorsed the new law on 13 March 2024.[3] The AI Act responds to the rapid and dynamic development of artificial intelligence which has penetrated many aspects of everyday life, from healthcare to transport and safety. These regulations aim to safeguard society from the potential risks arising from the unchecked development and implementation of AI while fostering innovation and providing a framework for the safe, ethical, and responsible use of this technology. The AI Act, therefore, represents a global paradigm shift in how AI is perceived and positioned within society. By introducing detailed guidelines for AI applications, anticipated by all stakeholders, the EU seeks to strike a balance between technological progress and the protection of civil rights, which if paramount in an era where technology intertwines with nearly every sphere of our lives.

As one of the first regulations of its kind, the AI Act, is poised to set the bar for other countries around the globe. Non-EU countries might follow by adopting similar rules, which could shape the global landscape for AI development and use. Companies based outside the EU and willing to gain a foothold in the European market will need to align their AI products with the AI Act's requirements. This could affect the competitive landscape as businesses will be forced to invest more resources in ensuring their AI solutions are secure and compliant. The AI Act could also open the door to greater international collaboration on AI regulation. Countries might join forces in aligning their laws, which would help smooth the way for international trade and bolster cooperation in the AI domain. For international

[2] Press release: https://www.europarl.europa.eu/news/en/press-room/20240308IPR19015/artificial-intelligence-act-meps-adopt-landmark-law [accessed: 29.08.2024].

[3] AI Act: https://www.europarl.europa.eu/doceo/document/TA-9-2024-0138-FNL-COR01_EN.pdf [accessed: 29.08.2024].

startups and small to medium-sized enterprises, adapting to the requirements of the AI Act may pose a challenge due to limited resources. However, compliance with the high standards set by the EU could also pave the way to a broader European market. Along with the AI Act, the demand for compliance experts is set to grow, both within the EU and on a global scale.

The introduction of the AI Act by the EU marks a watershed moment in the regulation of artificial intelligence. This groundbreaking legislation aims to set the stage for the future of AI, ensuring that its development and use will be secure, ethical but will also uphold fundamental human rights. In practical terms, for AI professionals and specialists, a thorough understanding of the AI Act is absolutely essential. This goes beyond mere legal compliance: it is also a critical element in building trust and reputation in the digital era.[4]

The document referred to above is one of the cornerstones of the EU's policy as regards the fostering and utilizing secure and lawful artificial intelligence across the entire single market without compromising fundamental rights [Bujalski 2023]. The AI Act follows a risk-based approach and establishes uniform and horizontal legal frameworks for AI to ensure legal certainty. It is designed to spur investment and innovation in the AI domain, enhance governance and the effective enforcement of existing regulations on security and fundamental rights, and facilitate the growth of a unified market for AI applications.[5]

2. DEFINITION OF THE CONCEPT OF "ARTIFICIAL INTELLIGENCE"

Many approaches to the concept of AI have emerged over the last few years, hence the need for a universal definition of the phenomenon. One developed by the OECD (Organisation for Economic Cooperation and Development) and considering artificial intelligence in terms of a system model is seen as an attempt to reach international consensus on how to frame AI. In accordance with the definition proposed by the OECD and contained in the Recommendation of the Council on Artificial Intelligence,[6] AI is

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[4] See *Sztuczna inteligencja regulacje – Unia Europejska i pierwsze regulacje AI*, https://leadakademia.pl/sztuczna-inteligencja-regulacje-unia-europejska-i-pierwsze-regulacje-ai/?gad_source=1&gclid=Cj0KCQjw6PGxBhCVARIsAIumnWaHD109ex5UexsRTZZdrxafjD-EsMpIWaBV9NFTDrTQwZxLqXGjWhAaArbJEALw_wcB [accessed: 09.05.2024].

[5] More on the diagnosis on AI systems and risks that exist in the area of management of a public institution in, see: Drogkaris and Adamczyk 2022, 10ff; Bourka and Drogkaris 2021, 14ff; *Realizing the Potential of AI in Financial Services. Overcome challenges and deliver on the full promise of AI with the NVIDIA AI Enterprise software suite*, https://www.vmware.com/docs/vmw-nvidia-ai-enterprise-ebook [accessed: 29.08.2024]; EBA Analysis of the RegTch in the Financial Sector. EBA/REP/2021/17 (EBA, June 2021), 31, after: Nowakowski 2023, 66.

[6] OECD, Recommendation of the Council on Artificial Intelligence (adopted by the Council at Ministerial Level on 22 May 2019), http://legalinstruments.oecd.org/en/instruments/

a machine-based system that, in response to certain human-input objectives, infers how to generate predictions, content, recommendations, or decisions that can influence physical or virtual environments. Therefore, in simple terms, artificial intelligence operates in a manner that mimics aspects of human thinking processes. It also harnesses the ability of machines to perform tasks that have traditionally required human reasoning and information processing capacity. Owing to machine learning algorithms, AI possesses the capability to analyse vast datasets, learn from them, and make decisions on its own.

In its negotiating position, the European Parliament adopted the definition of artificial intelligence as a system, as agreed upon by the OECD. It reads that an AI system means "a machine-based system that is designed to operate with varying levels of autonomy and that can, for explicit or implicit objectives, generate outputs such as predictions, recommendations, or decisions, that influence physical or virtual environments." Moreover, the MEPs proposed that the Council's definition of "general purpose AI system" should be reworded as "an AI system that can be used in and adapted to a wide range of applications for which it was not intentionally and specifically designed." Finally, the European Parliament introduced a definition of the "foundation model" as "an AI system model that is trained on broad data at scale, is designed for generality of output, and can be adapted to a wide range of distinctive tasks." The position of the European Parliament was adopted in the AI Act as final.[7]

3. REGULATIONS OF AI ACT

The new AI Act provisions ban certain uses of artificial intelligence that could jeopardize citizens' rights. General-purpose AI systems and the AI models behind them must adhere to specific transparency standards and comply with EU copyright law, including providing accurate summaries of the input materials used for training their models. The most advanced general-purpose AI models that pose systemic risks will face additional requirements. Furthermore, inauthentic or manipulated images, audio, and video content must be clearly labelled as such.

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oecd-legal-0449 [accessed: 14.05.2024].

[7] Recital 12 of the CORRIGENDUM to the position of the European Parliament adopted at first reading on 13 March 2024 with a view to the adoption of Regulation (EU) 2024/ ..... of the European Parliament and of the Council laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) P9_TA(2024)0138 (COM(2021)0206 – C9-0146/2021 – 2021/0106(COD)) of 17 April 2024, https://www.europarl.europa.eu/doceo/document/TA-9-2024-0138-FNL-COR01_EN.pdf [accessed: 11.05.2024].

Apparently, most of the responsibility lies with the providers (developers) of high-risk AI systems. General-purpose AI (GPAI): all providers of GPAI models must share technical documentation, user manuals, as well as complying with the relevant EU's copyright directives and publishing a summary of the content used for training such models. Providers of GPAI models that are released under a free and open-source licence need to adhere to copyright laws and publish a summary of the training data, unless they pose a systemic risk. All providers of GPAI models that present systemic risks, both open and closed, must also conduct model assessments, conduct adversarial testing, track and report serious incidents, and ensure that cybersecurity measures are in place.

Under the provisions of the AI Act (Article 61), providers are required to establish an appropriate monitoring system for high-risk AI systems launched on the market. Such a system should actively and systematically collect, document, and analyse relevant data submitted by users or collected from other sources and concerning the performance of high-risk AI systems throughout their life cycle [Nowakowski and Waliszewski 2022, 2].

Some AI systems are classified as "high-risk" under the EU AI regulations, thus placing additional obligations on their providers (Article 6 AI Act). These systems pose potential threats to health, safety, fundamental rights, environment, democracy, and rule of law. High-risk AI systems must follow stringent requirements regarding transparency, security, and human oversight. Detailed documentation on decision-making processes and algorithms is essential and needs to be collected. Such high-risk systems support various sectors, among them: Healthcare, Transport, and Automotive (the AI Act places specific requirements on autonomous vehicles, focusing on safety, reliability, and human intervention in critical situations. The act mandates risk assessments and safety testing), Finance and Banking (AI systems employed for credit risk assessment or algorithmic trading are considered high-risk, thus necessitating detailed assessments of their impact on fundamental rights and transparency in decision-making processes), Law (the use of facial recognition systems by law enforcement agencies is tightly regulated and must adhere to requirements for data protection and restrictions on mass surveillance. Judicial authorization is required for their use in specific situations, such as locating missing persons or preventing terrorist attacks. Before deploying such systems, the police force must conduct impact assessments on fundamental rights and register the system in the EU database; however, in justified and urgent cases, deployment may begin without registration, provided that it is registered later without undue delay), Education (AI used for tailored teaching processes and assessments must be transparent and unbiased. The act requires the developers of these systems to conduct regular ethical assessments and evaluations of their impact

on students' rights), Recruitment and Human Resource Management (AI used in recruitment and talent management must not discriminate against anyone. The act requires companies to assess the impact of these systems on fundamental rights and ensure transparency in their operations), Advertising and Marketing (AI systems used for personalized advertisement must comply with data protection and privacy regulations. The act requires companies to inform users explicitly about the use of algorithms for marketing purposes). Some law enforcement systems also rely on high-risk AI to manage migration and border security. It is employed in the justice system and democratic processes (e.g. to influence elections). These systems must be capable of assessing and mitigating risks and maintain event logs. They must also be transparent and accurate and subject to human oversight. Thanks to the AI ACT, citizens will have the right to file complaints regarding the operation of AI systems. They will also receive explanations for decisions made by high-risk AI systems that have an impact on their rights.

Artificial intelligence systems are deemed high-risk whenever they allow for the profiling of individuals, that is, for the automated processing of personal data to assess different facets of a person's life, including work performance, financial status, health condition, preferences, interests, reliability, behaviour, location, or movement. Providers who find that their AI system, which does not comply with the AI Act, does not pose a high risk must thoroughly document such an assessment prior to putting its deployment or putting it on the market (Articles 8-25 AI Act).

4. THE EUROPEAN OFFICE FOR ARTIFICIAL INTELLIGENCE

The European Commission has established a new EU-level regulator, the European Office for Artificial Intelligence. It will be structurally set within the European Commission's Directorate-General for Communication Networks, Content and Technology (DG CNECT). The AI Office will monitor, supervise, and enforce the AI Act requirements concerning general purpose AI (GPAI) models and systems across the 27 EU member states. The process will cover the analysis of emerging unforeseen systemic risks stemming from GPAI development and deployment, as well as developing capabilities evaluations, conducting model evaluations and investigating incidents of potential infringement and non-compliance. The AI Office will draw up codes of practice, adherence to which would create a presumption of conformity. They will also lead the EU in international cooperation on AI and strengthen bonds between the European Commission and the scientific community, including for the forthcoming scientific panel of independent experts. The Office will help the 27 member states cooperate on law enforcement, including on joint investigations, and will act as the Secretariat

of the AI Board, the intergovernmental forum for coordination between national regulators. It will support the creation of regulatory sandboxes where companies can test AI systems in a controlled environment. It will also provide information and resources to small and medium businesses (SMEs).[8]

The AI Act also commits EU member states to establishing, at national level, an environment that facilitates the development and pre-market testing of innovative AI systems. Such testing should be carried out in real conditions.

Harmonised rules applicable to the placing on the market, the putting into service and the use of high-risk AI systems, in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council, Decision No 768/2008/EC of the European Parliament and of the Council and Regulation (EU) 2019/1020 of the European Parliament and of the Council should apply across sectors. Under the new legal framework, they should be without prejudice to existing EU law, in particular on data protection, consumer protection, fundamental rights, employment, protection of labour, and product safety, to which the regulation is complementary.[9]

The AI Act will take effect 24 months after entry into force, yet with the exception of the following deadlines:[10] 6 months for provisions on prohibited AI systems (prohibited practices), 12 months for GPAI provisions, including concerning management, 36 months for high risk AI systems and obligations related thereto; codes of practice for providers must be ready 9 months after entry into force.

The public procurement market is leveraging AI tools, both contracting authorities and contractors. Over time, the ratio between human input and AI contribution will evolve. This will certainly expedite and streamline the processes of organizing, conducting, and auditing procurement procedures. However, AI is not envisaged to eliminate the human factor completely, primarily due to the fact that its reliability and output cannot always be trusted. Still, AI can assist people in relatively easy and repetitive tasks. Already today, both contracting authorities and contractors are employing technological solutions in public procurement procedures, such as during

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[8] See https://artificialintelligenceact.eu/the-ai-office-summary/ [accessed: 12.05.2024].

[9] Recital 9 of the CORRIGENDUM to the position of the European Parliament adopted at first reading on 13 March 2024 with a view to the adoption of Regulation (EU) 2024/ ..... of the European Parliament and of the Council laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) P9_TA(2024)0138 (COM(2021)0206 – C9-0146/2021 – 2021/0106(COD)) of 17 April 2024, https://www.europarl.europa.eu/doceo/document/TA-9-2024-0138-FNL-COR01_PL.pdf [accessed: 11.05.2024].

[10] Source: https://artificialintelligenceact.eu/high-level-summary/ [accessed: 29.08.2024].

electronic auctioning or in managing electronic document workflows. Experts are of the opinion that public procurement may not necessarily be among the first sectors to widely adopt AI capabilities [Jóźwiak 2023].

5. AI ACT AND PUBLIC PROCUREMENT

Opportunities for utilising AI in public procurement procedures at the specific stages of awarding public contracts [Skórzewska 2023]:

1. *Support at the stage of preparing the procurement process*: AI can help better understand the contracting authority's needs and can be useful in preparing the entire procurement process. By analysing historical data and previously awarded contracts, AI can draw valuable conclusions and predict future needs of the contracting authority (especially that some of the needs are recurring). It can also categorise awarded contracts and develop contract award procedure plans.
2. *Need and requirement analysis*: AI systems may support an analytical process aimed to pinpoint the contracting authority's actual needs and align them with available market solutions. Besides, it could help ensure the effective and reasonable spending of public money. When exploited in this domain, AI could help perform risk analyses for different solutions and recommend optimal actionable strategies. Owing to access to relevant data sources, AI could also assist in assessing various cost scenarios, thus identifying the most cost-effective and efficient solutions, as well as selecting eco-friendly options.
3. *Estimation of contract value*: AI can support the contracting authority in data analysis by sifting through databases of previous contracts with a view to identify historical costs and average prices. It will help the contracting authority to gauge the average value of similar contracts awarded in the past. With access to proper data sources, advanced AI algorithms could help analyse current market prices, predict potential risks based on price fluctuations or regulatory changes, which might impact the ultimate contract value, and update contract value estimates.
4. *Auto-generation of documents and solution suggestion mechanisms*: AI tools can streamline the generation of contract documentation and spot gaps or deficiencies concerning compliance. Based on existing document samples and data input by the contracting authority, AI can generate standard procurement documents, such as Terms of Reference, bid forms, requests, or public contract templates. This is likely to enhance the quality of documentation, reduce error prevalence, save time, and expedite the contract award procedure as a whole. Drawing on prior tender experience, AI can also suggest, depending on the type of contract, strategies

and decisions concerning bid assessment criteria, participation terms, selection of procedures, or the use of specific contract clauses. AI can also serve to systematise and categorise specific data types for the preparation of tender proceedings.

5. *Electronic bidding systems*: The use of electronic systems in bidding process offers numerous advantages, including increased operational efficiency owing to faster and better organized bid management. It also enhances transparency, which is essential in counteracting corruption and abuse attempts. However, it is pivotal to ensure top-class cybersecurity and users must be ready to adopt the new technology, although they may be lacking proper resources.
6. *Documentation analysis and error detection*: AI could also be a huge help for contracting authorities in reviewing bids and procurement documents. AI can rapidly validate and compare numerous documents to extract key information and identify any inconsistencies.
7. *Bid analysis and comparison*: AI can assist contracting authorities in analysing and comparing bids. It is able to flag inconsistencies or omissions, such as discrepancies between bid prices, competitor prices, or market prices. This can help identify bids with abnormally low prices or unrealistic cost components. AI would also be able to automatically assign scores to individual bids, summarize results, and even create rankings based on all evaluation criteria.
8. *Contract execution monitoring*: The use of AI in the performance of awarded contracts, that is, in the monitoring of progress, alignment of contract terms with financial settlements, compatibility of documentary material developed during the life of the contract with contractual provisions, etc. will allow faster and more accurate decision-making, which is invaluable for complex and high-value public contracts.
9. *Advanced analysis for procurement strategies* – in the contractor selection process. AI can support more profound bid analysis, assessment of contractor's capacity, and can even predict potential issues. This results in more informed and strategic decision-making.
10. *Information retrieval from databases*: advanced AI-powered systems could also enable quick searches within databases and document repositories, as well as helping contracting authorities in market analysis and monitoring.
11. *Monitoring the overall procurement process*: in the long term, AI could possibly play a key role in the monitoring and reporting on the entire public procurement process. This would create even greater transparency and control over how public funds are spent.

As of now, AI tools are chiefly perceived as supplementary measures. However, considering the rapid advancement of technology, it can be reasonably anticipated that, over time, AI will be gaining in importance, both in public procurement and across the entire public sector. While it is not easy to tell the exact AI adoption timeline, it is commonly held that its automation, data analysis, and prediction capabilities are more than likely to produce significant benefits within the public procurement domain by streamlining procedures. The extent to which AI will be employed in public procurement will depend on a range of factors, among them, technological progress, access to capable infrastructure, the reliability of data stored in databases, financial resources, the costs of implementing sophisticated systems, and the presence of legal solutions that will ensure transparent, secure, and traceable use of AI.[11]

CONCLUSION

In summary, in sectors involving the expending of taxpayers' money, including in public procurement, AI promises immense capabilities, particularly in areas where data is available, and processes and tasks can be automated. Certain limitations will continue to exist, such as the reliability and accuracy of data, as well as rules and regulations which undoubtedly influence how public institutions approach new technologies. The rapidly evolving legal and regulatory setting may serve both as an incentive for tests but may also represent a potential barrier to further development. Any decision to deploy AI must be preceded by a thorough analysis of the institution's capabilities and limitations and should also consider the tangible benefits for the organization and its users. The area of ICT risk management is now becoming crucial for many institutions as well as regulators and legislators, as one "IT architecture incident" can have an adverse impact on other systems. Artificial intelligence is evolving rapidly. Any experimentation and deployment of AI solutions should respect the legal, technical, ethical, and human aspects that are behind a safe and effective artificial intelligence that is expected to produce results for organisations and their clients. Building new quality often requires the organisational structure, policies, procedures and processes, and contractor agreements to be reviewed, let alone meeting legal and regulatory requirements. Therefore, it is crucial to acquire knowledge about new solutions and to build infrastructure that will adopt future implementations of new products and services.[12]

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[11] Source: file:///U:/14_artyku%C5%82y%202023-2024/AI%20ACT/Raport-Fundacji-Moje-Panstwo-AI-wersja-PL.pdf [accessed: 29.08.2024].

[12] Fr more see: https://www.nask.pl/download/30/4575/AIDApublikacja-analiza-danych.pdf [accessed: 15.09.2023]; https://w w w.knf.gov.pl/dla_rynku/fin_tech/aktualnosci?articleId=73633&p_id=18

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[accessed: 15.09.2023]; European Declaration on Digital Rights and Principles for the Digital Decade, European Commission, 26.01.2022, COM(2022) 28 final, https://ec.europa.eu/newsroom/dae/redirection/document/94370 [accessed: 23.09.2023]; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a Digital Finance Strategy for the EU, European Commission, 24.09.2020, COM(2020) 591 final, https://eur-lex.europa.eu/legal-content/EN-PL/TXT/?from=PL&uri=CELEX%3A52020DC0591 [accessed: 15.09.2023]; https://www.gov.pl/attachment/0986958f-830d-409c-8301-32ebae3ff6ef [accessed: 31.07.2023].

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NON-IMPERATIVE FORMS OF ACTION BY THE PRESIDENT OF THE OFFICE OF COMPETITION AND CONSUMER PROTECTION IN THE FIELD OF NON-FOOD PRODUCT SAFETY: A CONSUMER PROTECTION PERSPECTIVE

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Abstract. This article aims to present the information activities of the President of the Office of Competition and Consumer Protection in the context of product safety, focusing on the legal forms of action employed by public administration in the protection of consumer interests. It argues that reliable information about products and efficient communication between relevant administrative bodies, entrepreneurs and consumers is essential for effective consumer protection in the digital age and era of online transactions. This is achieved through non-imperative forms of action by the President of OCCP, with information activities (acts of information) being of particular significance.

Keywords: forms of public administration action; information activity; President of the OCCP; consumer protection.

INTRODUCTION

The onset of the 21st century saw a number of socio-economic changes, coupled with the dynamic development of new technologies and digitisation. These developments have resulted in a significant increase in the number of state tasks in the economy, thus posing a number of challenges to the legislator in terms of how these tasks should be implemented by the public administration in order to effectively apply and enforce compliance with the law. In instances where interaction with external actors is required (such as entrepreneurs and consumers), there has been a notable shift towards the utilisation of non-imperative forms of action by public administrations. This phenomenon is becoming increasingly evident in the field of product safety, where various forms of information-based legal action by public administrations are gaining importance. The diversity of products and the various delivery channels (both online and offline) necessitate a constant and rapid flow of information regarding the characteristics of products entering the market. Consequently, product information activities (information acts) are crucial

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for the effective functioning of the normative system of product safety. In this regard, the President of the Office of Competition and Consumer Protection (OCCP) assumes a pivotal role, serving as the principal economic administration entity tasked with ensuring product safety and consumer protection.

The article demonstrates that the availability of reliable information about products and the capacity for rapid communication between the relevant administrative bodies, entrepreneurs and consumers is a prerequisite for the effective protection of consumers in the context of digitalisation and the prevalence of online transactions. This is supported by the non-imperative forms of activity of the President of the OCCP, of which information activity (acts of information) is a particularly prominent example.

1. INFORMATION ACTIVITY AS A NON-IMPERATIVE FORM OF PUBLIC ADMINISTRATION ACTIVITY

For many years, the legal forms of action of public administration, in conjunction with forms of organising activities, have been the focus of interest among scholars of administrative law. This issue is the subject of numerous scientific studies, and the literature contains various conceptualisations of legal forms of action and catalogues of different types [Błaś 1998, 282; Idem 2004, 320-22; Ura 2010, 107; Zimmermann 2012, 289; Suwaj 2009, 309; Ziemski 2012, 4]. However, there is no shortage of discrepancies and controversies on how to understand these concepts, as evidenced by the work of Kijowski [Kijowski 2016, 217-25]. For the sake of brevity, these will not be considered further here.

The concept of a "legal form of public administration activity" is not straightforward to grasp, given the multiplicity of definitions that exist in the views of legal academics and commentators. It is therefore worth emphasising that one of the first authors to define the essence of legal forms of administration action was Jerzy Starościak. In his analysis, Starościak posits that legal forms of administrative action represent the legally regulated instruments through which the administration can act [Starościak 1978, 39-40]. Nevertheless, it is necessary to concur with Małgorzata Stahl's assertion that traditional catalogues of legal forms of action cannot be regarded as definitive and immutable in the context of an evolving administrative environment, an expansion of its responsibilities and a diversification of its structures, as well as the emergence of new forms of action and functions [Stahl 2013, 401].

In the field of administrative law, there is currently a diversity of approaches to defining the legal forms of action of public administration. For the purposes of this study, we adopt the following definition: a legal form of action of administration is a legally defined type of action of an administrative body. This encompasses a range of forms (types)

of administrative activities stipulated in the law, as outlined by Wierzbowski and Wiktorowska [Wierzbowski and Wiktorowska 2015, 247]. In other words, these are the forms of legal actions of the public administration (authoritative or non-imperative), through which the bodies create certain administrative-legal relations and fulfil the public functions and tasks assigned to them. Such categorisations are typically adopted in academic textbooks.

Despite the extensive analysis of the issue of legal forms of administrative activity from various perspectives, the subject retains its significance and timeliness due to the ongoing transformation of social and economic relations, where public administration performs particular public tasks. As Irena Lipowicz observes, "The legal forms of action of the administration evolve in conjunction with the tasks for which they were created. This is because, as Teresa Rabska maintains, the legal forms of action of administration serve to facilitate the fulfilment of the tasks of public administration" [Lipowicz 2016, 41]. In light of the aforementioned considerations, it is evident that in the present circumstances, these non-imperative forms of action, which have hitherto been subjected to relatively limited scrutiny within the theoretical discourse, are assuming greater significance. This is particularly evident in those domains where the efficacy of the implementation of a public task hinges upon the close collaboration of the entities in question. This interdependence is particularly evident in the context of product safety assurance.

Non-imperative forms of administrative action typically include the following: administrative settlements, administrative agreements, administrative promises as well as social and organisational and informational actions [Cieślak 2012, 91-130]. This study will focus on the last of these. The literature indicates that social and organisational actions are a non-imperative form of administrative action similar in their nature to the measures used by civil society organisations. They belong to the scope of de facto activities and may constitute both an independent form of implementation of public activities and a subsidiary form, supplementing other forms of activities, including imperative forms of action [Boć 2010, 318-54].

Information activity has also received various definitions in the views of legal academics and commentators. A broad definition of an act of information was proposed by Małgorzata Stahl, whereby it should be understood as "any document from which a citizen derives knowledge about the activities of public administration, i.e. a document related to official information activity" [Stahl 2013]. On the other hand, Wojciech Taras formulated a definition of an information activity that it is "information provided to citizens by the administration (i.e.) a statement of knowledge by a hub or functionary of a public administration body or other administrative entity, concerning a specific factual state, legal state or legal consequences resulting therefrom. It does not directly produce any legal consequences,

but may affect the realisation of certain rights or obligations of the recipient of the information or of third parties" [Taras 1988, 67]. This understanding of information activity is adopted in this study for the purpose of analysing the actions of the OCCP president. Generally speaking, information activity covers broad factual activities of administrative bodies, which consist, inter alia, in the promotion of legal knowledge among administered entities, including about ongoing changes in the law, as well as about the activities of administrative establishments and also about the performed public tasks within the jurisdiction of administrative bodies and the activities of persons performing public functions, and may be conducted through multiple access channels and in various ways.

In recent years, there has been a notable increase in the academic interest in the field of information activity from the perspective of legal forms of administrative action. This is particularly evident in the context of public administrative tasks that undergo Europeanisation. Elżbieta Małecka correctly identifies that the Europeanisation of Polish public law has resulted in a replacement of administrative law norms by civil law norms. In this manner, non-imperative forms of action by administrative bodies, which do not necessitate the utilisation of repressive administrative coercive measures, become a legal fact [Małecka 2016]. However, it is important to note that these actions also implement of the constitutional right of citizens to information, as expressed in Article 61 of the Polish Constitution. The right to information, in its broadest sense, encompasses not only the right to public information as defined in Article 1 of the Access to Public Information Act,[1] but also information on the activities of the state administrative apparatus in a general sense, in relation to the implementation of public tasks [Kudrycka 1995, 93; Taras 1992, 14]. It is evident that the advent of new technologies, climate change and the introduction of novel products to the market give rise to a host of hitherto unforeseen threats to human health and life, as well as to the natural environment. The potential for these threats to be averted or at least mitigated is contingent upon the dissemination of information regarding these concerns to the public. In light of the aforementioned considerations, the dissemination of information (in terms of both the velocity of its dissemination and, more crucially, its efficacy) has emerged as a pivotal avenue of action for the administrative apparatus. This is particularly true given the imperative of safeguarding citizens against the myriad threats that characterise the modern era. While information activity may be regarded as a secondary concern relative to other forms of activity, its prudent execution can significantly enhance the swiftness and efficacy with which administrative processes are conducted.

[1] Act of 6 September 2001 on access to public information, Journal of Laws of 2022, item 902.

2. THE ASSUMPTIONS AT THE CORE OF THE NON-FOOD PRODUCT SAFETY SYSTEM AND CONSUMER PROTECTION IN THE CONTEXT OF INFORMATION ACTIVITY

The non-food product safety system is the result of the Europeanisation of administrative law within the framework of complex European integration (the EU internal market). In essence, the freedom of movement of goods and the development of entrepreneurship have led to the pursuit of a high level of protection of consumer interests, which has become an integral part of EU consumer policy [Cieśliński 2013, 273-80]. The European heritage of this normative domain and the public functions fulfilled within it consequently shape the legal instruments employed by the administration.

In order to provide a brief overview of the assumptions of this system, it is important to emphasise that product safety is regulated at two levels: horizontal and vertical. The horizontal level is general and applies to products that are not covered by harmonisation, whereas the vertical level is sectoral and applies to products that are covered by harmonised legislation. At both levels, only products that are safe for consumers are permitted to be placed on the EU internal market. From a horizontal perspective, there is an absolute (general) obligation for all products placed on the EU market to meet an adequate level of safety. From a vertical perspective, there are additional harmonised technical requirements for specific product groups (within sectors) set out in sectoral regulations.

Concurrently, the intention of these requirements is to guarantee uniform (high) product quality throughout the EU internal market, which in turn is designed to ensure a high level of product safety and, as a result, protect consumers [Żywicka 2023, 127-42]. From a technical, legal and structural perspective, the EU non-food product safety system comprises the following elements: technical and legal measures, legal institutions, administrative structures for supervision as well as organisational and technical tools. The technical measures include essential or other product requirements, standards and technical specifications. The legal measures comprise legal rules and standards for the competence of conformity assessment bodies, accreditation granting principles, conformity assessment procedures, as well as modules and rules for CE marking. The legal institutions pertain to market surveillance, including the control of products from third countries. The administrative structures for supervision (supervisory bodies)[2] and organisational and technical tools (hazard communication systems)[3]

[2] For more on the assumptions of the conformity assessment system, see: EU Commission Notice Blue Guide – Implementation of EU product legislation 2022, (2022/C 247/01), OJ C 247/1, 29 June 2022.

[3] In EU legislation, the basic assumptions, objectives, institutions and legal means of such a

are also of significance, as they determine the complex public tasks in this area carried out by public administrations (both EU and national) organised in a network structure.

It can be concluded that the objective of the system described above is consumer protection. It is achieved by ensuring that products are safe and of proven quality, and by ensuring access to information about products placed on the market. This includes, in particular, dangerous products and products that do not meet essential requirements. In this manner, consumer protection is established, which, in accordance with Article 169(1) of the Treaty on the Functioning of the European Union, constitutes one of the EU's internal policies and activities.

Furthermore, it is important to note that the case law of the Court of Justice of the EU has developed a model of the average consumer for the purpose of protecting consumer interests. This model describes a consumer who is duly informed, attentive, and rational. Such a consumer has a certain amount of information, is able to use it, verifies marketing messages, is able to find the information necessary to make purchase decisions, and is attentive when making purchases and critical towards marketing messages addressed to them [Daniel and Geburczyk 2019]. In light of this perspective, it can be posited that the principal objective of the solutions under discussion is to safeguard the interests of consumers and to establish a foundation upon which consumers can make well-informed decisions regarding the products they purchase. It is also worth noting that the role of information in achieving this objective is highlighted in the views of legal academics and commentators when addressing the issue of food safety. They assert that consumers should be provided with comprehensive information regarding existing risks, and that risk assessors should be granted access to all data and information obtained throughout the risk management process, in order to make an accurate assessment based on this data

system are regulated by: Regulation (EC) 2023/988 of the European Parliament and of the Council on general product safety, amending Regulation (EU) No. 1025/2012 of the European Parliament and of the Council and Directive (EU) 2020/1828 of the European Parliament and of the Council and repealing Directive 2001/95/EC of the European Parliament and of the Council and Council Directive 87/357/EEC; Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and repealing Regulation (EEC) No. 339/93 (Official Journal of the EU L 218/30 of 13 August 2008, consolidated version of the act of 16 July 2021), Regulation (EU) 2019/515 of the European Parliament and of the Council of 19 March 2019 on the mutual recognition of goods lawfully marketed in another Member State and repealing Regulation (EC) No. 764/2008 (Official Journal of the EU L/91 of 23 March 2019). Market surveillance rules are governed by Regulation 2019/1020 EU of 20 June 2019 on market surveillance and product conformity and amending Directive 2004/42/EC and Regulations (EC) No. 765/2008 and (EU) No 305/2011 (OJ EU L 169/1 of 25 June 2019).

and scientific knowledge. Furthermore, the protection of consumer health and safety necessitates the provision of comprehensive information to risk managers and traders [ibid.].

It is also important to highlight that consumer protection through information is a preventative measure, designed to avert misguided purchasing decisions across all sectors, not merely in the domain of product safety. This approach safeguards consumers from potential hazards and risks. However, this condition can only be fulfilled if there is a rapid dissemination of information about products, particularly in the context of products offered via online purchasing platforms.

3. TASKS OF THE PRESIDENT OF THE OCCP IN THE AREA OF PRODUCT SAFETY – AN OVERVIEW

As public tasks in the area of competition, consumer protection and product safety undergo the process of Europeanisation, the way in which they are carried out is also affected. Pursuant to the principle of loyal cooperation, which is a general principle of EU law, Member States are obliged to designate national authorities competent to implement EU law and to cooperate with EU institutions and administrations of other Member States in the aforementioned areas [Hauser, Niewiadomski, and Wróbel 2014]. In Poland, the Office of Competition and Consumer Protection is the competent authority for the tasks outlined above. Its responsibilities are set out in the Act of 16 February 2007 on competition and consumer protection,[4] as well as the Act of 13 April 2016 on conformity assessment and market surveillance systems.[5] Additionally, the Office oversees horizontal (general) product safety matters under the Act of 12 December 2003 on general product safety.[6]

In order to analyse the tasks of the President of the OCCP in relation to product safety, it is necessary to consider the issue in accordance with the regulations adopted in the system. This analysis should be conducted at two levels: horizontally (in a general sense) and sectorally (in relation to specific product safety issues). In the initial area, the provisions of Regulation (EU) 2023/988 of the European Parliament and of the Council of 10 May 2023 on general product safety shall apply. It amends Regulation (EU) No. 1025/2012 of the European Parliament and of the Council and Directive (EU) 2020/1828 of the European Parliament and of the Council, and repeals Directive 2001/95/EC of the European Parliament and of the Council

[4] Journal of Laws of 2024, item 594.
[5] Journal of Laws of 2022, item 1854.
[6] Journal of Laws of 2021, item 222.

and Council Directive 87/357/EEC. It will come into force on 13 December 2024. This act has harmonised product safety issues across the EU and will be directly applicable. However, issues related to the tasks carried out by national authorities will only be enacted by law. At the time of writing, the legislative process is still ongoing. In the context of the extant legal framework, Article 14 of the current Act stipulates that the President of the OCCP exercises supervision over general product safety, which encompasses the following: 1) the periodic monitoring and evaluation of the effectiveness of the control of compliance of products with the general safety requirements, taking into account the types of products controlled and the risks investigated; 2) the development of periodic plans for the control of products with regard to compliance with the general safety requirements and monitoring of their implementation; 3) the conducting of proceedings on general product safety; 4) the maintenance of a register of hazardous products and the collation of data on products that do not comply with the specific safety requirements; 5) the collection of information on product safety, its transmission to the relevant authorities and the monitoring of its utilisation; 6) the collation of notifications on hazardous products submitted by producers and distributors. It is anticipated that these tasks will remain pertinent following the implementation of the aforementioned regulation. The tasks presented, from the perspective of legal forms of action, are mainly carried out in authoritative forms, such as administrative decisions issued in the course of product safety proceedings, and are essential for enforcing obligations on administered entities (entrepreneurs) with regard to compliance of products with general safety requirements. Non-imperative forms (product register, collection of information on hazardous products) are also no less important and will be discussed further in this paper.

In examining the competencies of the President of the OCCP in the domain of sectoral product safety, it becomes evident that the primary objective is to oversee the conformity of products with the standards set forth by EU harmonised legislation. The President of the Office is responsible for ensuring that products bearing the CE marking comply with the relevant EU legislation. It is important to note that this supervisory function is organised within a network administrative structure, which is composed of specialised administrative bodies. The President of the OCCP serves as the monitoring and coordinating authority for the system. Their duties include: 1) cooperation with other national market surveillance authorities, market surveillance authorities of EU Member States and Member States of the European Free Trade Agreement (EFTA) – parties to the Agreement on the European Economic Area, as well as with customs authorities; 2) participation in the work of the bodies of the Council of the EU and the European Commission, EU administrative cooperation

groups and in international forums in the field of the market surveillance system; 3) disseminating to other national market surveillance authorities, the European Commission and the market surveillance authorities of the EU Member States and the Member States of the European Free Trade Agreement (EFTA) – parties to the Agreement on the European Economic Area, as well as to customs authorities – information indicating that a product placed on the market does not fulfil the requirements or poses a risk, or formal non-compliance has been found, along with the corresponding actions taken; 4) communicating to the European Commission information on the relevant national market surveillance authorities and their respective competencies; 5) preparing and updating regular plans and reports on the performance of the national market surveillance system and publicly disseminating them, as well as transmitting them to the European Commission, EU Member States, and Member States of the European Free Trade Agreement (EFTA) – parties to the Agreement on the European Economic Area; 6) maintaining a register of non-compliant or hazardous products. In pursuance of the amendment of the legislation in 2021,[7] the President of the OCCP has been designated as the single liaison office within the market surveillance system, as defined in Regulation (EU) 2019/10 of the European Parliament and of the Council.[8] Consequently, the President of OCCP bears the responsibility for representing the unified stance of national market surveillance authorities and authorities tasked with the regulation of products placed on the European Union market, as well as for communicating the national market surveillance strategy. Furthermore, the President of the OCCP is required to facilitate intra-EU cooperation (including the exchange of information and the legal obligation to provide mutual assistance in ongoing proceedings) between market surveillance authorities of Member States with regard to mutual cross-border assistance. The aforementioned tasks are carried out in the form of non-imperative activities, both on the internal and external level. The first includes activities directed towards other administrative bodies, including national, EU, and other Member States, whereas the latter pertains to activities directed towards entities under administration, outside the administrative structures.

A comparison of the President of the OCCP's two areas of competence in the field of product safety reveals that the tasks related to general product safety are primarily conducted in accordance with the imperative formula.

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[7] Act of 15 April 2021 on amendments to the Act on the conformity assessment and market surveillance system, Journal of Laws item 925.

[8] Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and product conformity and amending Directive 2004/42/EC and Regulations (EC) No. 765/2008 and (EU) No. 305/2011 (OJ L 169, 25.06.2019, p. 1).

When conducting proceedings in the area of general product safety, the authority issues administrative decrees, which unilaterally shape and impose administrative sanctions upon the entities under its administration. In contrast, the area of sectoral safety is primarily defined by tasks that are not imperative in nature.

4. THE INFORMATION ACTIVITY OF THE PRESIDENT OF OCCP IN RESPECT OF PRODUCT SAFETY

In terms of information activities, it is first necessary to consider the public registers maintained by the President of the Office of Competition and Consumer Protection (OCCP). These comprise two distinct lists: the register of hazardous products and the register of non-compliant products or products which may present a risk. The registers are maintained in both paper and electronic format, and their contents are published on the website of the Office of Competition and Consumer Protection. The registers contain entries that imply the authoritative action of the President of OCCP and other authorities with competence in product supervision. An entry is made on the basis of a final administrative decision issued by the President of the OCCP in the course of the relevant proceedings. The entries are a typical instance of information acts as non-imperative administrative activities. The registers serve as an official information tool for consumers, with the objective of disseminating knowledge about products that have been withdrawn from the market.

In accordance with Article 61 of the Act on Conformity Assessment and Market Surveillance Systems, the President of the OCCP maintains a register of non-compliant products or products which may present a risk. The register collates data that enables the identification of the product in question, as well as information pertaining to: a) the specific nature and extent of the product's non-compliance with the requisite standards, the potential risks it may present, and the formal non-compliances identified; b) the measures that have been taken with respect to the product. In accordance with Article 30 of the General Product Safety Act, the register of hazardous products is required to collate information on products that fail to comply with the general safety requirements. In particular, the following information must be included: 1) data enabling the product to be identified; 2) information on: a) the nature and extent of the risks posed by the product, b) the measures that have been applied to the product. The entry in the register shall be deleted when the person concerned provides proof that the product has been withdrawn from the market or when the non-compliance with the safety requirements has been rectified. In order to ascertain whether products that do not comply with safety requirements

have been withdrawn from the market or whether non-compliance with safety requirements has been rectified, the supervisory authority may request the provincial inspector of the Trade Inspection to conduct an inspection in accordance with the relevant safety requirements.

It is also pertinent to note that, as part of the information dissemination process, the President of the OCCP publishes on the Office's website notices concerning hazardous products. These notices contain information on the hazards published by manufacturers, distributors or importers in connection with proceedings conducted by the OCCP. Furthermore, the dissemination of information on product safety may encompass educational initiatives spearheaded by the President of the OCCP, in accordance with the Act on Competition and Consumer Protection.

Effective consumer protection against the sale of unsafe or non-compliant products is contingent upon the timely dissemination of information to consumers concerning the potential hazards associated with the products in question. As previously stated, this protection is carried out in accordance with the information activities conducted by the President of the OCCP, with the objective of preventing potential issues. The particular character of the information activities renders them non-compulsory. It is not within the authority's purview to compel the consumer to read the information. Consequently, the efficacy of the message is compromised by the selection of information channels, which fail to reach the intended audience on a broad scale.

The results of the audit conducted by the Supreme Audit Office in 2019 revealed a notable deficiency in consumer awareness regarding the CE marking system for products. Notwithstanding the fact that some of the administrative bodies responsible for market surveillance conducted an extensive information campaign on their websites, the level of awareness regarding the CE mark was found to be negligible. In the case of 85% of those surveyed, the question of whether the products they intended to purchase were CE marked was of no consequence. Only one in ten respondents demonstrated an ability to correctly identify the mark of conformity with EU standards (9.7%).[9] Although the issue of the means through which information must be conveyed lies outside the scope of regulation, this poor result nevertheless represents a cause for concern, even five years after the study. This may indicate the low effectiveness of the current information activity and the necessity to promote information in informal online formats that will reach and engage the modern consumer. In light of the ongoing

[9] Supreme Audit Office Report of 2019 on the Safety of CE-marked product, https://www.nik.gov.pl/plik/id,21619,vp,24268.pdf [accessed: 20.08.2024] and data available on the Supreme Audit Office website https://www.nik.gov.pl/aktualnosci/bezpieczenstwo-pod-znakiem-ce.html [accessed: 20.08.2024].

digitalisation and the growing accessibility of the Internet, it is imperative to implement information campaigns in the mass media and on the Internet that are compelling, relevant, and tailored to the interests of the target audience. The advancement of digital technologies and the rising digital competencies of society should be leveraged to this end.

CONCLUSION

The findings of this study support the hypothesis that the information activity of the President of the OCCP in the field of product safety represents a significant aspect of its operations from the standpoint of safeguarding consumer interests. Furthermore, it represents an intriguing avenue for inquiry with regard to the legal forms of public administration activity.

In the context of public tasks subjected to the process of Europeanisation, and implemented within networked administrative structures, the efficiency and effectiveness of any given action is contingent upon the utilisation of information and communications technology. This holds true not only within the internal operations of a given administration, but also extends to its external activities in regard to the entities under its administration. The aforementioned relationship is exemplified in the context of product safety, as illustrated in this paper. It is not the case that non-imperative forms of action can be considered a substitute for authoritative action. However, their subsidiary importance is increasingly recognised in an era of continuous development of new technologies and the information society. This is evident in both internal communication between administrations and external communication towards businesses and consumers. In these contexts, non-imperative forms of action support traditional forms of action. Furthermore, the evolving role of public administration is a contributing factor. The function of providing support for sustainable economic development while ensuring consumer and environmental protection is becoming increasingly significant.

Although information activities on products (product registers) do not directly produce legal effects, they are an inseparable part of the process of administration in the area of product safety. They constitute an effect of authoritative actions and have a legal basis, as they are a form of action of the President of the Office of Competition and Consumer Protection. Information activities in the field of product safety play a pivotal role in preventing potential hazards, as informed consumers are better equipped to make decisions that align with their preferences and wellbeing. It can therefore be concluded that the dissemination of effective information can protect the health and lives of consumers. It thus falls upon public administration to address the challenge of how to conduct effective communication across various mass media on an ongoing basis.

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PETER'S PENCE AS A FORM OF FINANCING THE NEEDS OF THE HOLY SEE

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Abstract. The practice of sending offerings to the Holy See dates back to the seventh century, when the wealthy inhabitants of England began to support the activities of successive popes with temporal goods. It developed and was maintained for a number of years in England, Gaul, Denmark, Sweden, Norway and also in Poland, from the time of King Bolesław Chrobry. After gradually disappearing, especially during the Reformation, the practice was restored by Pope Pius IX. The institution of Peter's Pence is referenced in Canon 1271 of the 1983 Code of Canon Law, which obliges bishops to assist in procuring the means which the Holy See needs. This article is an analysis of the said institution from a legal-historical perspective and according to the current universal legislation.

Keywords: Peter's Pence; Holy See; diocesan bishop; diocese; pope.

INTRODUCTION

The Catholic Church, on the basis of an inherent right, in a manner absolutely independent of civil power, by virtue of its juridical-material dimension, enjoys the right to acquire, retain, administer and alienate temporal goods, which must serve the correct and efficient fulfilment of the Church's proper purposes, which are, among other things, to exercise works of the sacred apostolate and of charity, especially towards the needy (Canon 1254, cf. Canon 222 § 1).[1] The works of the apostolate and charity, especially towards the needy, constitute a very important task of the Church, which is confirmed by the numerous dispositions of the Codex legislature in this regard.[2] The Peter's Pence (German: *Peterspfenning*; Italian: *Obolo di San Pietro*; Spanish: *Óbolo de San Pedro*; Portuguese: *Óbolo de São Pedro*; French: *Denier de Saint Pierre*) is one of the already proven forms of financing the activities of the Holy See, also in the area of Christian *caritas*. This article will analyse this institution from a legal and historical perspective

[1] *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, pp. 1-317 [hereinafter: CIC/83].

[2] See Canons 114 § 2; 215, 222 § 1, 282 § 2, 298 § 1, 529 § 2, 640, 945 § 2, 1254, 1285.

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and according to current ecclesiastical legislation. The introduction of more detailed regulations by the legislator regarding the entities and amounts of contributions within the framework of Peter's Pence would contribute to a better understanding and more effective fulfillment of the obligation to support the Holy See by the faithful and individual particular Churches, thus strengthening the unity and expression of love between the faithful and the universal Church.

1. PETER'S PENCE IN LEGAL AND HISTORICAL PERSPECTIVE

It is widely acknowledged that offerings made to the Holy See originated in England, where, from the seventh century onwards, people of high social status sent material gifts to support the activities of successive popes [Dudziak 2013, 399].[3] This is a period when the people of England were still a newly converted nation.[4] The authority of the papacy was so important to the English that at the synod of Whitby, convened by King Oswiu in 664, it was decided to adopt the Roman way of counting Easter [Emerson Curtis 1969, 45-49]. The English were keen to consecrate churches and other sacred buildings, dedicating them primarily to Roman saints. Donations to these saints, as well as to their earthly servants (especially the popes) in the perception of the English, were a way of strengthening the ties between heaven and earth. Kings figured prominently among those sending gifts to the Holy See.[5] In addition, numerous high-ranking members of the ecclesiastical

[3] Various names were then used to describe the tax under study: *pecunia romana* ('Roman money'), *Romgescot* ('Rome payment'), *Rompening* ('Rome penny'), *Romfeoh* ('Rome money') and others [Naismith and Tinti 2019, 521].

[4] Although the Britons began to adopt Christianity as early as the second century, and by the end of the fourth century it had become quite widespread in the area, Britain was overrun by Picts and Scots in the early fifth century as a result of the weakening of the Roman Empire. The Germanic tribes of the Angles and Saxons, called to their aid, reintroduced paganism. The full conversion of Britain must be seen as an achievement of Pope Gregory I the Great, who proceeded to convert England in a far-reaching planned manner. First, he brought Anglo-Saxon slaves from Gaul to Rome and brought them up in the Catholic faith. Then, in 596, he sent the abbot Augustine with forty monks to England, where in 597, as a result of their missionary activity, King Etelbert of Kent was baptised with thousands of his subjects. In the following years, Pope Gregory I the Great sent out further missionaries. In 601, he ordered the division of England into two metropolises, Cantuaria and York, and into twelve dioceses. Over the next fifty years, five more Anglo-Saxon kingdoms adopted Christianity, which developed so intensively that between the seventh and eleventh centuries as many as twenty-three kings and sixty Anglo-Saxon queens and princesses were inscribed in the catalogue of saints [Kumor 2003, 25-26].

[5] Bede, in his monograph *Historia ecclesiastica*, cites the example of King Cædwall, ruler of the West Saxons (685-688), who went to Rome to be baptised. After receiving this sacrament, he was buried in St Peter's Basilica due to an unforeseen death, on the recommendation of

hierarchy also made pilgrimages to Rome, not only later bringing a number of relics, church decorations and rich book collections to England, but also bringing generous gifts, not only financial but also works of art, to the popes. Historical accounts of the time, including those of St. Bede the Venerable, confirm that donations to St. Peter's Church were an integral and common part of pilgrimages to Rome [Naismith and Tinti 2019, 524-25]. Because the English made such numerous pilgrimages to the Eternal City, they occupied almost the entire district of Rome in the closest vicinity to the Vatican, the *Burgus Saxonum*.[6] In time, they built a hospital and a school here, for the upkeep of which they decided to pay a special tax of one denarius per house.

In his interesting study, J. Ptaśnik considers two versions to explain the origins of the institution of the Peter's Pence. According to the first, this tax was imposed for the West of England during the reign of King Ine (689-726).[7] According to the second, it was imposed by Offa, King of Mercia (757-796), who, at the assembly of barons in 787, in the presence of the papal legate, was said to have pledged to contribute annually 365 fines of gold for the maintenance of the English poor in Rome and for the illumination of St. Peter's Church. By contrast, there is no longer any doubt that Aethelwulf, King of Wessex (839-858), pledged to send 300 fines of gold to Rome each year, of which 100 fines were to be used to pay for the lights in St. Peter's, another 100 for the same purpose in St. Paul's, and the remaining 100 fines were to be at the pope's personal disposal. Ptaśnik considers it likely that the aforementioned obligation evolved over time into a special tax for the pope referred to in England as *Romepenny sive Petrespenny*, which was sent to Rome by each ruler after collecting tribute from his subjects [Ptaśnik 1908, 5-6].[8]

Pope Sergius I (687-701). The tomb epitaph mentions that Cædwalla made a pilgrimage to Rome 'carrying sacred gifts' (Latin: *mystica dona gerens*) [Miller 1999, 180-81].

6 Hence the present-day name of Borgo, one of the twenty-two rioni of Rome, forming part of the Municipio Roma I, located on the right bank of the Tiber River, centering the area around the extensive second-century Castel Sant'Angelo.

7 See Grimmer 2007, 102-14.

8 On this subject, see William the Conqueror's decree: "Liber homo, qui habuerit in averiis campestribus triginta denarios, debet dare denarium S. Petri. Pro IV. denariis, quos dabit dominus, quieti erunt bordarii eius et eius bonnarii et eius servientes. Burgensis, qui dimidiam marcam habet in propriis catallis, debet dare denarium S. Petri. Qui in lege Danorum est liber homo et habet averia campestria valoris dimidiae marcae in argento, dare debet denarium S. Petri. Et per denarium, quem dominus donaverit, quieti erunt ii, qui manent in suo dominico. Qui denegaverit denarium S. Petri, reddet denarium per iustitiam sanctae Ecclesiae, et praeterea XXX. denarios pro foris factura. Et fide ea re implacitatus fuerit per iustitiam regis, foris factura episcopo erit XXX. denarios et regi XL. solidos", quoted by von Spittler 1797, 96.

In the Middle Ages, the perception of the analysed form of support for the Holy See should be seen through the prism of the so-called papal theocracy implementing the assumptions of the theory of the Church's direct authority in the temporal order (particularly in the 11th-13th centuries).[9] The Pope, as supreme head of the Catholic Church, had the prerogative of taking individual countries and rulers under his protection, which to some extent replicated the feudal scheme. Rulers would place their territories under papal fiefs, thereby strengthening their own political independence, especially *vis-à-vis* their more powerful neighbours, while also receiving a moral and legal mandate from the authority of the Holy See. On the other hand, it provided the popes with an important material security for their own activities, in the form of annual and therefore stable and predictable revenues. As a regular tribute, this benefit persisted in England, Gaul, Denmark, Sweden, Norway and Poland [Dudziak 2013, 399].

With regard to Poland, already Bolesław Chrobry (967-1025) sent a specific tribute to Rome. This practice probably disappeared during the re-emission of paganism in Poland during the reign of Mieszko II (990-1034). In turn, it was restored under Casimir I the Restorer (1016-1058) [Fajęcki 1913a, 260].[10]

The practice of sending the tribute under consideration was abolished gradually, especially during the Reformation. It is considered to have been reactivated by Pope Pius IX in his encyclical *Saepe venerabiles* of 5 August 1871, published on the occasion of the 25th anniversary of his pontificate,[11] in which he thanked for the many expressions of spiritual and material support given by the faithful, particularly after the abolition of the Papal States in 1870. The economic situation of the Holy See improved after

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[9] The main principles of this system were: 1) the idea of a single Christian community, which was identified with the Church and the State; 2) religious-political dualism distinguishing between two supreme authorities in its order – the papacy in the clerical order and the empire in the temporal order; 3) the secular power has no authority to interfere in the internal affairs of the Church; 4) although the secular power cannot influence ecclesiastical affairs, it is nevertheless obliged to use its own coercive means to help the Church (Latin: *brachium saeculare*); 5) God's law and canon law is superior to any secular law [Krukowski 2013, 34-36].

[10] This donation was referred to in Poland as *świętopietrze* [Fajęcki 1913b, 260].

[11] Pius PP. IX, Epistola encyclica *Saepe venerabiles* (05.08.1871), ASS 6 (1870-1871), pp. 337-40. "Hac vero occasione stips quoque Nobis solito largior affluxit, qua pauperes simul ac divites occurrere conati sunt factae Nobis inopiae, cui accessere munera multiplicia, varia, nobilissima, splendidumque christianarum artium et ingeniorum tributum relevandae praesertim accommodatum duplici Nobis a Deo concessae potestati spirituali ac regiae; et praeterea copiosa splendidaque supellex sacrarum vestium et utensilium, qua squalori et egestati tot Ecclesiarum undique occurrere possemus. Mirum certe spectaculum unitatis catholicae, quod evidenter ostendit, Ecclesiam universam, licet toto diffusam orbe, gentibusque compactam disparibus moribus, ingenio, studiis, uno informari Dei spiritu; et eo prodigiosius ab ipso confortari, quo furiosius illam insectatur et urget impietas, et quo callidius omni ipsam humano auxilio destituere conatur." Ibid, p. 338.

the signing of the Lateran Pacts on 11 February 1929 by Prime Minister Benito Mussolini and Cardinal Pietro Gasparri, under which the Italian government paid the Holy See compensation for the confiscations carried out: 1 750 million lire in securities and 750 million lire in cash. These funds established assets partly used to ensure the proper functioning of the Roman Curia. The disposition of the remaining proceeds from Peter's Pence was left to the personal discretion of each pope to subsidise the religious and charitable activities of the Holy See [Velasio de Paolis 2016, 86].[12]

The return in the late '70s of the last century of the Holy See's financial problems, mainly due to: 1) the economic situation in Italy; 2) the reception of the teachings of the Fathers of the Second Vatican Council (the erection of new dicasteries, the increase of staff in the Roman Curia, the multiplication of visits to Rome by diocesan bishops who, as members of the various dicasteries, were obliged to attend numerous working meetings, the establishment of the institution of the Synod of Bishops and its frequent convening – required a multiplication of financial resources); 3) the expansion of the activities of the particular Churches in favour of the missions, including material subsidies, was reflected in the amount of offerings paid to the Holy See. For this reason, the funds generated from the property acquired by the indemnity received from the Italian government, described above, were almost entirely used to finance the current needs of the Holy See, which negatively affected the charitable activities carried out by Pope Paul VI. It was for this reason, among others, that he erected the Pontifical Council *Cor Unum* for the Promotion of Human and Christian Progress (*Pontificium Consilium Cor Unum de humana et christiana progressione fovenda*) [ibid., 86-88].[13] Today, Peter's Pence has the character of a voluntary offering given to the Holy See according to various forms used by individual particular Churches as well as private donors [Dudziak 2013, 399].

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[12] For example, Pope Pius XII (1939-1958) authorised apostolic nuncios to donate funds from Peter's Pence to World War II victims [Velasio de Paolis 2016, 86].

[13] Created on 15 July 1971 to coordinate the initiatives of various Catholic institutions and organisations in the field of economic and cultural development and scientific and technological progress. Its main task was to mediate between the bishops' conferences and various types of Catholic institutions in order to better distribute material resources. It also saw to the efficient and effective organisation of aid to those affected by natural disasters [Groblicki 1995, 606]. Transformed by Pope John Paul II into the Pontifical Council Cor Unum (Latin: *Pontificium Consilium Cor Unum*), it continued, among other things, to support and coordinate the activities of Catholic institutions providing aid to the needy and to strengthen contacts with international organisations providing charitable assistance. By the decision of Pope Francis on 1 January 2017, it was dissolved and its former competences were taken over by the Dicastery for Integral Human Development [Romanko 2019, 2035-2036]. On the Dicastery itself, see Lewandowski 2018, 447-56.

2. PETER'S PENCE ACCORDING TO CURRENT ECCLESIASTICAL LEGISLATION

The Codex legislator in Canon 1271 states that "By reason of the bond of unity and charity and according to the resources of their dioceses, bishops are to assist in procuring those means which the Apostolic See needs, according to the conditions of the times, so that it is able to offer service properly to the universal Church." This disposition has no source in pre-Codex law,[14] nor does it have an equivalent in the 1917 Code of Canon Law.[15] The Pontifical Commission for the Authentic Interpretation of the Code of Canon Law (*Pontificia Commissio Codici Iuris Canonici Recognoscendo*) identified as the source of the canon: the Dogmatic Constitution on the Church *Lumen Gentium*[16] and the Instruction *Ecclesiae imago* on the Pastoral Ministry of Bishops.[17] Emphasising the unity of the College of Bishops made visible, among other things, in the mutual relations of individual bishops with the particular Churches and the universal Church, the Fathers of the Second Vatican Council recalled that individual bishops, by the command of Christ, are obliged to care for the whole Church, including in the area of their evangelising activity. "The task of proclaiming the Gospel everywhere on earth pertains to the body of pastors, to all of whom in common Christ gave His command, thereby imposing upon them a common duty, as Pope Celestine in his time recommended to the Fathers of the Council of Ephesus. From this it follows that the individual bishops, insofar as their own discharge of their duty permits, are obliged to enter into a community of work among themselves and with the successor of Peter, upon whom was imposed in a special way the great duty of spreading the Christian name. With all their energy, therefore, they must supply to the missions both workers for the harvest and also spiritual and material aid, both directly and on their own account, as well

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[14] Pontificia Commissio Codici Iuris Canonici Authentice Interpretando, *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus. Fontium annotatione et indice analytico-alphabetico auctus*, Libreria Editrice Vaticana, Città del Vaticano 1989.

[15] *Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus* (27.05.1917), AAS 9 (1917), pars II, pp. 1-593. A. Domaszk stresses that the disposition resulting from Canon 1271 is not an analogy to the disposition of Canon 1504, which regulated the *cathedraticum* on the grounds that it was a tribute paid by churches, benefices and confraternities, manifesting at the same time submission to the authority of the bishop, which was the implementation of the tradition of the monarchical system [Domaszk 2016, 154-55].

[16] Sacrosanctum Concilium Oecumenicum Vaticanum II, Constitutio dogmatica de Ecclesia *Lumen gentium* (21.11.1964), AAS 57 (1965), pp. 5-75 [hereinafter: LG].

[17] Sacra Congregatio pro Episcopis, Directorium de pastorali ministerio Episcoporum *Ecclesiae imago* (22.03.1973), Typis Polyglottis Vaticanis, Romae 1973 [hereinafter: EI].

as by arousing the ardent cooperation of the faithful." (LG 23). Similar emphases were placed by the Congregation for Bishops, which obliged the bishops to cooperate zealously with the Holy See in the mission of evangelising the nations. For this reason, each bishop, insofar as the particular Church entrusted to his care has the capacity to do so, in agreement with the Holy See and the local bishops' conference, should support the needs of the particular missionary Churches in a prominent way by providing people and means for evangelisation (EI 46). It is also his duty to assist the activity of the Holy See in providing assistance to persecuted Churches (EI 47). "Following in the footsteps of the Apostles, who were not only concerned with the proper stewardship of the goods of individual communities, but also with organising collections for the poorer […] the bishop rushes to the aid, as far as the capacities of his diocese permit, of the poorer Churches and of works of piety, charity, culture, apostolate, of national or international scope, as well as of missionary communities and the Holy See" (EI 138).

Despite the above indications, the disposition contained in Canon 1271 was not envisaged by the Pontifical Commission for the Authentic Interpretation of the Code of Canon Law in the schema *De iure patrimoniali Ecclesiae*.[18] At the consultation stage of the schema, during the meeting of the Commission on 23 June 1979, some consultors proposed that the moral obligation to make donations to the Holy See should be mentioned in the new codification.[19] As this indication met with the approval of the whole Commission, three proposals were elaborated: 1) "Meminerint Episcopi, ratione vinculi unitatis et caritatis, iuxta propriae dioecesis facultates, ex oblationibus fidelium aliquid contribuere ad media quibus Sedes Apostolica, secundum temporum condiciones indiget, ut servitium erga Ecclesiam universam a Deo sibi concreditum, rite exercere valeat"; 2) "Singulae dioeceses ne praetermittant, modo propriae oeconomicae conditioni proportionato, necessitatibus Romani Pontificis pro gubernio universae Ecclesiae contribuere"; 3) "In votis est ut dioeceses, quantum fieri possit, stipe etiam speciali in hunc finem colligenda, subsidium quotannis afierant Apostolicae Sedi, ut sumptus, quos muneris adimpletio secumfert, suppeditare valeat."[20] The first proposal, after a slight linguistic correction, was incorporated into the 1983 Code of Canon Law as Canon 1271.

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[18] Pontificia Commissio Codici Iuris Canonici Recognescendo, Schema canonum Libri V *De iure patrimoniali* Ecclesiae (15.11.1977), Typis Polyglottis Vaticanis, Civitas Vaticana 1977.

[19] "Nonnulli suggesserunt ut habeatur in Codice norma aliqua de morali obligatione quam habent dioeceses contribuendi ad media quibus Sedes Apostolica indiget, ut sua munera exercere valeat." *Adunatio diei 23 iunii 1979*, in: Pontificia Commissio Codici Iuris Canonici Recognescendo, Coetus studiorum *De bonis Ecclesiae temporalibus. Sessio I (diebus 17-23 iunii 1979 habita)*, Typis Polyglottis Vaticanis, Civitas Vaticana 1977, p. 411.

[20] Ibid.

E. Miragoli states that the consensus of the members of the Pontifical Commission on the matter under consideration was largely due to an awareness of the increasing financial difficulties of the Holy See and the growing needs in the material sphere. This awareness is to the credit of the Council of Resident Cardinals for the study of the organisational and economic problems of the Holy See (*Consiglio di Cardinali Arcivescovi residenziali per lo studio dei problemi organizzativi ed economici della Santa Sede*),[21] established by Pope John Paul II on 31 March 1981,[22] which from 1987 onwards sent to all bishops the economic report of the Holy See [Miragoli 1992, 68].

Although the legislator in the analyzed Canon 1271, indicating the entities obligated to provide material resources to the Holy See, uses the term bishop (Latin: *Episcopi*) without specifying 'diocesan', and although the bonds of unity and charity that were referred to in the text of the said canon bind all bishops, due to the indication *pro suae dioecesis facultatibus* [possibilities of one's own diocese] used by the legislator, it should be presumed that the moral and legal obligation in the analyzed matter rests exclusively with diocesan bishops, and not with titular bishops [Kennedy 2000, 1472-473].[23] P. Kaleta argues that, in addition to diocesan bishops, the subjects canonically obliged to implement the disposition arising from Canon 1271 are also those who, on the basis of Canon 381 § 2, are equal in law to the diocesan bishop, i.e. territorial prelate, territorial abbot, apostolic vicar, apostolic prefect and administrator of an apostolic administration erected in a stable manner [Kaleta 2019, 46]. It seems, however, that this statement should be supplemented by the addition that this is true insofar as the heads of the aforementioned particular Churches have received the episcopal sacrament, since the Codex legislator refers *expressis verbis* to the motivation *vinculi unitatis et caritatis* [bonds of unity and charity]. It should be added that the following are also equated in law with the diocesan bishop: the military ordinary,[24] the ordinary of the Personal Ordinariate

[21] The operation of the Committee is regulated in Articles 25-26 of the Apostolic Constitution on the Roman Curia: Ioannes Paulus PP. II, Constitutio apostolica *Pastor bonus* (18.06.1988), AAS 80 (1988), s. 841-912 [hereinafter: PB]. The Committee consisted of 15 cardinals and 15 hierarchs at the head of particular Churches from different parts of the world, appointed by the Pope for a five-year term (PB 24). Convened by the Secretary of State, it convened customarily twice a year to consider economic and organisational matters concerning the administration of the Holy See. It also oversaw the activities of a special institution, governed by its own laws, established in the Vatican City State to maintain and manage the assets entrusted to finance religious and charitable works (PB 25).

[22] *Giovanni Paolo II (Santi). Dati biografici – Parte prima*, http://www.internetsv.info/Vatican.html [accessed: 07.10.2024].

[23] Canon 376 CIC/83: "Episcopi vocantur dioecesani, quibus scilicet alicuius dioecesis cura commissa est; ceteri titulares appellantur."

[24] See Ioannes Paulus PP. II, Constitutio Dogmatica qua nova canonica ordinatio pro spirituali militum curae datur *Spirituali militum curae* (21.04.1986), AAS 78 (1986), pp. 481-86.

for Anglicans entering into full communion with the Catholic Church,[25] and the apostolic administrator of the Personal Apostolic Administration of St. John Mary Vianney,[26] who will have the same obligation, provided they are not presbyters [Lewandowski 2015, 17-18].

It should also be added that the implementation of the obligation under Canon 1271 – no longer *ex iure*, but rather *ex caritas* – can be seen much more broadly through a number of other dispositions of the Code legislator. First of all, it should be pointed out that the concern for safeguarding the needs of the universal Church as a whole is a serious obligation incumbent on all faithful Christians. The universal legislator states this responsibility twice: in Canon 222 § 1, obliging the faithful to take care of the needs of the Church, so that it has the necessary means for divine worship, for the works of the apostolate and of charity, as well as for the decent support of ministers, and in Canon 1261 § 1, recalling that the faithful are free to give temporal goods for the benefit of the Church. The obligation and right indicated above corresponds correlatively to the legislator's dispositions in Canon 1260, in which he proclaims the Church's innate right to require from the Christian faithful those things which are necessary for the purposes proper to it, and in Canon 1261 § 2, in which he obliges the diocesan bishop to admonish the faithful and enforce the obligation arising from the disposition of Canon 222 § 1. Bearing in mind the scope of the concept of the Christian faithful (cf. Canon 204 § 1; 207), it is also necessary to recall at this point Canon 282 § 2, in which the legislator calls upon the clergy to allocate what is left of the goods that accrue to them by virtue of their ecclesiastical office to the good of the Church and the works of charity, Canon 529 § 2 obliging the pastor to cooperate with the diocesan bishop and the diocesan presbytery, seeking also that the faithful care for the parish community, feel themselves members of both the diocese and the universal Church, and participate in or support activities for the development of that community; and Canon

[25] See Benedictus PP. XVI, Constitutio *Apostolica Anglicanorum Coetibus* qua Personales Ordinariatus pro Anglicanis conduntur qui plenam communionem cum Catholica Ecclesia ineunt (04.11.2009), AAS 101 (2009), pp. 985-90; Congregation for the Doctrine of the Faith, Complementary Norms for the Apostolic Constitution *Anglicanorum Coetibus* (04.11.2009), AAS 101 (2009), pp. 991-96. At present, the Dicastery for the Doctrine of the Faith has erected three personal Ordinariates for Anglicans entering into full communion with the Catholic Church: The Personal Ordinariate of St. Mary of Walsingham in the territory of the Bishops' Conference of England and Wales, the Personal Ordinariate of St. Peter's Cathedral in the territory of the Bishops' Conference of the United States, and the Personal Ordinariate of St. Mary of the Southern Cross in the territory of the Bishops' Conference of Australia [Zając 2013, 122; Lewandowski 2015, 18]. On the legal status of Personal Ordinariates for Anglicans entering into full communion with the Catholic Church, see also Zając 2017.

[26] Zob. Congregatio pro Episcopis, *Decretum de administratione Apostolica Personali «Sancti Ioannis Mariae Vianney» condenda* (18.01.2002), AAS 94 (2002), pp. 305-308. For more on the Personal Apostolic Administration of St. John Mary Vianney, see Zając 2015, 107-29.

640, according to which religious institutes are to strive to give, as it were, a collective witness of charity and poverty and are to contribute according to their ability something from their own goods to provide for the needs of the Church and the support of the poor [Idem 2019, 100-101].[27]

The Codex legislature does not specify the amount of support to be given to the Holy See – it depends on the financial capacity of the individual diocese and the discretion of the diocesan bishop himself [Kaleta 2014, 110-11; Idem 2015, 98]. This support corresponds to voluntary support made by the faithful in response to requests addressed to them (Canon 1262) or a special collection for universal purposes (Canon 1266) [Idem 2019, 47]. According to Canon 1266, the diocesan bishop may order a special collection in all churches and chapels, even if they belong to religious institutes. However, he cannot, by virtue of Canon 1263, institute a tax for the Holy See, since a tax as such can only be ordered for diocesan needs [Idem 2014, 111]. On the other hand, it may donate to the Holy See the funds collected from binations and trinations in its particular Church (Canon 951 § 1), as well as from collective Masses[28] [Perlasca 2007, 315-16]. The occasion for these offerings is also the *ad limina* visit (Canon 400). It should also be noted that in addition to the offerings generally given to the Holy See, there are also specific offerings, such as for the support of the Church's missionary activity [Domaszk 2016, 155; Idem 2020, 98].

How much the Peter's Pence represents a vital help provided by the Holy See is shown by successive statements by the last three Popes. John Paul II, during his address to the members of Circolo San Pietro[29] on 28 February

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[27] The aforementioned Canon 529 § 2 was cited by Cardinal Agostino Casaroli in his letter of 25 March 1987, in which the Secretary of State requested diocesan bishops to assist the Holy See in the face of a budget deficit. Similarly, Canon 640 was invoked by the Secretary of State in a letter of 29 June 1987 addressed to institutes of consecrated life and societies of apostolic life on the same issue. Subsequently, during the meeting of the presidents of the bishops' conferences from all over the world, which took place in the Vatican on 8-9 April 1991 on the financial crisis of the Holy See, Archbishop Angelo Sodano, as then Undersecretary of State (following the retirement of Cardinal Casaroli), made a strong plea to the assembled presidents of the bishops' conferences for the urgent economic support of the Holy See. On this basis, referring to the analysed Canon 1271, the presidents of the bishops' conferences sent an open letter to all the bishops of the world, asking for financial assistance [Renken 2009, 139].

[28] Congregatio pro Clericis, Decretum quoad stipendia a sacerdotibus pro Missis celebrandis accipienda, regulae quaedam dantur *Mos iugiter* (22.02.1991), AAS 83 (1991), pp. 443-46.

[29] Circolo San Pietro was founded in Rome in 1869 by a group of young people on the impulse of Blessed Pius IX, who entrusted them with their first charitable task: to provide meals for the poor of Rome. For 155 years, the Association has carried out voluntary work for the poor and needy with such dedication that it is sometimes referred to as 'la minestra del Papa' [the Pope's soup]. Circolo S. Pietro is part of Rome's history, and continues to strive to provide assistance to the poorest and excluded by alleviating their state of material and

2003, stressed: "Many expect the Apostolic See to give them the support they often fail to find elsewhere. In this perspective the Peter's Pence Collection is a true and proper participation in the work of evangelization, especially if one considers the meaning and importance of concretely sharing in the concerns of the universal Church."[30] Similarly, Benedict XVI speaking to the same Society on 7 July 2005 raised: "You have come here today, as you do each year, to present the Peter's Pence offering to the Pope, yet another sign of your generous openness to the brothers and sisters in difficulty. At the same time, it is a significant participation in the efforts of the Apostolic See to respond to the increasing number of emergencies in the Church, especially in the poorest nations."[31] Whereas, Francis, in his address to the staff of the Holy See and the Vatican City State on the occasion of Christmas on 21 December 2017, noted: "Without the work that you do, the work of the Church would not go well, one would not be able to do so much work for the preaching of the Gospel, to help so many people, the sick, schools, so many things. You are a part of this 'chain' that carries forward the work of the Church."[32]

CONCLUSION

The analysis carried out in this article allows concrete conclusions to be drawn, which can be articulated in the form of *de lege lata* and *de lege ferenda* postulates:

1) The sending of offerings to the Holy See was initiated in England in the seventh century.
2) In the Middle Ages, these offerings were part of the idea of the so-called papal theocracy.
3) In Poland, Bolesław Chrobry was already sending a special tribute to Rome.
4) After the practice was gradually abolished, especially during the Reformation, it was reactivated by Pope Pius IX.

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spiritual need. Unconditional loyalty to the Church and the Bishop of Rome is the hallmark of the Association, which reflects its motto: 'Prayer, action, sacrifice.' *Il Circolo S. Pietro*, https://www.circolosanpietro.org/storia [accessed: 14.10.2024].

[30] *Many expect the Apostolic See to give them the support they often fail to find elsewhere*, https://www.obolodisanpietro.va/en/cos-e-l-obolo/parole-dei-papi/giovanni-paolo-ii.html [accessed: 14.10.2024].

[31] *Address of His Holiness Benedict XVI to the Members of the "Circolo San Pietro"*, https://www.vatican.va/content/benedict-xvi/en/speeches/2005/july/documents/hf_ben-xvi_spe_20050707_circolo-san-pietro.html [accessed: 14.10.2024].

[32] *You are a part of this 'chain' that carries forward the work of the Church*, https://www.obolodisanpietro.va/en/cos-e-l-obolo/parole-dei-papi/francesco.2.html#paginationinit [accessed: 14.10.2024].

5) The practice now takes on the character of a voluntary offering given to the Holy See by individual particular Churches and people of good will.
6) The legislator regulates the institution of the Peter's Pence in Canon 1271 of the 1983 Code of Canon Law, according to which: "By reason of the bond of unity and charity and according to the resources of their dioceses, bishops are to assist in procuring those means which the Apostolic See needs, according to the conditions of the times, so that it is able to offer service properly to the universal Church."
7) The subjects morally and legally bound to carry out the disposition of the legislator arising from Canon 1271 are the diocesan bishops and those who are equal in law to them: the territorial prelate, the territorial abbot, the apostolic vicar, the apostolic prefect, the administrator of an apostolic administration erected in a stable manner, the military ordinariate, the ordinariate of the Personal Ordinariate for Anglicans entering into full communion with the Catholic Church and the apostolic administrator of the Personal Apostolic Administration of St. John Mary Vianney, if they have received the episcopal consecration. In view of the possible doubts of interpretation of the obligation analysed, the universal legislator should define precisely the catalogue of subjects obliged by the said canon.
8) It should be borne in mind, however, that concern for providing the needs of the universal Church as a whole constitutes a serious obligation incumbent on all Christian faithful.
9) The amount of support to be provided by the Peter's Pence has not been determined by the legislator and depends on the financial capacity of the particular Churches and the discretion of their heads.
10) The Peter's Pence is an expression of the unity and charity of the faithful with the Holy See.

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THE RIGHTS AND DUTIES OF CATHOLIC CHURCH FOUNDERS ACCORDING TO THE 1917 CODE OF CANON LAW

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Abstract. The issue of financing churches and religious associations in Poland is still topical and remains one of the main subjects of public debate. This is confirmed by the fact that in 2024 the Council of Ministers of the Republic of Poland started working on the system of financing the Church Fund, including the pension scheme for the clergy. At present, the state's financial support is provided mainly in the form of subsidies from the Church Fund for the maintenance and repair of sacred and ecclesiastical buildings of historical value or for the charitable and welfare activities of ecclesiastical legal entities. In the context of the proposed changes to Polish law, it is worth referring to historical legal regulations, including those of canon law. From the point of view of the Polish State and the Catholic Church, the fundamental acts regulating the system of financing the Church in the Second Republic were the Code of Canon Law of 1917 and the concordat between the Holy See and the Republic of Poland of 1925. In the first codification of canon law in the history of the Church, the ecclesiastical legislator regulated the institution of the church founder (patron or protector of the church), including their rights and duties. The main aim of this article is to analyse the canonical regulations and the state's implementation of these regulations in the light of the concordat. It also argues that the abolition of these legal provisions was justified and that historical regulations should not be taken into account when designing new systemic solutions for the financing of the Church and other religious associations.

Keywords: church foundations; right of patronage; patron; church-state relations; Polish law; canon law.

INTRODUCTION

On 11 January 2024, the President of the Council of Ministers of the Republic of Poland issued an order on the Inter-Ministerial Team for the Church Fund,[1] whose task is to work out changes to the system of financing the Church Fund,[2] including the pension scheme for the clergy.

[1] "Monitor Polski" of 2024, item 17.

[2] The Church Fund was established pursuant to Article 8 of the Act of 20 March 1950 on the Acquisition by the State of Mortmain Property, Guaranteeing Parish Priests

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Considering the subject matter of the present work, it should be emphasised that currently in the Polish state there is no formal concept of church founder (patron or protector of the church), i.e. an institution that was regulated in the 1917 Code of Canon Law.[3] The term refers to Catholic founders of churches, chapels or benefices and those who acquired the right of patronage from them. These persons held privileges for donating land for the construction of a church, as well as equipping and maintaining it. At the same time, they were also obliged to fulfil the duties set out in canon law, which included financial support of churches (Canon 1448 CIC/17) [Szady 2003, 6; Pankiewicz 2024, 237-50]. Bearing in mind the proposed changes to the Church Fund, the institution of the church founder should be revisited, if only for the possible consideration of the financing of the Church by lay believers, who are also citizens of the state.

Accordingly, the present article analyses the privileges held by church founders (patrons) in the past, i.e. the right of presentation, the right of support, and the right of honour, along with the obligations imposed on them in the CIC/17. Although the provisions described are no longer in force, as the 1983 Code of Canon Law[4] did not regulate this institution, its 'relics' are still present in various legal solutions and forms of support of the Catholic Church [Pankiewicz 2013, 41-61]. In the context of the ongoing public debate and the actions taken by the Council of Ministers of the Republic of Poland in this regard, the analysis of the rights and obligations of Catholic church founders as specified in to the CIC/17 takes on particular significance.

1. THE RIGHTS OF CATHOLIC CHURCH FOUNDERS

1.1. The right of presentation

The CIC/17 established certain rights for founders (patrons), who could be either clerical or lay persons. The most important right was the privilege of presentation (the so-called active right of patronage) [Głąb 1919, 11-12],

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the Possession of Farms and Establishing the Church Fund (Journal of Laws No. 9, item 87 as amended), as a form of compensation to churches for land property taken over by the state. See also Resolution No. 148 of the Council of Ministers of 7 November 1991 on the Statute of the Church Fund ("Monitor Polski" of 1991 No. 39, item 279).

[3] *Codex Iuris Canonici. Pii X Pontificis Maximi iussu digestus, Benedicti PP. XV auctoritate promulgatus* (27.05.1917), AAS 9 (1917), pars II, pp. 3-521 [hereinafter: CIC/17 or Pio-Benedictine Code]. For an English translation, see *The 1917 or Pio-Benedictine Code of Canon Law* available at https://cdn.restorethe54.com/media/pdf/1917-code-of-canon-law-english.pdf [accessed: 28.08.2024].

[4] *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, pp. 1-317 [hereinafter: CIC/83].

i.e. the presentation of a candidate for an ecclesiastical office[5] [Młynarczyk 1918, 130; Pasternak 1970, 94-95]. This was a unique privilege for lay people in particular, as it equipped them with a certain amount of power that was "naturally" ascribed to ecclesiastical authorities. That is why it was so important to strictly define the capacity of such persons to exercise the right of presentation [Grabowski 1948, 485] as well as their entitlement to execute legal acts [Pasternak 1970, 95-96].[6]

According to the CIC/17, the right of presentation was in the first instance given to a church founder. Additionally, this right could also be directly exercised by the founder's wife [Grabowski 1918, 97], provided that she had the right of patronage. Therefore, in a situation in which the right of presentation was vested only in the husband, his wife had only the right of his substitution by virtue of her power of attorney.[7] The right was also held by minors, but it could only be exercised by their legal representatives under civil law, i.e. their parents or guardians. In case the representatives were not Catholics, the right was suspended[8] [Bastrzykowski 1947, 35; Pasternak 1970, 96].

The Pio-Benedictine Code adopted the principles determining the legal capacity of minors as defined in secular law. In comparison, in its earlier regulations, the Church had allowed minors to exercise the right of presentation in person, despite the indication that this should be done by their guardians [Bączkowicz, Baron, and Stawinoga 1957, 388]. The right of presentation by proxy also concerned persons who had limited legal capacity, such as the mentally ill [Głąb 1919, 11].

According to the law, substitute patrons could only be persons who themselves had the capacity to be patrons and exercised the right of presentation at their own discretion.[9]

The CIC/17 also specified the situation in which there were several founders on a given benefice (co-patronage). The adoption of the general principle that the right of patronage was an indivisible right requires particular attention to the manner in which this right was exercised because it is difficult to imagine adopting this principle in relation to other rights,

[5] According to cannon law, the privilege of appointing and instituting parish priests belonged to the ordinary except for parishes reserved to the Holy See and in a situation in which such a power resulted from patronage or election (Canon 455 § 1 CIC/17).

[6] The right of presentation could not be exercised by persons afflicted by a censure or infamy (Canon 1470 § 4 CIC/17).

[7] See *Prawo patronatu* (print document) 1918, Uniwersytet Jagielloński, Towarzystwo Biblioteki Słuchaczów Prawa (co-author), Wydawnictwo Towarzystwa Biblioteki Słuchaczów Prawa Uniwersytetu Jagiellońskiego, Kraków, p. 79, https://dlibra.kul.pl/dlibra/publication/5337/edition/1478/content [hereinafter: *Prawo patronatu* 1918].

[8] Canon 1456 CIC/17: "Uxor per seipsam ius patronatus exercet, minores per parentes aut per tutores; quod si parentes vel tutores acatholici sint, ius patronatus interim suspensum manet."

[9] See *Prawo patronatu* 1918, p. 80.

which were divisible (e.g. privileges of honour or rent). The joint exercise of the right of presentation took place in two ways. First, a contract was permitted whereby the patrons, on behalf of themselves and their successors, undertook to exercise the right in a specific order. For the agreement to have the effects specified therein, the written consent of the ordinary was required [Grabowski 1918, 486]. This made it impossible for the agreement to be changed unilaterally in the future, either by the ordinary or by the patrons themselves since the consent of both the parties was needed.[10] Second, if a situation arose in which there was no relevant agreement on the order in which the right was exercised, the legislators allowed for the possibility of the patrons voting for a suitable candidate, who could be proposed by each patron individually, having the option to propose several candidates (*ius variandi*).[11] The candidate who received the greatest number of votes was presented. If a candidate did not receive at least a relative majority, and several candidates received the greatest and a reasonably equal number of votes, then all of them were presented[12] [Pasternak 1970, 96]. If, on the other hand, the right of presentation was held by a college,[13] the candidate who had received at least half of the votes was to be presented. The CIC/17 also regulated the voting procedure in a situation in which the best candidate had not been selected in the first round. If, in the first ballot, no candidate received the required half of the votes, another ballot was held. In case the situation from the first vote repeated, in which no candidate obtained an absolute number of votes, a third, and final, ballot was held. The candidate who had received the highest number of votes was presented. However, if it turned out that there were several candidates who had received an equal number of votes, all of them were presented[14] [ibid.]. It was also important that if a founder had a right of patronage derived from different titles (*ex diversis titulis*), they had as many votes as the titles they held.[15]

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[10] Canon 1459 § 1 CIC/17: "Si plures singulares personae sint patroni, possunt tum pro se tum pro suis successoribus de alternis praesentationibus inter se convenire. § 2. Ut autem haec conventio sit valida, accedat oportet Ordinarii consensus in scriptis datus, qui tamen semel praestitus nequit valide ab eodem Ordinario vel eius successoribus, patronis invitis, revocari."

[11] See *Prawo patronatu* 1918, p. 60.

[12] Canon 1460 § 2 CIC/17: "Si ius patronatus penes singulares personas sit, quae inter se de alternis praesentationibus non convenerint, ille praesentatus habeatur, qui maiorem saltem relative suffragiorum numerum retulerit; et si plures eundem, maiorem quam ceteri, suffragiorum numerum habuerint, omnes censeantur praesentati."

[13] The college included, among others, the chapter and the university senate.

[14] Canon 1460 § 1 CIC/17: "Si ius patronatus collegialiter exerceatur, ille praesentatus habeatur, qui maiorem suffragiorum numerum retulerit, ad normam can. 101 § 1; quod si, duobus scrutiniis sine effectu institutis in tertio scrutinio plures maiorem prae ceteris, sed aequalem inter se suffragiorum numerum habuerint, ii omnes praesentati censeantur."

[15] Canon 1460 § 3 CIC/17: "Qui ex diversis titulis ius patronatus obtinet, tot habet in praesentatione suffragia, quot titulos."

It should be noted that all patrons, lay or clerical, had the right to present one or more candidates.[16] They could exercise this right by presenting all the candidates together, as well as separately, one by one. This had to be done at the appointed time, without the possibility of excluding those previously presented, until their presentation was accepted by the ordinary.

Apart from specifying patrons' rights of presentation, the law listed the conditions that a candidate for an ecclesiastical office should fulfil (the so-called passive right of presentation)[17] [Głąb 1919, 12]. It was absolutely forbidden for a patron to present or vote for themselves [Grabowski 1948, 486] so as to ensure the number of votes required, and neither was it allowed to choose them for a presentation.[18]

The legislators also laid down rules for the selection of a candidate by means of an election should this be necessary (e.g. in the case of co-patronage). Candidates for filling a benefice could be presented, either by lay or clerical patrons, only if they had passed a special examination.[19] Examinations for those applying for secular patronage of benefices were to be held only if required by a particular (local) law. In such cases, any candidates who failed them could be excluded by the ordinary. The law specified that only clergymen suitable (*idoneum*) for the office of beneficiary could be presented (Canon 149 CIC/17) [Młynarczyk 1918, 47]. The requirements for the position were not only set out in common law but also in particular law and the provisions contained in the foundation act (Canon 153 § 1 CIC/17)[20] [Młynarczyk 1918, 110-12]. Clergymen had to fulfil these requirements on the day they were presented or, alternatively, on the day they were formally notified of being accepted by their superiors[21] [Pasternak 1970, 97].

In addition to patrons and their candidates for vacant offices, an important role was also played by local ordinaries. Bishops were equipped by the law with relevant prerogatives thanks to which they supervised the entire presentation process. Candidates for benefices were presented to ordinaries, who had not only the right but also the duty to assess whether the former

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16 Canon 1460 § 4 CIC/17: "Quilibet patronus, antequam praesentatio acceptetur, non unum tantum, sed plures praesentare potest, tum una simul tum etiam successive, intra tempus tamen praescriptum, modo illos ne excludat quos prius praesentavit."

17 See *Prawo patronatu* 1918, p. 42-46.

18 Canon 1461 CIC/17: "Nemo potest praesentare seipsum neque aliis patronis accedere ut suffragiorum numerum ad praesentationem necessarium pro se compleat."

19 Canon 1462 CIC/17: "Si ecclesiae vel beneficio provideri debeat per concursum, patronus, etiam laicus, non potest praesentare, nisi clericum legitime ex concursu probatum."

20 The foundation act could also specify the appointment of prelates (Canon 396 § 1) and canons (Canon 403) to the cathedral and collegiate chapter.

21 Canon 1463 CIC/17: "Persona praesentata debet esse idonea, idest, ipso praesentationis vel saltem acceptationis die, qualitatibus omnibus praedita, quae iure seu communi seu peculiari vel lege fundationis requiruntur."

were fit to perform the duties entrusted to them. In many cases, it was also bishops that were expected to see to the examinations and decided whether or not to exclude particular candidates from the presentation procedure. Bishops' autonomy in these matters was great. If they decided to reject a candidate, they were not obliged to give any reasons for their decision[22] even though the Pio-Benedictine Code allowed for the possibility of church founders appealing against such a decision to a higher ecclesiastical authority. If a bishop rejected a candidate, their patron was entitled to nominate another clergyman for the benefice, within the time limit for the presentation. However, the bishop, after examining the next candidate, could reject him, too. The benefice then became "free," i.e. the ordinary had the exclusive right to fill it. Such a solution made the position of church patrons much weaker. It should be noted that if a clerical patron presented a candidate who was not a *persona idonea* (suitable person), he lost his right of patronage. This was because there was a presumption that since the founder was a clerical person, he had done so deliberately.[23] For example, in the case of co-patronage, where ten co-patrons voted for two candidates, a situation could arise in which six patrons, including three clergymen, voted for a candidate who was unsuitable (*non idoneam*) for an ecclesiastical office. In that case, even though only four patrons had voted in favour of the second candidate, it was this candidate that was considered by the bishop. In such a situation, according to the law, the three clergymen who had voted for the unworthy candidate lost the right of patronage.[24]

In both first and second instance proceedings, it was possible for church founders and rejected candidates to exercise the so-called "right of recourse" to the Holy See. The procedure was strictly administrative, as the persons concerned had ten days to settle the matter, starting from the notification of the rejection of the candidate. After the appeal had been lodged, the case was subject to suspension, i.e. the benefice could not be filled before the conclusion of the dispute. When the need arose, the ordinary was obliged to temporarily hand over the benefice to an econome.[25] In the same

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[22] Canon 1464 CIC/17: "§ 1. Praesentatio fieri debet loci Ordinario, cuius est iudicare utrum idonea sit persona praesentata. § 2. Ordinarius ad suum formandum iudicium, debet ad normam can. 149 de persona praesentata diligenter inquirere et opportunas notitias, etiam secretas, si opus fuerit, assumere. § 3. Ordinarius non cogitur patrono patefacere rationes cur personam praesentatam admittere non posit."

[23] See *Prawo patronatu* 1918, p. 53.

[24] Ibid., p. 58-59.

[25] Canon 1465 § 1 CIC/17: "Si praesentatus non idoneus fuerit repertus, patronus, dummodo tempus utile ad praesentandum sua negligentia lapsum ne sit, potest alium intra tempus de quo in can. 1457 praesentare; sed si ne hic quidem idoneus repertus fuerit, ecclesia vel beneficium pro eo casu fit liberae collationis, nisi patronus vel praesentatus intra decem dies a significatione recusationis recursum a iudicio Ordinarii ad Sedem Apostolicam

provision, a presentation disgraced with simony, along with all of its consequences, was declared null and void by the law.[26]

Canon 1457 of the CIC/17 established a four-month limit for the exercise of the privilege of the presentation. The limit was counted from the date on which the patron was notified of the vacancy in the office and of the candidates who had taken an exam, if it was required. Such a measure served primarily to counteract the protracted procedure for filling vacant benefices, for it may have been in the patron's interest to prolong the vacancy, e.g. due to the presentation of a person close to them (their son) or the fact that they did not incur the costs of the candidate's upkeep during that period.[27] The time limit did not apply when there were obstacles during the proceedings (*tempus utile*). It should be noted that, depending on a specific act of foundation or custom, the time limit could be shorter[28] [Pasternak 1970, 97].

The failure to meet the deadline for making a presentation resulted in the benefice being conferred freely.[29] However, in the event of any dispute over the right of presentation between the patron and the ordinary or between the patrons, the proceedings were suspended until the dispute was resolved. Since the dispute could last for a long time, when necessary, the ordinary had the right to transfer the benefice to an econome designated by him.[30]

Once the presentation was made, i.e. it was accepted by the ordinary, the next stage followed, during which the presented clergyman acquired an ecclesiastical institution in the majesty of the law [ibid., 172]. The act of conferring the office was performed by the ordinary of the place in question, but, on the basis of his special delegation, this could also be done by the Vicar General.

Pursuant to Canon 1466 CIC/17, there could be a situation in which a church founder presented several candidates (*ius variandi*) at the time of making the presentation. Such a presentation could have a cumulative

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interposuerit; quo pendente, suspendatur collatio usque ad finem controversiae et interim, si opus sit, oeconomum ecclesiae vel beneficio vacanti Ordinarius praeficiat."

[26] Canon 1465 § 2 CIC/17: "Praesentatio, labe simoniaca infecta, est ipso iure irrita, et etiam institutionem forte subsecutam irritam reddit."

[27] See *Prawo patronatu* 1918, p. 46-47.

[28] Canon 1457 CIC/17: "Praesentatio, nullo iusto obstante impedimento, sive agatur de patronatu laicali sive de ecclesiastico et mixto fieri debet, nisi brevius tempus lege fundationis vel ligitima consuetudine praescriptum fuerit, saltem intra quatuor menses a die quo is, cui ius est instituendi, patronum certiorem fecerit de vacatione beneficii et de sacerdotibus qui in concursu fuerunt probati, si agatur de beneficio quod per concursum conferri debet."

[29] Canon 1458 § 1 CIC/17: "Si intra praescriptum tempus praesentatio facta non fuerit, ecclesia vel beneficium pro eo casu fit liberae collationis."

[30] Canon 1458 § 2 CIC/17: "Si vero lis, quae intra utile tempus dirimi nequeat, exoriatur sive circa ius praesentandi inter Ordinarium et patronum vel inter ipsos patronos, sive circa ius praelationis inter ipsos praesentatos, suspendatur collatio usque ad finem controversiae, et interim, si opus sit, oeconomum ecclesiae vel beneficio vacanti Ordinarius praeficiat."

or a private form. In the first variant, several candidates were presented at the same time, while in the second variant, each candidate was presented separately. This right was granted only to lay patrons.[31] The most suitable candidate was chosen by the ordinary,[32] who was also responsible for any wrong choices. As for cumulative presentations, bishops could confer an ecclesiastical office on the selected candidates before the deadline for the presentation. As for private presentations, this happened only after the deadline.[33]

Canon law set a time limit for the appointment of the candidate to the office, provided that no obstacles preventing it had arisen [Pasternak 1970, 97-98]. The presented person did not automatically receive the rights of a beneficiary but only the *ius ad rem*, i.e. the right to demand to receive a benefice [Głąb 1919, 14]. According to the law, the appointment was to take place within two months of the presentation.[34] Upon his induction into office, the appointee acquired *ius in rem*.[35] However, in case the bishop, without giving any reasons, had appointed another person who had not been represented by the patron, despite such a person meeting all the requirements as specified by canon law, the appointment was invalid when the patron requested it [ibid., 14-15].

The CIC/17 also specified situations in which the presentation procedure had to be repeated, i.e. when the presented person had died or officially resigned from office, in which case the church founder presented another candidate.[36] According to the law, this had to be done within four months.

When analysing the privilege of presentation, it should be noted that church founders did not always have to present their candidates for ecclesiastical offices themselves. In such cases, however, the person who was entitled to choose the clergyman for a given office had to obtain the patron's acceptance of the candidate, who had to meet all the necessary requirements (e.g. he had to be a person of noble origin). Once the founder had given their approval, they examined whether the choice had been made in accordance with the law. In case of any doubts, they could demand a lawsuit on the matter.[37]

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31 See *Prawo patronatu* 1918, p. 50-51.

32 Canon 1466 CIC/17: "§ 1. Legitime praesentatus, et idoneus repertus, acceptata praesentatione, ius habet ad canonicam institutionem. § 2. Ius concedendi canonicam institutionem proprium est Ordinarii loci, non autem Vicarii Generalis sine mandato speciali. § 3. Si plures et omnes idonei praesentati sint Ordinarius eligit quem magis idoneum in Domino iudicaverit."

33 See *Prawo patronatu* 1918, p. 51.

34 Canon 1467 CIC/17: "Institutio canonica pro quolibet beneficio etiam non curato dari debet, nullo iusto obstante impedimento, intra duos menses ex quo praesentatio facta sit."

35 See *Prawo patronatu* 1918, p. 54.

36 Canon 1468 CIC/17: "Si praesentatus ante canonicam institutionem renuntiaverit vel mortuus fuerit, patronus rursus ius praesentandi habet."

37 See *Prawo patronatu* 1918, p. 68-69.

It should also be noted that in a situation in which the Holy See granted a person the privilege of presentation to vacant benefices, or it was specified in concordats or otherwise, that privilege did not automatically entail any other privileges. Thus, it cannot be assumed that receiving the right of presentation also meant receiving the right of patronage. For this reason, such a person could not claim the rights granted to patrons in connection with their other titles [Grabowski 1948, 486-87].

After 1917, the exercise of the right of patronage in reborn Poland was a subject of the agreement concluded between the Holy See and Poland in 1925.[38] This agreement set out the procedure for the exercise of the right of presentation that substantially limited patrons' powers in presenting candidates to benefices, for it only allowed patrons to choose candidates presented by ordinaries.[39] Church founders had to make their choice within the prescribed period, and if they failed to do so, they lost this right. Thus, there was a "reversal" of the power to present candidates from patrons to ordinaries. Furthermore, in the case of filling a parish priest's benefice, the ordinary was obliged to submit the nomination for approval by the competent minister, in accordance with the provisions of the concordat.[40]

The CIC/17 also regulated situations in which there were popular elections and presentations to parochial benefices. The procedures for the appointment of suitable candidates to office could only be applied if the people had chosen their priest from three candidates presented by the local bishop.[41]

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[38] See Concordat concluded between the Holy See and the Republic of Poland, signed in Rome on February 10, 1925 (Journal of Laws No. 72, items 501 and 502). See also Laniewski and Kopystiański 1933, 11-29; Kacprzyk and Sitarz 2006, 531-42.

[39] Article 21 of the concordat: "The right of patronage of both the state and private individuals shall remain in force until a new arrangement. The presentation of a worthy clergyman to the vacant post shall be made by the patron within thirty days, according to a list of three names submitted by the Ordinary. If the presentation is not made within thirty days, the filling of the said benefice shall become free. In cases in which a parish priest's benefice is involved, the Ordinary, before making the appointment, shall consult the competent minister in accordance with art. XIX."

[40] Article 19 of the concordat: "The Polish Republic shall provide the competent authorities with the right to confer, in accordance with the provisions of canon law, ecclesiastical functions, offices, and benefices. In the granting of benefices to parish priests, the following rules shall be applied: In the lands of the Republic of Poland, parish priests' benefices may not be received, except with the permission of the Polish government, to the following: 1) unnaturalised foreigners, as well as persons who have not studied theology in theological institutes in Poland or in papal institutes; 2) persons whose activities are contrary to the security of the State. Before making an appointment to these benefices, the clerical authority shall consult the competent Minister of the Republic to ascertain that none of the reasons provided for in points 1) and 2) above preclude it. In the event that the said Minister does not, within thirty days, present such objections against the person whose appointment is sought, the ecclesiastical authority shall make the appointment."

[41] Canon 1452 CIC/17: "Electiones ac praesentationes populares ad beneficia etiam paroecialia, sicubi vigent, tolerari tantum possunt, si populus clericum seligat inter tres ab Ordinario loci designatos."

1.2. The right to support

In addition to the right of presentation, other patronage privileges were established, which could be written down in the foundation document.[42] The founder could, in accordance with the foundation act and with the consent of the ordinary, specify conditions that could be contrary to common law as long as they were fair and not detrimental to the benefice itself [Pasternak 1970, 146]. These were *iura utilia*, i.e. certain material rights (e.g. the right to an allowance or rent). Associated with these rights were also *iura onerosa* (e.g. *cura beneficia* – the right to inspect church property). Those rights were identified with the old concept of advocacy [Głąb 1919, 12].[43]

One of the basic privileges was the founder's right to draw a small annual salary. Interpreting this provision literally, one must conclude that its absence from the foundation act prevented the patron from later claiming such a benefit. A necessary prerequisite for exercising this entitlement was that the salary was clearly indicated in the document [Rittner 1912, 249], and that it was paid over a specified time or for life [Grabowski 1948, 487].

Another entitlement, which could accompany the annual salary or be granted separately, was the right to receive food and money from the benefice or church. This right was defined in general terms. When the patron was reduced to poverty through no personal fault, they could claim a payment even if they had relinquished the right of patronage to the church or if they had reserved the right to a salary in the foundation act. Under canon law, two requirements had to be met for a patron to exercise his right of maintenance. First, the church's income had to exceed the cost of the money requested, which included the beneficiary's living expenses. Second, for a patron to receive an allowance, their salary had to be insufficient to lift them out of poverty.[44]

1.3. The right to honours

In addition to entitlements of a strictly material nature, a church founder could also be granted immaterial ones, i.e. honours (*iura honorifica*, *honores*). Depending on local customs, these rights could take different forms, and, being public in character, they also had social significance [Grabowski

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[42] Canon 1417 § 1 CIC/17: "In limine fundationis fundator potest, de consensu Ordinarii, conditiones etiam iuri communi contrarias apponere, dummodo sint honestae et naturae beneficii ne repugnant."

[43] See also *Prawo patronatu* 1918, p. 71-73.

[44] Canon 1455 CIC/17: "Privilegia patronorum sunt: 2 Salva exsecutione onerum et honesta beneficiarii sustentatione, alimenta ex aequitate obtinendi ex ecclesiae vel beneficii reditibus, si qui supersint, quoties patronus inopiam nulla sua culpa redactus fuerit, etiamsi ipse iuri patronatus renuntiaverit in commodum Ecclesiae, vel pensio in limine fundationis ipsi patrono fuerit reservata, quae ad sublevandam eius inopiam non sufficiat." Cf. Rittner 1912, 249.

1948, 487], for they expressed the status of the patron in the founded church.[45]

Only three honourary rights of the founder were regulated in the CIC/17. The first was the right to include the clan or family coat of arms (*ius lystrae*) in the church of patronage. The second was the privilege of precedence over the other members of the congregation, e.g. during processions and services and while performing various functions. The third was the right to occupy a dignified place in the church, i.e. to be seated in special pews intended for patrons, which, however, could not be located in the chancel or under a canopy[46] [Bastrzykowski 1947, 36].

The list of honourary rights was not closed and, given local customs, these rights could take different forms.[47] This meant that the privileges specified in the Pio-Benedictine Code were not obligatory and were not granted to all patrons regardless of their place of residence. It should be emphasised that the CIC/17 did not abrogate the former rights of honour, whether they were part of common law or local tradition.[48] Therefore, they were still enjoyed along with those specified in the code, as illustrated especially by the privileges that concerned the liturgy [Nowicki 1938, 410]. The old honourary rights, which were commonly recognised although not taken into account in their entirety by general ecclesiastical law,[49] were defined in particular law or in foundation acts, or could have been acquired by way of prescription. Such rights included, among others, *honor sedis* (the right to occupy a dignified seat in the church or to use a prie-dieu), *ius precum* (the right for a person's surname to be mentioned during public prayers), *honor thuris* or *suffitus* during Mass (the right to incense when the founder was a man), *ius aspersionis* or *honor aquae benedictae* (the right to be sprinkled with holy water before others), *osculum pacis in missa sollemni* (the right to be handed

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45 See *Prawo patronatu* 1918, p. 69-71.

46 Canon 1455 CIC/17: "Privilegia patronorum sunt: 3 Habendi, si ita ferant legitimae locorum consuetudines, in sui patronatus ecclesia stemma gentis vel familiae, praecedentiam ante ceteros laicos in processionibus vel similibus functionibus, digniorem sedem in ecclesia, sed extra presbyterium et sine baldachino."

47 "In some places, they also have the right to a grave in the church (*ius sepulturae*), to be prayed for in public (*ius precum seu intercessionum*), the right to a candle, holy water, the kiss of peace (*osculum pacis*) by being given the cross to kiss, the right to incense, the right to a funeral service (*ius luctus ecclesiastici*), and others, depending on local custom" [Bączkowicz, Baron, and Stawinoga 1957, 392].

48 Patrons' honourary rights were discussed by E. Nowicki, who described the general principles in this respect and analysed honourary rights in general Prussian domestic law, pre-code church law, the CIC/17 and co-patronage, as well as the honourary rights of non-Catholic patrons. See Nowicki 1938, 407-13.

49 The basic principle adopted by general ecclesiastical law with regard to honourary rights was to give the patron priority over other lay persons (so-called *honour processionis*), except for persons representing the highest state authorities.

the pax except for the paten if the patron was a man), honor panis benedicti (the right of priority to receive Holy Communion), *ius cerei et palmarum* (the right of priority to be handed a candle during Candlemas and a palm on Palm Sunday), *ius or honour inscriptionis* (the right for the founder's clan or family coat of arms or a memorial plaque with the founder's name to be put on the church building), *ius or honour sepulturae* (the right to a dignified burial place for the founder and his family), *ius luctus ecclesiastici* (reciting prayers for the deceased founder and his family, celebrating a funeral mass, striking a bell, etc.) [Nowicki 1938, 408-10; Taczak 1915, 40-41].

2. THE DUTIES OF CATHOLIC CHURCH FOUNDERS

From the very beginning, the institution of church patronage was associated with protection of a church or benefice, known as advocacy [Taczak 1915, 43].[50] Patrons defended and represented the church and benefice of which they were the founders, for example in court and out-of-court disputes. As the owners of the property on which the church was built, they bore all the state burdens associated with it [Rittner 1912, 249].

In spite of the changes that had taken place over centuries with regard to the formation of the law of patronage and protection of churches and benefices, the CIC/17 specified not only founders' entitlements but also certain obligations incumbent upon them.[51] First, patrons were obliged to notify ordinaries that their church properties and benefices were being wasted as soon as they became aware of it. According to canon law, they were only expected to communicate such information, without being delegated to deal with the problem. Thus, they had no right to get involved in church governance itself. It was an obligation of no manifest character, but, more often than not, it could lead to patrons assuming responsibility for the whole situation.

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[50] See also *Prawo patronatu* 1918, p. 75-76.

[51] Caon 1469 CIC/17: "§ 1. Onera seu officia patronorum sunt: 1 Ordinarium loci monere, si bona ecclesiae seu beneficii dilapidari viderint, quin tamen se immisceant administrationi eorundem bonorum; 2 Aedificare denuo ecclesiam collapsam aut reparationes, iudicio Ordinarii, necessarias in eadem facere, si ex titulo aedificationis ius patronatus habeant, et nisi onus aedificandae denuo vel reparandae ecclesiae aliis incumbat ad normam can. 1186; 3 Supplere reditus, si ex titulo dotationis ius patronatus proveniat, cum ecclesiae vel beneficii reditus ita defecerint, ut nequeat amplius vel cultus decenter in ecclesia exerceri, vel beneficium conferri. § 2. Si ecclesia collapsa fuerit vel necessariis indigeat reparationibus, aut si reditus defecerint ad normam § 1, nn. 2, 3, ius patronatus interim quiescit. § 3. Si patronus, intra tempus ab Ordinario sub poena cessationis patronatus praefiniendum, ecclesiam denuo aedificaverit vel restauraverit aut reditus auxerit, ius patronatus revigescit; secus ipso iure et sine ulla declaratione cessat."

Other duties of the founder were strictly material. The CIC/17 established the patron's obligation to rebuild and repair a neglected church when they had the right of patronage by virtue of its construction, with the proviso, however, that they could not perform this duty without the express instruction of the local ordinary or when there was another person who was obliged to do so.[52]

The last duty imposed on patrons was that of ensuring enough money for the maintenance of the church. As stipulated by the law, church founders were obliged to replenish the church's revenue when it had diminished to such an extent that it resulted in undignified or discontinued worship or the fact that the benefice was impossible to fill.

When analysing the duties imposed on church founders by the Pio-Benedictine code, it should be noted that the fulfilment of those duties did not entail their interference in the internal affairs of the Church. Being obliged by canon law to perform specific tasks depending on their patronage title, patrons were nonetheless required to gain the local ordinary's approval in doing so.

3. CHURCH FOUNDERS' FAILURE TO PERFORM THEIR DUITES OR TO PERFORM THEM PROPERLY

3.1. Suspension of the right of patronage

Due to founders' failure to perform their duties or to perform them properly, their right of patronage could be suspended.[53] Under the CIC/17, the suspension of the right of patronage was the first punitive measure, which could result in a patron being deprived of the right as such.[54]

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[52] Canon 1186 CIC/17: "Salvis peculiaribus legitimisque cornsuetudinibus et conventionibus, et firma obligatione quae ad aliquem spectet etiam ex constituto legis civilis: 1. Onus reficiendi ecclesiam cathedralem incumbit ordine qui sequitur: Bonis fabricae, salva ea parte quae necessaria est ad cultum divinum celebrandum et ad ordinariam ecclesiae administrationem; Episcopo et canonicis pro rata proventuum; detractis necessariis ad honestam sustentationem; Dioecesanis, quos tamen Ordinarius loci suasione magis quam coactione inducatad sumptus necessarios, pro eorum viribus, praestandos; 2. Onus reficiendi ecclesiam paroecialem incumbit ordine qui sequitur: Bonis fabricae ecclesiae, ut supra; Patrono; Iis qui fructus aliquos ex ecclesia provenientes percipiunt secundum taxam pro rata redituum ab Ordinario statuendam; Paroecianis, quos tamen Ordinarius loci, ut supra, magis hortetur quam cogat; 3. Haec cum debita proportione serventur etiam quod attinet ad alias ecclesias." See also Grabowski 1948, 487; Bastrzykowski 1947, 36.

[53] Out of these two, it was patrons' failure to perform their duties altogether that was the basic premise behind the suspension.

[54] *Prawo patronatu* 1918, p. 108-109.

Under the threat of losing their patronage, patrons had to fulfil their overdue obligations within a time limit set by ordinaries.[55] When they had done so, the patronage was reinstated. Otherwise, it was terminated.

Another premise behind the suspension was censure[56] and infamy (loss of honour) [Łoziński 1897, 1-203; Pasternak 1970, 195]. When a patron was afflicted by these sanctions, the patronage was suspended until the person was freed from them.[57] Patronage was also suspended when the patron was a minor and his legal representatives (parents or guardians) were not Catholic.[58]

3.2. Loss of the right of patronage

The Pio-Benedictine Code specified the reasons for the loss of the right of patronage [Głąb 1919, 15-16; Taczak 1915, 39-40; Pasternak 1970, 195-96]. The first reason concerned founders who had failed to perform their obligations as patrons. In addition, the Holy See could abolish patronage after a given church or benefice had been dissolved.[59]

Under canon law, the right of patronage was also lost in the event of a private person having acquired this right by way of prescription over the period which was the same as in the civil legislation of the country concerned and which corresponded to the period of occupying the place in question.[60] However, in the case of prescription against ecclesiastical (moral) persons, the period was 30 years.[61]

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[55] Canon 1469 § 3 CIC/17: "Si patronus, intra tempus ab Ordinario sub poena cessationis patronatus praefiniendum, ecclesiam denuo aedificaverit vel restauraverit aut reditus auxerit, ius patronatus revigescit; secus ipso iure et sine ulla declaratione cessat."

[56] According to J.N. Opieliński, "Censure is 1. a punishment (*poena*), because it is inflicted for a transgression, i.e. an actual offence against the criminal law …. (2) Censure is a spiritual punishment (*poena spiritualis*) .... (3) Censure is a corrective punishment (*poena medicinalis*) .... For a censure to be valid, therefore, it is necessary that the offender should be obstinate (*contumax*), that is, that, despite warnings and admonitions, they should not adhere to the Church's regulations and persist in sin" [Opieliński 1894, 3-4].

[57] Canon 1470 § 4 CIC/17: "Censura aut infamia iuris innodati post sententiam condemnatoria vel declaratoriam, usque dum censura vel infamia perdurant, nequeunt ius patronatus exercere eiusque privilegiis uti."

[58] Canon 1456 CIC/17: "Uxor per seipsam ius patronatus exercet, minores per parentes aut per tutores; quod si parentes vel tutores acatholici sint, ius patronatus interim suspensum manet." See also Grabowski 1948, 485.

[59] Canon 1470 § 1 CIC/17: "Praeter casum de quo in can. 1469 § 3, ius patronatus exstinguitur: 2 Si Sancta Sedes ius patronatus revocaverit aut ipsam ecclesiam vel beneficium perpetuo suppresserit."

[60] Canon 1508 CIC/17: "Praescriptionem, tanquam acquirendi et se liberandi modum, prout est in legislatione civili respectivae nationis, Ecclesia pro bonis ecclesiasticis recipit, salvo praescripto canonum qui sequuntur."

[61] Canon 1511 § 2 CIC/17: "Quae ad aliam personam moralem ecclesiasticam, spatio triginta annorum."

Another premise behind the loss of patronage was related to the things constituting the objects of the patronage and the families who had been granted the patronage in a foundation act. In case such things ceased to exist and a family, clan, or line became extinct,[62] the right ceased to apply.[63]

Apart from losing their patronage, church founders were entitled to relinquish their right explicitly or implicitly, by behaving in a manner clearly indicating that they wished to do so.[64] However, the renunciation of the right of patronage could not affect the rights of the other co-patrons [Grabowski 1948, 487]. Similarly, the founder could give up their right to fill an ecclesiastical position for the first time, i.e. the right of presentation. In such a case, the founder gave their implicit consent for the beneficiary to be appointed by the bishop [Rittner 1912, 238].

The CIC/17 also allowed for the possibility of the patron losing the right of patronage in whole or in part as a result of their voluntary renunciation of this right, i.e. by making an appropriate declaration, provided that the submission of such a declaration did not cause any harm to the other co-patrons.[65]

Additionally, the right of patronage could be lost in a situation in which the founder agreed for the benefice under their patronage to be merged with another benefice of free endowment or to be converted into an elective or monastic benefice.

The loss of the right of patronage could also result from the patron's failure to perform the duties imposed on them. This concerned situations in which the person did not undertake the repair or reconstruction of the church or its equipment despite being clearly obliged to do so by the ordinary.[66]

Furthermore, the founder was threatened with the loss of their right of patronage after they had personally or with the help of third parties jeopardised the life or health of a clergyman, i.e. killed, maimed, or injured a rector or priest from the clergy of their church of patronage.[67] In such

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[62] See *Prawo patronatu* 1918, p. 104-108.

[63] Canon 1470 § 1 CIC/17: "Praeter casum de quo in can. 1469 § 3, ius patronatus exstinguitur: 4 Si res, cui ius patronatus inhaeret, pereat, aut exstinguatur familia, gens, linea cui secundum tabulas fundationis reservatur; quo in altero casu nec ius patronatus hereditarium evadit, nec Ordinarius valide permittere poterit donationem iuris patronatus alii fieri."

[64] *Prawo patronatu* 1918, p. 35-36.

[65] Canon 1470 § 1 CIC/17: "Praeter casum de quo in can. 1469 § 3, ius patronatus exstinguitur: 1 Si patronus iuri suo renuntiaverit; eius tamen renuntiatio ex integro fieri potest aut ex parte; nunquam vero potest aliis compatronis, si qui sint, damnum afferre."

[66] Canon 1469 § 3 CIC/17: "Si patronus, intra tempus ab Ordinario sub poena cessationis patronatus praefiniendum, ecclesiam denuo aedificaverit vel restauraverit aut reditus auxerit, ius patronatus revigescit; secus ipso iure et sine ulla declaratione cessat."

[67] Canon 1470 § 1 CIC/17: "Praeter casum de quo in can. 1469 § 3, ius patronatus exstinguitur: 6 Si patronus ius partronatus simoniace in alium transferre attentaverit; si lapsus fuerit

cases, the loss of patronage resulted from the subsequent legal procedure and sentence,[68] whose consequences also applied to the patron's heirs.[69] The code condemned all forms of lawless behaviour and stipulated that any founder would lose their patronage if they misappropriated or illegally occupied church property.

The loss of patronage also occurred if the patron had disposed of the right of patronage through simony (Canon 1470 § 1 CIC/17).

Since the right of patronage was closely linked to adherence to the Catholic faith (Canon 1470 § 1, 6˚CIC/17),[70] this right was lost by any church founder who had committed an act of apostasy, schism,[71] or heresy.[72] It should be emphasised that in the case of simony, apostasy, schism, heresy,

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in apostasiam, haeresim aut schisma; si bona ac iura ecclesiae vel beneficii iniuste usurpaverit aut detineat; si rectorem vel alium clericum ecclesiae servitio addictum aut beneficiarium per se vel per alios occiderit vel mutilaverit."

68 Canon 1470 § 3 CIC/17: "Ut ex delictis enumeratis in § 1, n. 6˚, patroni censeantur ius patronatus amississe, requiritur et sufficit sententia declaratoria."

69 Canon 1470 § 2 CIC/17: "Propter crimina de quibus in § 1, 6˚, ius patronatus amittit solus patronus reus et, ob delictum postremo memoratum, eius quoque heredes."

70 See also *Prawo patronatu* 1918, p. 108-10; Grabowski 1948, 487. It should be noted that even before the introduction of the Pio-Benedictine Code, in a situation in which a lay or ecclesiastical patron presented an excommunicated person for office, they were entitled to present a candidate again within the prescribed period. With regard to ecclesiastical patronage, the patron lost the privilege of presenting candidates to a benefice when they had presented an excommunicated person deliberately. The benefice then became *liberae collationis*. See Opieliński 1894, 236.

71 "Schism (Gr. *schizein* – to cut or to cleave) a division in the organisational structure of the Church consisting in the severance of jurisdictional ties with the Church and the denunciation of obedience to the Pope. In the moral aspect, it is a grave sin, violating the unity of the Church resulting from divine institution; consequently, it causes excommunication ipso facto' [Gigilewicz 2012].

72 "Heresy (Gr. *hairesis* – choice of parts), the rejection by an individual Christian or a religious group of one of the fundamental truths of the faith (or an aspect of it) that the Catholic Church, through the Teaching Office at a council or through the pope (*ex cathedra*) has obligatorily declared to be believed as a truth revealed by God (a dogma or symbol of the faith) or an erroneous interpretation of such a truth. Heresy can be a conscious and persistent doubting of a truth of the faith (Canon 751 CIC/83) or an unconscious deviation from it. If it is conscious and voluntary, it is something more than schism … and something less than apostasy (rejection of membership in the Church), constituting the gravest offence against the faith of the Church, its unity and apostolicity. Heresy is a concept opposed to orthodoxy .... In particular, the understanding of heresy was often reduced to questioning the decrees of the popes and the actual rejection of their jurisdictional primacy in the Church. According to the teaching of the popes, a heretic is a person who violates God's established order on earth, thus committing a political offence, for which they must be excommunicated. This understanding of heresy was partly curtailed by the Fourth Council of the Lateran (1215), which introduced the institution of the Inquisition and stated that declaring someone a heretic had to be preceded by an anathema, which gave the heretic a one-year period to admit that they were wrong" [Napiórkowski 2002, 456-62].

or unlawful appropriation of church property, the patron lost the right of patronage after a ruling that stated that fact. In such cases, it was only patrons themselves that lost the right as the effects of the ruling did not extend to their heirs (Canon 1470 CIC/17).

CONCLUSION

The major conclusion to be drawn from the above brief analysis of the provisions of the 1917 Code of Canon Law concerning the rights and duties of church founders (patrons or guardians of churches) and the Polish Concordat of 1925 is that the Church was justified in its prohibition of patronage in the future and its subsequent removal from the legal order. These changes were dictated by the extent to which the right of patronage was exercised and Poland's new political and legal system. At present, it would be difficult to imagine a situation in which, in view of Article 25(1) of the Constitution of the Republic of Poland of 2 April 1997,[73] the state or a lay person had the right to put forward a candidate for an ecclesiastical office. However, all forms of care and support for the activities of the Church, including its conservation and renovation of sacred and ecclesiastical buildings of historic value or engagement in charity and welfare projects should be preserved and strengthened. The legal solutions should include not only financing the Church from the state budget but also from the income of individual believers, for example in the form of tax relief.

To sum up, it should be emphasised that all forms of charitable and welfare activities of the Catholic Church can be taken advantage of by all citizens, including those who are not Catholics. As emphatically stated in Article 25(3) of the Polish Constitution, the State and the Church are obliged to cooperate for the individual and the common good.

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